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Wednesday
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12-Vols

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Air Pollution Control
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Banks, Banking
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Surface Mining Reclamation and Enforcement Office

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Pesticides and Pests
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Privacy
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National Aeronautics and Space Administration

Radio
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Federal Communications Commission

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

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Presidential Documents

Title 3—

The President

Proclamation 5033 of March 21, 1983

National Eye Donor Month, 1983

By the President of the United States of America

A Proclamation

One of the most magnificent presents that one human being can bestow upon another is the gift of sight. Incredible as it may seem, it is within the power of each of us to give this precious gift simply by making arrangements to donate our eyes after death.

Thanks to advances in eye research, donor eyes can be stored and the preserved corneal tissues transplanted into the eyes of people who would otherwise be unable to see the beautiful and exciting world in which we live.

Each year some 30,000 people lose vision because their corneas have been damaged by injury, disease, or an inherited condition. Where the cornea has become so clouded that vision is lost, sight usually can be restored through a replacement cornea provided by a cornea donor.

Tragically, some visually impaired people who could benefit from this operation cannot be helped because suitable corneal tissue is not always available when needed. Donor eyes are also needed for vision research so that we may learn more about how this organ functions and develop ways to prevent and treat the many disorders which threaten sight.

It is appropriate that we as a Nation encourage eye donations and increase public awareness of the need for such donations. By filling out a uniform donor card and carrying it, we may give the gift of sight to people who now suffer from corneal blindness and benefit others from eye research.

The Congress, by Senate Joint Resolution 15, has designated March 1983 as "National Eye Donor Month" and has authorized and requested the President to issue a proclamation in observance of that month.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of March 1983 as "National Eye Donor Month." I urge all citizens, health care professionals, educators, the media, and public and private organizations concerned with vision and vision research to join me in supporting this humanitarian action.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of March, in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and seventh.

Ronald Reagan

[FR Doc. 83-7627
Filed 3-21-83; 2:16 pm]
Billing code 3195-01-M

Rules and Regulations

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

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Docket No. R-0461]

Reserve Requirements of Depository Institutions; Regulation D; Reserve Requirements on Nonpersonal Time Deposits

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended Regulation D—Reserve Requirements of Depository Institutions (12 CFR Part 204) to modify the reserve requirements on nonpersonal time deposits. Under the amendment, nonpersonal time deposits with original maturities of 2½ years or more will be subject to a reserve requirement ratio of zero percent. Nonpersonal time deposits with original maturities of less than 2½ years will continue to be subject to a three percent reserve requirement ratio. This action was taken in view of the change in the Depository Institutions Deregulation Committee's rules, effective April 1, 1983, to permit the issuance of a ceiling-free time deposit with an original maturity of 2½ years or more which may be offered by depository institutions in negotiable form.

EFFECTIVE DATES: March 31, 1983. The first reserve maintenance period to which the amendment applies commences April 14, 1983.

FOR FURTHER INFORMATION CONTACT: Gilbert T. Schwartz, Associate General Counsel (202/452-3625) or Paul S. Pilecki, Senior Attorney (202/452-3281), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The Monetary Control Act of 1980 (Title I of Pub. L. 96-221; 94 Stat. 132) ("MCA") authorizes the Board to prescribe, solely for the purpose of implementing monetary policy, reserve requirements against nonpersonal time deposits within a reserve ratio range of zero to nine percent. The Monetary Control Act requires the reserve requirement against nonpersonal time deposits to be applied uniformly to the deposits at all depository institutions, except that such requirement may vary by deposit maturity. Nonpersonal time deposits are defined by the MCA as time deposits that are transferable, regardless of the nature of the holder, and time deposits in which any beneficial interest is held by a depositor who is not a natural person. Nontransferable time deposits in which the entire beneficial interest is held solely by a natural person are not subject to reserve requirements.

Regulation D—Reserve Requirements of Depository Institutions (12 CFR Part 204) currently imposes a three percent reserve requirement on nonpersonal time deposits with original maturities or notice periods of less than 3½ years. Nonpersonal time deposits with maturities of 3½ years or more are subject to a zero percent reserve requirement.

The Depository Institutions Deregulation Committee ("DIDC"), pursuant to its authority under the Depository Institutions Deregulation Act of 1980 (Title II of Pub. L. 96-221; 12 U.S.C. 3501 *et seq.*), authorized Federally insured commercial banks, mutual savings banks, and savings and loan associations to offer, effective May 1, 1982, a new category of ceiling-free time deposit with an original maturity of 3½ years or more. Such time deposits may be issued in negotiable or nonnegotiable form at the option of the issuer to any holder. Effective April 1, 1983, the minimum maturity of this deposit category will be reduced to 2½ years.

This new instrument, if issued to an individual with an original maturity of 2½ to less than 3½ years and in negotiable form (as well as an instrument with that maturity issued to other than a natural person regardless of negotiability) would be subject to a three percent reserve requirement. Thus, the existing reserve requirement structure presents a disincentive for issuing the new instrument with maturities of 2½ to less than 3½ years to individuals in negotiable form. At the time the 3½ year or more instrument was first authorized, the Board modified the maturity break for reserve requirements on nonpersonal time deposits from four years to 3½ years to facilitate the DIDC's objectives in authorizing this instrument in negotiable form. In this regard, a negotiable time deposit was viewed as more attractive to depositors since it could be sold as an alternative to incurring an early withdrawal penalty. To continue to facilitate the DIDC's objectives, the Board has amended the reserve requirements on nonpersonal time deposits so that, after the completion of the transition periods set forth in the MCA, nonpersonal time deposits with original maturities of 2½ years or more will be subject to a zero percent reserve requirement ratio and nonpersonal time deposits with original maturities of less than 2½ years will be subject to a three percent reserve requirement ratio. The Board estimates that the amount of reserves held on nonpersonal time deposits with maturities of 2½ to 3½ years is small, and, thus, this action will not adversely affect monetary control.

According to the current deregulation schedule adopted by the DIDC (12 CFR 1204.119), the minimum maturity of the 2½ year or more time deposit instrument will decrease by one year annually until March 31, 1986, at which time the minimum maturity will be that specified for any time deposit. However, the Board indicated that its action is not an indication that it will make further adjustments in the reserve requirements on nonpersonal time deposits in line with the DIDC's currently announced schedule to decrease annually the minimum maturity of this ceiling-free time deposit by one year. The Board notes that reducing further the nonpersonal time deposit maturity break could have an adverse effect on monetary control by eroding the reserve base and loosening the linkage between reserves and deposits in the money stock. Accordingly, any decision to shorten the maximum time deposit maturity to which reserve requirements apply will be considered by the Board as the DIDC implementation dates approach when account can be taken of experience up to that point and monetary and credit conditions at the time.

This action is effective for depository institutions that report deposits and

maintain reserves on a weekly basis with the reserve computation period beginning March 31, 1983. The first reserve maintenance period to which this action applies for these institutions commences April 14, 1983. For depository institutions that report deposits and maintain reserves on a quarterly basis, the change in reserve requirements on nonpersonal time deposits with maturities of 2½ years to 3½ years will commence with the reserve maintenance period that begins on May 19, 1983, for such institutions that will submit a Report of Transaction Accounts, Other Deposits and Vault Cash (Form FR 2900) for the computation period of April 21–27, 1983. The change in reserve requirements for other quarterly reporters will be effective with the reserves required to be maintained based on deposit reports to be submitted in either May 1983 or June 1983.

In view of the fact that commercial banks, mutual savings banks, and savings and loan associations may offer this time deposit category with a minimum maturity of 2½ years as of April 1, 1983, the Board finds that application of the notice and public participation provisions of 5 U.S.C. 553 to this action would be contrary to the public interest, and that, since this action relieves a restriction, good cause exists for making this action effective March 31, 1983.

List of Subjects in 12 CFR Part 204

Banks, banking, Currency, Federal Reserve System, Penalties, Reporting Requirements.

Part 204—[Amended]

Pursuant to its authority under sections 19, 25, and 25(a) of the Federal Reserve Act (12 U.S.C. 461, 601 *et seq.*, 611 *et seq.*) and under section 7 of the International Banking Act of 1978 (12 U.S.C. 3105), the Board amends Regulation D (12 CFR Part 204) effective March 31, 1983, by revising paragraph (a)(1) of section 204.9 to read as follows:

§ 204.9 Reserve requirement ratios.

(a)(1) *Reserve percentages.* The following reserve ratios are prescribed for all depository institutions, Edge and Agreement Corporations and United States branches and agencies of foreign banks:

Category	Reserve requirement
Net Transaction Accounts:	
$0–$26.3 million	3 percent of amount.
Over $26.3 million	$789,000 plus 12 percent of amount over $26.3 million.
Nonpersonal Time Deposit:	
By original maturity (or notice period):	
less than 2½ years	3 percent.
2½ years or more	0 percent
Eurocurrency Liabilities	3 percent

* * * * *

By order of the Board of Governors of the Federal Reserve System, March 17, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-7456 Filed 3-22-83; 8:45 am]

BILLING CODE 6210-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 217

[Economic Reg. No. 1; Reg. ER-1334]

Reporting Data Pertaining to Civil Aircraft Charters Performed by U.S. Certificated and Foreign Air Carriers; Approval by the Office of Management and Budget

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This final rule gives notice that Office of Management and Budget (OMB) has approved the revised reporting requirements contained in reissued Part 217 of the Board's Economic Regulations, "Reporting of Data Pertaining to Civil Aircraft Charters Performed by U.S. Certificated and Foreigh Air Carriers" (ER–1320, 48 FR 3939, January 28, 1983). This approval has been granted through March 31, 1986. OMB approval is required the Paperwork Reduction Act of 1980.

DATE: Adopted: March, 18 1983.

Effective: March 10, 1983.

FOR FURTHER INFORMATION CONTACT: Linda K. Koman, Data Requirements Section, Information Management Division, Office of Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673–6042.

Accordingly, the Civil Aeronautics Board amends Part 217 of its Economic Regulations (14 CFR Part 217) by adding a note at the end of the table of contents to Part 217 to read:

Note: The reporting requirement contained in § 217.3 has been approved by the Office of Management and Budget under number 3024–0005.

This amendment is issued by the undersigned pursuant to delegation of authority from the Board to the Secretary in 14 CFR 385.24(b).

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

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-7506 Filed 3-22-83; 8:45 am]

BILLING CODE 6320-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1212

Protection of Personal Privacy

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: 14 CFR Part 1212 is amended by revising § 1212.503, "Fee schedule," to correct an error in the NASA regulations regarding access to Privacy Act records. § 1212.503 is revised to reflect that under the Privacy Act there are no charges for the searching or retrieval of an individual's records. Since this revision involves only administrative correction in agency management procedures, no public comment period is required.

EFFECTIVE DATE: Date published in the Federal Register.

ADDRESS: Office of General Counsel, Code GG, NASA Headquarters, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: George E. Reese, (202) 755–3924.

List of Subjects in 14 CFR Part 1212

Privacy.

PART 1212—PROTECTION OF PERSONAL PRIVACY

For reasons set out in the Preamble, 14 CFR 1212.503 is revised to read as follows:

§ 1212.503 Fee schedule.

(a) *Prohibition Against Charging Fees*—Individuals will not be charged for:

(1) Search for or retrieval of the requesting individual's records;

(2) Review of the requesting individual's records;

(3) Making a copy of a requesting individual's record when it is a necessary part of the process of making the record available for review;

(4) Transportation of the requesting individual's record;

(5) Making a copy of an amended record to provide the requesting individual with evidence of the amendment.

(b) *Waiver*—The system manager may, at no charge, provide copies of a record if it is determined the production

of the copies are in the interest of the government.

(c) *Fee Schedule and Method of Payment*—Fees will be charged as provide below, except as provided in paragraphs (a) and (b) of this section.

(1) Duplication of records—The system manager will follow the provisions of Subpart 1206.700(a) in charging fees for duplication of records only.

(2) Where it is anticipated that duplication fees chargeable under this section will amount to more than $25.00, and the requester has not indicated in advance a willingness to pay fees as great as are anticipated, the requesting individual shall be notified of the amount of the anticipated fees before copies are made. The notification shall offer the requester the opportunity to confer with agency personnel in a manner which will reduce the fees, yet still meet the needs of the requester.

(3) Where the anticipated fee chargeable under this section exceeds $25.00, an advance deposit of part or all of the anticipated fee may be required.

James M. Beggs,

Administrator.

[FR Doc. 83-7443 Filed 3-22-83; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203, 213, 221, 227, 234, and 235

[Docket No. R-83-790]

Mutual Mortgage Insurance and Insured Home Improvement Loans

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

ACTION: Final rule.

SUMMARY: The regulation finalizes provisions that permit HUD to allow amortization periods other than in just five-year intervals as is presently required. This authority will enable HUD to accommodate innovative types of financing. The amortization period may not be in excess of the term of the mortgages. The maximum term permitted for mortgages is not being changed.

EFFECTIVE DATE: May 2, 1983.

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

SUPPLEMENTARY INFORMATION: Historically, HUD has established amortization periods of either 10, 15, 20, 25, 30, or 35 years, by providing for either 120, 180, 240, 300, 360, or 420 monthly amortization payments. On May 2, 1980, HUD published an interim rule which authorized it to allow mortgage amortization periods other than at five year intervals. The rule permitted adjustments to HUD mortgage term requirements to accommodate a variety of financing arrangements.

The interim rule did not change the prohibition against amortization periods exceeding the term of the mortgage or the maximum term permitted for mortgages.

The Department did not receive any comments from the public in response to the interim rule; therefore, it is publishing the interim rule as final.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulation. 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 was made in accordance with HUD regulations in 24 CFR Part 50, which implements Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, D.C. 20410.

This rule was listed as item (B) 23. H-38-79 under the Office of Housing in the Department's Semiannual Agenda of Regulations published on October 28, 1982 (47 FR 48439), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Pursuant to Section 605(b) of 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.

The Catalog of Federal Domestic Assistance program numbers are 14.105, 14.117, 14.120, 14.126, 14.133, and 14.165.

List of Subjects

24 CFR Part 203

Home improvement, Loan programs; Housing and community development, Mortgage insurance Solar energy.

24 CFR Part 213

Mortgage insurance, Cooperatives.

24 CFR Part 221

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

24 CFR Part 227

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

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.

Accordingly, the interim rule published at 45 FR 29277 on May 2, 1980 is hereby adopted as final.

(Sec. 211 of the National Housing Act (12 U.S.C. 1709, 1715b))

Dated: March 14, 1983.

Philip Abrams,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 83-5685 Filed 3-22-83; 8:45 am]

BILLING CODE 4210-27-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 162

[OPP 250023C; PH-FRL 2322-6]

Federal Insecticide, Fungicide, and Rodenticide Act; Effective Date for Exemption of Certain Biological Control Agents From Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Rule related notice.

SUMMARY: As required by section 25(a)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA),

EPA submitted a final regulation regarding the exemption of certain biological control agents from regulations under FIFRA to both Houses of Congress for review prior to the regulation taking effect. The regulation was published in the **Federal Register** of June 2, 1982 (47 FR 23928). The minimum 60-day period for Congressional review ended on September 21, 1982. Congress did not act either to extend the review period or to disapprove the regulation. Also, the Agency submitted the regulation to the Office of Management and Budget (OMB), as required by Executive Order 12291, for a 15-day review on November 27, 1981. OMB did not comment on the regulation and on December 4, 1981, cleared it for **Federal Register** publication. Therefore, the Agency is now establishing an effective date for the rule.

DATE: The regulation becomes effective on March 30, 1983.

FOR FURTHER INFORMATION CONTACT: Fred S. Betz, Hazard Evaluation Division (TS-769C), Office of Pesticide Programs, Environmental Protection Agency, Room 821, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-7351).

SUPPLEMENTARY INFORMATION: EPA promulgated a final regulation which was published in the **Federal Register** of June 2, 1982 (47 FR 23928) under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 et seq.). This regulation established an exemption from regulation under section 25(b) of FIFRA, as amended, for certain organisms which are used as biological control agents and which are therefore considered "pesticides" under FIFRA. However, as required by section 25(a)(4) of FIFRA, this regulation could not take effect until it had been submitted to both Houses of Congress for review and possible disapproval. This review period was to last for a minimum of 60 days of continuous Congressional session, as defined by section 25(a)(4), with a possibility of extension by Congress for an additional 30 days. Since it was not possible to predict an exact date on which the Congressional review period would end, the preamble to the final regulation stated that EPA would issue a separate **Federal Register** notice after the review period was over announcing the effective date of the regulation. On September 21, 1982, 60 days of continuous Congressional session elapsed. Since neither House of Congress took any action in that period either to disapprove the regulation or to extend the review period, Congressional review under section 25(a)(4) of FIFRA ended on that date. Accordingly, the final regulation promulgated as 40 CFR 162.5(c) on June 2, 1982, will take effect on March 30, 1983.

Dated: March 4, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 83-6943 Filed 3-22-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 2F2722/R502; PH-FRL 2327-4]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Hexakis [2-Methyl-2-Phenylpropyl] Distannoxane

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the insecticide hexakis[2-methyl-2-phenylpropyl]distannoxane and its metabolites in or on the raw agricultural commodities pecans and walnuts. This regulation to establish maximum permissible levels for the combined residues of the insecticide in or on the commodities was requested, pursuant to a petition, by the Shell Chemical Company.

EFFECTIVE DATE: March 23, 1983.

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: Jay Ellenberger, Product Manager (PM) 12, Office of Pesticide Programs, Environmental Protection Agency, Rm. 202, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2386).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of August 25, 1982 (47 FR 37289) which announced that Shell Chemical Company, Suite 200, 1025 Connecticut Ave., NW., Washington, D.C. 20036, had submitted pesticide petition 2F2722 proposing that 40 CFR 180.362 be amended by establishing tolerances for the combined residues of the insecticide hexakis[2-methyl-2-phenylpropyl] distannoxane and its organotin metabolites calculated as hexakis[2-methyl-2-phenylpropyl]distannoxane in or on the raw agricultural commodities pecans and walnuts at 0.5 part per million (ppm).

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

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the proposed tolerances included a 2-year dog feeding study with a no-observed-effect level (NOEL) of 5 mg/kg; a 2-year rat feeding/oncogenicity study which was negative for oncogenic effects at 600 ppm (highest dose tested); an 18-month mouse feeding study which was negative for oncogenic effects at 600 ppm (highest dose tested); multigeneration reproduction study with a NOEL of 100 ppm; mammalian mutagenicity assays which were negative for mutagenic effects; and rat and rabbit teratology studies with NOEL's of 30 mg/kg for pre-implantation losses and 1.0 mg/kg, for maternal toxicity respectively. Based on the 2-year rat feeding/oncogenicity study with a NOEL of 100 ppm (5 mg/kg of body weight (bw)/day) and using a safety factor of 100, the acceptable daily intake (ADI) for humans is 0.05 mg/kg of bw/day. The theoretical maximum residue contribution (TMRC) for existing tolerances for a 1.5 kg daily diet is calculated to be 1.8370 mg/day and represents 61.23 percent of the ADI. The current action will contribute .0005 mg/day to the TMRC and increase the ADI by 0.025 percent.

The metabolism of the pesticide in plants is adequately understood, and an adequate analytical method, gas-liquid chromatography using a tin selective flame photometric detector, is available for enforcement purposes. No significant feed items are involved and therefore there will be no problem of secondary residues in meat, milk, poultry, and eggs. No actions are currently pending against the continued registration of the insecticide, nor are there any other relevant considerations involved in establishing these tolerances.

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

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, 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 CFR 24950).

List of Subjects in 40 CFR Part 180

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

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

Dated: February 28, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.362 is amended by adding and alphabetically inserting the commodities pecans and walnuts to read as follows:

§ 180.362 Hexakis [2-methyl-2-phenylpropyl]distannoxane; tolerances for residues.

Tolerances are established for the combined residues of the insecticide hexakis[2-methyl-2-phenylpropyl] distannoxane and its organotin metabolites calculated as hexakis[2-methyl-2-phenylpropyl] distannoxane in or on the following raw agricultural commodities:

Commodities	Parts per million
* * * * *	
Pecans	0.5
* * * * *	
Walnuts	0.5
* * * * *	

[FR Doc. 83-7077 Filed 3-22-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 2F2704/R537; PH-FRL 2325-1]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; 1-(4-Chlorophenoxy)-3,3-Dimethyl-1-(1H-1,24-Triazol-1-yl)-2-Butanone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the fungicide 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1*H*-1,2,4-triazol-1-yl)-2-butanone and its metabolite in or on the raw agricultural commodities grass forage, seed cleanings (including hulls), and seed grass straw (including chaff). This regulation to establish maximum permissable levels for residues of the fungicide in or on the commodities was requested, pursuant to a petition, by the Mobay Chemical Corporation.

EFFECTIVE DATE: March 23, 1983.

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 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 August 11, 1982 (47 FR 34851), that announced that Mobay Chemical Corp., P.O. Box 4913, Kansas City, MO 64120, had submitted pesticide petition 2F2704 proposing to amend 40 CFR 180.410 by establishing tolerances for the combined residues of the fungicide 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1*H*-1,2,4-triazol-1-yl)-2-butanone and its metabolite beta-(4-chlorophenoxy)-alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazol-1-ethanol in or on the raw agricultural commodities seed grass cleanings, including hulls, at 145 parts per million (ppm), and seed grass straw, including chaff, at 105 ppm.

On November 24, 1982 (47 FR 53116), the EPA announced that Mobay had amended the petition by proposing a tolerance for grass forage at 0.2 ppm.

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 these tolerances included a rat teratology study which indicated that cleft palates are treatment-related effects (the no-observed-effects level (NOEL) for fetal development and teratology is considered to be at least 50 mg/kg/day, the NOEL for maternal toxicity is considered to be 10 mg/kg/day); an inhalation study in rats which was negative for teratogenicity and embryotoxicity at a dose level of 11.3 mg/m^3; dominant lethal test which was negative for mutagenicity; a micronucleus test which was negative; an Ames test which was also negative for mutagenicity; a 2-year feeding (oncogenicity) study in rats with no oncogenic potential observed under the conditions of the study and a systemic NOEL of 50 ppm (2.5 mg/kg/day in the diet); a 2-year feeding (oncogenicity) study in mice, with no oncogenic potential observed under the conditions of the study and a systemic NOEL of 50 ppm (7.1 mg/kg/day in the diet); and a multigeneration reproduction study in rats with a NOEL of 50 ppm (2.5 mg/kg/day in the diet) for reproductive effects.

Based in the NOEL of 50 ppm (2.5 mg/kg) in the 2-year feeding study in rats, and using a 100-fold safety factor, the allowable daily intake (ADI) is calculated to be 0.025 mg/kg/day and the maximum permissible intake (MPI) is 1.5 mg/day for a 60-kg person. Presently established temporary tolerances, toxicologically approved tolerances, and tolerances established by this rule, result in a maximum theoretical residue contribution (TMRC) of 0.3606 mg/day for a 60-kg person which represents 24.04 percent of the ADI. Temporary tolerances have previously been established for the combined residues of this fungicide and its metabolite in or on wheat grain, apple pomace, grape pomace, raisin waste, and in fresh apples and grapes.

Residues resulting in fat, meat, meat byproducts of cattle, goats, hogs, horses, poultry, and sheep and in milk and eggs from use of these raw agricultural commodities as feed, are adequately covered by tolerances established by EPA (48 FR 5919, February 9, 1983).

There are no regulatory actions pending against the continued registration of the fungicide and there are no other considerations involved in establishing these tolerances. The metabolism of this fungicide and its metabolite is adequately understood, and an adequate analytical method, gas chromatography with scintillation spectrophotometry, is available for enforcement purposes.

Based on the information cited above, the Agency has determined that the

establishment of tolerances for residues of this fungicide and its metabolite in or on the raw agricultural commodities seed grass cleanings, including hulls; seed grass straw, including chaff and grass forage will protect the public health. The pesticide is considered useful for the purposes for which the tolerances are sought and are therefore established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, 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.

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).

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

List of Subjects in 40 CFR Part 180

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

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

Dated: March 10, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.410 is amended by adding and alphabetically inserting the following commodities to read as follows:

§ 180.410 1-(4-Chlorophenoxy)-3,3-dimethyl-1-(1H-1,2,4-triazol-1-yl)-butanone; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Grass, forage	0.2
Grass, seed cleanings (including hulls)	145.0
Grass, seed straw (including chaff)	105.0
* * * * *	

[FR Doc. 83-7096 Filed 3-22-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 0E2408/R524; PH-FRL 2327-2]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; 5-Ethoxy-3-Trichloromethyl-1,2,4-Thiadiazole

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the fungicide 5-ethoxy-3-trichloromethyl-1,2,4-thiadiazole and its metabolite in or on the raw agricultural commodity tomatoes. This regulation to establish a maximum permissible level for residues of the fungicide in or on the commodity was requested, pursuant to a petition, by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: Effective on March 23, 1983.

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: Donald Stubbs, Emergency Response Section, Process Coordination Branch, Registration Division (TS-767C), Environmental Protection Agency, Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, [703-557-1192].

SUPPLEMENTARY INFORMATION: EPA issued a notice of proposed rulemaking published in the **Federal Register** of February 2, 1983 (48 FR 4680) that announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 0E2408 to EPA on behalf of the IR-4 Technical Committee and the Agricultural Experiment Station of Georgia proposing to amend 40 CFR 180.370 by establishing a tolerance for the combined residues of the fungicide 5-ethoxy-3-trichloromethyl-1,2,4-thiadiazole and its monoacid metabolite 3-carboxy-5-ethoxy-1,2,4-thiadiazole in or on the raw agricultural commodity tomatoes at 0.15 part per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the notice of proposed rulemaking. The pesticide is considered useful for the purpose for which the tolerance is sought. It is concluded that the tolerance would protect the public health and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, 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.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346(a)(e)))

List of Subjects in 40 CFR Part 180

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

Dated: March 10, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.370 is amended by adding and alphabetically inserting the raw agricultural commodity tomatoes to read as follows:

§ 180.370 5-Ethoxy-3-trichloromethyl-1,2,4-thiadiazole; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Tomatoes	0.15
* * * * *	

[FR Doc. 83-7078 Filed 3-22-83; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-49

[FPMR Amendment H-137]

Utilization, Donation, and Disposal of Foreign Gifts and Decorations—Miscellaneous Changes

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation amends FPMR Part 101-49 to require executive agencies to maintain security and physical custody of foreign gifts and decorations until conclusion of the screening period; to obtain commercial appraisals of foreign gifts to be offered for sale to an interested recipient; to annotate additional information on the reporting document, including an indication of the recipient's interest in designating a potentially eligible donee; and to provide additional information on the transfer document, including justification supporting the request. It further provides that GSA will assume physical custody of foreign gifts and decorations at the conclusion of the donation screening period, and specifies conditions under which foreign gifts will be considered for transfer for futher use by Federal agencies. These changes are made in response to a recent GSA audit report on security for foreign gifts and decorations and to expedite the disposition of this property by having agencies provide additional information on the reporting and transfer documents.

EFFECTIVE DATE: March 23, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley M. Duda, Director, Utilization Division, (703) 557-0807.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-49

Conflict of interest, Decorations, Medals, Awards, Foreign relations, Government property, Government property management.

PART 101-49—UTILIZATION, DONATION, AND DISPOSAL OF FOREIGN GIFTS AND DECORATIONS

Subpart 101-49.1—General Provisions

1. The table of contents for Part 101-49 is amended by revising the following five entries:

Sec.
101-49.107 [Reserved].
101-49.302 Requests by public agencies and nonprofit tax-exempt institutions and organizations.
101-49.401 Approval by the Secretary of State on sales.
101-49.402 Sale of gifts by GSA to interested recipients.
101-49.403 Sale of gifts by GSA to the public.

2. Section 101-49.101(a) is revised to read as follows:

§ 101-49.101 Custody of gifts and decorations.

(a) GSA generally will not take physical possession of gifts and decorations during the utilization and donation screening period governed by this Part 101-49. Gifts and decorations shall remain in the physical custody and be the responsibility of the employing agency during the screening period.

* * * * *

3. Section 101-49.102 is revised to read as follows:

§ 101-49.102 Care and handling.

(a) Each employing agency shall be responsible for the security of gifts and decorations in its custody.

(b) Each employing agency shall be responsible for and bear the cost of delivery of gifts and decorations to the physical custody of GSA after the screening period.

4. Section 101-49.105 is revised to read as follows:

§ 101-49.105 Appraisals.

In those cases where the recipient has indicated an interest in purchasing a gift required to be reported to GSA, employing agencies shall obtain a commercial appraisal for each gift before GSA offers the gift for negotiated sale to recipient. The commercially appraised value plus the cost of the appraisal shall be annotated on a copy of the SF 120, Report of Excess Personal Property, at the time of delivery of the gift to GSA for sale and a copy of the commercial appraisal shall be attached.

§ 101-49.107 [Reserved]

5. Section 101-49.107 is removed and reserved.

6. Section 101-49.108 is revised to read as follows:

§ 101-49.108 Disposal of firearms.

Firearms received as foreign gifts that are reported to GSA may be offered for transfer to Federal agencies, including law enforcement activities. Firearms shall not be donated. Those firearms not transferred to a Federal activity shall be destroyed under Subpart 101-45.309-4.

Subpart 101-49.2—Utilization of Foreign Gifts and Decorations

7. Section 101-49.201-1 is amended by revising the introductory text of paragraph (a) and paragraph (a)(8) and adding paragraphs (a)(9) and (a)(10) to read as follows:

§ 101-49.201-1 Gifts and decorations required to be reported.

(a) Except as provided in §§ 101.49.106 and 101-49.201-2, tangible gifts and decorations that are not retained for official use or returned to the donor shall be reported to GSA within 30 calendar days after deposit of the gift or decoration with the employing agency. Tangible gifts and decorations that have been retained for official use and have not been returned to the donor shall be reported to GSA within 30 calendar days after termination of the official use. Gifts and decorations shall be reported on Standard Form 120, Report of Excess Personal Property (see § 101-43.4901-120), to the General Services Administration (FM), Washington, DC 20406. The Standard Form 120 shall be conspicuously marked "FOREIGN GIFTS AND/OR DECORATIONS" and include the following information:

* * * * *

(8) An indication whether the recipient is interested in having the gift or decoration, if it becomes available for donation, donated to an eligible public agency or nonprofit tax-exempt institution for public display or reference purposes. This interest shall be documented in a letter outlining any special significance of the gift to the proposed donee institution. The mailing address and telephone number of both the recipient and the proposed donee shall be provided.

(9) The appraised value plus the cost of the appraisal shall be added to a copy of the SF 120, Report of Excess Personal Property, before GSA offers gifts for sale to interested recipients. At the time of termination of agency use, GSA may direct that the foreign gift be appraised.

(10) Each foreign gift or decoration shall be identified as a separate line item.

* * * * *

8. Section 101–49.202 is amended to revise paragraph (b) and to add paragraphs (c), (d), and (e) to read as follows:

§ 101–49.202 Transfer to other Federal agencies.

* * * * *

(b) Transfers will be accomplished by submitting for approval a Standard Form (SF) 122, Transfer Order Excess Personal Property (see § 101–43.4901–122), or any other transfer order form approved by GSA, to the General Services Administration (FM), Washington, DC 20406. The SF 122, or other transfer order form shall be conspicuously marked "FOREIGN GIFTS AND/OR DECORATIONS" and include all information furnished by the employing agency as specified in § 101–49.201–1(a).

(c) Transfers of gifts and decorations shall be for public display or other bona fide agency use and not for the personal benefit of any individual. GSA will approve only transfers of foreign gifts of the type that would ordinarily be acquired through procurement channels, identified by a National Stock Number, and stocked in a Federal warehouse or purchased from authorized schedules. Gift items suitable as museum specimens will be made available to Federal museums. Transfers will not be approved for use in private or semi-private offices or dining rooms or for loan to a third agency.

(d) A brief justification of the display or official use of the gift or decoration shall be shown on or accompany the transfer document to support the request.

(e) The transfer document shall include the statement, "At such time as these items are no longer required, they will be reported to the General Services Administration, Office of Property Management (FM), Washington, DC 20426, and will be identified as foreign gift items, and cross-referenced to the original excess report number."

Subpart 101–49.3—Donation of Foreign Gifts and Decorations

9. Section 101–49.302 is revised and the caption changed as follows:

§ 101–49.302 Requests by public agencies and nonprofit tax-exempt institutions and organizations.

Requests for donation of gifts and decorations to public agencies and eligible nonprofit tax-exempt institutions and organizations shall be supported with a letter of intent, signed and dated by the authorized representative of the proposed donee, describing the intended use of the items and the manner in which they would be displayed or used for reference purposes. Donations of gifts and decorations will be accomplished by submitting for approval a SF 123, Transfer Order Surplus Personal Property (see § 101–44.4901–123), to the General Services Administration (FM), Washington, DC 20406. The SF 123, Transfer Order Surplus Personal Property, shall be prepared and distributed in accordance with the instructions in § 101–44.4901–123–1 and shall be conspicuously marked "FOREIGN GIFTS AND/OR DECORATIONS."

10. Section 101–49.303 is revised to read as follows:

§ 101–49.303 Allocation.

Allocation of gifts and decorations among the States will be made at the discretion of the Administrator of General Services. The employee recipient may recommend that a gift or decoration be allocated for donation through the State agency to a specific donee. A statement of this recommendation shall be entered on the SF 120, Report of Excess Personal Property, by the reporting agency. The request must be supported by a letter from the outlining any special significance of the gift or decoration to the proposed donee. The mailing address and telephone number of both the recipient and the proposed donee shall also be included in the letter. Such requests will receive consideration if it is determined that the item is to be donated.

11. Section 101–49.304 is amended by revising paragraphs (c), (e), (f), (g), (h), and (i) to read as follows:

§ 101–49.304 Conditions of donation.

* * * * *

(c) The donee shall place the gift or decoration into use for public display or reference purposes within 12 months following receipt and use the gift or decoration in accordance with this section in perpetuity.

(e) The donee shall submit an annual report to GSA through the State agency. The report shall contain a description of the current condition and use of all gifts or decorations that the donee has received, and a certification that the donee is in compliance with the conditions of donation imposed on the gifts and decorations.

(f) The State agency shall review the use made of the gifts or decorations for compliance by the donee with terms, conditions, reservations, and restrictions imposed on foreign gifts and decorations. The donee shall allow the right of access to the donee's premises at reasonable times for inspection of the gifts or decorations by duly authorized representatives of the U.S. Government or the State agency.

(g) The donee shall not sell, trade, lease, lend, bail, encumber, cannibalize, or dismantle for parts or otherwise dispose of the property; or remove it permanently for use outside the State; or transfer title to the gift or decoration directly or indirectly; or do or allow anything to be done that would cause the gift or decoration to be seized, taken into execution, attached, lost, stolen, damaged, or destroyed.

(h) In the event the donee no longer desires to use the gift or decoration for public display or reference purposes as provided in this section, the donee shall notify the General Services Administration (FM), Washington, DC 20406, through the State agency; and upon demand by GSA, title and right to possession of the gift or decoration shall revert to the U.S. Government. In this event, the donee shall comply with transfer or disposition instructions furnished by GSA through the State agency, with costs of transportation, handling, and reasonable insurance during transportation to be paid by the donee or as directed by GSA.

(i) Upon the donee's failure to comply with any of the above conditions, GSA may demand return of the gift or decoration and, upon demand, title and right to possession of the gift or decoration shall revert to the U.S. Government. In this event, the donee shall return the gift or decoration in accordance with instructions furnished by GSA, with costs of transportation, handling, and reasonable insurance during transportation to be paid by the donee or as directed by GSA. If the gift or decoration is lost, stolen, or cannot legally be recovered or returned for any other reason, the donee shall pay to GSA the fair market value of the gift or decoration at the time of this demand as determined by GSA. If the gift or decoration is damaged or destroyed, GSA may require the donee to (1) return the item and pay the difference between the fair market value of the item if it were not damaged or destroyed and the fair market value of the damaged or destroyed item, or (2) pay the fair market value of the item if it were not damaged or destroyed, as determined by GSA.

Subpart 101-49.4—Sale or Destruction of Foreign Gifts and Decorations

12. Subpart 101-49.4 is revised to read as follows:

Subpart 101-49.4—Sale or destruction of foreign gifts and decorations

Sec.
101-49.400 Scope of subpart.
101-49.401 Approval by the Secretary of State on sales.
101-49.402 Sale of gifts by GSA to interested recipients.
101-49.403 Sale of gifts by GSA to the public.
101-49.404 Proceeds from sales.
101-49.405 Destruction of gifts and decorations.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); and sec. 515, 91 Stat. 862; 5 U.S.C. 7342.

§ 101-49.400 Scope of subpart.

This subpart prescribes policies and procedures governing the disposal by sale or destruction of foreign gifts and decorations that GSA has determined are not needed for Federal utilization and donation.

§ 101-49.401 Approval by the Secretary of State on sales.

The approval of the Secretary of State or the Secretary's designee shall be obtained before offering any gift for public sale.

§ 101-49.402 Sale of gifts by GSA to interested recipients.

GSA shall offer gifts through negotiated sales only to a recipient who has indicated an interest in purchasing the item(s). The mailing address and telephone number of the recipient shall be provided on the SF 120, Report of Excess Personal Property. The sales price shall be the appraised value of the gift(s) plus the cost of the appraisal. Sales shall be documented in accordance with Part 101-45.

§ 101-49.403 Sale of gifts by GSA to the public.

GSA shall sell gifts in accordance with Part 101-45.

§ 101-49.404 Proceeds from sales.

The proceeds from the sale of gifts shall be deposited in the Treasury as miscellaneous receipts, unless other disposition is authorized by law or regulation.

§ 101-49.405 Destruction of gifts and decorations.

Gifts that are not sold under this Subpart 101-49.4 and decorations may be destroyed and disposed of as scrap or for their material content.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and sec. 515, 91 Stat. 862; 5 U.S.C. 7342)

Dated: March 3, 1983.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 83-7474 Filed 3-22-83; 8:45 am]

BILLING CODE 6820-96-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 110

Health Maintenance Organizations

Correction

In FR Doc. 83-815 beginning on page 1301 in the issue of Wednesday, January 12, 1983, make the following correction:

On page 1302, column three, § 110.603(b)(2)(i), line seven, close parenthesis after "services".

BILLING CODE 1505-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 6

Privacy Act of 1974; Solicitation of Social Security Numbers

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This document amends FEMA Regulation 44 CFR 6.3(c) to modify a restriction on solicitation of social security numbers. The existing regulations prevent solicitation of social security numbers which are needed for administration of training programs and in connection with claims collection.

EFFECTIVE DATE: April 22, 1983.

ADDRESS: Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, Room 835, 500 C Street SW, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Thomas Ainora, Office of General Counsel, FEMA (202) 287-0379.

SUPPLEMENTARY INFORMATION: FEMA's Privacy Act Regulations presently effectively prohibit the obtaining of social security numbers. (44 CFR 6.3(c).) The statutes do not require such a rigorous provision but only provide that a benefit, right, or privilege cannot be denied for failure to disclose the social security number.

Use of such number can serve valid administrative purposes, and thus FEMA determined to revise its rule to conform to the statutory provision and to obtain social security numbers as identifiers in its forms used in training programs and in connection with claims collection. A notice of proposed rulemaking was published on January 6, 1983, at 48 FR 676. No comments were received. This final rule is the same as the proposed rule with very minor editorial changes.

This regulation deals with administrative matters and, hence, is categorically excluded from the requirements for an environmental assessment under 44 CFR Part 10. Further, it is not a major regulation under the terms of Executive Order 12291 and, since it deals with individuals, does not have impact on small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The regulation, as amended, does not require disclosure of any information and is not an information collection requirement. Any collection or attempt at collection of the social security number on any form or elsewhere must be justified in a separate process.

List of Subjects in 44 CFR Part 6

Privacy.

PART 6—IMPLEMENTATION OF PRIVACY ACT OF 1974

Accordingly, 44 CFR Part 6 is amended by revising paragraph (c) of § 6.3 to read as follows:

§ 6.3 Collection and use of information (Privacy Act Statements).

* * * * *

(c) *Solicitation of Social Security Numbers:* Before an employee of FEMA can deny to any individual a right, benefit, or privilege provided by law because such individual refuses to disclose his/her social security account number, the employee of FEMA shall ensure that either:

(1) The disclosure is required by Federal statute; or

(2) The disclosure of a social security number was required under a statute or regulation adopted before January 1, 1975, to verify the identity of an individual, and the social security number will become a part of a system of records in existence and operating before January 1, 1975. If solicitation of the social security number is authorized under paragraph (c) (1) or (2) of this section, the FEMA employee who requests an individual to disclose the social security account number shall first inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority the number is solicited, and the use that will be made of it.

* * * * *

Dated: March 17, 1983.

Louis O. Giuffrida,

Director.

[FR Doc. 83-7447 Filed 3-22-83; 8:45 am]

BILLING CODE 6718-01-M

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44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for the Unincorporated Areas of Hillsborough County, Florida Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule; map correction.

SUMMARY: The Federal Emergency Management Agency published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included Hillsborough County, Florida. It has been determined by the Associate Director, State and Local Programs and Support after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the Unincorporated Areas of Hillsborough County, Florida, that certain property is not within the Special Flood Hazard Area and that certain property is within the Special Flood Hazard Area.

This map amendment, by establishing that portions of the subject property is and that portions are not within the Special Flood Hazard Area, removes or adds the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 23, 1983.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone Toll Free (800) 638-6620.

The map amendments listed below are in accordance with § 70.7(a):

Map No. 120112, Panel 0190B, published on October 6, 1980, in 45 FR 66059, indicates that Lots 98, 102, 103, 107, and 108 in Block 8; Lots 13 and 14 in Block 12; and 14 through 18 in Block 11 of Timberlane Subdivision, Unit No. 5, Hillsborough County, Florida, as recorded in Plat Book 53, Page 45 of the Public Records of Hillsborough County, Florida, are located within the Special Flood Hazard Area. Map No. 120112, Panel 0190B also indicates that Lot 96 in Block 8 of Timberlane Subdivision, Unit No. 5, Hillsborough County, Florida, is not within the Special Flood Hazard Area.

Map No. 120112, Panel 0190B is hereby corrected to reflect that Lots 98, 102, 103, 107, and 108 in Block 8; Lots 13 and 14 in Block 12; and Lots 14 through 18 in Block 11 of the above-mentioned property are not within the Special Flood Hazard Area identified on June 18, 1980. These lots are in Zone B.

Map No. 120112, Panel 0190B is also corrected to reflect that Lot 96 in Block 8 of the above-mentioned property is partially located within the Special Flood Hazard Area identified on June 18, 1980.

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

List of Subjects in 44 CFR Part 70

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support).

Issued: March 2, 1983.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 83-7451 Filed 3-22-83; 8:45 am]

BILLING CODE 6718-03-M

[Docket No. FEMA-5952]

44 CFR Part 70

Letter of Map Amendment of the Town of Henrietta, New York Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final Rule; map correction.

SUMMARY: The Federal Emergency Management Agency (FEMA) published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the Town of Henrietta, New York. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the Town of Henrietta, New York, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: December 15, 1980.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Managment Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related finanical assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294 Bethesda,

Maryland 20034, Telephone: (800) 638–6620.

The map amendments listed below are in accordance with § 70.7(a):

Map Number FIRM 360419, Panel Number 0005C, published on December 15, 1980, in FR Volume 45 No. 242, page 82260, indicates that Lot 4, Township 12, Range 7, as described in Deed Book Libers 4666 and 4359, pages 220 and 281, of the Monroe County Clerk's office, is located wihin the Special Flood Hazard Area.

Map Number FIRM 360419, Panel Number 0005C, is hereby corrected to reflect that existing structure located at 1387 Bringhton-Henrietta Town Line Road of the above-mentioned property is not within the Special Flood Hazard Area identified on November 5, 1980. This structure is in Zone C.

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

List of Subjects in 44 CFR Part 70

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E.O. 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support).

Issued: February 28, 1983.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 83-7452 Filed 3-22-83; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR PART 70

[Docket No. FEMA-6237]

Letter of Map Amendment for the Township of South Lebanon, Pennsylvania Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule; map correction.

SUMMARY: The Federal Emergency Management Agency (FEMA) published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the Township of South Lebanon, Pennsylvania. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the Township of South Lebanon, Pennsylvania, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes tha requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: January 25, 1982.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Telephone: (800) 638–6620.

The map amendments listed below are in accordance with section 70.7(a):

Map Number FIRM 420581, Panel Number 0005B, published on January 25, 1980, in FR Volume 47 No. 16, page 3356, indicates that 1600 King Street, as described in the Deed Book Volume 90, page 975, of Lebanon County, Pennsylvania, is located within the Special Flood Hazard Area.

Map Number FIRM 420581, Panel Number 0005B, is hereby corrected to reflect that existing structure located at 1600 King Street of the above-mentioned property is not within the Special Flood Hazard Area identified on December 15, 1981. This structure is in Zone C.

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

List of Subjects in 44 CFR Part 70

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; E. O. 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support.)

Issued: March 9, 1983.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 83-7453 Filed 3-22-83; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-6048]

Letter of Map Amendment for Williamson County, Tennessee, Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included Williamson County, Tennessee. It has been determined by the Associate Director, State and Local Program and Support after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for Williamson County, Tennessee, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 23, 1983.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Acting Chief,

Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: If a property owner as required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone Toll Free (800) 638-6620.

The map amendments listed below are in accordance with § 70.7(a):

Map Number 470204 Panel 0020 A published on May 12, 1982 in 46 FR 26307 indicates that portions of the River Rest Estates Subdivision, Sections 3 and 4, as recorded in Book 6 at Pages 70 and 72, respectively, in the Register's Office, Williamson County, Tennessee and Lot 113 in proposed River Rest Estates, Section 5, being a 29.14 acre parcel of land which is evidenced in Book 222, Page 54, Register's Office, Williamson County, Tennessee are located within the Special Flood Hazard Area.

Map Number 470204 Panel 0020 A is hereby corrected to reflect that the portions of Lots 80 through 83 of Section 3, Lots 84 through 111 of Section 4, and Lot 113 of proposed Section 5 which are not contained within the regulatory floodway and are at or above elevation 584 feet National Geodetic Vertical Datum (NGVD) as shown on the Grading Plan of River Rest, prepared by Turner Engineering Co., Inc., dated May 5, 1981, are not within the Special Flood Hazard Area identified on April 1, 1981. The portions lying between 584 feet (NGVD) and 586.4 feet (NGVD) are located in Zone B, and the portions above 586.4 feet (NGVD) are in Zone C. However, some of the lots would be partially inundated by the base flood.

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

List of Subjects in 44 CFR Part 70

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; delegation of authority to Associate Director, State and Local Programs and Support.)

Issued: March 9, 1983.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 83-7454 Filed 3-22-83; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 82-320; FCC 83-81]

Radio Broadcast Services; Suburban Community Policy, Berwick Doctrine, and De Facto Reallocation Policy

AGENCY: Federal Communications Commission.

ACTION: Final rule (*Report and Order*).

SUMMARY: The Report and Order eliminates three policies and two rules used in the licensing of radio and television stations. The policies are the suburban community policy, the *Berwick* doctrine and the *de facto* reallocation policy. The rules are the 10- and 15-mile rules, 47 CFR 73.203(b) and 73.607(b). The action is necessary in order to delete rules and policies rendered unnecessary by changes that have occurred in the industries regulated. This action will expedite the authorization of radio and television stations.

EFFECTIVE DATE: February 17, 1983.

FOR FURTHER INFORMATION CONTACT: Mary Catherine Kilday, Mass Media Bureau, 202-632-6968.

List of Subjects in 47 CFR Part 73

Radio broadcast.

Report and Order

Adopted: February 17, 1983.
Released: March 14, 1983.

In the matter of: The Suburban Community Policy, the *Berwick* Doctrine, and the *De Facto* Reallocation Policy; BC Docket 82-320; FCC 83-81.

By the Commission: Commissioner Quello dissenting in part and issuing a statement; Commissioner Sharp dissenting in part and issuing a statement.

Introduction

1. Before the Commission is the *Notice of Proposed Rulemaking*, 47 FR 29282, published July 1, 1982 and the comments filed in response to that notice. In the notice, the Commission sought comment on whether the public interest requires the continuation of three policies used in the licensing of radio and television stations. The policies, adopted to aid the Commission in fulfilling its responsibilities under section 307(b) of the Communications Act, 47 U.S.C. 307(b), are the suburban community policy, used in authorizing AM radio, and the *Berwick* doctrine and the *de facto* reallocation policy, used in authorizing FM radio and television stations. We have reviewed carefully the comments filed in this proceeding. The comments indicate that the policies frequently are used for anticompetitive purposes. Commenting parties also contend that the policies have frustrated rather than furthered the goals of section 307(b) by inhibiting the establishment of stations in small communities located nearby larger ones. Consequently, based on our analysis of the comments and for the reasons that follow, we believe that the mandate of section 307(b) can be fulfilled without reliance on these policies which, we conclude, no longer serve the public interest and should be eliminated. We emphasize, however, that elimination of these policies will not eliminate or modify section 307(b) of the Communications Act. Our obligation to implement that statutory responsibility continues and will be faithfully carried out.

Background

2. The notice set out Commission responsibilities under section 307(b) of the Communications Act. Section 307(b) requires the Commission to "make such distribution of licenses, frequencies, hours of operation and of power among the several states and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same." Prior to the Radio Act of 1927, radio licensees generally were free to locate their radio stations in any preferred location subject to the then-existing minimal limitations against electrical interference. The result was "an unjustifiable grouping of stations within limited areas. There are within 50 miles of Chicago, 40 stations; of New York, 38; of Philadelphia, 22; and of San

Francisco, 22." 67 Cong. Rec. 5479 (1926) (remarks of Representative White). To dilute this concentration of radio stations in and around large cities, Congress enacted Section 9 of the Radio Act of 1927, which provided, *inter alia*, that

> The licensing authority shall make such a distribution of licenses, bands of frequency of wave lengths, periods of time for operations, and of power among the different States and communities as to give fair, efficient, and equitable radio service to each of the same.

Pub. L. 69–632, ch. 169, section 9, 44 Stat. 1166. By this statutory provision, Congress authorized the newly created Federal Radio Commission "in passing upon a license to consider its proposed location and the area to be served" and directed the Commission to "effect an equitable geographical distribution of stations over the entire country." 67 Cong. Rec. 5479 (1926).

3. Unsuccessful efforts were made to include in Section 9 language requiring the Commission to consider "the right of each state to have allocated to it" a certain quota of frequencies. 68 Cong. Rec. 2557 (1927). However, the following year, a compromise amendment to Section 9 was enacted which directed the Commission to allocate frequencies among five zones, each composed of several states. The frequencies were to be allocated in accordance with a formula based on population. Pub. L. 70–195, 45 Stat. 373. In 1934, Congress reenacted Section 9, as amended, into the Communications Act, as section 307(b). Two years later, in 1936, Congress deleted the five-zone scheme, which had proved to be mechanistic and unsatisfactory. This restored the original language of Section 9 of the Radio Act of 1927. Pub. L. 74–652, 49 Stat. 1475, 47 U.S.C. 307(b). Thus, the legislative intent behind the original Section 9 of the Radio Act is still controlling today; namely, to effect an equitable geographical distribution of stations across the entire nation.

4. The Commission implemented section 307(b) in commercial FM radio and TV by establishing and incorporating in its rules a Table of Assignments for each service.[1] These tables provide for a distribution of channels to specific communities throughout the United States based, in part, on fixed mileage separations. The Commission determined that:

> Effectuation of the distribution of radio facilities in such a manner that the result is fair, efficient and equitable and otherwise in the pubic interest from the standpoint of the listening and viewing public of the United States (Sections 303 and 307(b)) * * * can best be achieved by the adoption of a Table of Assignments * * *.

Sixth Report and Order on Television Allocations, 41 FCC 148, 151 (1952). The licensing procedure for FM and television is a two-step process. Step one fulfills the section 307(b) obligation by making available for licensing only a frequency which has been assigned to a specific community on the Table of Assignments. If the applicant is desirous of utilizing the frequency in another community, he or she must petition for a rulemaking to amend the Table of Assignments. In step two of the licensing procedure, applications are processed in order to ascertain that the applicants have the requisite qualifications to be licensees of the Commission. If there is more than one applicant for a frequency, a comparative hearing takes place in order to determine the party most worthy of the grant. The notice explained that Commission rules permit a station to be located within 15 miles (TV or Class B/C FM) or 10 miles (Class A FM) [2] of the community listed in the Tables.[3] If multiple applicants apply for a single frequency within the 15-mile or 10-mile limit, and these applications propose different communities of license, then a second section 307(b) determination is made during the comparative hearing.

5. In contrast, AM radio frequencies are allocated on a demand basis, with an applicant requesting the desired community and providing engineering exhibits to show the absence of harmful interference to existing stations. Section 307(b) considerations are made during the one-step proceeding to process the construction permit application. A hearing can result if petitions to deny are filed raising substantial and material questions of fact or if there are mutually exclusive applications.

6. Objectives and priorities guide the Commission's section 307(b) determinations. These set up preferences for applicants proposing to establish a station in an underserved community or in a community lacking broadcast service. Because the preferences are based on section 307(b) considerations, they can be conclusive in a mutually exclusive licensing contest.[4] The Commission feared that preferences could create incentives for applicants to try to prevail on the section 307(b) issue by designating as the community of license an underserved community proximate to a larger, more lucrative community, which was the intended recipient of the service. Thus, in an attempt to determine which community an applicant actually *intended* to serve, the Commission created policies that are under study in this proceeding.

7. The suburban community-central city setting presented the Commission with its first occasion to test intent. Designation of a suburban community without a local transmission service could garner an applicant a section 307(b) preference while, at the same time, permitting coverage of the larger metropolitan community, not favored under section 307(b). Out of this situation, the suburban community policy was promulgated. The notice stated that the suburban community policy, adopted in 1965 and modified in 1975 to apply principally in hearings involving mutually exclusive license applicants, is applicable where

> The applicant's proposed 5 mV/m daytime contour would penetrate the geographic boundaries of any community with a population of over 50,000 persons and having at least twice the population of the applicant's specified community * * * a presumption will arise that the applicant realistically proposed to serve that larger community rather than its specified community.

Policy Statement on Section 307(b) Considerations for Standard Broadcast Facilities Involving Suburban Communities, 2 FCC 2d 190, 193 (1965) ("*Suburban Community Policy*"). Related to this is the *Berwick* Doctrine, which applies the public interest considerations underlying the AM suburban community policy to FM radio and television, but without benefit of the presumption. *Berwick Broadcasting Corp.*, 12 FCC 2d (Rev. Bd. 1968); 20 FCC 2d 393 (1969); *sub. nom. P.A.L. Broadcasters, Inc.*, 40 FCC 2d 546 (Rev. Bd. 1973). *De facto* reallocation is

> [A]n attempt to utilize a channel assigned to one community in order to establish a broadcast service in another community, thereby depriving the assigned community of service from that channel.

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[1] *See, Sixth Report and Order on Television Allocations*, 41 FCC 148, 151–153 (1952). *Revision of FM Broadcast Rules*, 40 FCC 747, 757 (1963). 47 CFR 73.202 contains the FM Radio Table of Assignments and 47 CFR 73.606 contains the Television Table of Assignments.

[2] A Class A FM station is designed to render service to a relatively small community, city, or town, and the surrounding rural area. A Class B FM station is designed to render service to a sizable community, city, or town, or to the principal city or cities of an urbanized area, and to the surrounding area. A Class C FM station is designed to render service to a community, city, or town, and large surrounding area.

[3] The 10- and 15-mile rule for FM is found at 47 CFR §§ 73.203(b) of the rules. The 15-mile rule for TV is found at 47 CFR 73.607(b).

[4] *FCC* v. *Allentown Broadcasting Corp.*, 349 U.S. 348 (1955).

Hall Broadcasting Co., Inc., 71 FCC 2d 235, 237 (1979).

8. The notice explained that the instant rulemaking proceeding was prompted, in part, by a remand of *Communications Investment Corporation* v. *FCC*, 641 F.2d 954 (1981) ("CIC"), by the United States Court of Appeals for the District of Columbia. In that case, the Court reviewed two actions of the Commission granting construction permits for two FM [5] radio stations in Utah. The *CIC* court said that the Commission had failed to follow its own and court precedent in authorizing, without a hearing, a transmitter location that objectors claimed constituted *de facto* reallocation of two class C FM stations from their city of license to a larger community. The court derived from the precedents nine factors [6] for determining when an evidentiary hearing is required on *de facto* reallocation and *Berwick* doctrine issues before a transmitter location can be approved. The court, however, invited our review of the policies. Based on that invitation and on our continuing evaluation of the relevancy of all our rules and policies in furthering the public interest, we undertook this rulemaking proceeding.

9. The notice sought comment on whether the policies under review herein continue to be necessary in implementing section 307(b) in light of the extensive dispersion of radio and television services throughout the United States. The notice also expressed concern that the policies may impose unwarranted costs on the public and the parties involved in licensing new or improved service. This occurs, according to the notice, when allegations that a proposed facility will not serve its designated community are made, not in furtherance of a fair, efficient, and equitable distribution of service, but in order to delay or to impede the authorization of new service and new competition, most often in smaller communities. We asked comment on whether the benefits to be derived from the policies warrant the costs involved.

10. The notice also sought comment on whether the term "community" should be redefined for section 307(b) purposes in application processing to mean, not the specified community, but the metropolitan area effectively covered by the signal of the proposed station. Utilization of such a definition, said the notice, would remove the comparative preference for designating as the community of license an underserved suburb while proposing power sufficient to cover a metropolitan area. The final item on which we sought comment was an implementation scheme in the event that the policies were deleted.

Comments

11. Comments were filed by parties representing two main interests: those generally concerned about the policies in question and those with matters pending before the Commission involving the policies.[7] One theme enunciated by commenting parties favoring retention of the policies centered on the Commission's responsibility to challenge, as stated by Seven Parties,[8] "disingenuous" applications. These were defined as construction permit applications specifying, as the community of license, a small community that is nearby a large or metropolitan community the applicant actually intends to serve. In a similar vein, Dempsey and Koplovitz said that, if the policies were removed, the Commission "will be plagued with questions of good faith, (and) undisclosed motivation for service to the larger more lucrative market," as long as an advantage can be earned under section 307(b). Chatterbox, Inc. and Commanche Broadcasting, Inc. warn that "the evils sought to be averted by the policies still exist."

12. Parties favoring deletion of the policies generally agreed with Ben Lomond [9] who stated that the policies "are relics of an earlier age when there was a paucity of local transmission services." Atlantic Broadcasting Coporation expressed a similar conviction: "[A]lthough the policies may have served legitimate public policy concerns years ago, they have outlived their usefulness and, in fact, may actually undermine the policies underlying section 307(b)." Gordon & Healy Chartered, declaring that the policies have denied local facilities to suburban American communities, submitted that, "It makes no sense in 1982 to view such current proposals [for new service] in light of American social structure of 1965 when the Suburban Community Policy was first adopted."

13. The comments presented divergent views on the benefits smaller communities, the intended beneficiaries under section 307(b), have reaped from these policies. Buena Vista Telecasters of Texas, Inc., Chatterbox and Edward O. Fritts stated that elimination of the policies will hurt smaller communities because stations licensed to those communities will direct service to nearby larger areas and ignore the needs of the smaller communities. Ward & Mendelsohn, P.C., believes that the suburban community policy, or a suitable replacement, is necessary to "prevent abuse, but that significant communities which merit their own local outlet (due to a reasonable population benchmark) should not lose their valid section 307(b) interests merely because they are located near a still larger community." Atlantic states that tastes and interests of persons living in large and small communities proximate to each other are not so divergent that service to one precludes service to another. Buena Vista, although urging retention of the policies, notes that "the frequencies for which applications are pending, or for which no applications have yet been filed, tend to be those available for suburban or outlying communities." Arch Communications commented that "hindrance of competition, hearing costs and delays, the realization of section 307(b) objectives through past allocation

[5] *D & B Broadcasting Co., Inc.*, 67 FCC 2d 570, *reconsid. denied*, 67 FCC 2d 1118 (1978); *Ben Lomond Broadcasting Co.*, 66 FCC 2d 1331 (1978).

[6] The nine factors are: the ratio of the population of the city of license to that of the larger city; the ratio of the distance between the proposed site and the city of license to the distance between the site and the larger community; the ratio of the signal strength in the city of license to the signal strength in the larger city; a loss area in the city of license or surrounding areas; whether the proposed site is already in use by larger city stations; whether the station is commonly owned with an AM station in the larger city and plans to share programming, staff or facilities with it; whether the station has evinced a prior intent to locate in the larger city; whether the station proposes to move its studio to the larger city; and whether there is a unique advantage to the site proposed.

[7] See Appendix A for a list of the commenting parties. On August 6, 1982, Southern Minnesota Broadcasting Co., Antares Broadcasting Co., and four FM applicants commenting jointly, Beaufort County Broadcasting Co., Dutchess Communications Corp., Carson Valley Broadcasting Company, and Jack A. Carpenter ("Beaufort"), requested the Commission to accept late filed comments. Because the filings were only one day late and in the interest of developing a full record in this proceeding, the comments have been accepted and considered. In similar fashion, "Beaufort" filed reply comments one day late, which, for the same reasons, will be accepted. On September 9, 1982, Channel 287, Inc., requested leave to respond to the reply comments of Mid-States Broadcasting, Inc. Because this unauthorized filing refers to a specific application pending before the Commission and otherwise raises no new or significant issues relevant in this rulemaking, it is denied. Denton Channel Two Foundation, Inc. filed a Motion to Strike portions of the reply comments of Public Communications Foundation for North Texas who, on October 6, 1982, filed an opposition. Because the Motion to Strike refers to matters pending in a restricted adjudicative proceeding, the Motion to Strike is granted.

[8] Joint comments filed by: Alegria I, Inc., Alegria II, Inc., Alegria III, Inc., Big Time Radio, Inc., the Orange County Broadcasting Corporation, Santa Maria Radio, Inc., and Sonrisa, Inc. ("Seven Parties").

[9] Joint comments of Ben Lomond Broadcasting Company, KDAB, Inc., and Wasatch Broadcasting Partnership ("Ben Lomond").

decisions and the existence of other rules and policies to assure that licensees will direct their service to their specified communities of license" are persuasive reasons for abolishing the policies.

14. Eight different parties [10] focused on the 10- and 15-mile rules as a solution to the *Berwick* doctrine. Because the Tables of Assignment constitute the Commission's decision as to the "fair, efficient and equitable" distribution of FM radio and TV stations mandated by section 307(b), these parties contended that the rulemaking proceeding to amend the Tables should satisfy and conclude the section 307(b) question for those services. In other words, step one of the licensing process should resolve all section 307(b) determinations. As stated by Ward & Mendelsohn:

> [A]ny party wishing to apply for a channel in a community other than that specified in the Table of Assignments or in a Petition for Rulemaking (to specify a new channel assignment) shall do so in the course of the Commission's initial allocation procedures rather than via an application.

15. The Notice's request for comments on a redefinition of community elicited varied responses. Arch Communications stated that without such a redefinition, unwarranted preferences could become acute. Buena Vista, Ward & Mendelsohn, National Radio Broadcasters Association (NRBA), and Gordon & Healy warned about the impossibility in many instances, due to geographic configurations, of covering a specified community with the requisite signal and avoiding penetration of larger nearby communities with the same signal. Dempsey and Koplovitz suggested that the proposal be treated as one for the largest community to which "significant" [11] principal-city service is provided, regardless of the community specified. Southwest Radio Enterprises disagrees with a redefinition of community. It states, however, that if such a definition is adopted, it not be applied to Class A FM facilities, which are designed to serve small local communities. Buena Vista and NRBA warn that applicants receiving conclusive Section 307(b) preferences by proposing power sufficient to serve underserved communities could later amend to increase power and/or move their transmitter, thereby providing service to a larger more lucrative community. Ogden Broadcasting Service, Inc., cautions that such a redefinition "would defeat the important policy goals of Section 307(b) by virtually insuring that smaller communities situated near larger communities will never acquire their own local broadcast transmission services."

16. In commenting on the *de facto* reallocation policy, the Denton Channel Two Foundation and Communications Investment Corporation said that as long as the Tables of Assignment are retained, so must the *de facto* reallocation policy in order to insure that applicants do not subvert the Table. McKenna, recognizing that "inconsistent application of the *de facto* reallocation doctrine has generated considerable confusion, which has only been heightened by the *CIC* decision," suggests a *de facto* reallocation test based on the nine-factor *CIC* test. The National Association of Broadcasters (NAB) suggested a similar test. Taft Broadcasting Co. believes that the nine-factor analysis in the *CIC* case constitutes a reasonable approach to *de facto* reallocation, which the Commission should reaffirm. Gordon & Healy suggested that enforcement of Commission rule § 73.315(b) which states that the FM transmitter should be located as near the center of the proposed service area as possible, would solve the *de facto* reallocation problem for FM. On the other hand, Ben Lomond finds that the distinctions some commenters draw about the importance to section 307(b) of the *de facto* reallocation policy as opposed to the importance to section 307(b) of the suburban community policy and the *Berwick* doctrine are not persuasive.

17. Putbrese and Hunsaker suggests an alternative if the policies are eliminated. The Commission should adopt a policy holding that in cases "where there are mutually exclusive applicants for broadcast licenses in which there is overlap of 50% or greater of the proposed primary service contours of the proposals, then no section 307(b) preference would be awarded."

18. The notice's request for comment on the implementation process should any or all of the policies be abandoned, elicited the full range of options. Seven Parties and Southwest Radio Enterprises said that the current policies should be applied to all applications that have been "cut-off." Arch states that, should the three policies be eliminated and community redefined, those decisions should be applied in all pending cases. Ben Lomond states that the retroactive effectiveness of the abolition of the policies could be so disruptive to cases far into the hearing process that it may be prudent to have various implementation programs dependent on the category of case. Denton believes that *de facto* reallocation issues already designated for hearing should not be deleted.

Discussion

19. Before discussing our decision on the policies under consideration in this item, we believe it important to focus attention on one view expressed by some of the commenting parties. These parties warn of the misrepresentation that is rife when an applicant applies for a facility in a community proximate to a community larger or more lucrative than the designated one. These parties state that the instant policies must be continued so that the Commission can look behind the declarations about community of license made in the application and/or related documents in order to ascertain the real intent of the applicant with regard to the primary community to be served. We acknowledge that such misrepresentations may occur. Nevertheless, policies which attempt to guard against the eventuality of such behavior should be discarded if they are ineffectual or disserve the overall public interest, as long as other means are available to deter misrepresentations. In this case, statutory and regulatory provisions concerning candor and veracity required on applications, amendments and related statements of fact filed with the Commission adequately respond to the concerns of the parties. Section 312(a)(1) of the Communications Act, 47 U.S.C. 312(a)(1), [12] empowers us to revoke a station license for false statements knowingly made in applications. Section 73.3513(d) of our rules, 47 CFR 73.3513(d), states that willful false

[10] The parties are: ABC, Inc.; Joint Comments of Beaufort County Broadcasting Co., Dutchess Communications Corp., Copper Valley Broadcasting Co., Jack A. Carpenter ("Beaufort"); Dempsey and Koplovitz; Gordon & Healy; Joint Reply Comments of Arcatel, Inc., Lockhart Omni Communications, Inc., Cen-tex Broadcasting Corporation, Texas Professional Communications, Inc., and Lockhart Radio, Inc. ("Lockhart"); Ward and Mendelsohn; McKenna, Wilkinson and Kittner ("McKenna"). Joint Comments of Forward Communications Corp., Group One Broadcasting Co., Guaranty Broadcasting Corp., Lake Huron Broadcasting Corp., Shamrock Broadcasting Co., Inc., Ralph C. Wilson Industries, Inc., Summit Radio Corp., Wilson Communications, Inc., WKRG-TV, Inc. ("Licensees").

[11] Significant could mean, according to Dempsey and Koplovitz, "provision to the larger community of at least 50% of the service that would satisfy any of the applicable principal community criteria."

[12] Section 312(a)(1) reads as follows:

The Commission may revoke any station license or construction permit—

(1) for false statements knowingly made either in the application or in any statement of fact which may be required pursuant to section 308.

statements made in applications, amendments and related statements of facts are punishable by fine and imprisonment.[13] Stating one community of license, while intending to render primary service to another community fails the candor and veracity test. The requirements for candor and veracity in all dealings with the Commission are mandated by the Communications Act and by our rules. *RKO General, Inc.* v. *FCC*, 670 F. 2d 215 (D.C. Cir. 1981). We remind all applicants that those requirements pertain whether or not the instant policies are maintained.

20. On the basis of the record adduced, we have determined that the policies in question, which attempt to ascertain an applicant's intent with respect to the community to be served, should be abolished. Due to the growth in broadcast services, suburban locations are oftentimes as attractive to licensee applicants as nearby cities. Thus, we no longer see a substantial likelihood that, merely because of proximity to larger urban areas, licensees will provide inadequate service to their communities. Moreover, these policies inhibit entry into unserved communities because they increase costs to suburban applicants and cause delays in processing. In addition, the policies provide incumbent stations a means to delay competition from new suburban stations and thereby retard competition in metropolitan markets. Consistent with this analysis is the indication, gleaned from a review of the cases, that the test for determining intent under the suburban community policy and *Berwick* doctrine may be invalid for that purpose. For these reasons the policies in question undermine the goal of Section 307(b), to distribute broadcast services fairly, efficiently, and equitably, and should therefore be abolished.

21. *Suburban Community Policy and the Berwick Doctrine.* We begin the rationale for our decisions with the suburban community policy and its FM corollary, the *Berwick* doctrine.[14] Because the *de facto* reallocation policy is so closely related, much of our reasoning applies with equal validity to that policy. The oldest of the policies, the suburban community policy, was adopted in 1965. At that time, the Commission was faced with the problem of processing "rising numbers of applications for suburban communities, which would be entitled to a first transmission service preference in a comparative hearing." *Suburban Community Policy*, 2 FCC 2d at 191. The Commission also had been instructed by the U.S. Court of Appeals for the District of Columbia to establish or clarify the standards used to distinguish between suburban applicants for the same frequency. *Miners Broadcasting Service, Inc.* v. *Federal Communications Commission*, 349 F. 2d 199 (1965). The suburban community policy was the Commission's response to those events.

22. The suburban community policy was designed to further Section 307(b)'s mandate for a fair, efficient, and equitable distribution of service by "testing" the AM radio applicant's intent to serve the suburban community designated rather than a metropolitan center located nearby. The test consists of the applicant's evidence that:

1. The suburban community has programming needs, separate and distinct from the central city;
2. Those needs are unmet currently;
3. The applicant's programming proposal will meet the specific, unsatisfied programming needs of the suburb; and
4. Advertising revenues generated within the specified community are adequate to support the programming proposal.

This is a rugged test. An applicant subject to the presumption can attempt to rebut it without a hearing through submission with the application of information on the four issues. An applicant has to demonstrate that its community has separate and distinct programming needs which are currently unmet by existing stations. Establishing with competent and probative evidence that existing stations are not serving the community's programming needs is a difficult task. Normally, program logs and/or portions of an existing station's renewal application are not detailed enough to satisfy the required showing. Moreover, there is little incentive for existing stations, whose personnel are the most knowledgable and thus most competent witnesses, to provide assistance. Consequently, reliance is often placed on costly programming surveys. This evidentiary problem is exacerbated by the fact that the nearby larger community normally has a number of aural facilities whose programming has to be surveyed. In addition, it is not unusual for these nearby stations to direct at least some programming to the smaller suburban community. With regard to demonstrating the source and adequacy of projected revenues, again an applicant is faced with a difficult burden. While the suburban community policy specifically stated that dependence on revenues from other communities would not necessarily be determinative, applicants still have to make an effort to demonstrate the source of their revenues. The only reliable means of obtaining this information involves surveying potential advertisers. Thus, not only are the standards somewhat confused, but even when understood, the evidentiary burdens are time consuming and costly to meet. The burdens of proof required to rebut the presumption were criticized by the United States Code of Appeals for the District of Columbia in 1972. In the Court's view, applicants were left "devoid of any guidelines as to the type and degree of evidence required to rebut the Commission's Policy Statement," *Northern Indiana Broadcasters, Inc.* v. *F.C.C.*, 459 F.2d 1351 (1972). Although the Court thought it incumbent upon the Commission to clarify the standards used to grant or deny licenses in suburban communities, the Commission itself has not since 1972 had occasion to resolve a suburban community proceeding after hearing.[15]

23. We have analyzed the reported cases involving the suburban community issue and find what we believe is a disturbing variance in success on rebutting the presumption. When there is only one applicant for a frequency, the suburban applicant has been more successful in rebutting the presumption than when there are competing applicants. This is true in cases in which the presumption was rebutted without a hearing [16] as well as in cases in which the presumption was rebutted in a hearing.[17] When the suburban applicant

[13] Section 73.3513(d) reads as follows:

Applications, amendments, and related statements of fact need not be submitted under oath. Willful false statements made therein, however, are punishable by fine and imprisonment, U.S. Code, Title 18, section 1001, and by appropriate administrative sanctions, including revocation of station license pursuant to section 312(a)(1) of the Communications Act.

[14] The *Berwick* doctrine is rarely invoked in licensing proceedings for television stations because, by virtue of their technical specifications, television stations are designed to serve regional areas.

[15] *Radio Wheeling*, 85 FCC 2d 486, 490 (Rev. Bd. 1981).

[16] *Pettit Broadcasting Co.*, 21 RR 2d 317 (1971); *David Ortiz Radio Corp.*, 16 FCC 2d 798 (1969); *Wood & Watkins*, 12 RR 2d 97 (1968); *KACY, Inc.*, 15 FCC 2d 33 (1968); *WTOW, Inc.*, 11 FCC 2d 277 (1968); *Burlington Broadcasting Co.*, 9 RR 2d 1119 (1967); *Virginia Broadcasters*, 9 FCC 205 (1967); *Major Market Stations, Inc.*, 8 FCC 2d 13 (1967); *Donnelly C. Reeves*, 6 FCC 2d 531 (1967); *Du Page County Broadcasting Inc.*, 5 FCC 2d 557 (1966); *Clay Broadcasters, Inc.*, 4 FCC 2d 932 (1966). *Wood & Watkins, Burlington, DuPage County* and *Virginia Broadcasters* involved two or more applicants.

[17] *Progressive Broadcasting Co.*, 54 FCC 2d 638 (1975); *Hymen Lake*, 46 FCC 2d 560 (1974); *Great Southern Broadcasting Co.*, 14 FCC 2d 176 (1968); *Jupiter Associates, Inc.*, 12 RR 2d 889 (1968); *Mount-Ed-Lynn, Inc.*, 9 FCC 2d 986 (1967); *Jersey Cape*

was not successful in rebutting the presumption in a hearing, he typically was competing with another for the frequency.[18] These results seem to indicate that, prior to 1975 when the policy was relaxed to exclude most singleton applicants, an applicant who was not vying with another applicant for one frequency had a good chance of convincing the Commission that the designated community truly would be the community served. However, that outcome was not so certain when another applicant joined the contest for a single outlet. We are concerned that the test can be manipulated by the competing applicant so that it becomes not a measurement of intent but a tool useful in defeating a suburban community applicant.

24. Settlements of mutually exclusive licensing contests frequently result in the demise of the suburban community applicant.[19] This result leads us to question whether the burden of rebutting the presumption creates an incentive seemingly at odds with the goals of section 307(b). For example, as a result of the settlement in *H-B-K Enterprises*, the application designating the suburban community of Grandview, Missouri, vying for its first local service, dropped out, and Kansas City, Missouri, was awarded its sixth local service.

25. The Commission acknowledged that the suburban community policy presented a signficant obstacle to the authorization and improvement of AM radio service in 1974. In that year, the Commission initiated a rulemaking proceeding designated to liberalize AM radio allocations policies. In the *Notice of Proposed Rulemaking*, 39 FR 42920, published on November 27, 1974, we sought comment on whether or not the rule changes proposed would be effective in encouraging more AM applications if the suburban community policy remained unaltered. The *Report and Order* concluding the proceeding found that, unchanged, the suburban community policy would obstruct the goals sought to be achieved by liberalizing § 73.37 of the rules in order to encourage AM applicants. Therefore, the Commission relaxed the suburban community presumption to apply primarily in mutually exclusive licensing contests in which a hearing was required irrespective of the suburban community issue. We said:

> By amending the rules * * * while continuing to impose the significant burden of the section 307(b) presumption, particularly on applications for improvements to existing facilities, we would merely be removing one so-called artificial barrier while leaving another in its place.

54 FCC 2d at 21.

26. In 1969, the Review Board applied the public interest considerations underlying the suburban community policy in an FM licensing case and the *Berwick* doctrine was born. In its decision on the merits in the *Berwick* proceeding, decided *sub nom. P.A.L. Broadcasters, Inc.*, 40 FCC 2d 546 (1973), the Review Board made clear that the suburban applicants for an FM facility had the burden of proving the same four sub-issues that the Commission had adopted for AM suburban applicants. *See*, paragraph 22, *supra*. However, in two recent cases that we affirmed, the Review Board has criticized those standards as "unworkable, unduly burdensome, and not reasonably related to the Commission's concern" about an applicant's intent to serve the designated community rather than a nearby larger one. *Radio Wheeling, Inc.*, 85 FCC 2d 486, 489 (Rev. Bd., 1981). In *Bie Broadcasting Co.*, 81 FCC 2d 1 (Rev. Bd., 1980), the Review Board rejected outright use of the standards. Thus, the *Berwick* doctrine, as traditionally applied, has been found to be infirm as a test for determining an FM applicant's intent. This result parallels our determination with respect to the suburban community policy, as outlined above. It is appropriate, therefore, that these tests be abolished.

27. We are mindful that the policies were promulgated in order to protect underserved, small, and suburban communities, favored under section 307(b), by assuring they actually receive the service promised. As we said when promulgating the suburban community policy, "developing deserving suburban communities" should be protected in situations where the

> propagation of a competitive signal over a heavily populated area of substantial size, * * * (has) led to our licensees' serving the transmission and reception needs of the area rather than the transmission needs of their specified communities.

2 FCC 2d at 193. The suburban community policy and the *Berwick* doctrine responded to what apparently was considered the inevitable intent of a small market licensee: To *abandon* the needs of its designate market in those situations in which its signal was able to reach a more populous community. Although that assumption may have been valid in 1965, changes in the broadcasting industry since that time, especially in radio, make the assumption invalid today.

28. The major change of relevance to the present proceeding is the growth since 1965 in the number of broadcasting facilities. At the end of fiscal year 1965, there was a total of 5,630 AM and FM radio stations in operation and 681 commerical and educational television stations.[20] By the end of fiscal year 1981, that number had grown to 9,087 for radio and 1,035 for television.[21] Growth in the number of stations has increased competition in the industry and created the incentive for broadcasters to discover discrete markets within which to provide an economically viable service. For example, it is possible that a station could earn more revenues as the single station in a 40,000 person community rather than the 11th station in a nearby community of 400,000 persons. Indentification with and service of small community becomes economically feasible after an increase in the number of players in an industry fractionalizes a market.[22]

29. Another change in the broadcasting industry of relevance to this proceeding is the role of demographics, creating an economic incentive for a broadcaster to establish a station in a small community to serve a particular type of audience, instead of in a larger, more heterogeneous nearby community. For example, there are 122 radio stations utilizing Spanish language programming for twenty or more hours per week.[23] Not all these stations are licensed to large metropolitian communities. Among the communities in this category are:

Seguin, Texas, KWED

Broadcasting Corp., 2 FCC 2d 942 (1966); *Southington Broadcasters*, 2 FCC 2d 936 (1966). *Progressive Broadcasting Co.* was the only mutually exclusive licensing contest case.

[18] *Centreville Broadcasting Co.*, 50 FCC 2d 261 (1974); *James E. Reese*, 45 FCC 2d 315 (1974); *Broadcasters 7, Inc.*, 46 FCC 2d 282 (1974); *What the Bible Says, Inc.*, 28 FCC 2d 551 (1971); *Harry D. and Robert E. Stephenson*, 33 FCC 2d 763 (1969); *Kittyhawk Broadcasting Corp.*, 20 FCC 2d 1011 (1969); *Augustus L. Cavallaro, Jr.*, 15 FCC 2d 4863 (1969); *Tri-State Broadcasting Co., Inc.*, 19 FCC 2d 1042 (1969); *Tidewater Broadcasting Co., Inc.*, 12 FCC 2d 471 (1968); *Northern Indiana Broadcasters, Inc.*, 13 FCC 2d 546 (1968); *KWEN Broadcasting Co.*, 10 FCC 2d 753 (1967); *Boardman Broadcasting Co., Inc.*, 10 FCC 2d 422 (1967); *Goodman Broadcasting Co.*, 10 FCC 2d 141 (1967); *Lebanon Valley Radio*, 2 FCC 2d 683 (1966). *Centreville, Cavallaro, Tri-State, Northern Indiana* and *Goodman* were singleton applicants.

[19] *Ditmer Broadcasting Co., Inc.*, 23 FCC 2d 283 (Rev. Bd. 1970); *Sundial Broadcasting Co., Inc.*, 17 FCC 2d 614 (Rev. Bd. 1969); *Howard M. McBee*, 19 FCC 2d 800 (1960); *H-B-K Enterprises*, 15 FCC 2d 683 (Rev. Bd., 1968); *Logan Broadcasting Co.*, 10 FCC 2d 166 (1967).

[20] *FCC Annual Report*, 1965.

[21] *FCC Annual Report*, 1981.

[22] *See generally, Inquiry and Proposed Rulemaking: Deregulation of Radio*, 44 FR 57630, published October 5, 1977, for an analysis of competition in radio markets.

[23] *Broadcasting/Cablecasting Yearbook, 1982*, at D-94.

Bishop, Texas, KFLZ–FM
Clyde, Ohio, WMEX–FM
Ceres, California, KLOC
Muleshoe, Texas, KMUL
Vineland, New Jersey, WDVL
Henderson, Nevada, KVOV
Millville, New Jersey, WREY
Chualar, California, KUBO–FM
Fowler, California, KLIP
Gilroy, California, KCUR
Lodi, California, KAZA
Kissimmee, Florida, WMJK
Belen, New Mexico, KARS
Espanola, New Mexico, KDCE
Beeville, Texas, KIBL

The *Broadcasting/Cablecasting Yearbook, 1982* also lists 151 all news radio stations. This kind of programming appeals to a specialized audience usually described by broadcasting entrepreneurs as well educated and middle income. Among the communities receiving service from all-news stations are the following:[24]

Black Canyon City, Arizona, KUET
Crystal Lake, Illinois, WIVS
Sonora, California, KVML
Thousand Oaks, California, KGOE
Salisbury, Maryland, WQHQ–FM
Plymouth, North Carolina, WPNC
Palm Desert, California, KGUY
Searcy, Arkansas, KWCK
Greeley, Colorado, KFKA
Auburn, Maine, WRXV
Poynette, Wisconsin, WIBU
Hancock, Michigan, WMPL
Griffin, Georgia, WKEU
Glens Falls, New York, WBZA.

Thus, it is plausible that a broadcaster can fashion as service targeted for a specific community characteristic, such as ethnicity, educational level or cultural preference and find the service economically remunerative enough to be disinclined to abandon the smaller community for the larger.

30. We believe the policies may be used to stem the establishment of competing stations. In practice, the policies are frequently invoked by stations in large communities against the establishment of new or improved service in small communities.[25] Moreover, a *Berwick* issue is not limited to mutually exclusive licensing contests as is generally true in AM radio since 1975.[26] It can be obtained in Petitions to Deny new applications and applications for improved facilities. If the small community applicant is unsuccessful in passing the stringent test created by these policies, new or improved service will be denied to the small community. This is a result at odds with Commission policy fostering competition in the broadcasting industry and with the objectives of section 307(b). If the suburban community policy and the *Berwick* doctrine have worked against the purposes of section 307(b), the statutory provision they were formulated to implement, then their continuation is mere folly. The test for overcoming these policies is a rugged one involving high expenditures for lawyers and engineers who participate in hearings with a resulting delay in the authorization of new service in the smaller community.[27] This tends, ironically, to benefit stations in the larger, metropolitan markets by delaying or frustrating the establishment or improvement of competing stations in nearby smaller markets.

31. After considerable reflection, we fail to see the deleterious effect on the public living in small communities from our authorization of a station that designates the small community as its community of license, locates its main studio in that community, places the requisite signal over the community, fashions a programming proposal to meet the needs and interests of the smaller community, and then also competes in the larger metropolitan area that includes the community of license. The station failing to live up to its obligations to the community of license risks a renewal challenge. In the *Notice of Proposed Inquiry and Proposed Rulemaking* in BC Docket 80–130, 45 FR 26390, published April 18, 1980, we said about the *Berwick* doctrine: "Even if it's true that the station intends to compete in the metropolitan market, this does not mean that it would not be able to offer programming responsive to the needs of this small locality." We continue to believe that statement to be true.

32. Many commenting parties in this proceeding discussed the so-called 10- and 15-mile rules, 47 CFR 73.203(b) (FM) and 73.607(b) (TV). These rules permit an FM or TV station to be licensed to an unlisted community with ten miles (Class A FM) or 15 miles (Class B/C FM and TV) of a community contained in the Tables of Assignments without petitioning for a rule making to add the community to the Table. These rules were adopted at the time the Tables were adopted.[28] Their purpose was "to preserve flexibility and to permit adjustments * * * upon demand and need in communities other than those listed in the table without going through the rule making procedure." *Notice of Proposed Rulemaking*, FCC 68–54, 33 FR 917, published January 25, 1968. The Commission was well aware of the fact that in adopting a Table of Assignments it was impossible to predict population trends or pinpoint community development. However, "a Table coupled with the flexibility present in a 'twenty-five mile rule,' [now the 10- and 15-mile rule] provides the best means to insure an efficient *present* distribution of channels." 40 FCC at 758. (emphasis added) We also noted, that, "the question of future flexibility becomes increasingly academic as the available FM channels are put to use by present day applicants." *Id.* The decision to provide for flexibility within the limited geographical area surrounding each listed community was appropriate for the early days in which the new services were being established. That condition does not exist today. Television and FM radio are mature, thriving services, well dispersed throughout the United States.[29] We no longer have to foster and facilitate their development as we did when the Tables of Assignments were adopted. In addition, the rules create an unnecessary burden on applicants and the Commission alike. The issues raised under the rules are issues that can be resolved more efficiently and at lower cost to both the applicant and the Commission in a rulemaking proceeding than in a hearing.[30] Therefore, we have decided to

[24] *Id.* at D–91.

[25] *Communications Investment Corp.* v. *FCC*, 641 F.2d 954 (1981); *Home Service Broadcasting Corp.*, 68 FCC 2d 1135 (1978).

[26] In the *Report and Order* relaxing the applicability of the suburban community policy to mutually-exclusive licensing contests primarily, the Commission affirmed its continuing concern about the intent of applicants with regard to their community of license and stated that it would entertain suburban community issues where warranted even outside a mutually-exclusive contest. 54 FCC 2d at 22. *See e.g., Home Service Broadcasting Corp.*, 68 FCC 2d 1135 (1978).

[27] The *CIC* court quoted from one party's pleadings that a hearing in that case would have meant a delay of up to two years and an estimated cost of $50,000 for attorney's fees.

[28] *Sixth Report and Order on Television Allocations*, 41 FCC 148, 209 (1952); *Revision of FM Broadcast Rules, Third Report, Memorandum Opinion and Order*, 40 FCC 747, 763 (1963). In FM, § 73.203(b) originally permitted a station to locate within 25 miles of a listed community without amending the Table of Assignments. This rule was changed in 1968 to 10 miles for Class A stations and 15 miles for Class B and C stations. *Amendment of § 73.203(b) Concerning the Availability of FM Channels to Unlisted Communities*, 12 FCC 2d 660 (1968).

[29] The Commission has found that "there is no part of the contiguous 48 states which lacks at least some aural broadcast service, and almost no place * * * where multiple skywave services are not available." *Clear Channel Broadcasting in the AM Broadcast Band*, 78 FCC 2d 1345, 1356 (1980). Similarly, in the television service, the Commission has stated that the "Table of Assignments * * * was designed to provide service to as large a part of the population as was possible and at the same time to provide local outlets for as many communities as possible * * * the goals of the Table have been largely achieved * * *" *Inquiry Into the Future Role of Low-Power Television Broadcasting*, FCC 80–503, 45 FR 69178, 69179 (Oct. 17, 1980).

[30] Section 307(b) determinations are based on, *inter alia*, the number of transmission services in

eliminate the 10- and 15-mile rules. This, of course, does not mean that applicants are foreclosed from applying for communities 10 or 15 miles from listed communities. Our decision only means that the applicant must petition for a rulemaking in order to add the community to the Table. Henceforth, all § 307(b) issues will be concluded in the rulemaking proceeding, which is step one of the licensing process. Step two will be concerned solely with establishing the qualifications of the applicants and, when there are competing applicants, deciding which applicant should prevail.

33. *De Facto Reallocation.* The *de facto* reallocation policy is closely related to the *Berwick* doctrine.[31] It is applicable only in the FM and TV services and does not require a central city-suburban community setting. The Commission has made clear that two essential elements must be present in order for a proponent to prevail on an allegation of *de facto* reallocation: (1) redirection of the service of an FM or TV station from its community of license in such a manner as to constitute its removal from that community, and (2) its effective use to provide service to another community. *Central Alabama Broadcasters, Inc.*, 68 FCC 2d 1339, 1340 (1978); *Hall Broadcasting Co., Inc., supra.* The policy is most often invoked in proceedings to modify existing facilities, for example, to change a transmitter site or to increase power. If, as a result of such a proposal, the station's signal either reaches another community, typically a larger one, or penetrates more of it, the stage is set for a *de facto* reallocation allegation.

34. Some commenting parties have urged that the *de facto* reallocation policy is essential in safeguarding the integrity of the Tables of Assignments and, through the Tables, section 307(b). Others have contended that our requirements for, *inter alia*, the requisite signal over the community of license,[32] and the location in that community of the station's main studio,[33] are adequate safeguards. As we will outline below, we find that the policy has many of the same infirmities we found to be present in the suburban community/*Berwick* policies. Therefore, based principally upon those same reasons, and upon the fact that in many instances the *de facto* reallocation policy is indistinguishable from the *Berwick* doctrine, we have determined that the *de facto* reallocation policy no longer serves the public interest and should be abolished.

35. Our major concern with the policy is that rather than furthering the purposes of section 307(b), the *de facto* reallocation policy, as applied, has frustrated that end. It is most often invoked against small market stations. The frequent proponents of the policy are licensees located in larger communities who will face increased competition as the result of an application to modify or improve facilities filed by licensees in nearby smaller communities.[34] The arguments proponents make in support of *de facto* reallocation are strikingly similar to those made by proponents of the suburban community/*Berwick* policies: that a station in the smaller community will, as the result of the modification, direct its service to the larger community thereby abandoning its community of license, undermining the Tables, and subverting the goals of section 307(b). Changes in the industry, as we described above, no longer pre-ordain such results. Moreover, the policy places a burden on the establishment and improvement of service in small communities that is not in keeping with the objectives of section 307(b). We are also convinced that the policy too frequently is invoked to preclude additional competition. Such a result is an abuse of the policy.

36. Because the *de facto* reallocation policy does not require a central city-suburban community relationship, its applicability is broader than that of the suburban community policy and the *Berwick* doctrine. More than ten years ago, in a case in which a Chicago station filed a petition to deny raising *de facto* reallocation against a Gary, Indiana station filing to relocate its transmitter, we said:

> [W]e did not intend to prohibit a Gary station from serving large portions of the city of Chicago as it is simultaneously providing primary service to Gary . . . A *de facto* reallocation issue does not arise merely because a licensee proposes an extension of a station's service area, and in some circumstances, the retention of the station's main studio in its community of license may itself constitute sufficient contact with the community to rebut any presumption of reallocation. *Rhode Island Television Corp.* v. *FCC*, 320 F.2d 782 (1963); *Community Telecasting Co. (WXTV)* v. *FCC*, 255 F.2d 891 (1958).

General Media TV, Inc., 27 FCC 2d 861, 863 (1971). The policy can be invoked without regard to the size of the communities involved. Even though the smaller of two communities is an independent, non-suburban, and thriving city, worthy and capable of supporting its own stations, an application to modify the license of a station in that community will likely prompt an allegation of *de facto* reallocation from a licensee in the larger community.[35] The policy also can be invoked without regard to the type of station involved. For example, a Class C FM station is a wide area station designed to serve a community, city or town *and* a large surrounding area. Similarly, television stations are capable of serving wide areas. However, if such a station applies to modify its signal strength to the highest permitted, an allegation of *de facto* reallocation would undoubtedly be forthcoming from a licensee in a community receiving a new or strengthened signal.[36] The fact that Class C FM and television stations are supposed to serve wide areas is not enough to deflect an allegation of *de facto* reallocation or even to avoid a hearing on the allegation.[37]

37. The *CIC* majority constructed its nine-factor test for determining when a hearing must be held on a *Berwick* or *de facto* reallocation issue from precedents found in four cases decided between 1963 and 1969.[38] The record of Commission action in this area, however, includes other cases whose holdings are at variance with the outcomes cited by the *CIC* majority. Several of these cases pre-date the 1978 Commission action in the cases

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competing communities, the number of reception services in each, and the size of the communities involved.

[31] *See, CIC*, 641 F.2d at 967, n. 82.

[32] 47 CFR §§ 73.186 (AM); 73.315 (FM); 73.685 (TV).

[33] 47 CFR § 73.1125. "The Commission has frequently ruled that a station is identified by the place where its studios are kept, not the location of its transmitter or antenna." *Community Telecasting Co.* v. *FCC*, 255, F.2d 891, 893 (1958).

[34] *Son Broadcasting, Inc.*, 79 FCC 2d 598 (1980); *Hall Broadcasting Co.*, 71 FCC 2d 235 (1979); *D and B Broadcasting Co. (KDAB)*, 67 FCC 2d 243 (1978); *Central Alabama Broadcasters*, 68 FCC 2d 1339 (1978); *Magic Box Media*; 65 FCC 2d 45 (1977); *Kaiser Broadcasting Corp.*, 62 FCC 2d 246 (1977); *Great Trials*, 59 FCC 2d 916 (1976); *Robert P. Adams*, 36 FCC 2d 479 (1972); *General Media TV, Inc.*, 27 FCC 2d 861 (1971); *WSTE-TV*, 11 FCC 2d 1013 (1968).

[35] In the *CIC* case, Salt Lake City stations raised the issue of *de facto* reallocation against Ogden, Utah stations that located their transmitters in an antenna farm located near Salt Lake City. This location apparently cured a multipath interference problem, caused by terrain, that impaired reception of the Ogden stations in Ogden. Judge Wald, in dissent, noted, that the Salt Lake City stations were received in Odgen more clearly than was Odgen station *KDAB* before its move.

[36] *WSET-TV*, 80 FCC 2d 233 (1980); *Sarasota-Bradenton*, 70 FCC 2d 699 (1979); *Hall Broadcasting*, 71 FCC 2d 235 (1979).

[37] *Radio Wheeling*, 85 FCC 2d 488 (1981).

[38] *Wometco Enterprises, Inc. FCC*, 314 F.2d 266 (D.C. Cir. 1963) (per curiam), *rev'g Scripps-Howard Radio, Inc.*, 22 RR 1054 (1962); *Louisiana Television Broadcasting Corp.* v. *FCC*, 347 F.2d 808 (D.C. Cir. 1965) (per curiam), *rev'g St. Anthony Television Corp.*, 2 RR 2d 348 (1964); *Santa Fe Television, Inc.*, 18 FCC 2d 741 (1969); *Berwick Broadcasting Corp.*, 20 FCC 2d 393 (1969).

consolidated in *CIC*,[39] while others are more recent. In three cases decided before Commission action in *CIC*, *Grindstone Boradcasting Corp.*, 41 RR 2d 1107 (1977); *Magic Box Media, Inc.* 65 FCC 2d 45 (1977); and *Public Service Broadcasters, Inc., supra*, we found that the mere fact that a station proposes to put a city-grade signal over a larger nearby community, in addition to its designated community, is not sufficient to lead to the conclusion that the station intends to serve the larger community.[40] Since Commission action in the *CIC* case, we have continued to move away from designating *Berwick* and *de facto* reallocation issues. In *Hall Broadcasting Co., Inc., supra*, the Commission could not find that a *de facto* reallocation would occur when the transmitter of a Class C FM station was moved to a point midway between the community of license and a larger community and the antenna height was increased, permitting greater coverage of the larger community. Nor would we designate a *de facto* issue in *Bie Broadcasting Co.*, 81 FCC 2d 1 (1980) and *Radio Wheeling, Inc.*, 85 FCC 2d 486 (1981). Many years ago, a similar decision withstood judicial scrutiny. In *Rhode Island Television Corp* v. *FCC*, 320 F.2d 762, 766 (11s3), the Court approvingly quoted the Commission's conclusion:

> The mere fact that as a result of the proposed modification, WTEV will improve its signal to the Providence area from Grade B to Grade A does not warrant [the conclusion that there has been a channel reassignment]. In fact, WTEV will continue to be a New Bedford station, will maintain its main studio in New Bedford, will place a principal city signal over that community and will be primarily responsible for providing for the needs of that community under the Rules. Accordingly, grant of the proposal will not change the channel assignment.

The court's unequivocal statement twenty years ago has not resulted in a disciplined use of the policy. Rather, the policy has been invoked to frustrate more competition despite our consistent rejection of such a course. The trend we have documented now must be concluded by abolition of the policy. Anything less would permit future use in a manner we find inconsistent with the public interest.

38. In the future, we will examine applications to determine compliance with our licensing rules. If that exists, we will presume the licensee intends to serve the community designated. Compliance with the rules will result in the requisite signal to the community of license, location of the main studio in that community and a programming proposal that will serve the needs of the community of license. Abolition of this policy does not mean that we will countenance subversion of our rules or the Tables. However, we believe the risk of a renewal challenge for failure *actually* to serve the designated community consititutes a more effective regulatory tool than utilization in advance of guidelines and factors that are inexact in dividing intent. Abolition of the *de facto* reallocation policy also means that it will not be available for anti-competitive purposes. Ten years age, in approving an assignment of license application in which *de facto* reallocation policy also means that it will not be available for anti-competitive purposes. Ten years ago, in approving an assignment of license application in which *de facto* reallocation was raised by a petitioner to deny, we said:

> [P]etitioner is in effect asking us to hold a hearing to determine whether the assignee will do what it has affirmatively represented it would do. In effect, we are being asked to determine, in advance, whether the assignee will operate KUTE as it has proposed it would. In view of the assignee's explicit representations regarding its proposed operation of KUTE, a hearing on this question is clearly unnecessary. Moreover, such a hearing would deprive the assignee of the opportunity to demonstrate its good faith. *Brandywine-Main Line Radio, Inc.*, 4 RR 2d 697, 702 (1965).

Robert Adams, 38 FCC 2d 1, 4 (1972). By abolishing the policy, we will return to that position.

Redefinition of Community

39. The *Notice* asked for comment on whether the term "community" should be redefined for Section 307(b) purposes to mean, not necessarily the community specified on the application, but the community actually receiving service as a result of the power proposed. We have reviewed carefully the record in this proceeding to determine if it supports such an action. We have determined that it does not. The current definition of community has guided our Section 307(b) determinations through the years. To change from that concept to one based on a larger geographical or urbanized metropolitan area standard, for example, requires that our action be supported by an adequate record and a rational basis for making the change. We do not believe that we have that record before us in this proceeding. Consequently, we decline to adopt the proposed redefinition.

40. Our refusal to change the concept of community for section 307(b) purposes at this time does not foreclose the possibility of doing so in the future. A rulemaking in which comments are elicited on such questions as the benefits to the public interest of a new definition, the costs that may be involved in making a change, the different geographical standards that could be substituted, and the standard that would be preferable could well provide the adequate basis to support a decision to change the concept in the future.

41. *Implementation.* We believe that the public interest requires the implementation of these decisions with respect to the suburban community policy, the *Berwick* doctrine and the *de facto* reallocation policy upon adoption of this *Report and Order*. Permitting the policies abolished herein to be used, even in pending application contests, would simply continue what we have found to be adverse to the public interest. Therefore, effective with the adoption of this *Report and Order* we will:

1. Process AM radio applications without application of the suburban community policy;

2. Process petitions to amend the TV Table of Assignments without application of the *Berwick* doctrine;[41]

3. Process FM and TV applications for new service or for modification to existing service without application of the *Berwick* doctrine and the *de facto* reallocation policy; and

4. Delete from all hearings, in progress and scheduled to start after adoption of this *Report and Order*, all issues based on the suburban community policy, the *Berwick* doctrine and the *de facto* reallocation policy.

42. Deletion of §§ 73.203(b) and 73.607(b) of our rules, the 10- and 15-mile rules, will be phased in. Applications already on file as of the date of the adoption of this *Report and Order* that utilize these rules, will be processed under the rules. Applications filed after the date of adoption of this *Report and Order* utilizing the 10- and 15-mile rule will be accepted only if such an application is tendered as a valid competing application to one the staff

[39] *See CIC*, 641 F.2d at 977, where majority seems to believe that only one case with a contrary holding pre-dated Commission action in *CIC*.

[40] *See also, General Media Television, Inc.*, 27 FCC 2d 861, 863 (1971); *Almardon, Inc.*, 16 FCC 2d 395, 399 (Rev. Bd. 1969); *David Ortiz Radio Corp.*, 46 FCC 2d 341, 342 (Rev. Bd. 1974); *Congaree Broadcasters, Inc.*, 40 FCC 2d 297, 300 (Rev. Bd. 1973).

[41] The *Berwick* doctrine is not entertained in petitions to amend the FM Table of Assignments. *FM Assignment Policy and Procedures*, 90 FCC 2d 88 (1982).

has already found acceptable for filing under the 10- or 15-mile rule.

43. *Regulatory Flexibility Act Final Analysis.* The rule and policy changes effected herein are appropriate in light of the changes that have taken place in the broadcasting industry. These revisions will also facilitate the establishment of additional radio and television facilities by abolishing issues that give rise to costly hearings with resultant delays in new service.

44. We received no public comments which specifically addressed the initial regulatory flexibility analysis contained in the Notice of Proposed Rulemaking. Since the decisions we are making in this proceeding relieve an economic burden, especially for licensees in small communities, our action is consistent with the purposes of the Regulatory Flexibility Act. Other alternatives that we might have adopted would have achieved more limited benefits.

45. Accordingly, *it is ordered,* pursuant to the authority contained in Section 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 4(i) and 303, that effective as stated herein, Part 74 of the Commission's Rules is amended by the deletion of § § 73.203(b) and 73.607(b). *It is further ordered,* that, effective February 17, 1983, the suburban community policy, the *Berwick* Doctrine, and the *de facto* reallocation policy are abolished. It is further ordered, That this proceeding is terminated.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Comments Submitted:

Alegria I, Inc., *et al.:*
- Alegria II, Inc.
- Alegria III, Inc.
- Big Time Radio, Inc.
- Orange County Broadcasting Corp.
- Santa Maria Radio, Inc.
- Sonrisa, Inc.

Association of Maximum Service Telecasters
Arch Communications Corp.
Atlantic Broadcasting Corp.
Beaufort County Broadcasting Company, *et al.:*
- Dutchess Communications Corp.
- Copper Valley Broadcasting Company
- Jack A. Carpenter

Ben Lomond Broadcasting Co., *et al.:*
- KDAB, Inc.
- Wasatch Broadcasting Partnership

Buena Vista Telecasters of Texas, Inc.
Chatterbox, Inc.
Communications Investment Corp.
Commanche Broadcasting, Inc.
Carl Como, Ronette Communications Corp.
Dempsey and Koplovitz
Denton Channel Two Foundation, Inc.
Edward O. Fritts
Gordon & Healy, Chartered
Historic Hudson Valley Radio, Inc.
Kaldor Communications, Inc.
The Honorable Thomas N. Kindness, Member of Congress from Ohio
McKenna, Wilkinson & Kittner
National Radio Broadcasters Association
National Association of Broadcasters
Mark Pierce
Puerto Rico Broadcasting, Inc.
Putbrese & Hunsaker
Southern Minnesota Broadcasting Co. and Antares Broadcasting Co.
Southwest Radio Enterprises, Inc.
Taft Broadcasting Co.
Town and Country Broadcasting, Inc.
Ward & Mendelsohn, P.C.

Reply Comments Submitted:

American Broadcasting Companies, Inc.
Arcatel, Inc., *et al.:*
- Lockhart Omni Communications, Inc.
- Cen-Tex Broadcasting Corp.
- Texas Professional Communications, Inc.
- Lockhart Radio, Inc.

Atlantic Broadcasting Corp.
Beaufort County Broadcasting Co., *et al.:*
- KDAB, Inc.
- Wasatch Broadcasting Partnership

Buena Vista Telecasters of Texas, Inc.
Community Television of Connecticut, Inc.
Forward Communications Corporation, *et al.:*
- Group One Broadcasting Company
- Guaranty Broadcasting Corp.
- Lake Huron Broadcasting Corp.
- Shamrock Broadcasting Co., Inc.
- Ralph C. Wilson Industries, Inc.
- Summit Radio Corp.
- Wilson Communications, Inc.
- WKRG–TV, Inc.

Mid-States Broadcasting, Inc.
National Association of Broadcasters
Ogden Broadcasting Service, Inc.
Public Communications Foundation for North Texas
Sanger Telecasters, Inc.
South Florida Broadcasting Company, Inc.
United Church of Christ, Office of Communication
WDOD of Chattanooga, Inc.
Ward & Mendelsohn, P.C.

February 17, 1983.

Statement of FCC Commissioner James H. Quello; Dissenting in Part

In re: The Suburban Community Policy, the *Berwick* Doctrine and the *De Facto* Reallocation Policy

I support these new policies, but I dissent from the Commission's refusal to consider broadening the definition of community in this proceeding.

Dissenting Statement of Commissioner Stephen A. Sharp

Re: The Suburban Community Policy, the Berwick Doctrine and the De Facto Reallocation Policy

I dissent from the Commission's action because, under the guise of administrative convenience, it returns us to the pre-*Berwick* era without a new answer to the problems as to which the *Berwick* doctrine and its brethren have proven to be an inadequate solution. In so doing, the *Report and Order* exhibits a basic misunderstanding of the nature of major market radio broadcasting. This flaw stems, I believe, from an attempt to justify the original result in the Odgen-Salt Lake City dispute (while avoiding a second reversal and remand) rather than solving the underlying problem. As a result, this proceeding skews the rational, market-based decisions of broadcasters in a manner not mandated by statute and is thus fundamentally inconsistent with the deregulatory principles to which we have sought to adhere.

Problems in the Report and Order

This ad hoc approach to policy-making leads to muddled facts and questionable logic weakening the credibility of the *Report and Order's* entire analysis. For example, paragraph 20 states that "[d]ue to the growth in broadcast services, suburban locations are oftentimes as attractive to licensee applicants as nearby cities." The decision offers no factual support for this conclusory statement and fails to show how, to the extent suburban locations *are* attractive, such attractiveness is not due to the Section 307(b) preference accorded applicants for such communities.

The discussion in paragraphs 27 through 29 provide the clearest example of the frailty of this decision. The *Report and Order* confuses "small market lincensees" with suburban applicants and confuses a "market" with a community of license. It labels as an "assumption" the economic necessity of today's major market radio stations: service to an area beyond the borders of a particular suburb. It states that "small, and suburban communities" are "favored under Section 307(b)" without any basis in the record, the statute or the legislative history and in the face of contrary indications in paragraphs 2 and 3. While the decision catalogues the growth of broadcasting and increased competition, it fails to show the relevance of national totals to the suburban community issues at hand.

From the general, the *Report and Order* leads to the specific arguing that "it is possible that a station could earn more revenues as a single station in a 40,000 person community rather than the 11th station in a neighboring community of 400,000 persons." While a station with no competition in a community some distance from a metropolitan area could earn substantial revenue, the unsupported suggestion that this is as true for the single licensee in a suburban community blinks at reality.

While a station may be the only licensee in a particular suburb, it is compared with and competes for revenues against all of the other stations in that metropolitan radio market. In nearly every case, a close "identification with service of a small community" in a metropolitan market will ensure that the station will be the 11th rated station if, indeed, it is rated at all. The "fractionalization" of larger markets is both the result of and the reason for distinctive formats based on content designed to appeal to a specific category of listeners generally spread over a geographic area larger than the specific community of license. The two lists in paragraph 29 further demonstrate the

unstated and unsupported assumptions which underlie the decision. Even to the extent all news radio usually appeals to a "well educated and middle income" audience, the fact that over ninety percent of such stations are within metropolitan areas does not lend much credence to the implication that serving audiences in more than the community of license is not important for a station's viability. Indeed, without an analysis of the service area demographics for the listed stations, the relevance of paragraph 29 is questionable at best.[1]

An Alternative Analysis

I agree that the *Berwick*, suburban community and de facto reallocation doctrines and the 10- and 15-mile rules, have failed to provide the Commission with an effective means to determine whether broadcast applicants intend to serve suburban municipalities rather than the heart of the market, the center city. Instead, they may have been devices of delay and great cost to both parties and the Commission, often animated by anti-competitive motives.

However, their elimination merely uncovers the deeper issue. The Commission's administrative embellishment of Section 307(b) of the Act has provided an incentive for applicants to seek a suburban community of license in the form of a dispositive preference vis-a-vis those who openly seek to serve a center city. To the extent this regulatory gloss has deterred applicants from serving the market of their choice, it has given rise to *Berwick* et al. as a means of testing their true intent.

To my mind, it is this governmental incentive which is crucial. By removing it, as I proposed, *Berwick* issues would, perforce, disappear as well.[2] My proposal would eliminate any Section 307(b) preference available for an applicant as compared with a mutually-exclusive applicant who seeks a community of license within the same metropolitan statistical area ("MSA"). Thus, in the AM band, the city of license sought would mean the MSA in which that city lies. In the FM and TV bands, the city identified in the Tables would be interpreted to mean the MSA in which that city is located. Thus, an applicant could, if consistent with our technical requirements, apply for any city withing the MSA, without a rulemaking and without affecting its Section 307(b) status relative to others in the same MSA. Other technical, coverage, service and studio requirements remain in force. Section 307(b) preferences would continue to be available in situations where a competing applicant seeks a city of license outside of the MSA.

Four objections have been raised in opposition to my proposal. First, it is alleged to be inconsistent with the Commission's reliance on each applicant forthrightly to state its intent to serve its proposed city of license. My proposal purportedly denies that such reliance is feasible and therefore would obviate the intent issue entirely (at least within MSAs). Such an analysis misperceives my approach and, indeed, stands it on its head. No reason has been given as to why the Commission should be concerned with the applicant's stated intent to serve a particular intra-MSA city for Section 307(b) purposes. Until this is answered, there is no harm in eliminating the issue, regardless of whether intent is stated honestly. Our misrepresentation jurisprudence exists to ensure compliance with our substantive rules; we do not and should not establish rules merely in order to test compliance with them.

Second, it is stated that my recognition of the need for waivers in MSAs of unusual size or configuration would be overused or abused. But it is not clear why waivers in this context would be different than in any other. We are legally required to provide for waivers. The cause of legal certainty can only be promoted by stating the parameters for grant at the outset.

Third, my proposal is thought to be internally inconsistent because it does not modify certain localism-based standards, such as city coverage, studio location, ascertainment and programming requirements, while limiting the impact of the Commission's gloss on Section 307(b) itself (within MSAs). However, to the extent there is an inconsistency, it is an argument for a close review of those remaining Commission-imposed requirements, not for the retention of an otherwise erroneous policy. If they have a policy basis different from that of the application selection preference, there may be a basis for keeping them. If not, they should be revisited.

Last, my suggestion to use the MSA designed by the Census Bureau and OMB is challenged as not being an "appropriate" delineation of a metropolitan area community for "our purposes". It is difficult to refute these arguments because they advance no standards of their own. Our reliance on city boundaries is indeed longstanding, but continuing past approaches for their own sake is not sound policy-making. Similarly, I recognize that MSAs are not a perfect device in this context; nonetheless, they are the best available geographic definition of the common socio-economic interests and patterns by which we define community. Whatever weaknesses do inhere in the use of MSAs, they are no different than those of municipal borders.

I am also concerned that no cogent arguments have been made to refute my approach to this issue. Neither the existence, nor the market-distorting impact, of the problem have been denied; no pro-suburban incentive legal requirement has been cited and my proposal is more consistent with the general policy of this Commission.

The present Commission has sought to rely on market forces rather than government regulation, whenever feasible. However, by encouraging applicants to seek suburban locations on the basis of the number of stations currently licensed to a particular municipality, the Commission not only ignores the basic fact that radio waves do not stop at political boundaries, but also inhibits the applicant's otherwise market-based decision to serve a perceived market need.

Congress has indicated that, in certain situations, other policies concerns are paramount; and with that decision I have no quarrel here. Nonetheless, the elimination of preferences within a metropolitan area is fully consistent with the language, legislative history and Commission and judicial interpretation of Section 307(b). Significantly, the statutory language itself does not define "community"; the Commission's distribution of broadcast facilities "among the several States and communities" must be "fair, efficient and equitable to each of the same." The complex legislative history of this provision indicates that Congress was concerned primarily with preserving the ability of less populated areas of the country, particularly in the west, but also rural areas in general, to obtain broadcast service. *See Pasadena Broadcasting Co. v. FCC*, 555 F. 2d 1046, 1050 (D.C. Cir. 1977). To the extent there was any concern with intrametropolitan area distribution of facilities, it was not clearly expressed.

Section 307(b), in its present form, was added to the Communications Act in 1936. It was designed to restore the provisions originally enacted in the Radio Act of 1927 which had been significantly revised in 1934. *See* 80 Cong. Rec. 6032 (1936) (remarks of Sen. Wheeler). The 1927 provision was animated by congressional concerns that an excessive percentage of both the total and preferred radio frequencies were used by stations based in the nation's largest cities, particularly those in the east. As Rep. Davis noted, of the approximately 700 stations then licensed, "[a]bout 600 of those are held in 21 States, chiefly in a few large cities." 68 Cong. Rec. 2575 (1927). Similarly, he stated "in the entire South and Southwest . . . there were 79 broadcasting stations, and there was not one first-class license in the whole lot, and is not to-day, south of the Ohio River." *Id.* He had previously cited the fact that there were "*within 50 miles* of Chicago 40 stations, of New York 38, of Philadelphia 22, and of San Francisco 22" as the basis for enjoining the Secretary of Commerce "to effect an equitable distribution of stations over the entire country." 67 Cong. Rec. 5479 (1926) (emphasis added). There is no indication in the legislative history that, in enacting Section 307(b) or its 1927 predecessor, Congress intended that the Commission be concerned with the relative status of a center city versus a suburb, much less grant dispositive preferences on that basis.

As far back as the *Sixth Report and Order on Television Allocations*, 1 R.R. 601, 621 (1952), we have recognized that metropolitan centers and their central cities have "broad areas of common interest" which we must consider in allocating broadcast channels under Section 307(b). As a result, very few suburbs received allocations, even after the center city received several. Indeed, even prior to that point, not only we, but the Court of Appeals as well, have recognized that smaller municipalities in metropolitan areas are properly treated as identical to the center city for Section 307(b) purposes. *Huntington*

[1] There are factual problems with the lists as well. For example, many people in Henderson, Nevada would be surprised to learn they were not part of the Las Vegas metropolitan area.

[2] The non-resolution of this problem here is compounded by immediately eliminating *Berwick*-type issues in pending cases, thus prejudicing the rights of competing applicants who have already applied for a license for a center city rather than a convenient suburb.

Broadcasting Co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951).

Similarly, in *St. Louis Telecast, Inc.*, 22 FCC 625 (1957), the Commission refused to find Section 307(b) applicable in selecting among mutually exclusive applicants for a television station in St. Louis as its proposed city of license. We noted there that both St. Louis and East St. Louis were in the St. Louis Standard Metropolitan Area and that "there exists a single economically and culturally integrated community * * *." 22 FCC at 713. *See also Rossmoyne Corp.*, 7 R.R. 117 (1951). I would expand that finding, by rule, to all MSAs.

Finally, I would note that, while this issue may appear to be a minor one; it does, in fact, have long-term significance. We are currently considering a proposal to drop in a substantial number of FM stations. Later this decade, an entire new segment of the spectrum may be made available for AM stations in the 1600 KHz band. Thus, the Commission's action is important and will affect many licensing decisions in the years ahead.

In conclusion, I acknowledge the Commission's willingness to consider a new proceeding, on an accelerated schedule, to provide a more copious record on this issue. While later is better than never, given the many major policy issues in the mass media area which are to be resolved in the near future, I am not optimistic of an early resolution. Sound deregulation is not accomplished by utilizing two rulemaking proceedings when one will do.

[FR Doc. 83-7501 Filed 3-22-83; 8:45 am]
BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1137

[Ex Parte No. 322 (Sub-No. 1)]

Revised Procedures for Divisions of Revenue Cases

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is modifying its regulations governing the processing of division of revenue proceedings. Modifications are necessary to implement revised deadlines for these cases established in the Staggers Rail Act of 1980. Other changes amend the existing procedural rules and evidentiary standards for the purpose of simplifying them and eliminating unnecessary restrictions in the development of evidence.

EFFECTIVE DATE: April 22, 1983.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275-7278.

SUPPLEMENTARY INFORMATION: The Commission has adopted the rules as proposed (46 FR 51261, October 19, 1981), with three exceptions. First, proposed § 1137.1(i), "Alternative to resolution of divisions dispute through adjudication" has been rejected. Second, clarification of the evidentiary guideline § 1137.1(g)(1) has been made to identify exempt traffic as either that traffic which has specifically been exempted from the federal regulation or traffic which moves under rail contracts. Finally, an additional requirement has been made to § 1137.1(c) prohibiting the filing of the formal complaint sooner than 120 days after the filing of the notice of intent. However, this requirement may be waived upon a showing of good cause.

Additional information is contained in the Commission's decision decided February 24, 1983. 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.

We find that the modified rules should be implemented as shown in the appendix.

This notice of Final Rules is issued under 5 U.S.C. 553 and 49 U.S.C. 10321 and 10705. The rules do not significantly affect the quality of the human environment, the conservation of energy resources, or small entities.

The index terms covering 49 CFR Part 1137 are as follows: Administrative practice and procedure, and Railroads.

It is ordered:

1. Part 1137 of Chapter X of Title 49 of the Code of Federal Regulations is amended as set forth in the appendix.

2. This decision is effective on April 22, 1983.

Decided: March 17, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison. Commissioner Andre was absent and did not participate.

Agatha L. Mergenovich,

Secretary.

Appendix

49 CFR Part 1137 is amended as follows:

Part 1137—[Amended]

Section 1137.1 is revised to read as follows:

§ 1137.1 Divisions of revenue cases.

(a) Notice of intent to file complaint.

(1) An original and 15 copies shall be filed for Commission use. Complainant shall serve copies of the notice upon each party (each receiver or trustee if a bankrupt line) to the joint rate.

(2) The notice of intent shall state generally: the involved traffic and applicable joint rates, the territorial scope, the participating railroads, and the present and proposed divisions.

(3) The notice shall include a statement indicating when filing of the formal complaint is expected. The formal complaint may not be filed more than one year after the filing of the notice of intent, unless the Commission approves an extension of time. Lack of diligence in filing of the formal complaint may result in dismissal of the action.

(b) Notice of intent to file cross complaint. These notices shall be filed within 30 days from service of the original notice and are subject to the requirements in paragraph (a) of this section.

(c) Formal complaint (and cross complaint). The formal complaint (and cross complaint) shall be filed no sooner than 120 days after the filing of the notice of intent unless good cause is shown either for not filing a notice or for a shorter notice period. The request to waive the notice time requirement may be included in the formal complaint or in a separate petition. The formal complaint (or cross complaint) shall contain the case-in-chief. All supporting papers shall be made available to opposing parties for inspection and copying. Complaints (and cross complaints) are subject to the same copy requirements as in paragraph (a) of this section. Complainant (or cross complainant) shall serve copies on each party of record. If circumstances permit, the cross complaint will be consolidated for disposition.

(d) Answer. The answer to the formal complaint shall contain the entire case-in-rebuttal. Supporting papers shall be made available to opposing parties for inspection and copying. If the notice of intent procedure was used, the case-in-rebuttal shall be filed within 30 days from service of the complaint. If the notice procedure is waived, the case-in-rebuttal shall be filed within 5 months of the filing of the complaint. Answers shall be served on each party of record. An original and 15 copies shall be submitted to the Commission.

(e) Further proceedings. Following submission of defendant's evidence, complainant may, within 2 months, submit reply evidence which shall be served on each party of record. Unless otherwise ordered, no further filing shall be accepted. Divisions cases shall be handled under the modified procedure, unless oral hearing is shown to be necessary.

(f) Discovery. If the notice of intent procedure was used, discovery shall be available to all parties only prior to the

filing of the complaint. If the notice procedure was not used, discovery shall be available to defendants only and must be exercised under the time restrictions contained in paragraph (d) of this section. Prehearing conferences may be requested to adjudicate discovery requests, or they may be resolved by written pleadings.

(g) Evidentiary guidelines.

(1) Traffic and cost studies, either individual or joint, may be submitted. Studies shall be accepted for consideration as long as they do not delay the process or conflict with other applicable deadlines. Cost studies should be developed, absent a more specific method, in accordance with Rail Form A (or URCS, if implemented), adjusted to reflect the specific traffic and updated to a current level. Studies may include the types of evidence discussed in Appendix D of *Expeditious Handling of Divisions of Revenue Cases*, 353 I.C.C. 349, 388 (1976).

(2) The following evidentiary standards apply:

(i) Costs associated with exempt or contract traffic shall not be included, except that allocation of certain common costs to regulated traffic may be acceptable if adequately explained.

(ii) Elements of profit, income tax, and passenger, commuter, and LCL deficits are not proper expense items for developing fully allocated cost [See *Rules to Govern Assembling and Presenting Cost Evidence*, 337 I.C.C. 298 (1970)], but will be treated under the issue of revenue need.

(iii) Passenger and commuter service costs shall be considered only in relation to the carrier's revenue need.

(iv) All subsidies shall be disclosed and explained.

(v) The same divisional basis shall apply on "border point" traffic.

(h) Time periods for completion of proceedings. In accordance with section 10705(f)(1)(A)(ii), a party, for good cause, may seek extension of any applicable filing deadline. If a requested extension will result in an evidentiary period in excess of 9 months and the proceeding does not involve Class III carriers, the request shall contain sufficient information to allow the required report to Congress and set forth the reasons why the extension is necessary. When the proceeding involves a railroad in reorganization or a contention that the divisions do not cover the variable costs of handling the traffic, requests for extension of filing deadlines shall be viewed with disfavor. The Act directs us to give these proceedings preference and to take final action at the earliest practicable time. 49 U.S.C. 10705(f)(1)(A)(i).

[FR Doc. 83-7485 Filed 3-22-83; 8:45 am]
BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 48, No. 57
Wednesday, March 23, 1983

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

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM82-32-000]

Limitation on Incentive Prices for High-Cost Gas to Commodity Values

March 21, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: On February 10, 1983, the Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking to modify the maximum lawful price of high-cost gas designated by the Commission under section 107(c)(5) of the Natural Gas Policy Act of 1978 (NGPA), to ensure that ceiling prices do not go above the commodity value of the natural gas. (48 FR 7469, February 22, 1983). The comment period is being extended at the request of Indicated Producers and Henderson Clay Products, Inc.

DATE: Comments must be submitted on or before May 27, 1983.

ADDRESS: All comments should refer to Docket No. RM82-32-000 and should be submitted to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, (202) 357-8400.

Notice of Extension of Time

Limitation on Incentive Prices for High-Cost Gas to Commodity Values; Docket No. RM82-32-000.

March 21, 1983.

Indicated Producers and Henderson Clay Products, Inc., have filed motions for an extension of time to file comments in response to the Commission's Notice of Proposed Rulemaking issued February 10, 1983, in the above-docketed proceeding. The motions state that the companies require additional time in order to complete their evaluation of the proposed rulemaking and to prepare adequate responses.

Upon consideration, notice is hereby given that an extension of time for the filing of comments is granted to and including May 27, 1983.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-7631 Filed 3-22-83; 8:45 am]

BILLING CODE 6717-01-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Effective Date for Reduced Awards of Educational Assistance Allowance

AGENCY: Veterans Administration.

ACTION: Proposed regulation.

SUMMARY: This proposed regulation implements a provision of the Omnibus Budget Reconciliation Act of 1982 which affects veterans receiving educational assistance under chapter 34, title 38, United States Code. Veterans who lose a dependent will have their assistance reduced effective the end of the month in which the loss occurred, rather than at the end of the year.

DATES: Comments must be received on or before April 22, 1983. In keeping with Pub. L. 97-253, it is proposed that this regulation be made effective October 1, 1982.

ADDRESS: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420.

All written comments received will be available for public inspection at this address only between the hours of 8 am and 4:30 pm Monday through Friday (except holidays) until May 2, 1983. Anyone visiting Veterans Administration Central Office in Washington, D.C. for the purpose of inspecting any of these comments will be received by the Central Office Veterans Services Unit in room 132. Visitors to VA field stations will be informed that the records are available for inspection only in Central Office and will be furnished the address and room number.

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

SUPPLEMENTARY INFORMATION: Section 21.4135, Title 38, Code of Federal Regulations, is amended to provide that when a veteran loses a spouse or dependent child, his or her award of educational assistance allowance will be reduced effective the end of the month in which the loss occurs.

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

The Administrator of Veterans' Affairs hereby certifies that this proposed regulation, if promulgated, will not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), this proposed regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because this proposed regulation implements a statutory change and has no independent economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this proposed regulation is 64.111

List of Subjects in 38 CFR Part 21

Civil rights, Claims education, Grant programs—Education, Loan program—

Education, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 10, 1983.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

March 10, 1983.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

It is proposed to amend 38 CFR Part 21 as follows:

In § 21.4135, paragraphs (b), (c)(1) and (d)(1) are revised as follows:

§ 21.4135 Discontinuance dates.

* * * * *

(b) *Death of dependent.* Last day of the month in which death occurs unless discontinuance is required at an earlier date under other provisions. (38 U.S.C. 3012(b), 3013; Pub. L. 97-253, 96 Stat. 763)

(c) *Divorce.* (1) Veteran, chapter 34: Last day of the month in which divorce occurs unless discontinuance is required at an earlier date under other provisions. (38 U.S.C. 3012(b), 3013; Pub. L. 97-253, 96 Stat. 763)

* * * * *

(d) *Dependent child—chapter 34.* (1) *Marriage.* Last day of the month in which marriage occurred unless discontinuance is required at an earlier date under other provisions. (38 U.S.C. 3012(b), 3013; Pub. L. 97-253, 96 Stat. 763)

* * * * *

[FR Doc. 83-7511 Filed 3-22-83; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA Docket No. AWO11WV; A-3-FRCL 2327-6]

West Virginia State Implementation Plan; Extensions of Time

AGENCY: Environmental Protection Agency.

ACTION: Notice of time extensions to submit revisions to the West Virginia State Implementation Plan (SIP).

SUMMARY: This action extends the deadline for the State of West Virginia to submit the required sulfur dioxide (SO_2) revisions to the West Virginia SIP for the Harrison and Mitchell power plants.

DATE: Required information must now be submitted on or before September 17, 1983 for the Mitchell power plant and December 31, 1984 for the Harrison power plant.

FOR FURTHER INFORMATION CONTACT: Lillie R. Ellerbe (3AW13), U.S. Environmental Protection Agency, Region III, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106, 215/597-8170.

SUPPLEMENTARY INFORMATION: On September 27, 1982 (47 FRL 42382), EPA published a notice in the **Federal Register** granting an extension of time until January 17, 1983 for the State of West Virginia to submit the required SO_2 revision for attaining the secondary standard to its SIP concerning the Harrison and Mitchell power plants. Additional time is now needed by the State to submit the necessary information.

On January 10, 1983 and January 11, 1983, the State requested more time to complete and submit the revisions as appropriate to the SIP. Extensive modeling and meteorological data collection have now necessitated additional time being needed. An eight month extension until September 17, 1983 is requested for the Mitchell power plant to perform needed air quality modeling and an extension until December 31, 1984 is requested for the Harrison power plant to collect on-site meteorological data prior to submitting the revision.

The extensions would allow the State time for data analyses and collection, completion of public notices and hearings, and submittal of any regulatory changes that may be necessary.

EPA fully agrees with the State that these extensions are justified and hereby approves September 17, 1983 for the Mitchell power plant and December 31, 1984 for the Harrison power plant as the dates by which the required information must be submitted.

(42 U.S.C. 7401-7642)

Dated: March 8, 1983.

Stanley L. Laskowski,

Deputy Regional Administrator.

[FR Doc. 83-7306 Filed 3-22-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-9-FRL 2298-1]

Approval and Promulgation of Implementation Plans; State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: EPA is proposing to approve, as revisions to the California State Implementation Plan (SIP), three South Coast Air Quality Management District (SCAQMD) rules, one Kern County rule, and one Ventura County rule which control nitrogen oxides (NO_x) emissions. In addition, EPA proposes to approve procedures of the Bay Area Air Quality Management District (BAAQMD) for enforcement and monitoring. This notice also proposes to approve a SCAQMD visible emissions rule, except the provision which exempts coke oven operations. These rules are approvable because they represent measures necessary to insure attainment and maintenance of the National Ambient Air Quality Standards. Because the visible emission limit is especially important to the control of fugitive emissions and the coke oven operation is a major source of fugitive emissions, EPA proposes to disapprove the exemption provision.

DATE: Comments will be considered if received on or before April 22, 1983.

ADDRESSES: Comments should be sent to: Regional Administrator, Environmental Protection Agency, Region 9, ATTN: Air Management Division, Air Programs Branch, State Implementation Plan Section (A-2-3), 215 Fremont Street, San Francisco, CA 94105.

Information pertinent to this notice is available for public inspection during normal business hours at the EPA Region 9 office at the address above and at the following locations:

California Air Resources Board, 1102 "Q" Street, Sacramento, CA 95812

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109

South Coast Air Quality Management District, 9150 Flair Drive, El Monte, CA 91731

Kern County Air Pollution Control District, 1601 "H" Street, Suite 250, Bakersfield, CA 93301

Ventura County Air Pollution Control District, 800 South Victoria Avenue, Ventura, CA 93009

FOR FURTHER INFORMATION CONTACT: Douglas Grano, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-7641.

SUPPLEMENTARY INFORMATION:

Background

The Clean Air Act requires states to revise their SIPs for areas that have not attained the National Ambient Air Quality Standards (NAAQS). The State of California recently submitted revisions to EPA for its SIP. Included in these revisions were five rules to control

NO_x emissions, one SCAQMD rule to limit visible emissions, and portions of the BAAQMD's Manual of Procedures (MOP). EPA evaluated these revisions by comparing them to the requirements of the Clean Air Act, as amended in 1977. The reader is directed to EPA's Technical Support Document (available at the above address) for more detailed information on the evaluations. A summary of EPA's evaluation and conclusions for each revision follows:

Rule 1112—Emissions of Oxides and Nitrogen From Cement Kilns (SCAQMD)

The State submitted Rule 1112 to EPA on May 20, 1982. The rule limits NO_x emissions to 3.1 pounds of NO_x per ton of clinker produced, beginning July 1, 1984. The rule also requires the SCAQMD to conduct a public hearing in January 1984, to review the rule's emission limit and compliance date. Two issues have been raised on this rule by a cement company representative: (1) The technology to meet the 3.1 limit may not be available yet and (2) the rule could be considered unenforceable since the emission limit and final compliance date may be changed after the January 1984 public hearing.

EPA has determined that the rule is fully approvable since it provides new emission limits for NO_x in an area that exceeds the NAAQS for NO_x, ozone and particulate matter. In addition, there is ample legal precedence showing:

(1) EPA is precluded from taking economic and technological feasibility factors into account in determining whether to approve SIP submittals, and

(2) Although Rule 1112 is contingent upon the results of ongoing fact finding, it is still valid and constitutional.

EPA has been informed in informal communications with the SCAQMD that Rule 1112 may be amended after this notice of proposed rulemaking has been published but prior to final rulemaking. If the SCAQMD submits such an amendment to EPA for approval, and if EPA determines that the changes are only minor (for example, if the public hearing and compliance date are extended), EPA will publish direct-final approval of the amended rule. Comments received in response to today's proposed rulemaking will of course be considered by EPA prior to any final rulemaking.

Rule 1110 (SCAQMD) and Rule 74.9 (Ventura County)—Emissions From Stationary Internal Combustion Engines

Rule 74.9 was formally submitted to EPA on October 23, 1981 and Rule 1110 was submitted on March 1, 1982. The two rules are identical and require owners of certain internal combustion engines to participate in a program to demonstrate effective methods for reducing NO_x emissions.

EPA evaluated these rules and finds them to be approvable because they strengthen the SIP and could contribute to the attainment of the NO_x, ozone, and/or particulate matter standards.

Rule 1117—Emissions of Oxides of Nitrogen From Glass Melting Furnaces (SCAQMD)

Rule 1117 was submitted to EPA on May 20, 1982. The rule requires all container glass manufacturers to participate in a program to determine the baseline NO_x emission characteristics of each furnace and to evaluate methods to reduce NO_x emissions. The intent of the rule is to first demonstrate effective NO_x control measures, and then implement the measures when the furnaces are rebuilt. EPA evaluated Rule 1117 and finds it to be approvable because it is both consistent with the State's NO_x control strategy and is necessary for attainment of the NO_x NAAQS.

Rule 425—Oxides of Nitrogen Emissions From Steam Generators Used in Thermally Enhanced Oil Recovery (Kern County)

Rule 425 was submitted to EPA on June 28, 1983. The rule limits NO_x emissions from existing steam generators. Kern County is designated attainment for NO_x and nonattainment (San Joaquin Valley portion) for ozone and particulate matter. EPA believes that Rule 425 is approvable because it both strengthens the SIP and could contribute to the attainment of the ozone and particulate standards.

Rule 401—Visible Emissions (SCAQMD)

The State submitted Rule 401 to EPA on August 15, 1980. The rule limits visible emissions from all sources, with certain exceptions, including an exemption for coke oven operations. The exemptions are generally approvable since they would not significantly impact the air quality. However, the coke oven operation is a major source of particulate, both fugitive and stack emissions, in the SCAQMD which is nonattainment for particulate matter. Because the visible emission limit is especially important to the control of fugitive emissions, EPA proposes to disapprove the exemption for coke oven operations. The remainder of the rule is proposed to be approved.

BAAQMD MOP

The State submitted to EPA on May 20, 1982, the following portions of their MOP: Volume I, *Enforcement Procedures;* Volume V, *Continuous Emission Monitoring and Procedures;* and Volume VI, *Air Monitoring Procedures.* EPA proposes to approve these procedures because they are consistent with Section 110 of the Clean Air Act and strengthen the SIP. No action is taken on Sections 3 and 4 of Volumes I and VI, since these sections address pollutants for which a NAAQS has not been set.

Regulatory Process

As required by the Regulatory Flexibility Act (5 U.S.C. (b)), EPA hereby certifies that the attached rule will not, if promulgated, have a significant economic impact on a substantial number of small businesses. (See 46 FR 8709) Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

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

Authority: Sec. 110, 129, 171 to 178 and 301(a) of the Clean Air Act, as amended, (42 U.S.C. 7410, 7429, 7501 to 7508, and 7601(a))

Dated: January 21, 1983.

Sonia F. Crow,

Regional Administrator.

[FR Doc. 83-7493 Filed 3-22-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-1-FRL 2317-2]

Approval and Promulgation of Implementation Plans; Revisions to Sulfur-in-Fuel Regulation—New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of New Hampshire concerning sulfur-in-oil requirements. These revisions would raise the statewide sulfur-in-oil limit for eligible sources from 1.0% sulfur by weight to 2.2% in the New Hampshire portion of the Androscoggin Valley Interstate Air Quality Control Region and to 2.0% in all other parts of the

State. The intended effect of these revisions is to allow residual oil burning facilities in New Hampshire to burn cheaper oil than that currently allowed. These revisions do not apply to eight identified sources which will be the subject of a future SIP revision to be submitted by New Hampshire.

DATE: Comments must be received on or before April 22, 1983.

ADDRESSES: Comments may be mailed to Harley F. Laing, Director, Air Management Division, Room 2312, JFK Federal Building, Boston , MA 02203. Copies of the New Hampshire submittals and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2111, JFK Federal Building, Boston, MA 02203; and the New Hampshire Air Resources Commission, Health and Welfare Building, Hazen Drive, Concord, NH 03301.

FOR FURTHER INFORMATION CONTACT: Miriam Fastag, State Air Programs Branch, EPA Region I, JFK Federal Building, Boston, Massachusetts 02203, (617) 223-5130.

SUPPLEMENTARY INFORMATION: On July 12, 1973; April 11, 1975; and December 21, 1982, the State of New Hampshire submitted regulatory changes to the New Hampshire State Implementation Plan (SIP) which would raise the allowable sulfur content of No. 5 and No. 6 residual oils and crude oil used, purchased or sold for use in stationary combustion installations within the State. The proposed revisions would allow the use of 2.2% sulfur content residual fuel oil in the New Hampshire portion of the Androscoggin Valley Interstate Air Quality Control Region and 2.0% sulfur content oil in all other parts of the State, by all but eight fuel burning sources. The excluded sources are:

1. International Packings Corp., Bristol
2. Dartmouth College, Hanover
3. Hinsdale Products Co., Inc., Hinsdale
4. Groveton Paper Co., Northumberland
5. James River Corp./Cascade Division, Gorham
6. Velcro USA, Inc., Manchester
7. ATC Petroleum, Newington
8. Anheuser-Busch, Inc., Merrimack

They will be the subject of a future SIP revision to be submitted by New Hampshire.

The SIP currently prohibits use of any fuel with a sulfur content greater than 1.0% by weight at any facility, except for the James River Corporation plant in Berlin, New Hampshire, formerly known as the Brown Company. (EPA approved a revision to New Hampshire's sulfur-in-fuel regulation for this plant only on June 23, 1980 (45 FR 41942). The SIP revision, as it applies to other sources in New Hampshire, was not acted on by EPA at that time because it contained insufficient technical support.)

The July 12, 1973 and April 11, 1975 SIP revision submittals were incomplete because they did not contain sufficient technical support for the proposed changes. In 1981, EPA required as a federal grant condition that New Hampshire submit additional technical materials, and provided assistance to New Hampshire to analyze the effect of the higher sulfur-in-fuel allowance on the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO_2). First, ambient monitoring data were used to assess the impact of sources with potential emissions less than 100 tons per year. No problems were identified. Next, all point sources in the State with potential SO_2 emissions equal to or greater than 100 tons per year were modeled in accordance with EPA's *Guideline on Air Quality Models*. The modeling demonstrated NAAQS compliance while burning higher sulfur oil for all but the eight sources excluded from these revisions. The State and EPA are presently investigating suitable control measures or other actions for these eight sources, and these will be the subject of a separate State submittal and Federal rulemaking action. As to impacts on neighboring States, EPA has concluded that this revision would not interfere with any other States' ability to meet the NAAQS.

The State of New Hampshire, except Berlin, has been designated as attaining the NAAQS for SO_2, and this designation is supported by the currently available ambient monitoring data which show no SO_2 violations outside of Berlin. The SO_2 attainment plan for Berlin (approved at 45 FR 41942, June 23, 1980), projected attainment of the NAAQS by December 31, 1981. In fact, no values in excess of the SO_2 standards were recorded in Berlin during 1981 or in the 1982 record available thus far. Further air quality improvement is expected to result from continued implementation of this attainment plan.

These SIP revisions approving regulatory changes made by the State and initially submitted to EPA in 1973 and 1975, will not result in the consumption of any Prevention of Significant Deterioration (PSD) increment. Rather, the emissions from sources eligibile to burn the higher sulfur fuel are included in the baseline for SO_2.

The revisions submitted by New Hampshire include a provision for the unavailability of conforming fuel. That provision would allow for the use of 2.5% sulfur oil upon adequate demonstration that conforming fuel is not available. The provision further stipulates that no such variance would become effective until it has received approval from EPA.

Proposed Action: EPA is proposing to approve the revisions to burn higher sulfur oil by those sources in New Hampshire which are the subject of these revisions.

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

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

The Administrator's decision to approve or disapprove the plan revisions will be based on whether they meet the requirements of Sections 10(a)(2) (A)-(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51. These revisions are being proposed pursuant to Sections 110(a) and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a)).

List of Subjects in 40 CFR Part 52

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

Dated: February 17, 1983.

Paul G. Keough,

Acting Regional Administrator, Region I

[FR Doc. 83-7492 Filed 3-22-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[OPP-300073; PH-FRL 2327-1]

Polybutenes, Polyvinyl Chloride, and Butyl Benzyl Phthalate; Proposed Exemptions From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rules.

SUMMARY: This document proposes that polybutenes, polyvinyl chloride, and butyl benzyl phthalate be exempted from the requirement of a tolerance when combined with each other and used as inert ingredients in multi-

layered dispensers of pesticide formulations. This proposed regulation was requested by the Health-Chem Corporation.

DATE: Written comments must be received on or before April 22, 1983.

ADDRESS: Written comments to: Process Coordination Branch (TS–767C), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 716 D, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Roland D. Blood, (703) 557–7700 at the above address.

SUPPLEMENTARY INFORMATION: At the request of the Health-Chem Corporation, the Administrator proposes to amend 40 CFR Part 180 by establishing an additional exemption from the requirement of a tolerance for residues of polybutenes, polyvinyl chloride, and butyl benzyl phthalate, respectively, when combined with each other and used as inert ingredients in multi-layered dispensers of (Z)-11hexadecenal to disrupt the mating of the artichoke plume moth.

Inert ingredients are all ingredients which are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as water; baits such as sugar, starches, and meat scraps; dust carriers such as talc and clay; fillers; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term inert is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredients: Polybutenes, polyvinyl chloride, and butyl benzyl phthalate.

Name and address of requestor: Health-Chem Corporation, 1107 Broadway, New York, NY 10010.

Bases for approval:

1. These three inert ingredients are already exempt from the requirement of a tolerance for residues in or on the raw agricultural commodity cottonseed when used as inert ingredients in multi-layered dispensers of gossyplure to disrupt the mating habits of the pink bollworm.

2. Data indicate that there is little likelihood of residues reaching the marketplace because of the agricultural practices of artichoke growers.

3. However, if a dispenser does remain hidden inside an artichoke, it is of sufficient size, ¼" x ¼" x 0.02", as to be readily observed at the point of consumption and therefore avoided.

Based on the above information, and review of their use, it has been found that, when used in accordance with good agricultural practices, these ingredients are useful and do not pose a hazard to humans or the environment. It is concluded, therefore, that the proposed amendments to 40 CFR Part 180 will protect the public health, and it is proposed that the regulations be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains one or all of these inert ingredients, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulations. Comments must bear a notation indicating both the subject and the petition and document control number, [OPP–300073]. All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Process Coordination Branch at the address given above from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

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. Law 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(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

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

Dated: March 11, 1983.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. In § 180.1037, by designating the existing text as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 180.1037 Polybutenes; exemption from the requirement of a tolerance.

* * * * *

(b) Polybutenes are exempt from the requirement of a tolerance for residues in or on the raw agricultural commodity artichokes when used as a sticker agent for multi-layered laminated controlled-release dispensers of (Z)-11-hexadecenal to disrupt the mating of the artichoke plume moth.

2. In § 180.1060, by designating the existing text as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 180.1060 Polyvinyl chloride; exemption from the requirement of a tolerance.

* * * * *

(b) Polyvinyl chloride is exempt from the requirement of a tolerance for residues in or on the raw agricultural commodity artichokes when used as inert multi-layered laminated controlled-release dispensers of (Z)-11-hexadecenal to disrupt the mating of the artichoke plume moth.

3. In § 180.1062, by designating the existing text as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 180.1062 Butyl benzyl phthalate; exemption from the requirement of a tolerance.

* * * * *

(b) Butyl benzyl phthalate is exempt from the requirement of a tolerance for residues in or on the raw agricultural commodity artichokes when used as an inert plasticizer in multi-layered laminated controlled-release dispensers of (Z)-11-hexadecenal to disrupt the mating of the artichoke plume moth.

[FR Doc. 83-7079 Filed 3-22-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 3E2770/P288; PH-FRL 2323-1]

Insecticide Acephate; Proposed Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues of the insecticide acephate and its cholinesterase-inhibiting metabolite in or on the raw agricultural commodity cranberries. The proposed regulation to establish a maximum permissible level for residues of the insecticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

DATE: Comments must be received on or before April 22, 1983.

ADDRESS: Written comments to: Emergency Response Section, Process Coordination Branch, Registration Division (TS–767C), Environmental Protection Agency, Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Donald Stubbs (703–557–1192) at the above address.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 3E2770 to EPA on behalf of the IR–4 Technical Committee and the Agricultural Experiment Stations of Massachusetts, New Jersey, Oregon, Wisconsin and Washington.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the insecticide acephate (*O,S*-dimethyl acetylphosphoramidothioate) and its cholinesterase-inhibiting metabolite *O,S*-dimethyl phosphoramidothioate in or on the raw agricultural commodity cranberries at 0.5 ppm (of which no more than 0.1 ppm is *O,S*-dimethyl phosphoramidothioate).

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance were a 90-day rat feeding study with a no-observed-effect level (NOEL) of 5.0 ppm (0.25 mg/kg) based on the inhibition of cholinesterase activity in plasma, red blood cells (RBC), and brain; a 2-year dog feeding study with a NOEL of 30.0 ppm (0.75 mg/kg), based on the inhibition of plasma, RBC, and brain cholinesterase activity, and a NOEL of 100.0 ppm (2.5 mg/kg) for systemic toxicity; a 28-month rat feeding/oncogenic study with a NOEL of 5.0 ppm (0.25 mg/kg), based on the inhibition of cholinesterase activity in plasma, RBC and brain; a rabbit teratorlogy study with a NOEL of 10.0 mg/kg (highest dose tested); a rat teratology study with a NOEL of 200.0 mg/kg (highest dose tested); and a supplemental acute delayed neurotoxicity study with no effects observed (no leg paralysis) at the 375 mg/kg level.

In a recently conducted micronucleus test (mouse bone marrow), acephate did not display mutagenic activity. There are studies available, however, in which acephate did display such activity (gene mutations in microorganisms and DNA repair). Additional mutagenic studies have since been submitted and are currently under review by the Agency.

Studies which are lacking but considered desirable include a rat reproduction study, and a delayed neurotoxicity study. A mouse oncogenic study has been submitted and is currently under review. Although there are significant data gaps for the chemical, the available toxicity data are adequate to support the proposed tolerance because the proposed use will result in an insignificant increase (0.05 percent) in the TMRC to the human diet. As stated in the **Federal Register** of May 11, 1979 (44 FR 27932–27936), the Agency will generally consider as insignificant an increase in the TMRC of 1.0 percent or less.

The acceptable daily intake (ADI), based on a NOEL of 0.25 mg/kg/day from the 28-month rat feeding/oncongenic study and using a 10-fold safety factor, is calculated to be 0.025 mg/kg of body weight (bw)/day. The maximum permitted intake (MIP) for a 60-kg human is calculated to be 1.5 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.4244 mg/day; the current action will increase the TMRC by 0.00023 mg/day. The existing tolerances and this regulation utilize a total of 28.31 percent of the ADI.

The nature of the residues is adequately understood and an adequate analytical method (gas chromatography with a thermionic detector is available for enforcement purposes. Since cranberries are not considered to be an animal feed commodity, there will be no problem with secondary residues in meat, milk, poultry and eggs. There are presently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.108 would protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 403(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 3E2770/P288]. All written comments filed in response to this petition will be available in the Emergency Response Section, Registration Division, at the address given above from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

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).

List of Subjects in 40 CFR Part 180

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

(Sec. 408(e), 685 Stat. 514 (21 U.S.C. 346a(e)))

Dated: March 7, 1983.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.108 be amended by adding and alphabetically inserting the raw

agricultural commodity cranberries to read as follows:

§ 180.108 Acephate; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Cranberries (of which no more than 0.1 ppm is *O,S*-dimethyl phosphoramidothioate)	0.5
* * * * *	

[FR Doc. 83-6944 Filed 3-22-83; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 228

[WH-FRL 2329-6]

Ocean Dumping; Notice of Public Hearing on North Atlantic Incineration Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public hearing.

SUMMARY: EPA today announces a public hearing to be held in Ocean City, Maryland, on April 14, 1983, to receive public comment on the proposed designation as an EPA approved ocean incineration site, the North Atlantic Incineration Site.

DATE: The public hearing will be held on April 14, 1983.

ADDRESSES: The public hearing will be held in the City Council Chambers, Third Street and Baltimore Avenue, Ocean City, Maryland.

Send comments or statements to: Mr. T. A. Wastler, Chief, Marine Protection Branch (WH-585), EPA, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. T. A. Wastler, 202/755-0358.

SUPPLEMENTARY INFORMATION: On November 17, 1982, EPA published in the **Federal Register** a proposed rule to designate the North Atlantic Incineration Site as an EPA approved ocean incineration site. 47 FR 51769. The comment period on this proposed rule expired on Janaury 3, 1983. As a result of public comments and requests for a public hearing on the proposed designation of this site, EPA plans to hold a public hearing to receive additional public comment. This hearing will be held on April 14, 1983, in the City Council Chambers, Third Street and Baltimore Avenue, Ocean City, Maryland. There will be a morning session from 10 a.m. to 12 noon. If all those wishng to make statements cannot be accommodated during the morning session, an afternoon session will be held starting at 2 p.m. An evening session is scheduled to begin at 7 p.m.

All interested parties are invited to be present or to be represented to express their views on the proposed designation of this site. For reasons of accuracy, however, we request that statements be submitted in writing. Oral statements should summarize any extensive written material so there will be time for all interested parties to be heard. If persons desire to participate in this hearing but are not able to attend, they are encouraged to send their comments or statements to the address given above on or before the date of the hearing for inclusion in the record.

Dated: March 11, 1983.

Rebecca W. Hammer,

Assistant Administrator for Water.

[FR Doc. 83-7872 Filed 3-22-83; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 30304-32]

Foreign Fishing, Groundfish of the Bering Sea and Aleutian Islands Area

Correction

In FR Doc. 83-6343 beginning on page 10383 in the issue of Friday, March 11, 1983, make the following corrections:

1. On page 10385 in the second column, ninth line, "PSCA" should read "PSCs".

2. On page 10387 in the second column, § 611.93(c)(2)(iii)(D)(*1*), the paragraph designation "(*l*)" should read "(*i*)".

BILLING CODE 1505-01-M

Notices

Federal Register
Vol. 48, No. 57
Wednesday, March 23, 1983

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with Section 800.6(d)(3) of the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), that the Advisory Council on Historic Preservation will meet at the Department of Transportation Building, 400 7th Street SW., Room 2230–32, Washington, D.C. The meeting is open to the public.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470) to advise the President and Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol, the Secretaries of the Interior, Agriculture, Housing and Urban Development, Treasury, Transportation; the General Services Administrator; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor, a Mayor, and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

Call to Order
Chairman's Welcome
Order of Business
Consideration of Minutes of October 19, 1982, Meeting
I. Report of the Executive Director
II. Report of the General Counsel:
A. Regulations Review
B. Tax Study
III. Report of the Office of Cultural Resource Preservation:
A. Status of Section 106 Cases
B. Progress on Programmatic Memorandum of Agreement
C. Counterpart Regulations: Soil Conservation Service
D. Cost-Effectiveness Review
IV. New Business

DATE: The meeting will begin at 9:00 a.m., Tuesday, April 12, 1983.

FOR FURTHER INFORMATION CONTACT: Additional information concerning either the meeting agenda or the submission of oral and written statements to the Council is available from the Executive Director, Advisory Council on Historic Preservation, 1522 K Street NW., Suite 430, Washington, D.C. 20005, 202–254–3967.

Dated: March 18, 1983.

Robert R. Garvey, Jr.,

Executive Director.

[FR Doc. 83-7476 Filed 3-22-83; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Forest Service

Tonto National Forest Grazing Advisory Board; Meeting

The Tonto National Forest Grazing Advisory Board will meet April 19, 1983, at 10:00 a.m. at the Canyon Volunteer Fire Company on Jess Hayes Road in Globe, Arizona. A portion of the meeting will consist of a field trip to selected grazing allotments. The purpose of this meeting is to cover the following agenda items:

1. Review proposed expenditure of Range Betterment Funds, as authorized by Public Law 94–579 (FLPMA Section 403), for Fiscal Year 1984.

2. Field trip to selected allotments on the Globe and Tonto Basin Ranger Districts to review Allotment Management Plans in operation and associated structural range improvements which have been constructed with Range Betterment Funds.

The meeting will be open to the public. Persons who wish to attend should notify James L. Kimball, Supervisor, Tonto National Forest, 102 South 28th Street, Phoenix, Arizona 85038, telephone (602) 261–3205. Written statements may be filed with the Board before or after the meeting.

Oral statements may be made by public attendance when recognized by the chair.

Dated: March 14, 1983.

James L. Kimball,

Forest Supervisor.

[FR Doc. 83-7504 Filed 3-22-83; 8:45 am]

BILLING CODE 3410-11-M

Office of the Secretary

Forms Under Review by Office of Management and Budget

March 18, 1983.

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: Marshall L. Dantzler, Acting Statistical Clearance Officer, (202) 447–6201.

Revised

- Statistical Reporting Service
- Vegetable Surveys
- Weekly, monthly, quarterly
- Farms, businesses: 16,175 responses; 2,411 hours; not applicable under 3504(h)

Lee Sandberg (202) 447–6820

• Agricultural Marketing Service
Limes Grown in Florida-Marketing Order No. 911
On occasion, annually
Businesses: 5,056 responses; 5,214 hours; not applicable under 3504(h)
William J. Doyle (202) 447–5975

Extension

• Office of Rural Development Policy
7 CFR–1948–A, Area Development Assistance Planning Grants
Quarterly
State or local government, businesses: 547 responses; 1,368 hours; not applicable under 3504(h)
Marge Goodpasture (202) 447–2457

• Agricultural Marketing Service
Wheat and Wheat Foods Research and Nutrition Education
Quarterly
Businesses: 2,625 responses; 238 hours; not applicable under 3504(h)
Lowry Mann (202) 447–2650

• Animal and Plant Health Inspection Service
9 CFR 11, Horse Protection Regs (Recordkeeping)
On occasion
Businesses: 450 responses; 562 hours; not applicable under 3504(h)
Dr. R.L. Rissler (301) 436–5286

Marshall L. Dantzler,

Acting Statistical Clearance Officer.

[FR Doc. 83-7463 Filed 3-22-83; 8:45 am]

BILLING CODE 3410-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)
Dates of Meeting: Friday, 8 April 1983
Times: 0830–1700 hours (Closed)
Place: The Pentagon, Washington, D.C.

Agenda: The Army Science Board Ad Hoc Subgroup on Army Utilization of Space Assets will meet for classified briefings and discussions on the capabilities of currently available and future space assets to enhance the Army's ability to carry out its mission. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C. App. 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Helen M. Bowen, may be contacted for further information at (202) 695–3039 or 697–9703.

Helen M. Bowen,

Administrative Officer.

[FR Doc. 83-7514 Filed 3-22-83; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)
Dates of Meeting: Monday and Tuesday, 11 & 12 April 1983
Times: 0830–1700 hours (Closed)—both days
Place: Project Manager Smoke/Obscurants and Chemical Systems Laboratory, Aberdeen Proving Ground, Maryland
Agenda: The Army Science Board Ad Hoc Subgroup on Smoke and Obscurants Program will meet for classified briefings and discussions on the smoke and obscurants threat, concepts, doctrine, materiel developments, testing, training, toxicology, and research and development technologies. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C. App. 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Helen M. Bowen, may be contacted for further information at (202) 695–3039 or 697–9703.

Helen M. Bowen,

Administrative Officer.

[FR Doc. 83-7515 Filed 3-22-83; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)
Dates of meeting: Thursday and Friday, 7 & 8 April 1983
Times: 0830–1700 hours (Open)—both days
Place: The Pentagon, Washington, D.C.
Agenda: The Equipping the Army Subpanel of the Army Science Board's 1983 Summer Study on the Future Development Goal will meet to discuss the performance, management Army goal of future development. Briefings and discussions will encompass steps to innovation across the critical areas of doctrine, force structure, manning, training, equipping, mobilizing, and leverage technology. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. In order to be able to accommodate prospective attendees, Helen M. Bowen, the ASB Administrative Officer, must be notified no later than 31 March 1983. For further information, call the ASB at (202) 697–9703 or 695–3039.

Helen M. Bowen,

Administrative Officer.

[FR Doc. 83-7643 Filed 3-21-83; 3:35 pm]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Intent to Prepare A Draft Environmental Impact Statement For Fall River/Lower Valley Transmission System Reinforcement

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of intent to prepare and consider an environmental impact statement (EIS) on a proposal to reinforce the electrical transmission system serving the areas of Targhee, Teton, and Drummond in Idaho and Palisades in Wyoming.

SUMMARY: BPA proposes to construct a 70-mile long, 161-kV transmission line between Goshen Substation, 12 miles south of Idaho falls, and Drummond Substation, 50 miles northeast of Idaho Falls.

Two routes are currently being considered for the new line. Both routes would likely parallel existing BPA lines to an area about 35 miles northeast of Goshen Substation. From this area the alternatives follow different routes across the Snake River and north to another existing transmission line belong to the Fall River Electric Cooperative. The line would likely parallel this line into Drummond Substation. An additional transformer and circuit breaker would be installed at Drummond Substation and another circuit breaker would be installed at Goshen Substation. Both construction alternatives may require siting transmission structures in a floodplain. Possible alternatives to the proposed action are conservation and no action.

Scoping for this EIS will include: (1) Consultation with affected utilities in the area including Fall River Electric Cooperative, Lower Valley Power and Light, and Utah Power and Light; (2) consultation with affected Federal, State, regional, and local agencies; and (3) public meetings. BPA will hold public scoping meetings March 30, 1983, in Idaho Falls, Idaho, at the City Electric Building, and March 31, 1983, in Driggs, Idaho, at the American Legion Hall. The meetings will begin at 7:30 p.m. BPA will

announce the meetings through local news media and direct mailings.

FOR FURTHER INFORMATION CONTACT: Those desiring further information or wishing to submit written comments on the scope of the environmental impact statement should address their correspondence to Anthony R. Morrell, Environmental Manager, Bonneville Power Administration, P.O. Box 3621–SJ, Portland, Oregon 97208.

Issued in Portland, Oregon, March 14, 1983.

James J. Jura,

Acting Administrator.

[FR Doc. 83-7441 Filed 3-22-83; 8:45 am]

BILLING CODE 6450-01-M

Negotiation of New Regionwide Conservation Program Contracts and Opportunities for Public Participation

AGENCY: Bonneville Power Administration, (BPA), DOE.

ACTION: Notice of contract negotiation and opportunities for public participation.

SUMMARY: This notice summarizes the history of the negotiation process and invites participation of interested parties including States, local governments, BPA's customers, and interested individuals.

The process for negotiating the new regionwide conservation contracts is already underway. BPA has hosted three contract negotiation meetings in January and February 1983, in order to begin preparation of these new contracts. The meetings, which were open to the public, were announced to those individuals and groups who had expressed an interest in the BPA contract negotiation process in the past.

The purpose of the meetings was to determine the process by which new regionwide conservation contracts should be negotiated and to begin exploring the needs of the various parties who would be affected by the contracts. Due to the need of the parties to review the Pacific Northwest Electric Power Planning and Conservation Council's draft regional energy plan, the negotiations were adjourned in early February and will recommence in late March.

The next scheduled meeting is March 30, 1983, and will be used to organize 2 weeks of intensive negotiations beginning April 5 and ending April 15, 1983. General Contract Provisions (GCPs) will be discussed April 5 and 6. BPA has prepared a draft of the GCPs, as have representatives from the Intercompany Pool, representing the investor owned utilities in the region. These drafts are available from the BPA Public Involvement office for review by interested parties.

BPA will host an information meeting on March 24 in order to explain the provisions of the current GCP drafts and answer questions about the content and process of these negotiations. This meeting is primarily for State and local governments and interested individuals that might likely sponsor conservation programs at some point in the future, because the contracts being negotiated now may have direct bearing on how these sponsors structure their programs.

DATES: The following meetings are currently scheduled for the Regionwide Conservation Contracts. Additional meetings will be announced in BPA's weekly meting calendar. To receive a copy of the calendar, contact the Public Involvement office.

Mar. 24, 1983, 9 a.m.	GCP Information Meeting.	Room 464, BPA Building, 1002 NE. Holladay, Portland
Mar. 30, 1983, 9:30 a.m.	Negotiations Organizing Meeting.	BPA Building, 1002 NE., Holladay, Portland.
Apr. 5–15, 1983, 9 a.m.	GCP & Utility Program Contract Negotiations.	Cosmopolitan Hotel, 1030 NE. Union Avenue, Portland.

FOR FURTHER INFORMATION CONTACT:

Mr. Joseph F. Cade, Public Involvement, P.O. Box 12999, Protland, Oregon 97212, 503–230–3478. Oregon callers may use the toll-free number 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Wyoming, and Washington may use 800–547–6048. Information may also be obtained from:

Mr. George Gwinnutt, Lowe Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97208, 503–230–4551

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952

Mr. Ronald H. Wilkerson, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518

Mr. George Eskridge, Montana District Manager, 800 Kensington, 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 99362, 509–525–5500, extension 701

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

SUPPLEMENTARY INFORMATION:

I. Background

In July 1981, the first regionwide conservation contracts were offered to the region's electric utilities following a series of contract negotiation sessions which began in February 1981. Those negotiations continued through the summer and fall of 1981. The last of the initial regionwide program contracts was offered in November of that year. These contracts were designed to facilitate rapid program implementation and were expected to be replaced by long-term contracts within 2 years. Because these programs were to be administered by utilities, BPA negotiated with representatives of the region's utilities. The process was open to the public with regular participation by state energy office and consumer interest group representatives.

Initial work on the long-term contracts took place between September and November 1981 and culminated with a series of public meetings to review and discuss the agreements. These contracts were not offered because BPA wanted more knowledge and useful experience from the programs initiated under the July 1981 contracts.

During 1982, BPA negotiated contracts with the State of Oregon, Washington, Montana, and Idaho for two conservation programs. The contracts were again negotiated through a public process. They were offered in October 1982.

The contracts currently in place with the region's electric utilities for operating BPA conservation programs will terminate in September 1983. It is important that BPA prepare contracts to continue these programs beyond that time. Negotiations should be concluded by mid-spring to ensure time for BPA and implementing utilities to produce and process necessary contract documents.

II. Purpose and Need for These Contracts

The current programs, generally considered the focus for these contract negotiations, are being operated by electric utilities. However, the contracts being discussed have wide applicability in that the major component of those contracts will be the *General Contract Provisions*. These GCPs are intended to be the "boilerplate" for acquisitions of programmatic conservation, whether initiated by BPA or a program sponsor. Although site specific projects, or

metered energy purchase agreements between BPA and a cosumer/provider, may require a different contract form, the principles expressed in the GCPs will be used as a basis for these contracts where applicable.

Since the GCPs may affect future conservation contracts, any entity expecting to operate a conservation program funded by BPA should participate in, or be represented in, the development of these "boilerplate" provisions. This contract form is the same as was used with the state conservation programs mentioned earlier, but reflects BPA's experience since those contracts were negotiated.

The current programs being operated by the region's electric utilities will use these provisions beginning on October 1, 1983. The current programs operated by the region's States will remain in effect under existing contracts for the term of those contracts; any necessary changes resulting from existing negotiations will be in the form of amendments and in accordance with the current contract provisions.

The major difference between this concept of General Contract Provisions and the prior contract form used with some BPA programs is that BPA will now have an individual contract for each program. The contracts will be in effect for the expected life of the applicable programs.

Some of the major issues that remain outstanding and will be the primary focus of the negotiations in April include: Amendment of the agreement, suspension and termination, the collection of costs for operating the conservation programs, and program coordination. The March 24, 1983, information meeting will provide detailed background on these issues.

Issued in Portland, Oregon, March 11, 1983.

James J. Jura,

Acting Administrator.

[FR Doc. 83-7510 Filed 3-22-83; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 82-CERT-013]

Consolidated Edison Company of New York, Inc.; Certification of Eligible Use of Natural Gas to Displace Fuel Oil

On July 29, 1982, Consolidated Edison Company of New York, Inc. (Con Edison), 4 Irving Place, New York, N.Y. 10003, filed with the Administrator of the Economic Regulatory Administration (ERA), pursuant to 10 CFR Part 595, an application for blanket certification of an eligible use of approximately 84.0 billion cubic feet of natural gas for a period of one year. The use of this natural gas is estimated to displace approximately 13.326 million barrels of residual fuel oil (0.3 percent sulfur), approximately 139,000 barrels of No. 2 fuel oil (0.2 percent sulfur), and approximately 739,000 barrels of kerosene (0.1 percent sulfur) at six of Con Edison's steam and electric generating stations located in New York City: Astoria in Queens; East River in Manhatttan; Narrows in Brooklyn; Ravenswood in Queens; Waterside in Manhattan; and East 60th Street in Manhattan. The eligible sellers and pipeline transportation companies will be determined at later dates as Con Edison negotiates and executes contracts with them. Within 5 days of the execution of the contracts, Con Edison will be required to report the following information to the Administrator of ERA who will notify the Federal Energy Regulatory Commission: (1) The names and addresses of the eligible sellers; (2) the names and addresses of the transporting pipeline companies; (3) the volume of gas to be used in each unit; and (4) the amount of oil which will be displaced, its type and sulfur content. Notice of that application was published in the **Federal Register** (48 FR 7776, February 24, 1983) and an opportunity for public comment was provided for a period of ten (10) calendar days from the date of publication. One comment was received in support of Con Edison's application and concept of blanket certification.

At this time, Con Edison has in effect only one other certification by the ERA, as listed below, which authorizes a purchase of approximately 6 billion cubic feet of natural gas for use at the steam and electric generating stations named in this application for a blanket certificate.

Docket No.	Volume (Bcf)	Effective	Expires
81-CERT-016	6.0	10/07/82	10/06/83

The volume of natural gas to be certified by the requested blanket certificate includes this 6 Bcf, which would have needed recertification in the event of a renewal of the purchase arrangements by Con Edison. Therefore, renewal of this certification would now be accomplished by simply notifying ERA under this blanket certificate in accordance with the reporting requirements set forth above.

The ERA has carefully reviewed Con Edison's application in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that Con Edison's application satisfies the criteria enumerated in 10 CFR Part 595 and, therefore, has granted the certification and transmitted that certification to the Federal Energy Regulatory Commission. More detailed information, including a copy of the application, transmittal letter, and the actual certification is available for public inspection at the ERA Natural Gas Division Docket Room, RG-43, Room GA-007, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., March 15, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-7509 Filed 3-22-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-002]

Lukens Steel Co.; Certification of Eligible Use of Natural Gas To Displace Fuel Oil

On January 14, 1983, Lukens Steel Company (Lukens), 50 South First Avenue, Coatesville, Pennsylvania 19320, filed with the Administrator of the Economic Regulatory Administration (ERA), pursuant to 10 CFR Part 595, an application for certification of an eligible use of approximately 1,200,000 million cubic feet of natural gas which is expected to displace the use of approximately 8,796,000 gallons (209,429 barrels) of No. 2 fuel oil (0.50 percent sulfur) per year at its steel manufacturing facility in Coatesville, Pennsylvania.

The eligible seller of the natural gas is Graham Exploration Ltd., Suite 200, 3510 N. Causeway Boulevard, Metarie, Louisiana 70002. The gas will be transported by Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, Texas 77001; Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25325; and Columbia Gas of Ohio, Inc., 99 North Front Street, Columbus, Ohio 43215, a local distribution company.

Notice of that application was published in the **Federal Register** (48 FR 7777, February 24, 1983) and an opportunity for public comment was

provided for a period of ten (10) calendar days from the date of publication. No comments were received.

The ERA has carefully reviewed Lukens' application for certification in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that Lukens' application satisfies the criteria enumerated in 10 CFR Part 595 and, therefore, has granted the certification and transmitted that certification to the Federal Energy Regulatory Commission. More detailed information, including a copy of the application, transmittal letter, and the actual certification, is available for public inspection at the ERA Natural Gas Division Docket Room, RG–43, Room GA–007, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., March 15, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-7508 Filed 3-22-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-005]

Columbus Bituminous Concrete Corp.; Application for Certification of the Use of Natural Gas To Displace Fuel Oil

Columbus Bituminous Concrete Corporation (CBCC), P.O. Box 366, 301 Frank Road, Columbus, Ohio 43216, filed an application on March 4, 1983 with the Economic regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at its asphalt production facilities in Columbus and Circleville, Ohio, pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). More detailed information is contained in the application on file and available for public inspection at the ERA Natural Gas Division Docket Room, RG–43, Room GA–007, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

In its application, CBCC indicates that the volume of natural gas for which it requests certification is approximately 157,000 Mcf per year. This volume is estimated to displace the use of approximately 1,050,000 gallons (25,000 barrels) of No. 6 fuel oil (1.0 percent sulfur) per year.

The eligible seller is Ohio Gas Marketing Corporation, 3933 Price Road, Newark, Ohio 43055. The gas will be transported by Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, S.E., Box 1273, Charleston, West Virginia 25325; and by Columbia gas of Ohio, Inc., 99 North Front Street, Columbus, Ohio 43215, a local distribution company.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Office of Fuels Programs, Natural Gas Division, RG–43, Room GA–007, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585. Attention: Paula A. Daigneault, within ten(10) calendar days of the date of publication of this notice in the **Federal Register.**

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within the ten (10) day comment period. The requests should state the person's interest and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines that an oral presentation is necessary, further notice will be given to CBCC and any person filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., on March 16, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-7442 Filed 3-22-83; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of January 31 Through February 4, 1983

During the week of January 31 through February 4, 1983, the decisions and orders summarized below were issued with respect to 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.

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 commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 16, 1983.

Remedial Order

Davis and Forbes, February 4, 1983, DRO–0375

Davis and Forbes objected to a Proposed Remedial Order which the Office of Enforcement of the Economic Regulatory Administration issued to the firm on August 27, 1979. In the Proposed Remedial Order, the Office of Enforcement found that the firm improperly treated two separate leased premises as one property for purposes of applying the stripper well lease exemption to the sale of crude oil from the premises. 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 the two properties could be aggregated pursuant to Ruling 1977–1, and (ii) whether the firm's estimates of production from particular wells raised any issue as to the accuracy of the production reports it originally filed with the state commission.

Requests for Exception

Borg-Warner Central Environmental Systems, January 31, 1983 HXE–0052

On November 18, 1982, Borg-Warner Central Environmental Systems (Borg-Warner) (formerly York Division Unitary Products) requested an extension of the exception relief granted to the firm on February 9, 1981 by the Office of Hearings and Appeals. *York Division Unitary Products*, 7 DOE ¶ 81,209 (1981). That Decision permitted Borg-Warner to modify the central air conditioner test procedures specified in 10 CFR Part 430 in order to more accurately test the energy consumption of its variable speed heat pump. In considering the request, the DOE determined that the current test procedures underestimate the energy efficiency of the variable speed heat pump manufactured by Borg-Warner causing the firm to suffer a competitive disadvantage and a gross inequity. Accordingly, exception relief was extended until December 31, 1983, or until the procedures are revised, whichever is sooner.

The 341 Tract Unit of the Citronelle Field, Exxon Company, U.S.A. et al. January 31, 1983, DEE–7746, *HED–0079*

On December 31, 1980, the DOE issued a Decision and Order to the Citronelle Unit. *The 341 Tract Unit of the Citronelle Field*, 7 DOE ¶ 81,140 (1980). In that Decision, interim exception relief was approved that allowed the Citronelle Unit to recoup an additional $63.8 million in revenues. The interim exception relief was designed to permit the Citronelle Unit to immediately implement an enhanced crude oil recovery project on the Citronelle Field. The level of exception relief was comparable to that which would have been available to a major oil company operating the Unit under the Tertiary Incentive Program. The present determination considered a number of Statements of Objections filed in opposition to a finalization of the interim relief granted to the Citronelle Unit.

The DOE first addressed a number of procedural challenges to the approval of exception relief. The DOE found that the notice and comment procedures followed by the agency in this case accorded the aggrieved parties proper due process. The DOE also determined that the manner in which the Intrim Order was isued was appropriate and conformed to the provisions of the DOE Procedural Regulations. The DOE next concluded that the Office of Hearings and Appeals possessed the requisite statutory authority to grant exception relief to the Citronelle Unit.

The DOE also considered a number of legal objections to the approval of exception relief. The DOE found that there was a sufficient causal nexus between the problems experienced by the Citronelle Unit in obtaining access to the provisions of the Tertiary Incentive Program and the DOE regulations to constitute a gross inequity. The DOE also determined that the exception relief granted to the Citronelle Unit did not constitute an abuse of the Crude Oil Entitlements Program.

The DOE next considered a number of factual objections to the approval of exception relief. According to the objectors, exception relief was not warranted to enable the Citronelle Unit to undertake the tertiary project. After a review of the record in the case, including testimony presented at an evidentiary hearing, the DOE concluded that the Citronelle Unit could not finance the tertiary project in the absence of a significant amount of exception relief. The DOE also determined that the level of exception relief approved for the Citronelle Unit in the Interim Order was appropriate. Consequently, the DOE affirmed the Interim Order but required the Citronelle Unit to repay the exception relief to the extent that the tertiary project is successful. The DOE also denied a consolidated Motion for Additional Discovery filed by Exxon Co., U.S.A. and other objectors.

Protective Order

Gulf Oil Corporation, January 31, 1983, *HRJ-0031*

Gulf Oil Corporation filed a motion requesting that the Office of Hearings and Appeals issue a protective order limiting the dissemination of any Gulf documents released by the firm to the Office of Special Counsel (OSC) pursuant to OHA's Decision and Order in *Office of Special Counsel (Gulf)* DOE ¶ 84,105 (1982). The motion related to a Proposed Remedial Order (PRO) OSC issued to Gulf on May 1, 1979. In considering Gulf's motion, the Office of Hearings and Appeals rejected OSC's claim that it should be permitted unrestricted use of the documents in question. OHA noted that its prior decisions had not addressed Gulf's assertion that the relevant documents were privileged with respect to parties other than OSC, and that production of the documents to OSC had been ordered only to enable OSC to rebut affirmative defenses Gulf had made in the pending PRO proceeding. OHA therefore concluded that Gulf had made an adequate showing to justify the issuance of a protective order, and issued the proposed protective order submitted by Gulf as an Order of the Department of Energy.

Interlocutory Order

Atlantic Richfield Co., Marathon Oil Co., Murphy Oil Corp., February 1, 1983, HRZ-0120, HRZ-0121, HRZ-0122

Atlantic Richfield Company, Marathon Oil Company, and Murphy Oil Corporation were each issued a Proposed Order of Disallowance by the Department of Energy. The POD's alleged that for certain months during the period October 1973 through May 1975 each of the firms improperly claimed increased costs in computing its maximum allowable prices in violation of the DOE refiner price regulations. The firms denied those allegations and were granted discovery of the transfer pricing data base relied upon by the DOE to calculate the maximum prices for the crude oil involved. *See Marathon Oil Co.*, 8 DOE ¶82,558 (1981); *Atlantic Richfield Co.*, 8 DOE ¶82,585 (1981).

In the present case, the firms contended that the data base which the OSC proposed to make available to them failed to comply with the OHA's discovery orders because the material contained data pertaining to crude oils not at issue in the POD proceedings. The firms requested the OHA to order the OSC to delete the non-responsive portions. In denying the firms' request, the OHA held that a party producing documents in response to a discovery request has no duty to ensure that all portions of the documents are responsive. The OHA also found that the firms had not shown that they would be unable to prepare their defenses to the POD's unless the OSC removed the non-responsive portions from the data base. Accordingly, the firms' request was denied.

Supplemental Orders

Atlantic Richfield Co., Gulf Oil Corp., Marathon Oil Co., Texaco Inc., Louisiana Land & Exploration Co., February 1, 1983, HRX-0074, HRX-0075, HRX-0077, HRX-0078, HRX-0076

On August 2, 1982, the Atlantic Richfield Company, the Gulf Oil Corporation, the Marathon Oil Company, Texaco Inc. and the Louisiana Land and Exploration Company (the "producers") filed a motion to compel additional discovery with the Office of Hearings and Appeals. In that motion, the producers requested the OHA to order the Office of Special Counsel for Compliance (OSC) to produce certain documents which the OSC had identified in response to the OHA's discovery order in *Atlantic Richfield Co.*, 5 DOE ¶82,521 (1980), and for which the OSC has asserted claims of privilege. On January 5, 1983, the OHA issued a Decision and Order upholding most of the privilege claims at issue and ordered the OSC to submit certain documents to the OHA for *in camera* review. *Atlantic Richfield Co.*, 10 DOE ¶84,020 (1983). Pursuant to that Decision the OSC submitted 16 documents to the OHA. After completing its *in camera* review, the OHA upheld the OSC's privilege claims for each of the documents submitted.

Dresser Industries, Inc., February 4, 1983, HEX-0079

A supplemental Order was issued to Dresser Industries, Inc. concerning two Requests for Information which the firm had submitted under the Freedom of Information Act (the FOIA). The Supplemental Order concluded that various documents which were found by the Director of the Office of Policy, Planning and Coordination to be properly classified records within the intended scope of Exemption 1 of the FOIA should not be released to Dresser.

Refund Applications

Northeast Petroleum Insustries, Inc./ DeBlois Oil Company, February 4, 1983, RF25-1

DeBlois Oil Company (DeBlois) filed an Application for Refund for a portion of the Northeast Petroleum Industries consent order fund. After analyzing DeBlois' claim, the Office of Hearings and Appeals found that DeBlois qualified for a refund under the procedures set forth in *Office of Enforcement (Northeast)*, 10 DOE ¶ 85,021 (1982). Accordingly, DeBlois' application was granted.

Northeast Petroleum Industries, Inc./ O.B. Hill Motor Transportation Company, Inc., February 4, 1983, RF25-2

O.B. Hill Motor Trans. Company, Inc. (Hill) filed an Application for Refund for a portion of the Northeast Petroleum Industries consent order fund. After analyzing Hill's claim, the Office of Hearings and Appeals found that Hill was not eligible to receive a refund under the procedures set forth in *Ofice of Enforcement (Northeast)*, 10 DOE ¶ 85,021 (1982). Accordingly, Hill's application was denied.

Standard Oil Company (Indiana)/ Lisk Standard Service et al., February 2, 1983, RF21-3 et al.

On February 2, 1983, the DOE issued a Decision and Order concerning 103 Applications for Refund from branded retailers of Amoco motor gasoline. All of these firms elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel; In The Matter of Standard Oil Co. (Indiana)*, 10 DOE ¶ 85,048 (1982). Each retailer therefore submitted detailed information concerning its Amoco purchase volumes. After analyzing this information, the DOE conclued that each of the 103 applicants should receive a refund based upon the total volume of their Amoco motor gasoline

purchases. Accordingly, these applications were granted in full.

Vickers Energy Corporation/Red Rock Petroleum Co., Inc., February 4, 1983, RR1-2

On December 21, 1982, the Office of Hearings and Appeals issued a Decision and Order approving five Applications for Refund from a $2,850,000 fund obtained by the DOE through a consent order with Vickers Energy Corporation. *Vickers Energy Corp./ Petroleum Marketing Co.*, 10 DOE ¶ 85,047 (1982). Subsequent to the issuance of the December 21 decision, it was discovered that due to an arithmetic error one applicant, Red Rock Petroleum Company, Inc., did not receive the full refund to which it was entitled. The Office of Hearings and Appeals therefore issued a Supplemental Order approving an additional refund to the firm.

Vickers Energy Corp./Koch Industries, Inc., February 4, 1983, RR1-1

Koch Industries, Inc. (Koch) filed a Motion for Modification requesting the DOE to reconsider its Decision and Order in *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982). In that Decision, Koch's Application for Refund was denied on the basis that the firm had incurred no competitive injury as a result of the alleged regulatory violations by Vickers. In considering its Motion, the DOE found that Koch did not meet the requirements for a Motion for Modification. The DOE also found that the data submitted by Koch did not demonstrate that it did no pass on the alleged Vickers' overcharges to its customers. Finally, the DOE found that Koch was not entitled to a refund based upon the threshold volume of 50,000 gallons per month.

Dismissals

The following submissions were dismissed.

Name	Case No.
Amcole Energy Corp.	HRO-0088
Stephen M. Shaw	HFA-0110

[FR Doc. 83-7434 Filed 3-22-83; 8:45 am]
BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of February 7 Through February 11, 1983

During the week of February 7 through February 11, 1983 the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Science Management Corporation, February 9, 1983, HFA-0109

Science Management Corporation filed an Appeal from a denial by the Director of the DOE Office of Procurement Operations of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the Director's search for responsive documents was adequate and that no responsive documents exist.

Request for Exception

Basin, Inc., February 7, 1983, BEE-1670

On July 1, 1981, Basin, Inc. (Basin) filed an Application for Exception from the provisions of 10 CFR 212.131(b)(2) with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). Basin's exception request, if granted, would permit the firm to recertify certain crude oil sold to Cities Service Company (Cities) during the period January through December 1979. In considering this request, the OHA determined that Basin had failed to act reasonably, promptly and in good faith with DOE certification requirements. Accordingly, the firm's Application for Exception was denied.

Interlocutory Orders

Office of Special Counsel, February 8, 1983, HRZ-0095

The Office of Special Counsel sought to strike from the record of an enforcement proceeding certain geological exhibits and an affidavit filed by Texaco, Inc. At a hearing on the OSC motion, the Office of Hearings and Appeals deferred ruling on the request and directed the parties to propose mechanisms for expediting the resolution of the underlying dispute between them, the proper interpretation of the "very large tract" exception to the regulatory definition of "property." After considering the parties' proposals, the OHA determined to set the issue of the proper interpretation of the exception for decision and directed the parties to file legal briefs on that issue.

State of California, February 7, 1983, HRZ-0125

The State of California filed a Request to Participate in an enforcement proceeding involving P&R Trading Company. California sought to represent the interests of its citizens with respect to the disposition of any overcharges recovered through the proceeding. The Economic Regulatory Administration opposed California's participation on the ground that ERA had reserved until a later date the issue of the proper disposition of any overcharges recovered, and that this matter was therefore not an issue in the proceeding. DOE found that California's request should be granted. DOE noted that although the PRO does not address the distribution of any refunds recovered and DOE has in several previous decisions declined to consider the remedy issue in the context of an enforcement proceeding, the matter may still become an issue in the proceeding. In that event, DOE found that its resolution of the issue may benefit from the views of California. Accordingly, California was permitted to file comments on the issue of the distribution of any overcharges recovered through the P&R enforcement proceeding.

Dismissals

The following submissions were dismissed:

Company name	Case No.
Edward G. Connor	HFA-0115
Pittsburgh-Des Moines Corporation	HFA 0106

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 commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 16, 1983.

[FR Doc. 83-7435 Filed 3-22-83; 8:45 am]
BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Orders; Week of February 7 through February 11, 1983

During the week of February 7 through February 11, 1983, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception and to applications for refund in a Subpart V proceeding.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any

further proceeding involving the exception matter.

Copies of the full text of these proposed 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, 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.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 16, 1983.

Petrolane Incorporated, Washington, D.C.; RF2-1 NGLP.

Mobil Oil Corporation, Fairfax, Virginia; NF2-2 NGLP.

Controller of the State of California, Washington, D.C.; RF2-3 NGLP.

On January 8, 1980 the Coline Gasoline Corporation (Coline) and the Department of Energy (DOE) entered into a consent order which established an escrow account in the amount of $628,480.79 in order to settle disputes arising from Coline's alleged pricing violations during the period August 1973 through May 1978. Petrolane Incorporated (Petrolane), Mobil Oil Corporation (Mobil), and the Controller of the State of California (California) filed applications to receive refunds from the Coline escrow account. In a Proposed Decision and Order issued on February 10, 1983, the DOE determined that: (1) Petrolane qualified for a refund of $438,587 plus 69.79% of the interest accrued in the escrow account; (2) Mobil's application did not warrant that the firm be granted a refund; and (3) the State of California's application should be considered during the second stage refund proceedings, when the remainder of the Coline escrow funds will be distributed.

Texas Armada Refining Company, Euless, Texas; BEE-1696.

Texas Armada Refining Company (TARCO) filed an Application for Exception from the provisions of 10 CFR 211.69. The exception request, if granted, would permit TARCO to file amended ERA-49 forms with the Economic Regulatory Administration pertaining to a period prior to the October 1, 1980 cut-off date specified in § 211.69. On February 10, 1983, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 7436 Filed 3-22-83; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of February 14 Through February 18, 1983

During the week of February 14 through February 18, 1983 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.

Appeal

Margaret Knoll, February 16, 1983; HFA-0107

Margaret Knoll filed an Appeal from a determination issued to her by the Idaho Operations Office, concerning a Request for Information which she had submitted pursuant to the Freedom of Information Act. In her request, she had sought personnel and medical records of her mother (Hazel Leisen), and documents concerning her mother's role in the SL-1 incident, an accident involving a nuclear reactor in which three persons died. In her Appeal, she argued that the Idaho Operations Office had not identified all documents responsive to her request. DOE found that there was no basis for the appellant's allegation that the medical records disclosed by the Operations Office were incomplete. With respect to the appellant's argument that her mother was interviewed following the SL-1 incident and that notes of the interview must exist, DOE found that while notes may have been taken of an interview with Hazel Leisen, they may have been discarded in the intervening years and that the Operations Office's search for responsive documents was adequate under the circumstances. Accordingly, the Appeal was denied.

Interlocutory Orders

Office of Special Counsel for Compliance, February 15, 1983; HRZ-0110.

The Office of Special Counsel for Compliance (OSC) filed a Motion for Sanctions in which it requested the issuance by the Office of Hearings and Appeals of an order precluding the Atlantic Richfield Company (Arco) from raising certain defenses in an enforcement proceeding before OHA. The proceeding concerns Arco's objections to a Proposed Order of Disallowance (POD) that OSC issued to the firm on May 15, 1980.

In considering the OSC Motion for Sanctions, OHA first rejected Arco's argument that it lacked the power to impose sanctions because it had no authority to adjudicate enforcement proceedings. OHA found that Arco had not raised this argument in a timely manner. Additionally, OHA found that even if Arco's argument were timely, it would conclude that it possessed authority to adjudicate the POD proceeding pursuant to section 301 of the Department of Energy Organization Act, 42 U.S.C. 7151(a). OHA also rejected Arco's argument that, even if OHA did possess authority to conduct adjudicative enforcement proceedings, it could seek enforcement of its discovery order only through issuance of a subpoena.

OHA then considered the merits of the Motion for Sanctions. OHA denied the motion insofar as OSC sought sanctions for Arco's alleged failure to provide a complete answer to OSC interrogatory 5(c) pursuant to OHA's order in *Office of Special Counsel (Arco)* 9 DOE ¶ 82,595 (1982) (*OSC/Arco*). OHA concluded that this request for sanctions was not made in a timely manner.

In addition, OSC requested that sanctions be imposed for Arco's failure to comply with OHA orders in *OSC/Arco* and *Atlantic Richfield Co.*, 10 DOE ¶ 82,515 (1982), requiring the firm to produce three documents responsive to OHA's discovery orders for which the firm's privilege claims were rejected. The sanction which OSC sought would have precluded Arco from offering proof concerning five issues in the case. OHA concluded that sanctions were warranted for Arco's refusal to comply with these orders. However, after examining the prejudice that Arco's failure to produce the documents caused OSC, OHA concluded that a less severe sanction than that sought by OSC was warranted. Instead, OHA stated it would infer that the three documents Arco failed to produce were unfavorable to its case. Accordingly, the OSC Motion for Sanctions was granted in part.

Texaco Inc., 2/26/83; HRZ-0134.

Texaco Inc. sought an order compelling the Office of Special Counsel to provide an additional response to a Texaco discovery request. The Office of Hearings and Appeals found that OSC's response was responsive to the discovery request and denied the motion.

Supplemental Orders

Atlantic Richfield Company, HRX-0127.
Gulf Oil Corporation, HRX-0128.
Marathon Oil Company, HRX-0130.
Texaco Inc., HRX-0131.
Louisiana Land and Exploration Company, 2/14/83; HRX-0129.

On January 14, 1983, Atlantic Richfield Company, Gulf Oil Corporation, Marathon Oil Company, Standard Oil Company (Ohio), Texaco Inc. and Louisiana Land and Exploration Company (the "producers") filed a motion to compel additional discovery with the Office of Hearings and Appeals. In that motion, the producers requested OHA to order the Office of Special Counsel for Compliance (OSC) to produce twenty-five documents which the OSC had identified in response to the OHA's discovery order in *Atlantic Richfield Co.*, 5 DOE ¶ 82,521 (1980), and for which the OSC has asserted claims of privilege. The documents sought by the producers were identified in an index which the OSC filed with the OHA on December 15, 1982. In considering the producer's motion, the OHA upheld the OSC's privilege claims for twenty-four of the documents at issue. In the one instance in which the OSC's privilege claim was not sustained, the OSC was ordered to submit the document to the OHA for *in camera* review.

MGPC, Inc., 2/16/83; HRX-0072.

MGPC, Inc. filed a Statement of Objections to a Proposed Remedial Order (PRO) issued by the Rocky Mountain District Office of Enforcement of the Economic Regulatory Administration in which it is alleged that the firm overcharged its purchasers in sales of natural gas liquids, natural gas liquid products, and crude oil condensate. In considering the violations alleged with respect to crude oil condensate, the DOE rejected MGPC, Inc.'s claims that the substance which it sold was not crude oil condensate and that the condensate produced by the firm was not a covered product during the period of violation. Accordingly, the DOE issued a final Remedial Order to MGPC, Inc. with respect to its sales of condensate, and retained jurisdiction over the remaining violations alleged in the PRO.

Refuned Applications

Standard Oil Company (Indiana)/Bozarth Oil Company, et al., 2/14/83; RF 21-238, et al.

On February 14, 1983, the DOE issued a Decision and Order concerning 27 Applications for Refund filed by wholesalers of Amoco motor gasoline. All of these firms elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). Each applicant therefore submitted detailed information concerning its Amoco purchase volumes. After analyzing this information, the DOE concluded that each of the 27 applicants should receive a refund based upon their Amoco motor gasoline purchases. The refunds granted in this proceeding totaled $12,332.

Standard Oil Company (Indiana)/Jim Gandy Service et al., 2/14/83; RF 21-780, et al.

On February 14, 1983, the DOE issued a Decision and Order concerning 206 Applications for Refund from retailers of Amoco motor gasoline. All of these firms elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). Each retailer therefore submitted detailed information concerning its Amoco purchase volumes. After analyzing this information, the DOE concluded that each of the 206 applicants should receive a refund based upon the total volume of their Amoco motor gasoline purchases. Accordingly, these applications were granted in full.

Vickers Energy Corporation/ Walthers Oil Company, 2/16/83; RF1-105

On February 16, 1983 the DOE issued a Decision and Order concerning an Applications for Refund filed by Walthers Oil Company, a reseller and retailer which purchased 7,536,682 gallons of Vickers motor gasoline during the consent order period. Because Walther's purchases from Vickers exceeded the 50,000 gallon per month small claims threshold, the DOE required the firm to establish that it had not passed through any alleged Vickers overcharges to its customers. Walthers purchased motor gasoline from a number of suppliers other than Vickers. In addition to its banks of unrecouped increased product costs, the firm therefore submitted detailed information concerning its purchase volumes and acquisition costs from each of these suppliers. An analysis was conducted to determine the degree of injury sustained by the firm as a result of its Vickers purchases, and the application was granted to the extent indicated by the analysis.

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 commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 16,1983.

[FR Doc. 83-7439 Filed 3-22-83; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of February 18 Through February 25, 1983

During the Week of February 18 through February 25, 1983, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 16, 1983.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Feb. 18 through Feb. 25, 1983]

Date	Name and location of applicant	Case No.	Type of submission
Feb. 18, 1983	Amoco Brand Committee, Conoco Brand Committee, Gulf Oil Wholesale Marketers Association, Inc. & the National Association of Union Oil Jobbers, Inc., Washington, D.C.	HEZ-0137	Interlocutory order. If granted: The Office of Hearings and Appeals would issue a Decision and Order clarifying the manner in which downstream purchasers can participate in the Alkek/Adams (Case No. DEF-0002) refund proceeding.
Feb. 18, 1983	Atlantic Richfield Company, Washington, D.C.	HRH-0015	Evidentiary hearing. If granted: An evidentiary hearing would be convened in connection with the Statement of Objections submitted by Atlantic Richfield Company in response to the Proposed Remedial Order (Case No. DRO-0193) issued to the firm.
Feb. 18, 1983	OE/State of California Oildale, Calif.	HRZ-0136	Interlocutory order. If granted: The state of California would not be alowed to participate in the Proposed Remedial Order proceeding involving West Coast Oil Company (Case No. HRO-0087).
Feb. 23, 1983	Texaco Inc., Washington, D.C.	HRR-0049	Request for modification/rescission. If granted: The Jan. 3, 1983, Decision and Order (Case No. HRZ-0104) issued to the Office of Special Counsel by the Office of Hearings and Appeals would be rescinded.
Feb. 24, 1983	Richard Rhodes	HFA-0120	Appeal of an information request denial. If granted: The Feb. 14, 1983, Information Request Denial issued by the Assistant Manager for Administration, Albuquerque Operations Office would be rescinded, and Richard Rhodes would receive access to "Engineering and Delivery" by N. F. Ramsey, volume XIII of the Los Alamos Technical Series.
Feb. 25, 1983	Cladouhos & Brashares, Washington, D.C.	HFA-0121	Appeal of an information request denial. If granted: The Jan. 27, 1983, Information Request Denial issued by the Office of Special Counsel of the Economic Regulatory Administration would be rescinded and Cladouhos & Brashares would receive access to information regarding crude oil prices and the interpretation of the safe harbor provision.

NOTICES OF OBJECTION RECEIVED

[Week of Feb. 18, 1983 to Feb. 25, 1983]

Date	Name and location of applicant	Case No.
Feb. 22, 1983	Husky Oil Co., of Delaware Tulsa, Okla.	BEX-0210
Feb. 23, 1983	Texas Armada Refining Co., Washington, D.C.	BEE-1696

REFUND APPLICATIONS RECEIVED

[Week of Feb. 18 to Feb. 25, 1983]

Date	Name of refund proceeding name of applicant	Case No.
Feb. 17, 1983	Arcone Oil Co./The Augsbury Corp.	RF20-2
Feb. 22, 1983	Sid Richardson/Alpine Butane Co., Inc.	RF26-1

REFUND APPLICATIONS RECEIVED—Continued

[Week of Feb. 18 to Feb. 25, 1983]

Date	Name of refund proceeding name of applicant	Case No.
Feb. 22, 1983	Amoco refund applications	RF-2573, thru RF21-3311

[FR Doc. 83-7438 Filed 3-22-83; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Order Filed; Week of February 21 Through February 25, 1983

During the week of Februay 21 through February, 1983, the notice of objection to the proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearnings and Appeals, Department of Energy, Washington, D.C. 20461.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 16, 1983.

A. L. Barton, Big Lake, Texas, HRO-0127, Crude Oil

On February 25, 1983, A. L. Barton, 1001 Main Street, Big Lake, Texas 76932 filed a Noice of Objection to a Proposed Remedial Order which the DOE Dallas District Office on Enforecement issued to the firm on January 28, 1983.

In the PRO the Dallas District found that during the period November 1973 to December 1979, Barton sold crude oil at prices in excess of the maximum lawful selling price, in violation of 10 CFR 212.93, 212.183 and 212.10, and that from January 1978 to December 1979, Barton failed to properly certify the crude oil he sold, in violation of 10 CFR 205.202, 210.62(c), 212.131 and 212.185(c).

According to the PRO the Barton violation resulted in $661,369.05 of overcharges. In the alternative, the PRO alleges that this violation resulted in $809,847.10 of overcharge.

[FR Doc. 83-7437 Filed 3-22-83; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-50591; PH-FRL 2327-3]

Issuance of Experimental Use Permits; Dow Chemical U.S.A. et al.

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 defined 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:

464-EUP-67. Extension. Dow Chemical U.S.A., P.O. Box 1706, Midland, MI 48640. This experimental use permit allows the use of 750 pounds of the herbicide 3,6-dichloro-2-pyridinecarboxylic acid as the monoethanoloamine salt on rangelands and permanent grass pastures to evaluate the control of mesquite, weeds, and associated woody species. A total of 1,500 acres are involved; the program is authorized only in the States of New Mexico and Texas. The experimental use permit is effective from January 11, 1983 to May 1, 1984. Temporary tolerances for residues of the active ingredient in or on forage grass, forage grass hay, the kidney of cattle, horses, and sheep, and the meat, fat, and meat byproducts of cattle, horses, and sheep have been established. (Robert Taylor, PM 25, Rm. 245, CM#2, (703-557-1800))

464-EUP-79. Issuance. Dow Chemical U.S.A., P.O. Box 1706, Midland, MI 48640. This experimental use permit allows the use of a total of 33,000 pounds of the herbicides 2,4-D (22,000 pounds) and triclopyr (11,000 pounds) on turf to evaluate the control of broadleaf weeds. A total of 2,750 acres are involved; the program is authorized in the States of Arizona, California, Colorado, Connecticut, Idaho, Illinois, Indiana, Iowa, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington, Wisconsin, and Wyoming. The experimental use permit is effective from March 18, 1983 to March 18, 1985. (Robert Taylor, PM 25, Rm. 255, CM#2, (703-557-1800))

1471-EUP-58. Renewal. Elanco Products Company, 740 South Alabama St., Indianapolis, IN 46285. This experimental use permit allows the use of 300 pounds of the herbicide oryzalin on winter wheat to evaluate the control of various weeds. A total of 300 acres are involved. (Robert Taylor, PM 25, Rm. 255, CM#2, (703-557-1800))

1471-EUP-69. Renewal. Elanco Products Company, 740 South Alabama St., Indianapolis, IN 46285. This experimental use permit allows the use of 32,430 pounds of the herbicide oryzalin on winter wheat to evaluate the control of various weeds. A total of 32,430 acres are involved. This program and the one above are authorized in the States of Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Maryland, Mississippi, Missouri, New Jersey, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and Washington. The permits were previously effective from August 6, 1981 to August 6, 1982. The permits are now effective from February 3, 1983 to February 3, 1984. A temporary tolerance for residues of the active ingredient in or on wheat has been established. The permits will use the same active ingredient but different formulations. (Robert Taylor, PM 25, Rm. 251, CM#2, (703-557-1800))

279-EUP-89. Extension. FMC Corporation, 2000 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 2,112 pounds of the insecticide carbosulfan on apples to evaluate the control of various insects. A total of 132 acres are involved; the program is authorized in the States of California, Georgia, Idaho, Indiana, Maine, Maryland, Michigan, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Virginia, Washington, West Virginia, and Wisconsin. The experimental use permit is effective from March 10, 1983 to March 10, 1984. This permit is issued with the limitation that all crops are destroyed or used for research purposes

only. (Jay Ellenberger, PM 12, Rm. 202, CM#2, (703–557–2386))

279–EUP–93. Issuance. FMC Corporation, 2000 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 4,800 pounds of the herbicide 2-(2-chlorophenyl) methyl-4,4-dimethyl-3-isoxazolidinone on soybeans to evaluate the control of various grasses and broadleaf weeds. A total of 800 acres are involved; the program is authorized in the States of Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, and Wisconsin. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Robert Taylor, PM 25, Rm. 245, CM#2, (703–557–1800))

10182–EUP–26. Extension. ICI Americas Inc., Concord Pike and New Murphy Road, Wilmington, DE 19897. This experimental use permit allows the use of 1,375 pounds of the herbicide (±) butyl 2-(4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy] propanoate on various crops to evaluate the control of weeds. A total of 1,375 acres are involved; the program is authorized in all 50 States except Alaska. The experimental use permit is effective from February 2, 1983 to May 18, 1984. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Richard Mountfort, PM 23, Rm. 253, CM#2, (703–557–1830))

3125–EUP–177. Issuance. Mobay Chemical Corporation, P.O. Box 4913, Hawthorn Road, Kansas City, MO 64120. This experimental use permit allows the use of 832 pounds of the fungicide 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1*H*-1,2,4-triazol-1-yl)-2-butanone on almonds, apricots, nectarines, and peaches to evaluate the control of blossom blight and brown rot. A total of 245 acres are involved; 80 acres to be treated in 1983 and 165 acres to be treated in 1984. The program is authorized only in the States of California, Oregon, and Washington. The experimental use permit is effective from January 31, 1983 to December 31, 1984. A temporary tolerance for residues of the active ingredient in or on almonds (hulls and meats), apricots, nectarines, and peaches has been established. (Henry Jacoby, PM 21, Rm. 229, CM#2, (703–557–1900))

3125–EUP–183. Issuance. Mobay Chemical Corporation, P.O. Box 4913, Hawthorn Road, Kansas City, MO. 64120. This experimental use permit allows the use of 120 pounds of the insect growth regulator 2-chloro-N-[[[4-(trifluoromethoxy)phenyl]amino]carbonyl] benzamide on forests and shade trees to evaluate the control of gypsy moth larvae. A total of 3,000 acres are involved; the program is authorized only in the States of New Jersey, New York, Pennsylvania, and Rhode Island. (Franklin Gee, PM 17, Rm. 207, CM#2, (703–557–2690))

3125–EUP–184. Issuance. Mobay Chemical Corporation, P.O. Box 4913, Hawthorn Road, Kansas City, MO 64120. This experimental use permit allows the use of 200 pounds of the insect growth regulator 2-chloro-N-[[[4-(trifluoromethoxy)phenyl]amino]carbonyl] benzamide on forests and shade trees to evaluate the control of the gypsy moth larvae. A total of 3,000 acres are involved; the program is authorized in the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Virginia, Vermont, and West Virginia. This experimental use permit and the one above are effectrive from March 1, 1983 to March 1, 1984. The permit will use the same active ingredient but different formulations. (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: March 10, 1983.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 83-7080 Filed 3-22-83; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-44002; TSH-FRL 2328-2]

Chlorinated Paraffins, 2-Chlorotoluene, and Alkyl Phthalates Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces data submissions from negotiated testing programs under section 4 of the Toxic Substances Control Act (TSCA) received during the fourth quarter of 1982. Submissions include: (1) Range-finding reports for teratology and two teratology studies on three chlorinated paraffins, (2) a preliminary inhalation study in the rat and rabbit, and provisional results for embryotoxicity and teratogenicity of 2-chlorotoluene in the rat and rabbit, and (3) mutagenicity assays, a cell transformation test, and short-term biological studies in rats on di-2-ethylhexyl phthalate, di-2-ethylhexyl adipate and, in the mutagenicity studies, mono-2-ethylhexyl phthalate and 2-ethylhexanol.

ADDRESS: The studies described in the notice and others previously submitted to the Agency are available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays. The material may be copied for a nominal fee. Rm. E-107, Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Jack McCarthy, Director, Industry Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-511, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: The EPA issued a notice published in the **Federal Register** of December 1, 1982 (47 FR 54160) that announced receipt of test data from negotiated testing programs for several chemicals under section 4 of TSCA for the third quarter of 1982. This notice announces test data received from negotiated testing programs for the fourth quarter of 1982.

I. Chlorinated Paraffins

The Consortium of Chlorinated Paraffins Manufacturers is conducting a negotiated testing program on chlorinated paraffins, substances use primarily as flame retardants and plasticizers. This testing program, described in full in the **Federal Register** of January 8, 1982 (47 FR 1017), was accepted by the EPA in lieu of a chlorinated paraffins test rule under section 4 of TSCA. The negotiated testing program is a two-level testing scheme on four chlorinated paraffins of differing chain length and degree of chlorination. All four of the chlorinated paraffins will be tested in some of the lower-level tests while other studies will test fewer. These lower-level tests include metabolism, teratology and mutagenicity tests in mammals, and subchronic toxicity tests in both mammals and aquatic organisms. The upper-level tests will use the compound considered the most toxic in the lower-

level tests, and will include a two-generation reproductive study in rats and a number of specialized aquatic studies. The American members of the Consortium also will be performing an avian reproductive study on a chlorinated paraffin yet to be selected.

The International Research and Development Corporation, under contract to the Consortium, has performed eight range-finding studies and two teratology studies on chlorinated paraffins, a listing of which follows.

1. Five-day oral range-finding study in rats of the 52 percent chlorinated intermediate chain length *n*-paraffin.
2. Range-finding teratology study in rats of the 52 percent chlorinated intermediate chain length *n*-paraffin.
3. Range-finding teratology study in rabbits of the 52 percent chlorinated intermediate chain length *n*-paraffin.
4. Second range-finding teratology study in rabbits of the 52 percent chlorinated intermediate chain length *n*-paraffin.
5. Range-finding teratology study in rabbits of the 58 percent chlorinated short chain length *n*-paraffin.
6. Second range-finding teratology study in rabbits of the 58 percent chlorinated short chain length *n*-paraffin.
7. Teratology study in rats of the 58 percent chlorinated short chain length *n*-paraffin.
8. Range-finding teratology study in rats of the 43 percent chlorinated long chain length *n*-paraffin.
9. Range-finding teratology study in rabbits of the 43 percent chlorinated long chain length *n*-paraffin.
10. Teratology study in rabbits of the 43 percent chlorinated long chain length *n*-paraffin.

The general toxicity range-finding studies were performed to enable the consortium to choose appropriate doses for the full teratology tests in rats and rabbits. They do not, in themselves, answer toxicological questions addressed by the Consortium program but are a preliminary state in one phase of the evaluation.

The teratology study in rats of the 58 percent chlorinated short chain length *n*-paraffin had dosage levels of 0, 100, 500 and 2,000 mg/kg-day by gavage on days six through 15 of gestation. According to the submission, at 2,000 mg/kg-day, eight rats died between gestation days 15 and 20 and maternal weight gain was reduced. A statistically significant increase in the number of post-implantation losses and an increase in digital abnormalities (missing and/or shortened digits) were also seen at this dose. At the 500 mg/kg-day dose maternal toxicity was observed, but no fetal effects.

The teratology study in rabbits of the 43 percent chlorinated long-chain length *n*-paraffin measured the effects of doses of 0, 500, 2,000, and 5,000 mg/kg-day by gavage for days six through 27 of gestation. The report states that no effects were seen on servival or maternal toxicity in any group compared with controls. Two rabbits in the high dose group (5000 mg/kg-day) and one in the mid dose group (2,000 mg/kg-day) aborted. In the high dose group only there was a slight increase in mean post-implantation loss and a slight decrease in the mean number of viable fetuses. No teratologic effects were reported seen in any group.

The Agency is evaluating these data and the conclusions that can be drawn from the data in regard to further testing under this program. The studies have been iserted in the public file on chlorinated paraffins [OPTS–42004] for the FR notice published in the **Federal Register** of January 8, 1982 (47 FR 1017).

II. 2-Chlorotoluene

Hooker Industrial and Specialty Chemicals of Occidental Chemical Corporation is conducting a negotiated testing program on 2-chlorotoluene, a solvent for agricultural pesticides and a general solvent replacement for 1,2-dichlorobenzene. The testing scheme is multi-level in approach, with the EPA participating at a number of decision points. The toxicological areas being addressed by this program are metablism, teratology, mutagenicity, chronic toxicity, and environmental toxicity. Because of Hooker/Occidental's commitment to this testing scheme, as detailed in the **Federal Register** of April 28, 1982 (47 FR 18172), the EPA decided that it would not propose a 2-chlorotoluene test rule under section 4 of TSCA. Occidental's submission includes:

1. A letter which presents interim results for the 2-chlorotoluene rat embryotoxicity study.
2. A letter which presents provisional findings for the fetal examinations in the rat embryotoxicity study, and initial findings in the rabbit embryotoxicity study with 2-chlorotoluene.
3. A letter providing preliminary data evaluation of the 2-chlorotoluene embryotoxicity inhalation study (item 1) in the rat.
4. A preliminary inhalation range finding study of 2-chlorotoluene in the rat and rabbit.
5. A letter assessing the 2-chlorotoluene preliminary inhalation study in rats and rabbits.

The interim report on the rat embryotoxicity study reviewed the experiment which involved 25 female rats exposed to 0, 1, 3, or 9 mg/l 2-chlorotoluene via inhalation, between days 6 and 20 of gestation. No additional information on the experimental procedure is provided in this report. The numbers of pregnant females at each concentration were 23, 23, 22, and 24, with mean litter sizes of 10.2, 11.2, 11.7, and 10.3, respectively, reported for each group. No deaths were reported; however, a dose-related reduction in maternal mean body weight gain and food consumption was noted. Fetal body weight was lowest at the 9 mg/l exposure level. No instances of total embryo resorption were reported. Nine out of 247 pups at the 9 mg/l dose showed macroscopic evidence of malformation. The more detailed fetal analysis revealed skeletal anomalies and sternebral variance, primarily brachydactyly (shortened digits). These skeletal abnormalities were postulated by Huntingdon Research Centre, the performing laboratory for this study, to be more attributable to maternal weight loss than to the toxic effects of 2-chlorotoluene.

The initial findings from the rabbit study showed that 10, 12, 13, and 10 females exposed, via inhalation between days 6 and 28 gestation, to 0, 1.5, 4, or 10 mg/l had mean litter sizes of 6.8, 5.3, 7.7 and 7.7 young, respectively. Initially each group contained 16 mated females; however, only the aforementioned numbers of females were successfully impregnated. Five animals at the 10 mg/l dose died or were killed (reason unspecified) prior to completion of the experiment; four of these showed macroscopic lung changes. The only evidence of structural abnormality in any of the offspring was evidence of brachydactyly in one fetus at 10 mg/l.

Evaluation of The Huntingdon Research Centre's preliminary data by Occidental Chemical Corporation resulted in the tentative conclusion that the teratogenic effects noted are the secondary result of maternal toxicity and resulting limitations on fetal growth and maturity.

The preliminary inhalation study in the rate and rabbit exposed 10 male and 10 female rats to mean analyzed levels of 0, 4, 7.6, 11.4, and 15.2 mg/l 2-chlorotoluene six hours per day for 14 days and 6 female rabbits to the same concentration, six hours per day, for 23 consecutive days. Three rats died at the 11.4 mg/l dose and 5 at the 15.2 mg/l dose during days 1 and 2 of the experiment. One control and one 11.4

mg/l rabbit died during the study. Dose-related loss in weight was observed in male rats and in the rabbits. A dose-related drop in food consumption was also noted for these two groups. Water consumption increased for all exposed rat groups while no difference in water consumption from the controls was noted in rabbits. Hematology and blood chemistry in rats indicated 2-chlorotoluene inhalation exposure caused mild liver toxicity. Blood data were not presented for rabbits. Liver, spleen and kidney weights were greater than those of controls for both sexes of rats at the three highest doses. No data were presented on organ weights for rabbits.

Occidental's letter that assesses the preliminary inhalation study in rats and rabbits postulated that the reduced weight gain in the exposed animals could be due to a central nervous system depression resulting in a lack of appetite, and that increased water consumption could be a response of a kidney to 2-chlorotoluene or one of its metabolites acting as a diuretic. This diuretic effect and the resulting alteration in blood chemistry appeared to affect male rats more severely. The mild liver toxicity observed could contribute to both the kidney and hematological effects observed.

The Agency is evaluating these data and the conclusions which can be drawn from the data in regard to further testing under this program. These studies have been inserted in the public file on 2-chlorotoluene [OPTS-42011A] for the notice published in the **Federal Register** of April 28, 1982 (47 FR 18172).

III. Aklyl Phthalates

The Chemical Manufacturers Association (CMA), through its Phthalate Esters Program Panel, is conducting testing on the phthalate esters, alkyl diesters of 1,2-benzenedicarboxylic acid, which are primarily used as plasticizers. The CMA's proposal was accepted by the Agency in lieu of a test rule under section 4 of TSCA and is described in the **Federal Register** of October 30, 1981 (46 FR 53775).

Industry's proposal addresses aquatic toxicity, environmental transport and fate, and biodegradation of the high production alkyl phthalates and benzyl butyl phthalate. The proposal also examines, in a more experimental approach, potential oncogenic and mutagenic effects of selected alkyl phthalates and benzyl butyl phthalate. Basically, CMA's health proposal is a multistage test program consisting of two first-stage components: (1) a battery of short-term mutagenicity tests; and (2) a 21-day *in vivo* test with rats. CMA will concurrently be performing extensive metablism work on di-2-ethylhexyl phthalate. Long-term tests, such as 2-year bioassays, may also be performed on alkyl phthalates selected on the basis of results of the short-term tests for other phthalates.

Phase I validation results for health effects testing have been obtained and submitted to the Agency by CMA. These are genotoxicity and biological studies with the reference compounds di-2-ethylhexyl phthalate (DEHP), di-2-ethylhexyl adipate (DEHA), mono-2-ethylhexyl phthalate (MEHP) and 2-ethylhexanol (2-EH).

Litton Bionetics, under contract to CMA, performed the genotoxicity tests and reported the test results which follow.

1. Ames Salmonella/Microsome Plate Test with and without rat liver S9 preparation; no mutagenic activity observed for any of the four reference compounds tested in any of the five Salmonella strains (TA-1535, TA-1537, TA-1538, TA-98, and TA-100) used.

2. Mouse Micronucleus Test with single and multiple (two) treatment doses; no clastogenic activity observed for any of the four reference compounds, except for equivocal results in female mice receiving multiple doses of MEHP.

3. *In Vitro* Transformation of BALB/3T3 Cell Assay with and without primary hepatocyte activation; no cell transformation activity observed for three of the reference compounds (DEHP, DEHA, and MEHP) tested nor for 2-EH without activation. Results for 2-EH with activation are to be provided in a supplementary report.

4. Mouse Lymphoma Forward Mutation Assay with and without S9 activation; no mutagenic activity observed for either of the two compounds (DEHP and DEHA) tested.

5. Primary Rat Hepatocyte Unscheduled DNA Synthesis Assay; no suggestion of DNA damage for either of the two compounds (DEHP and DEHA) tested. Published results as reported by CMA for MEHP and 2-EH also show negative results in these last two assays.

Midwest Research Institute (MRI) performed the biological studies on the two reference compounds (DEHP and DEHA) selected for study. These studies were designed to examine the hypolipidemic peroxisome proliferation potential for these two compounds. Both DEHP and DEHA produced significant increases in liver to body weight ratios in male and female rats; DEHA increases were greater in males than in females. Two weeks after cessation of treatment (compound administered in the diet) liver to body weight ratios had returned to normal. Changes were also noted in serum cholesterol and triglyceride levels with decreased levels in male and female rats fed DEHP or DEHA, except that triglyceride levels were not significantly changed in female rats fed DEHA. Other measures of liver function, serum glutamic pyruvic transaminase (SGPT) and alkaline phosphatase, were unaffected by treatment, except that in male rats fed DEHA a significant decrease in alkaline phosphatase levels was seen at the mid-dose level.

Liver enzyme activities were measured for carnitine acetyl transferase (CAT) and catalase. There was a marked increase in CAT activity for both compounds in both male and female rats at one and three weeks of feeding. For both compounds, CAT activity returned to control levels after two weeks of recovery. Catalase activity was much less changed by treatment with either compound, but MRI did report that there was a trend toward increasing catalase levels for both compounds in both sexes also.

Morphological studies further revealed areas of increased catalase activity and, by means of electron microscope identification, peroxisome proliferation in liver cells. After three weeks of treatment with DEHP, male rats showed an increase in peroxisome levels at the high dose. Female rats showed a lesser increase. Because of problems in staining liver sections, MRI was unable to obtain results for localization of catalase activity by cytochemical techniques for DEHA. However, liver sections from one male and one female rat from each treatment group and the control group were examined by electron microscopy. An increased level of hepatic microsomes was seen in the male rat at the high dose level of DEHA but little difference was noted in the female rats, even at the high dose.

CMA concluded that the ability of DEHP and DEHA to induce hypolipedemic peroxisomes has been confirmed and is a distinguishable end point. In contrast, CMA reported, no genotoxic effects were noted for any of the reference compounds tested. The Agency is evaluating these data and the conclusions that can be drawn from the data in regard to further (i.e. Phase II) testing under this program.

These studies have been placed in the public file on alkyl phthalates and benzyl butyl phthalate (OPTS-42005) for the notice published in the **Federal Register** of October 30, 1981 (46 FR 53775).

(Sec. 4, 90 Stat. 2006, Pub. L. 94–469 (15 U.S.C. 2601))

Dated: March 7, 1983.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 83-7494 Filed 3-22-83; 8:45 am]

BILLING CODE 6560-50-M

[OPP—240027; PH-FPL 2328-1]

State Registration of Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received notices of registration of pesticides to meet special local needs under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) from 26 States. A registration issued under this section of FIFRA shall not be effective for more than 90 days if the Administrator disapproves the registration or finds it to be invalid within that period. If the Administrator disapproves a registration or finds it to be invalid after 90 days, a notice giving that information will be published in the **Federal Register.**

DATE: The last entry for each item is the date the State registration of the product became effective.

FOR FURTHER INFORMATION CONTACT: Sandra English, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1122, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2126).

SUPPLEMENTARY INFORMATION: Most of the registration listed below were received by EPA in September 1982. Receipts by EPA of State registrations will be published periodically. Except as indicated by (CUP) in 23 of the registrations listed below, there is no changed use pattern involved in any of these registrations.

Alabama

EPA SLN No. AL 82 0034. Mobay Chemical Corp. Registration is for Furadan 10 GR, to be used on soybeans to control nematodes (root-knot, cyst, stunt, ring, sting, spiral, lesion, lance, dagger, and stubby-root). September 7, 1982.

EPA SLN No. AL 82 0035. Mobay Chemical Corp. Registration is for Furadan 10 GR, to be used on soybeans to control nematodes (root-knot, cyst, stunt, ring, sting, spiral, lesion, lance, dagger, and stubby-root). September 7, 1982.

Arizona

EPA SLN No. AZ 82 0018. Arizona Agrochemical Co. Registration is for Agro Chem Brand Methyl Parathion 4 E, to be used on guar beans to control midges and pale striped flea beetles. September 1, 1982.

California

EPA SLN No. CA 82 0089. California Dept. of Food and Agriculture. Registration is for Telone II, to be used on nursery stock growing grounds to control plant parasitic nematodes. (CUP). September 24, 1982.

EPA SLN No. CA 82 0095. EM Industires, Inc. Registration is for Funginex EC 18.2%, to be used on cherries to control monilinia fruit brown rot. (CUP). September 3, 1982.

EPA SLN No. CA 82 0096. Stoller Chemical Co., Inc. Registration is for That Big 8 FL Sulfur, to be used on lemons to control broad mites. (CUP). September 13, 1982.

EPA SLN No. CA 82 0097. ICI Americas Inc. Registration is for Gramoxone Paraquat Herbicide, to be used on new hay plantings of alfalfa to control weeds. September 13, 1982.

EPA SLN No. CA 82 0098. ICI Americas Inc. Registration is for Gramoxone Paraquat Herbicide, to be used on established plantings of alfalfa for desiccation of bluegrass, ryegrass, shepherd's-purse, chickweed, sowthistle, groundsel, and tansy mustard. September 16, 1982.

EPA SLN No. CA 82 0099. Mobay Chemical Corp. Registration is for Furadan 4 FL, to be used on strawberries to control root weevils. September 29, 1982.

Connecticut

EPA SLN No. CT 82 0009. Bell Laboratories, Inc. Registration is for P.C.O. Rat and Mouse Bait, to be used on orchards and groves to control meadow and pine mice, and voles (*Microtus spp.*). September 15, 1982.

EPA SLN No. CT 82 0010. Motomco Ltd. Registration is for Contrax-P, to be used on orchards and groves to control meadow and pine mice, and voles (*Microtus supp.*). September 15, 1982.

Delaware

EPA SLN No. DE 82 0012. FMC Corp. Registation is for Pounce 3.2 EC, to be used on greenhouse chrysanthemums to control Liriomyza leafminer flies. September 24, 1982.

Florida

EPA SLN No. FL 82 0049. The Land, Epcot Center. Registration is for Sumithrin Greenhouse Spray, to be used on various crops to control infestations of whiteflies, aphids, spider mites, and mealybugs. September 7, 1982.

EPA SLN No. FL 82 0050. The Land, Epcot Center. Registration is for Tedion E–1, to be used on various crops to control European red mites, two-spotted mites, McDaniel mites, canadensis mites, carpini mites, schoenii mites, citrus red mites, Texas citrus mites, and tropical mites. September 7, 1982.

EPA SLN No. FL 82 0051. The Land, Epcot Center. Registration is for Fulex DDVP Fumigator, to be used on various crops to control red spider mites, aphids, whiteflies, and mealybugs. September 7, 1982.

EPA SLN No. FL 82 0052. The Land, Epcot Center. Registration is for Flora-Fog Malathion, to be used on various crops to control red spider mites, aphids, thrips, and whiteflies. September 7, 1982.

EPA SLN No. FL 82 0053. The Land, Epcot Center. Registration is for Flora-Fog Kethane, to be used on various crops to control red spider mites and cyclamen mites. September 7, 1982.

EPA SLN No. FL 82 0054. The Land, Epcot Center. Registration is for Flora-Fog Kethane, to be used on various crops to control chrysanthemum leafminers, aphids, red spider mites, thrips, whiteflies, and leaf rollers. Septembr 7, 1982.

EPA SLN No. FL 82 0055. The Land, Epcot Center. Registration is for Flora-Fog Vapona, to be used on various crops to control chrysanthemum leafminers, aphids, red spider mites, thrips, and whiteflies. September 7, 1982.

EPA SLN No. FL 82 0056. The Land, Epcot Center. Registration is for Dithane M–45, to be used on various crops to control *Alternaria, Cercospora,* downy mildew, gummy stem blight, *Botrytis,* late blight, gray leaf mold, anthracnose, and gray leaf spot. (CUP). September 7, 1982.

EPA SLN No. FL 82 0057. The Land, Epcot Center. Registration is for Flora-Fume Malathion, to be used on various crops to control mites, aphids, thrips, whiteflies, and chrysanthemum leafminers. Septembr 7, 1982.

EPA SLN No. FL 82 0058. The Land, Epcot Center. Registration is for Omite 30W, to be used on various crops to control brown almond, citrus red, clover, European red, McDaniel, Pacific spider, peach silver, strawberry spider, two-spotted spider, and Willamette mites. September 7, 1982.

EPA SLN No. FL 82 0059. The Land, Epcot Center. Registration is for Kelthane EC, to be used on various crops to control apple rust, Bermuda, carmine, citrus flat, citrus red (purple), citrus rust, clover (brown almond),

cyclamen, and desert mites. September 7, 1982.

EPA SLN No. FL 82 0060. The Land, Epcot Center. Registration is for Dibrom 8 Emulsive, to be used on various crops to control mites, thrips, aphids, armyworms, whiteflies, and mealybuds. September 7, 1982.

EPA SLN No. FL 82 0061. The Land, Epcot Center. Registration is for Enstar 5E, to be used on various crops to control whiteflies, aphids, soft and armored scales, mealybugs, and fungus gnats. September 7, 1982.

EPA SLN No. FL 82 0062. The Land, Epcot Center. Registration is for Karathane WD, to be used on various crops to control powdery mildew. (CUP). September 7, 1982.

EPA SLN No. FL 82 0063. The Land, Epcot Center. Registration is for Bravo W-75, to be used on various crops to control *Alternaria*, downy and powdery mildew, gummy stem blight, grey leaf mold, *Botrytis*, and target spot. (CUP). September 7, 1982.

EPA SLN No. FL 82 0064. The Land, Epcot Center. Registration is for Bravo 500, to be used on various crops to control *Alternaria*, downy mildew, powdery mildew, gummy stem blight, gray leaf mold, *Botrytis*, and target spot. (CUP). September 7, 1982.

EPA SLN No. FL 82 0065. The Land, Epcot Center. Registration is for Pentac WP, to be used on various crops to control Phytophagous mites, such as two-spotted, and tumid spider; European red and broad mites. September 7, 1982.

EPA SLN No. FL 82 0066. The Land, Epcot Center. Registration is for Manzate D, to be used on various crops to control early and late blight, anthracnose, *Cercospora*, downy mildew, gummy stem blight, gray leaf spot, and *Septoria*. (CUP). September 7, 1982.

EPA SLN No. FL 82 0067. The Land, Epcot Center. Registration is for Manzate 200, to be used on various crops to control *Phytophthora*, gray leaf mold, anthracnose, *Cercospora*, downy mildew, gummy stem blight, gray leaf spot, early blight, and *Septoria*. (CUP). September 7, 1982.

EPA SLN No. FL 82 0068. The Land, Epcot Center. Registration is for Exotherm Termil, to be used on various crops to control *Botrytis*, early and late blight, gray leaf spot, and leaf mold. (CUP). September 7, 1982.

EPA SLN No. FL 82 0069. The Land, Epcot Center. Registration is for Dithane Z-78, to be used on various crops to control downy mildew, *Cladosporium*, early and late blight, *Cercospora*, and gummy stem blight. (CUP). September 7, 1982.

EPA SLN No. FL 82 0070. The Land, Epcot Center. Registration is for Dithane M-22, to be used on various crops to control downy mildew, *Botrytis*, *Cladosporium*, early and late blight, gray leaf spot, and *Alternaria*. (CUP). September 7, 1982.

EPA SLN No. FL 82 0071. The Land, Epcot Center. Registration is for Kelthane 35, to be used on various crops to control European red, two-spotted (red spider), six-spotted, Pacific, privet, schoenii, yellow (carpini), McDaniel, Willamette, spruce, desert, and tropical mites. September 7, 1982.

EPA SLN No. FL 82 0072. The Land, Epcot Center. Registration is for Benlate, to be used on various crops to control gummy stem blight, powdery mildew, *Botrytis*, *Cladosporium*, and *Penicillium* rots. (CUP). September 7, 1982.

EPA SLN No. FL 82 0073. The Land, Epcot Center. Registration is for Fulex Nicotine Fumigator, to be used on various crops to control greenhouse aphids and most thrips. September 7, 1982.

EPA SLN No. FL 82 0074. The Land, Epcot Center. Registration is for Fulex Thiodan Insecticidal Smoke, to be used on various crops to control most greenhouse aphids, and adult whiteflies (including resistant strains). September 7, 1982.

EPA SLN No. FL 82 0075. The Land, Epcot Center. Registration is for Phaltan 50 Wettable, to be used on various crops to control powdery and downy mildew. (CUP). September 7, 1982.

EPA SLN No. FL 82 0076. The Land, Epcot Center. Registration is for Orthene 75 S, to be used on various crops to control aphids, armyworms, thrips, grasshoppers, loopers, cutworms, stink bugs, and leafhoppers. September 7, 1982.

EPA SLN No. FL 82 0077. The Land, Epcot Center. Registration is for Tedion W-50, to be used on various crops to control European red, two-spotted, spider, McDaniel, canadensis, carpini, schoenii, citrus red, Texas citrus, and tropical mites. September 7, 1982.

EPA SLN No. FL 82 0078. The Land, Epcot Center. Registration is for Pentac Aquaflow, to be used on various crops to control phytophagous mites including two-spotted and tumid spider; European red, and broad mites. September 7, 1982.

EPA SLN No. FL 82 0079. The Land, Epcot Center. Registration is for Orthocide 50 WP, to be used on various crops to control *Botrytis*, *Phythium* damp off, gray leaf spot, and downy mildew. (CUP). September 7, 1982.

EPA SLN No. FL 82 0080. Florida Dept. of Agriculture and Consumer Services. Registration is for Arasan 50-Red, to be used on dried citrus seeds to reduce albinism in young citrus seedlings. (CUP). September 20, 1982.

EPA SLN No. FL 82 0083. Dow Chemical U.S.A. Registration is for Lorsban 4E Insecticide, to be used on soybeans to control larvae of the lesser cornstalk borer infesting soybeans. September 23, 1982.

Georgia

EPA SLN No. GA 82 0018. American Hoechst Corp. Registration is for Hoelon 3 EC Herbicide, to be used on wheat to control rye grass. September 29, 1982.

Hawaii

EPA SLN No. HI 82 0002. ICI Americas Inc. Registration is for Gramoxone Paraquat Herbicide, to be used on sugarcane for preharvest crop desiccation. September 2, 1982.

Idaho

EPA SLN No. ID 82 0026. ICI Americas Inc. Registration is for Gramoxone Paraquat Herbicide, to be used on winter wheat for suppression of volunteer rye and downy brome (cheat grass). September 17, 1982.

EPA SLN No. ID 82 0027. Motomco Ltd. Registration is for Contrax-P, to be used on orchards to control mountain voles. September 21, 1982.

EPA SLN No. ID 82 0028. Burroughs Wellcome Co. Registration is for Atroban 11% EC, to be used on beef cattle, dairy cattle, and horses to control face flies, stable flies house flies, horn flies, and lice. September 21, 1982.

EPA SLN No. ID 82 0029. Union Carbide Agricultural Products. Registration is for Fruitone, T, to be used on Italian prunes to control preharvest drop. September 21, 1982.

EPA SLN No. ID 82 0030. Dow Chemical U.S.A. Registration is for Tordon 22K Weed Killer, to be used on non-irrigated fallow cropland to control perennial broadleaf weeds. September 28, 1982.

Illinois

EPA SLN No. IL 82 0017. Merck and Co., Inc. Registration is for Mertect 340-F Fungicide, to be used on soybeans grown for seed to control pod and stem blight, anthracnose, brown spot, frog eye, leaf spot, and purple seed stain. (CUP). September 3, 1982.

EPA SLN No. IL 82 0018. FMC Corp. Registration is for Furadan 10G Insecticide/Nematicide, to be used on sweet corn to control corn rootworms, flea beetles, and nematodes. September 8, 1982.

EPA SLN No. IL 82 0019. Vertac Chemical Corp. Registration is for Vertac General Weed Killer, to be used

on onion sets for desiccation of the top growth. September 24, 1982.

EPA SLN No. IL 82 0020. Vertac Chemical Corp. Registration is for Vertac Premegrge 3 Dinitro Amine Herbicide, to be used on peas to control root rot. September 24, 1982.

Indiana

EPA SLN No. IL 82 0014. Burroughs Wellcome Co. Registration is for Atroban 11% EC, to be used on livestock and their premises to control face, stable, house, horse, and horn flies and lice, ticks, and psoroptic (scabies) mites. September 14, 1982.

Kansas

EPA SLN No. KS 82 0017. Ciba-Geigy Corp. Registration is for D z n 50W, to be used on wheat to control white grubs. September 7, 1982.

EPA SLN No. KS 82 0018. Ciba-Geigy Corp. Registration is for D z n AG500, to be used on wheat to control white grubs. September 7, 1982.

Louisiana

EPA SLN No. LA 82 0032. Burroughs Wellcome Co. Registration is for Atroban 11% EC, to be used on livestock and their premises to control horn, face, stable, house, and horse flies and lice on beef and dairy cattle and horses, ticks and psoroptic (scabies) mites on beef and dairy cattle. September 7, 1982.

EPA SLN No. LA 82 0033. American Hoechst Corp. Registration is for Hoelon 3EC Herbicide, to be used on wheat and soybeans to control annual ryegrass. September 10, 1982.

EPA SLN No. LA 82 0034. Chevron Chemical Co. Registration is for Orthene Tree and Ornamental Spray, to be used on trees and ornamentals for fire ant mound treatment. September 10, 1982.

EPA SLN No. LA 82 0035. Shell Chemical Co. Registration is for Pydrin Insecticide 4 ULV Concentrate, to be used on cotton to control pink bollworms. September 13, 1982.

EPA SLN No. LA 82 0036. Chevron Chemical Co. Registration is for Orthene 75 S Soluble Powder, to be used on pastures and range areas for fire ant mound treatment.

Maryland

EPA SLN No. MD 82 0016. Chevron Chemical Co. Registration is for Orthene Tree and Ornamental Spray, to be used on turfgrass to control greenbugs. September 28, 1982.

EPA SLN No. MD 82 0017. Burroughs Wellcome Co. Registration is for Atroban 11% EC, to be used on beef and dairy cattle and horses and their premises to control horn, face, stable, and house flies, and on beef and dairy cattle to control lice, ticks, and psoroptic (scabies) mites. September 30, 1982.

Michigan

EPA SLN No. MI 82 0023. Burroughs Wellcome Co. Registration is for Atroban 11% EC, to be used on horse, beef, dairy, swine, sheep, and poultry premises and outside meat processing premises to control house and stable flies. September 21, 1982.

Mississippi

EPA SLN No. MS 82 0040. Dow Chemical U.S.A. Registration is for Lorsban 15G GR Insecticide, to be used on pine seedlings to control soil insects. September 13, 1982.

EPA SLN No. MS 82 0041. American Hoechst Corp. Registration is for Hoelon 3EC Herbicide, to be used on wheat to control annual ryegrass. September 22, 1982.

EPA SLN No. MS 82 0042. Chevron Chemical Co. Registration is for Orthene 75 S Soluble Powder, to be used on homeowner yards for fire ant mound treatment. September 22, 1982.

Montana

EPA SLN No. MT 82 0011. PCI/ Gordon Corp. Registration is for Acme Agricultural Products, Ultra-Sulv (Amine), to be used on small grains, pastures, rangelands, and non-crop areas to control weeds. September 15, 1982.

EPA SLN No. MT 82 0012. E.I. du Pont de Nemours and Co. Registration is for Du Pont Velpar L Weed Killer, to be used on reforestation areas to control weeds. September 14, 1982.

Nebraska

EPA SLN No. NE 82 0021. Phillips Roxane, Inc. Registration is for Anchor Permectrin 25% WP Long Lasting Barn and Premise Fly Spray, to be used on barns and livestock premises to control house, stable, and false stable flies and other manure-breeding flies. September 28, 1982.

EPA SLN No. NE 82 0022. Phillips Roxane, Inc. Registration is for Bioceutic Overtime 25% WP Long Acting Livestock Premise Insecticide, to be used on livestock premises to control house, stable, and false stable flies and other manure-breeding flies. September 28, 1982.

New Jersey

EPA SLN No. NJ 82 0017. ICI Americas Inc. Registration is for Gramoxone Paraquat Herbicide, to be used on alfalfa to control weeds. September 28, 1982.

New Mexico

EPA SLN No. NM 82 0021. E.I. du Pont de Nemours and Co. Registration is for Du Pont Lannate L Insecticide, to be used on cotton to control bollworms and tobacco budworms. September 9, 1982.

EPA SLN No. NM 82 0022. Chevron Chemical Co. Registration is for Ortho Monitor 4 Spray, to be used on peppers to control green peach aphids, leafminers, thrips, and flea beetles. September 13, 1982.

Oregon

EPA SLN No. OR 82 0061. Dow Chemical U.S.A. Registration is for Tordon 22K Weed Killer, to be used on small grain fields to control perennial broad leaf weeds. September 20, 1982.

EPA SLN No. OR 82 0062. Occidental Chemical Co. Registration is for Blueshield, to be used on Easter lilies to control bacterial blight and on sycamores to control anthracnose (CUP). September 20, 1982.

EPA SLN No. OR 82 0063. Occidental Chemical Company. Registration is for Blueshield, to be used on apples, pears, and European cankercranberries to control storage rots, and stem and leaf-blight. (CUP). September 20, 1982.

EPA SLN No. OR 82 0064. Great Lakes Chemical Corp. Registration is for Terr-O-Gas 75, to be used on onions to control white rot. September 20, 1982.

EPA SLN No. OR 82 0065. Chas. H. Lilly Co. Registration is for Miller's Wipe Out Slug and Snail Bait, to be used as a preplant application to control slugs or snails. September 28, 1982.

Tennessee

EPA SLN No. TN 82 0021. FMC Corp. Registration is for Furadan 10 GR, to be used on alfalfa to control clover root curculio, potato leafhoppers, crickets, and grasshoppers. September 14, 1982.

EPA SLN No. TN 82 0022. FMC Corp. Registration is for Furadan 15 GR, to be used on alfalfa to control clover root curculio, potato leafhoppers, crickets, and grasshoppers. September 14, 1982.

EPA SLN No. TN 82 0023. American Hoechst Corp. Registration is for Hoelon 3EC Herbicide, to be used on fall seeded wheat to control annual ryegrass. September 15, 1982.

Texas

EPA SLN No. TX 82 0048. FMC Corp. Registration is for Furadan 10 GR, to be used on peanuts to control root lesion nematodes. September 2, 1982.

EPA SLN No. TX 82 0049. Diamond Shamrock Corp. Registration is for Ectrin Insecticide 10 Water Dispersible Liquid, to be used on livestock and their

premises to control flies, lice, and ticks. September 3, 1982.

EPA SLN No. TX 82 0050. Philips Roxane, Inc. Registration is for Anchor Permectrin 25% WP Long Lasting Barn and Premise Fly Spray, to be used on livestock and their premises to control flies, lice, and ticks. September 7, 1982.

EPA SLN No. TX 82 0051. Philips Roxane, Inc. Registration is for Bioceutic Overtime 25% WP Long Acting Livestock Premise Insecticide, to be used on livestock and their premises to control flies, lice, and ticks. September 7, 1982.

EPA SLN No. TX 82 0052. Chevron Chemical Co. Registration is for Ortho Monitor 4 Spray, to be used on peppers to control green peach aphids, leafminers, thrips, and flea beetles. September 9, 1982.

EPA SLN No. TX 82 0053. Shell Chemical Co. Registration is for Pydrin Insecticide 2.4 EC, to be used on soybeans to control Mexican bean beetles, green cloverworms, velvetbean caterpillars, and tobacco leafhoppers. September 14, 1982.

EPA SLN No. TX 82 0054. Shell Chemical Co. Registration is for Pydrin Insecticide 4 ULV Concentrate, to be used on cotton to control pink bollworms and cotton leaf perforators. September 14, 1982.

EPA SLN No. TX 82 0055. Burroughs Wellcome Co. Registration is for Atroban 11% EC, to be used on beef and dairy cattle and horses to control face, stable, house, horse, and horn flies and lice. September 14, 1982.

EPA SLN No. TX 82 0056. Gustafson, Inc. Registration is for Gustafson Lorsban 30 FL, to be used on stored cotton and sorghum planting seed to control red flour beetles, rice weevils, sawtoothed grain beetles, Indian meal moths, angoumois grain moths, and cigarette beetles. September 16, 1982.

Virginia

EPA SLN No. VA 82 0030. Burroughs Wellcome Co. Registration is for Atroban 11% EC, to be used on livestock and their premises to control flies. September 27, 1982.

Washington

EPA SLN No. WA 82 0060. Wilbur-Ellis Co. Registration is for Wilbur-Ellis Zineb 10 Dust, to be used on mushrooms to control fungal diseases. (CUP). September 20, 1982.

EPA SLN No. WA 82 0061. Dow Chemical U.S.A. Registration is for Tordon 22K Weed Killer, to be used on small grain fields to control perennial weeds. September 22, 1982.

West Virginia

EPA SLN No. WV 82 0009. Motomco Ltd. Registration is for Contrax-P, to be used on orchards and groves to control meadow and pine mice and voles. September 27, 1982.

Dated: March 14, 1983.

Douglas D. Campt,

Director, Registration Division.

[FR Doc. 83-7405 Filed 3-22-83; 8:45 am]

BILLING CODE 6560-50-M

[PF-317; PH-FRC 2323-8]

Certain Companies; Pesticide Petitions; Elanco Products Co. et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide petitions relating to the establishment of tolerances for residues of certain pesticide chemicals in or on certain commodities.

ADDRESS: Written comments to : Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202.

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-317] and the 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: Henry Jacoby, PM-21, (703-557-1900) at the address given above.

SUPPLEMENTARY INFORMATION: EPA gives notice that the Agency has received the following pesticide petitions relating to the establishment of tolerances for residues of certain pesticide chemicals in or on certain commodities in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each petition.

Initial Filing

1. *PP 3E2836.* Elanco Products Co., 740 South Alabama St., Indianapolis, IN 46285. Proposes amending 40 CFR Part 180 by establishing tolerances for the residues of the fungicide nuarimol [alpha-(2-chlorophenyl)-alpha-(4-fluorophenyl)-5-pyrimidinemethanol in or on the commodity bananas at 0.10 part per million (ppm). The proposed analytical method for determining residues is gas-liquid chromatography using an electron capture detector.

2. *PP 3F2837.* Mobay Chemical Corp. P.O. Box 4913, Hawthorn Rd., Kansas City, MO 64120. Proposes amending 40 CFR 180.410 by establishing tolerances for the combined residues of the fungicide 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1*H*-1,2-4-triazol-1-yl)-2-butanone and its metabolite beta-(4-chlorophenoxy)-alpha-(1,1-dimethylethyl)-1*H-1,2,4-triazole-1-ethanol in or on the commodities almonds, hulls at 0.10 ppm and meats at 0.05 ppm. The proposed analytical method for determining residues gas chromatography with a conductivity detector.*

(Sec. 408(d)(1), 68 Stat. 512, (7 U.S.C. 136))

Dated: March 9, 1983.

Robert Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 83-6940 Filed 3-22-83; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30222A, PH-FRL 2322-8]

Elanco Products Co.; Withdrawal of Application To Register a Pesticide Product Containing a New Active Ingredient

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Elanco Products Co. has withdrawn its application to register the insecticide Bant containing an active ingredient not included in any previously registered pesticide product as provided for in section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: George LaRocca, Product Manager (PM) 15, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, CM#2, Rm. 204, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2400).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of January 12, 1983 (48 FR 1349), which announced that the Elanco Products Co., 740 S. Alabama St., Indianapolis, IN 46285, had submitted an application to conditionally register the insecticide Bant, file symbol 1471-RGG. The product containing 0.75 percent of the active ingredient *N*-[2,-amino-3-nitro-5-(trifluoromethyl)phenyl]-2,2,3,3-tetrafluoropropanamide, an active

ingredient not included in any previously registered product, was intended for general use for the control of imported fire ants and use on noncropland areas only.

Elanco Products Co. withdrew the application without prejudice to future filing for registration of the product.

(Sec. 3(c)(4) of FIFRA, as amended)

Dated: March 7, 1983.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 83-6942 Filed 3-22-83; 8:45 am]

BILLING CODE 6560-50-M

[PP 3G2775/T406; PH-FRL 2323-7]

Mobay Chemical Corp.; Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for the combined residues of the nematocide, ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphoramidate, and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity grapes. This temporary tolerance was requested by Mobay Chemical Corporation.

DATE: This temporary tolerance expires December 31, 1983.

FOR FURTHER INFORMATION CONTACT: Henry Jacoby, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 229, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1900).

SUPPLEMENTARY INFORMATION: Mobay Chemical Corporation, Agricultural Chemicals Division, P.O. Box 4913, Kansas City, MO 64120, has requested, in pesticide petition PP 3G2775 the establishment of a temporary tolerance for the combined residues of the nematocide, ethyl 3-methly-4(methylthio)phenyl (1-methylethyl) phosphoramidate and its cholinesterase-inhibiting metobolites in or on the raw agricultural commodity grapes at 0.1 part per million (ppm). A related document, establishing a food and feed additive regulation permitting residues of the nematocide in grape pomace and raisin waste was published in the Federal Register of February 24, 1983 (48 FR 7729).

This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permits 3125-EUP-173 and 3125-EUP-174 which are being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permits and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permits.

2. Mobay chemical Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires December 31, 1983. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permits are revoked or if any experience or scientific data with this pesticide indicate that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Strat. 1164, 5 U.S.C. 610-612), 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(j), 68 Stat. 516, (21 U.S.C. 346(j)))

Dated: March 9, 1983.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 83-6941 Filed 3-22-83; 8:45 am]

BILLING CODE 6560-50-M

[PP OG1802/T405; PH-FRL #2325-2]

Oryzalin; Renewal of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has renewed a temporary tolerances for residues of the herbicide oryzalin in or on the raw agricultural commodity wheat.

DATE: This temporary tolerance expires February 3, 1984.

FOR FURTHER INFORMATION CONTACT: Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the Federal Register of April 13, 1978 (43 FR 15487) stating that a temporary tolerance had been established for residues of the herbicide oryzalin (3,5-dinitro-N^4, N^4-dipropylsulfanilamide) in or on the raw agricultural commodity wheat at 0.1 part per million (ppm). This tolerance was established in response to pesticide petition PP OG1802, submitted by Elanco Regulatory Services, Elanco Product Company, 740 South Alabama St., Indianapolis, IN 46285. The company has requested a one-year renewal of the temporary tolerance to permit the continued marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permits 1471-EUP-58 and 1471-EUP-69 which are being renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that a renewal of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been renewed on the condition that the pesticide be used in accordance with the experimental use permits and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permits.

2. Elanco Regulatory Services must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance, and on request make the records available to

any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires February 3, 1984. Residues not in excess of the temporary tolerance in or on the above raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permits and temporary tolerance. This tolerance may be revoked if the experimental use permits are revoked or if any scientific data or experience with this pesticide indicates that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice 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(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: March 10, 1983.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 83-7097 Filed 3-22-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

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

March 15, 1983.

Task Group A-2 of Working Group A: Facilities & Technology.

Chairman: Jeffrey Binckes (202) 863-6864.

Date: Friday, March 25, 1983.

Time: 9:30 A.M.-2:30 P.M.

Location: Communications Satellite Corporation, 950 L'Enfant Plaza SW., Room 6030, Washington, D.C.

Task Group B-1 of Working Group B: Legal Implications.

Chairman: Martin Rothblatt (202) 463-2962.

Date: Thursday, April 14, 1983.

Time: 1:30 p.m.-4:30 p.m.

Location: Schnader, Harrison, Segal & Lewis, 1111 19th Street NW., Suite 1000, Washington, D.C.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-7498 Filed 3-22-83; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1398]

Petitions for Reconsideration of Actions in Rule Making Proceedings

March 18, 1983.

The following listings of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to CFR 1.429(e). Oppositions to such petitions for reconsideration must be filed within 15 days after publication of this Public Notice in the **Federal Register**. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.606(b), Table of Assignments, Television Broadcast Stations. (Hampton-Norfolk-Portsmouth-Newport News, Virginia) (BC Docket No. 82-541, RM-4158)

Filed by: Paul A. Zevnik & Diane Z. Goldman, Attorneys for Paul, Hastings, Janofsky & Walker & Atlantic Telecasting Limited Partnership on 2-28-83.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-7497 Filed 3-22-83; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection and Recordkeeping Requirements Submitted to Office of Management and Budget for Review

March 15, 1983.

On March 15, 1983 the Federal Communications Commission submitted the following information collection and recordkeeping requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of these submissions are available from Richard D. Goodfriend, Agency Clearance Officer, (202) 632-7513. Comments should be sent to Edward H. Clarke, Office of Management and Budget, OIRA, Room 3201 NEOB, 726 Jackson Place, N.W., Washington, D.C. 20503.

- Title: Application for Permit to Deliver Programs to Foreign Broadcast Stations

Form No. FCC 308

Action: Revision

Respondents: Any applicant holding a valid radio or TV broadcast station construction permit or license, or other adult citizen of the U.S., its territories or possessions.

Estimated Annual Burden: 10 Responses; 210 Hours.

- Title: Application for Consent to Assignment of Radio Broadcast Station Construction Permit or License or Transfer of Control of Corporation Holding Broadcasting Station Construction Permit or License

Form No. FCC 316

Action: Revision

Respondents: Permittee or Licensee seeking authority for assignment or transfer of control.

Estimated Annual Burden: 580 Responses; 1,740 Hours.

- Title: Application for Instructional Television Fixed Station License

Form No. FCC 330-L

Action: Revision

Respondents: Licensees and Permittees of TV instructional fixed stations.

Estimated Annual Burden: 50 Responses; 88 Hours.

- Title: Application for TV or FM Broadcast Translator Station License

Form No. FCC 347

Action: Revision

Respondents: Licensees and Permittees of Low Power TV and TV or FM Translator Stations.

Estimated Annual Burden: 774 Responses; 1,742 Hours.

- Title: Standard Broadcast and FM Program Logging Rules Extension

Action: Extension

Respondents: All AM and FM licensees of operational noncommercial educational broadcast stations

Estimated Annual Burden: 1,181 Responses; 5,172,780 Hours.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-7499 Filed 3-22-83; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Privacy Act of 1974; Proposed Amendments to Existing Systems of Records

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed inclusion of the Social Security Number in existing systems of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a,

notice is hereby given that the Federal Emergency Management Agency (FEMA) proposes to add the Social Security Number to five existing systems of records. These systems of records are entitled, "Claims Collection Files, FEMA/RMA–9," "Student Application and Registration Records, National Fire Academy, FEMA/NETC–1," "National Fire Academy Instructor Records, FEMA/NETC–2," "Student Academic and Course Records, FEMA/NETC–3." and "Home Study Courses, FEMA/NETC–4." The inclusion of the social security number will be used only for recordkeeping purposes to properly identify an individual. Because of a large number of individuals who have identical names and birth dates, some identities can only be distinguished by the Social Security Number. Disclosure of the Social Security Number is voluntary and failure to provide it will not result in denial of any right, privilege, or benefit to which the individual would otherwise be entitled. For those individuals who do not wish to provide their Social Security Number, an internal number will be assigned for recordkeeping purposes.

EFFECTIVE DATE: The proposed inclusion of the Social Security Number will become effective in the five mentioned FEMA systems of records, without further notice, on April 22, 1983, unless comments necessitate otherwise.

ADDRESS: Written comments may be sent or delivered to Rules Docket Clerk, Federal Emergency Management Agency, (Room 835), 500 C Street, S.W., Washington, D.C. 20472.

FOR FURTHER INFORMATION CONTACT: Linda M. Keener, FOIA/Privacy Specialist, (202) 287–0313.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency last published the five subject systems of records in their entirety on November 26, 1982, 47 FR 53483. To economize on costs, we are only publishing the sections of the system of records notices which contain changes.

Dated: March 4, 1983.

James L. Holton,

Director, Office of Public Affairs, Federal Emergency Management Agency.

FEMA/RMA–9

SYSTEM NAME:

Claims Collection Files.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Claims Collection Officers' file will contain the name and address of the debtor, taxpayer's identification number (which may be the social security number), amount of claim or delinquent amount; basis of claim; date claim arose; office referring claim to the Claims Collection Officer; record of each collection made; credit report or financial statement reflecting the net worth of the debtor; date by which the claim must be referred to the Agency Collections Officer for further collection action; citation or basis on which claim was terminated or compromised; and the appropriation number under which the Accounts/Notes Receivable was established.

RETRIEVABILITY:

By name or taxpayer's identification number (which may be the social security number).

FEMA/NETC/1

SYSTEM NAME:

Student Application and Registration Records, National Fire Academy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files include application forms and other information submitted by the applicants. Information collected includes, but is not limited to, name, sex, social security number, date of birth, education level, home address and job title. Files concerning students registered for Academy courses include the above information in addition to the next of kin (in case of emergency), home and/or business address, name or course, number of course credits, and grade, if any, and medical information in case of student injury or illness.

RETRIEVABILITY:

By name of the applicant or social security number.

FEMA/NETC/2

SYSTEM NAME:

National Fire Academy Instructor Records.

CATEGORIES OF RECORDS IN THE SYSTEM:

Instructor's name; home and/or business addresses and telephone numbers; titles of courses taught; dates and locations of courses; and evaluations of courses and instructors.

RETRIEVABILITY:

Filed according to the surname of the Instructor or social security number.

FEMA/NETC/3

SYSTEM NAME:

Student Academic and Course Records.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains student application records—FEMA 95–2, containing name, address, educational level, social security number, emergency management courses taken and where, emergency management organization and program affiliation, emergency management title, emergency management telephone number and length of emergency management service, employer, business title and business telephone number, student travel authorization and voucher for partial expense and date and location of course; individual training records; individual and business file for National Emergency Training Center Catalogs, Information Bulletins, etc.; Career Development Individual files; photographs with identification; MOBDES training files; Career Development directory; Student Expense files; completed Grant-in-aid forms; State recommendations, attendance and progress reports, student locators, and related academic documents.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files, 3 x 5 index cards, and magnetic tape.

RETRIEVABILITY:

3 x 5 locator cards files alphabetically by name or social security number; academic records filed chronologically by course title; and travel authorizations and vouchers filed by fiscal year and State.

FEMA/NETC–4

SYSTEM NAME:

Home Study Courses.

CATEGORIES OF RECORDS IN THE SYSTEM:

File includes individual application forms (including social security number), group enrollment forms, group completion forms, key punch cards and related computer printout indicating home study entry, progress, grades and completion, correspondence and related academic documents.

RETRIEVABILITY:

By name and address of Student Number or Social Security number.

[FR Doc. 83–7462 Filed 3–22–83; 8:45 am]

BILLING CODE 6718–01–M

California; Amendment To Notice of Major-Disaster Declaration

[FEMA–677–DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the Notice of a major disaster for the State of California (FEMA–677–DR), dated February 9, 1983, and related determinations.

DATE: March 11, 1983.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287–0501.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of California dated February 9, 1983, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 9, 1983.

Shasta County for Individual Assistance.
Yolo County as an adjacent county for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83–516, Disaster Assistance. Billing Code 6718–02).

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 83–7448 Filed 3–22–83; 8:45 am]

BILLING CODE 6718–01–M

[FEMA–677–DR]

California; Amendment to Notice of Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the Notice of a major disaster for the State of California (FEMA–677–DR), dated February 9, 1983, and related determinations.

DATED: March 17, 1983.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287–0501.

NOTICE: The notice of a major disaster for the State of California dated February 9, 1983, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 9, 1983.

Riverside, Solano and Trinity Counties as adjacent counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83–516, Disaster Assistance. Billing Code 6718–02)

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 83–7449 Filed 3–22–83; 8:45 am]

BILLING CODE 6718–01–M

[FEMA–674–DR]

Illinois; Amendment to Notice of Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the Notice of a major disaster for the State of Illinois (FEMA–674–DR), dated December 13, 1982, and related determinations.

DATED: March 10, 1983.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287–0501.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Illinois dated December 13, 1982, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 13, 1982.

For Public Assistance:

Woodford County; Norman Township in Grundy County; Union County Unit Road District

(Catalog of Federal Domestic Assistance No. 83–516, Disaster Assistance. Billing Code 6718–02)

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 83–7450 Filed 3–22–83; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL RESERVE SYSTEM

Acquisition of Bank Shares by a Bank Holding Company

The company listed in this notice has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated. With respect to the application, interested persons may express their views in writing to the address indicated. Any comment on the application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Chartercorp*, Kansas City, Missouri; to acquire 97.94 percent of the voting shares of Thornton Bank, Nevada, Missouri. Comments on this application must be received not later than April 15, 1983.

Board of Governors of the Federal Reserve System, March 17, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83–7457 Filed 3–22–83; 8:45 am]

BILLING CODE 6210–01–M

Bank Holding Companies; Notice of Proposed "De Novo" Nonbank Activities

The organizations identified in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to these applications, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any comment that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating

how the party commenting would be aggrieved by approval of that proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearing should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Bank of New York Company, Inc.*, New, York, New York (mortgage banking activities; Hawaii): To engage, through its wholly-owned subsidiary, Arcs Mortgage, Inc., in making, originating and servicing loans secured by first and second mortgages on real estate consisting of one- to four- family residential properties. These activities would be conducted from an office on Honolulu, Hawaii, serving the State of Hawaii. Comments of this application must be received not later than April 15, 1983.

B. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *American Bancorporation Holding Company*, Brainerd, Minnesota (financing, servicing, data processing; Minnesota): To engage through a subsidiary, CreditAmerica Lending Company, primarily in consumer finance activities, including the extension of direct loans to consumers secured by personal or real property, and secondarily in commercial finance activities including extension of commercial loans secured by borrower's inventory, accounts, receivable, or other assets; servicing loans for affiliates and others; and providing bookkeeping and data processing services for affiliates in accordance with the Board's Regulation Y. These activities would be conducted from an office located in Brainerd, Minnesota, serving the community of Brainerd, Minnesota and the surrounding area. Comments on this application must be received not later than April 14, 1983.

Board of Governors of the Federal Reserve System, March 17, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-7460 Filed 3-22-83; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1)) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companes by acquiring voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Empire Bancshares, Inc.*, Hicksville, Ohio; to become a bank holding company by acquiring 100 percent of the capital stock of The Hicksville Bank, Hicksville, Ohio. Comments on this application must be received not later than April 15, 1983.

B. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Eagan BanCorporation, Inc.*, St. Paul, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Minnesota National Bank of Eagan, Eagan, Minnesota. Comments on this application must be received not later than April 15, 1983.

Board of Governors of the Federal Reserve System, March 17, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-7458 Filed 3-22-83; 8:45 am]

BILLING CODE 6210-01-M

Western Bancorporation, Inc.; Merger of Bank Holding Companies

Western BanCorporation, Inc., Houston, Texas, has applied for the Board's approval under § 3(a)(5) of the Bank Holding Company Act (12 U.S.C. 1842(a)(5)) to merge with Port City Bancshares, Inc., Houston, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than April 15, 1983. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, March 17, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-7459 Filed 3-22-83; 8:45 am]

BILLING CODE 6210-01-M

Fee Schedules for Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Fee schedules for wire transfer of funds and net settlement services.

SUMMARY: The Monetary Control Act of 1980 (title I of Pub. L. 96–221) requires that schedules of fees be established for Federal Reserve Bank services. Revised fee schedules for the wire transfer of funds and net settlement services were implemented effective April 29, 1982. The Board has now determined to continue the existing fee schedules for these services.

EFFECTIVE DATE: March 17, 1983.

FOR FURTHER INFORMATION CONTACT: Elliott C. McEntee, Assistant Director (202/452–2231) or Florence M. Young, Program Manager (202/452–3955) Federal Reserve Bank Operations; Gilbert T. Schwartz, Associate General Counsel (202/452–3625) or Daniel L. Rhoads, Attorney (202/452–3711), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The Monetary Control Act of 1980 ("Act") requires that fee schedules be developed for Federal Reserve Bank services based on pricing principles established by the Board. The fee schedules for wire transfer of funds and net settlement services became effective January 29, 1981. Proposed new fee schedules for wire transfer of funds and net settlement services were published for public comment on January 19, 1982 (47 FR 2790). New fee schedules for these services became effective on April 29, 1982 (47 FR 13406).

Revenues from the provision of wire transfer of funds and net settlement services are slightly in excess of the costs, including the 16 percent private sector adjustment factor ("PSAF"), incurred in providing the services from May 1982 through January 1983 ($42.4 million and $42.2 million, respectively). Based on 1983 estimates of the volume of funds transfers (39.7 million transfers), the Board believes that the fee schedules currently in effect will provide sufficient revenues to cover the costs of providing the services, including the PSAF. The Board has concuded that it is appropriate to retain the current fee schedules for the wire transfer of funds and net settlement services. The System is, however, conducting a comprehesive review of the fee structures of these services. Should it be determined that significant restructuring of the fee schedules for these services are desirable, public comment on any such proposed changes will be solicited. It is anticipated, however, that any changes to the current fee structures would not be implemented until 1984.

Accordingly, the fee schedules for the Federal Reserve's wire transfer of funds and net settlement services will continue in effect as follows:

Wire transfer of funds		Net settlement	
On-line transfer:			
Originator	$0.65	Settlement entries	$1.30
Receiver	0.65		
Off-line surcharges:		Off-line surcharges:	
Originator	3.50	Per settlement	5.00
Receiver	2.25	Telephone advice	2.25

Reserve Banks may charge higher fees for net settlement arrangements that result in higher costs.

By order of the Board of Governors of the Federal Reserve System, March 17, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-7455 Filed 3-22 83; 8:45 am]

BILLING CODE 6210-01-M

THE COMMISSION OF FINE ARTS

Notice of Meeting

The Commission of Fine Arts will next meet in open session on Tuesday, April 19, 1983 at 10:00 a.m. in the Commission's offices at 708 Jackson Place, N.W., Washington, D.C. 20006 to discuss various projects affecting the appearance of Washington including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Access for handicapped persons will be through the main entrance to the New Executive Office Building on 17th Street between Pennsylvania Avenue and H Street, N.W. Call 566–1066 for assistance.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 566–1066.

Dated in Washington, D.C., March 14, 1983.

Charles H. Atherton,

Secretary.

[FR Doc. 83-7466 Filed 3-22-83; 8:45 am]

BILLING CODE 6330-01-M

GENERAL SERVICES ADMINISTRATION

Office of the Administrator

Advisory Board; Meeting

Notice is hereby given that the GSA Advisory Board's Subcommittee on Contracting will meet on March 29, 1983, from 10:00 a.m. to 4:30 p.m., in Room 328 of the John W. McCormack Post Office/Post Office Courthouse, located on Post Office Square, Boston, MA 02109. This session will be devoted to discussions of matters relating to the agency's plans in the areas of internal contracting automation, internal organization of contracting policy functions, and status reports dealing with professionalism of the GSA contracting workforce and efforts to implement multi-year contracting within selected procurement operations.

Less than fifteen (15) days notice is being given due to scheduling difficulties.

For further information, contact Roger C. Dierman, Deputy Associate Administrator, on (202) 523–1141.

Charles S. Davis III,

Associate Administrator.

[FR Doc. 83-7715 Filed 3-22-83; 12:58 pm]

BILLING CODE 6820-26-M

National Archives and Records Service

National Archives Advisory Council; Meeting

Notice is hereby given that the National Archives Advisory Council will meet on April 28, 1983 from 9:00 a.m. to 5:30 p.m. and April 29, 1983 from 9:00 a.m. to noon in Room 105, National Archives and Records Service, 8th and Pennsylvania Avenue, N.W., Washington, D.C. 20408. The meeting will be devoted to a review of the current state of the Archives, reports from Council Subcommittees, and related matters of concern to the operation of the National Archives and Records Service of the United States.

The meeting will be open to the public.

Dates: March 14, 1983.

Robert M. Warner,

Archivist of the United States.

[FR Doc. 83-7471 Filed 3-22-83; 8:45 am]

BILLING CODE 6820-26-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Advisory Council on Social Security; Meeting

AGENCY: Health and Human Services Department.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a)(2) of Pub. L. 92–463, the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Council on Social Security, as established by the Secretary of Health and Human Services in accordance with Section 706 of the Social Security Act, 42 U.S.C. 907.

DATE/ADDRESS: The meeting will be held on April 24 from 2:00 p.m. to 8:00 p.m. and on April 25 from 9:00 a.m. to 4:00 p.m. in Room 800 of the Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Thomas R. Burke, Executive Director, Advisory Council on Social Security, 200 Independence Avenue, S.W., Washington, D.C. 20201; telephone (202) 755–8670/71.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Attendance will be limited to the space available. Interested parties may submit written presentations for considerations by the Council until April 15, 1983. Correspondence can be addressed to Advisory Council on Social Security, 200 Independence Avenue, S.W., Washington, D.C. 20201.

Sign language interpreting services will be provided if requested in advance.

The proposed meeting agenda includes further briefings and discussion on the Medicare program; and such other business as the Chairperson, the Executive Director, or the membership may put before the Council.

A previous meeting of the Advisory Council on Social Security was announced in 48 FR 7813, February 24, 1983.

Records are kept of all Council proceedings and are available for public inspection at the Office of the Administrative Officer, Advisory Council on Social Security, Room 317–H, HHH Building, 200 Independence Avenue, S.W., Washington, D.C. 20201.

Thomas R. Burke,

Executive Director.

[FR Doc. 83-7475 Filed 3-22-83; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A-18084]

Classification Decision; Lease or Sale; Cochise County, Arizona

The following described land has been examined and found suitable for lease or sale under the Recreation and Public Purposes Act of June 14, 1926, as amended (44 Stat. 741; 43 U.S.C. 869 et seq.).

Gila and Salt River Meridian, Arizona

T. 22 S., R. 21 E.,
Sec. 15: SE¼NE¼.

Containing 40 acres more or less.

The above described land is valuable for public purposes and is therefore considered chiefly valuable for public purposes. This classification is consistent with Land Use Plans for these lands.

These lands will be used for a communications testing and training facility by the Cochise County Department of Emergency Services in accordance with their plan of development.

Classification of the land under the provisions of the above cited Act will segregate it from all forms of appropriation, including location under the mining laws, except applications under the mineral leasing laws and application under the Recreation and Public Purposes Act.

Detailed information concerning this classification can be obtained from the Safford District Office. For a period of 45 days from the date of this Notice, interested parties may submit comments to the District Manager, Safford District, Bureau of Land Management, 425 East Fourth Street, Safford, Arizona 85546. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

Dated: March 14, 1983.

Lester K. Rosenkrance,

District Manager.

[FR Doc. 83-7473 Filed 3-22-83; 8:45 am]

BILLING CODE 4310-84-M

Nevada; Ely District Advisory Council Meeting

AGENCY: District Advisory Council, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94–579 and 43 CFR Part 1780 that a meeting of the Ely District Advisory Council will be held on Wednesday, April 27, 1983.

The meeting will begin at 9:00 a.m. in the Conference Room of the Ely District Office on the Pioche Highway, Ely, Nevada. The agenda will include: (1) Updates and discussion of the district's major program efforts; (2) a briefing on current water policy; and (3) a 1:00 p.m. public comment period.

The meeting is open to the public. Interested persons may make oral statements for the council's consideration at 1:00 p.m. or file written comments with the District Manager prior to the meeting.

Summary minutes of the meeting will be available for public inspection at the Ely District Office within 30 days following the meeting.

DATE: April 27, 1983.

ADDRESS: Bureau of Land Management, Star Route 5, Box 1, Ely, Nevada 89301.

FOR FURTHER INFORMATION CONTACT: Ms. Cleone McDonald, 702–289–4865.

Dated: March 14, 1983.

Merrill L. DeSpain,

District Manager.

[FR Doc. 83-7469 Filed 3-22-83; 8:45 am]

BILLING CODE 4310-84-M

[M55891]

Direct Sale of Public Lands; Montana

AGENCY: Bureau of Land Management, Butte District Office, Interior.

ACTION: Notice of Realty Action M55891, direct sale of public land in Jefferson County.

SUMMARY: The following described lands have been examined and identified as suitable for disposal by sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 (1976), at no less than the fair market value:

Principal Meridian Montana

T9N, R3W,
Sec. 17, E½SE¼, lot 6.

The area described contains 2.56 acres.

The land will be sold to Mr. and Mrs. Al Hill as a final solution to a long standing, but inadvertent occupancy trespass. The sale will give the Hills full title to the land upon which part of their home and various ranch buildings are located. The sale will not affect access to or resource values on adjacent public land. The sale tract is located in northern Jefferson County near Montana City.

The subject tract has, in effect, been closed to public use since it was originally settled in 1917. A land report and environmental assessment identified little or no public values and the land is not needed for any resource management programs. This notice will constitute public notification of the proposed sale.

The proposed sale is consistent with the Bureau's planning system and Jefferson County government officials have been notified of the sale.

Terms and Conditions

The terms and conditions applicable to this sale are as follows:

1. All minerals will be reserved to the United States together with the right to explore, prospect for, mine, and remove same under applicable law and regulations;

2. A right-of-way for ditches or canals will be reserved to the United States in accordance with 43 U.S.C. 945;

3. The sale of these lands will be subject to all valid existing rights and reservations of record.

DATES: For a period of 45 days, from the date of this notice, interested parties may submit comments to the Butte District Manager, Bureau of Land Management, P.O. Box 3388, Butte, Montana 59702. Any adverse comments will be evaluated by the BLM Montana State Director, who may vacate or modify this realty action and issue a final determination of the Department of Interior. In the absence of any action by the State Director, this realty action will become a final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Information related to the sale, including planning documents, environmental assessment, and the record of public discussions is available for review at the Butte District Office, 106 North Parkmont, Butte, Montana.

Dated: March 10, 1983.

Jack A. McIntosh,

District Manager.

[FR Doc. 83-7465 Filed 3-22-83; 8:45 am]

BILLING CODE 8310-84-M

National Petroleum Reserve in Alaska; Availability of Final Environmental Impact Statement on the Establishment of a Competitive Oil and Gas Leasing Program

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a final environmental impact statement regarding the establishment of a competitive oil and gas leasing program in the National Petroleum Reserve in Alaska (NPR–A).

Single copies of the final environmental impact statement can be obtained from the Alaska State Office, Public Room, 701 C Street, Box 13, Anchorage, AK 99513; Fairbanks District Office, Public Room, North Post, Fort Wainwright, Box 1150, Fairbanks, AK 99707; NPR–A Program Office, Old Federal Building, Room 249, 605 West 4th Avenue, Anchorage, AK; and the Office of Public Affairs, Bureau of Land Management (130), 1800 C Street, NW., Washington, D.C. 20240.

Copies of the final environmental impact statement will also be available for review at the following locations: Alaska Federation of Natives, 1577 O Street, Suite 304, Anchorage, AK 99501; Department of the Interior, Resources Library, 701 C Street, Box 36, Anchorage, AK 99513; North Slope Borough, Department of Planning, P.O. Box 69, Barrow, AK 99723; North Star Borough Library, Fairbanks, AK 99701; University of Alaska, Institute of Social and Economic Research Library, Fairbanks, AK 99801; Z. J. Loussac Public Library, 524 W 6th Avenue, Anchorage, AK 99801; Juneau Memorial Library, 114 W 4th Street, Juneau, AK 99824; Alaska State Library, Documents Librarian, Pouch G, Juneau, AK 99811; Department of Defense, Army Corps of Engineers Library, P.O. Box 7002, Anchorage, AK 99501; Kodiak Public Library, P.O. Box 985, Kodiak, AK 99615; University of Alaska, Juneau Library, P.O. Box 1447, Juneau, AK 99447; University of Alaska, Anchorage Library, 3211 Providence Drive, Anchorage, AK 99504; and University of Alaska, Elmer E. Rasmuson Library, Fairbanks, AK 99701. Copies are also available through village coordinators at the following locations: Anaktuvuk Pass, AK 99721; Nuiqsut, AK 99723; Point Hope, AK 99766; Point Lay, AK 99790; Wainwright, AK 99782; and Atqasuk, AK 99790.

George F. Brown,

Acting Assistant Director, Fluid Leasable Minerals.

[FR Doc. 83-7490 Filed 3-22-83; 8:45 am]

BILLING CODE 4310-84-M

New Mexico; Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Prepare a Resource Management Plan.

SUMMARY: The Bureau of Land Management (BLM), Albuquerque District, New Mexico is beginning preparation of a Resource Management Plan (RMP) which will include an environmental impact statement (EIS). The plan provides a framework through which resource management decisions will be made regarding public lands administered by the Bureau in the Rio Puerco Resource Area.

Background standards and precedures for the RMP are contained in Title 43 of the Code of Federal Regulations, Subpart 1601.

SUPPLEMENTARY INFORMATION: The planning area includes all of Bernalillo, Cibola, Torrance, and Valencia Counties. It also includes most of Sandoval County, 3,200 acres of southwest Santa Fe and 46,000 acres of McKinley Counties.

Land use planning has just been completed in Cibola and Valencia Counties, therefore, they will not be addressed in this document.

Significant resource issues will be identified during the first phase of the planning process. It is anticipated that some of the issues to be addressed in the Resource Management Plan will include, but not be limited to, the development of mineral resources, protection of cultural resources, management of wildlife habitat and critical watersheds, designation of off-road vehicle use areas, forage allocation, the management of livestock grazing on the public lands, designation of rights-of-way corridors, demand for fuelwood, and the disposal of isolated tracts of public lands.

The RMP will be developed by an interdisciplinary team including a wildlife biologist, realty specialist, outdoor recreation planner, archaeologist, geologist, hydrologist, and a range conservationist, and other staff specialists, as required.

A public participation plan has been prepared and is intended to involve interested or affected parties early and continuously throughout the planning process. The plan generally follows a "grass roots" approach to public involvement, emphasizing localized, one-to-one contacts and extensive direct mailings, as well as continual coordination with local, State and other Federal agencies.

Specific public participation events, dates, and locations will be announced. The comment period for proposed issues and planning criteria, developed as a result of initial public involvement, will be announced before the formal adoption of the issues and criteria. Individuals may submit written protests of the final EIS only with respect to those items that they submitted for the record to the District Manager during the planning process.

For information about resource management planning in the Rio Puerco Resource Area or to be placed on the mailing list, please contact: Herrick E. Hanks, Rio Puerco Resource Area Manager, (505) 766–3114, or Jeff Radford, Public Affairs Officer, (505) 766–2455, at the following address. USDI—Bureau of Land Management, P.O. Box 6770, 3550 Pan American Freeway N.E., Albuquerque, New Mexico 87107.

Complete records of the planning process, including draft and final Environmental Impact Statements will be available for review at the address above.

Dated: March 14, 1983.

L. Paul Applegate,

Albuquerque District Manager.

[FR Doc. 83-7472 Filed 3-22-83; 8:45 am]

BILLING CODE 4310-84-M

Oregon; Medford Grazing Management Plan; Intent To Prepare an Environmental Impact Statement and Conduct Scoping Meeting.

The Department of the Interior, Bureau of Land Management, Medford District Office, will be preparing an Environmental Impact Statement (EIS) on the grazing management program on approximately 400,000 acres of public land in the Medford EIS Area of the Medford District, southwestern Oregon. The final statement is to be completed by spring, 1984. Decisionmaking will take place over a several-month period following completion of the final statement. The EIS will identify impacts associated with an array of alternatives for the grazing management program. Alternatives being considered for discussion in the EIS include the Bureau's preferred alternative, no action, no livestock grazing, and at least one higher and one lower level of livestock grazing than that under the Bureau's preferred alternative. The statement and associated public input will serve as an analytical tool prior to final livestock grazing management decisionmaking in the Medford EIS area.

A public scoping meeting will be held on Tuesday, April 19, 1983 at 7 p.m. in

the Oregon Room of the BLM, Medford District Office, 3040 Biddle Road, Medford, Oregon to identify the significant issues which will be discussed in the EIS. The meeting will also solicit public comments to help develop the preferred land use alternative for the area and various alternatives that could realistically be addressed in the EIS. Possible methods for obtaining public comment on the draft EIS after distribution in fall 1983 will be discussed.

Additional information may be obtained from: Bureau of Land Management, Medford District Manager, 3040 Biddle Road, Medford, Oregon 97501, Telephone (503) 776–4174.

Dated: March 15, 1983.

Jerry E. Asher,

Acting District Manager.

[FR Doc. 83-7486 Filed 3-22-83; 8:45 am]

BILLING CODE 4310-84-M

Planning Criteria Completed for the Central Yukon Planning Area

The Fairbanks District Office of the Bureau of Land Management invites public comment on the proposed planning criteria for the Central Yukon Planning Area. Planning schedules require that all comments on these criteria be phoned in or postmarked no later than April 18, 1983. Copies of the proposed criteria may be obtained upon request. Comments and requests should be sent to Dave Ruppert, Planning Team Leader, Fairbanks District Office, Bureau of Land Management, P.O. Box 1150, Fairbanks, Alaska 99707, (907) 356–5384.

Carl D. Johnson,

District Manager.

[FR Doc. 83-7484 Filed 3-22-83; 8:45 am]

BILLING CODE 4310-84-M

[NM-54358]

New Mexico; Notice of Proposed Withdrawal and Opportunity for Public Meeting

On March 12, 1983, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land for settlement, sale, location, or entry under the general public land laws, including the mining laws, subject to valid existing rights:

New Mexico Principal Meridian

T. 15 N., R. 3 W.,
Sec. 14, lots 3 & 4.
T. 14 N., R. 12 W.,
Sec. 24, SE¼NE¼, W½SE¼.

The area described contains 188.55 acres in McKinley and Sandoval Counties, New Mexico.

The purpose of the proposed withdrawal is to protect the lands by preserving the Cultural Resources in the two Chacoan Prehistoric Communities. The lands will be segregated from the operation of the public land laws, including the mining laws for a period of two years from the date of publication of this notice in the **Federal Register**, or until the withdrawal action is completed whichever occurs first. The temporary segregation of the lands in connection with a withdrawal proposal shall not affect recreation or other surface uses.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned authorized officer of the Bureau of Land Management.

Notice is nearby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled, or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are

All communications in connection with this proposed withdrawal should be addressed to the State Director, Bureau of Land Management, Department of the Interior, P.O. Box 1449, Sante Fe, NM 87501.

Leroy C. Montoya,

Chief, Division of Operations.

March 12, 1983.

[FR Doc. 83-7503 Filed 3-22-83; 8:45 am]

BILLING CODE 4310-84-M

[I-20085]

Realty Action; Competitive Sale of Public Lands in Pauer County, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, I–20085, Competitive Sale of Public Lands in Power County, Idaho, commonly known as the Blind Spring Creek Tract.

SUMMARY: The following described land has been examined, and through the development of land use decisions based on public input, it has been determined that the sale of the tract is consistent with Section 203(a) of the Federal Land Policy and Management Act of 1976. The lands will be offered for sale at public auction for no less than the appraised fair marked value indicated below. Both sealed and oral bids will be accepted.

	Acres	Value
T. 6 S., R. 32 E., Boise Meridian: Sec. 5: Lot 6, SW¼NW¼ and NW¼SW¼	120.38	$12,000.00

Upon publication of this Notice in the **Federal Register**, the land described above will be segregated from all forms of appropriation under the public land laws, including the mining laws, but excepting the mineral leasing laws, for a period of two years, or until the lands are sold. The segregative effect may otherwise be terminated by the Authorized Officer by publication of a termination notice in the **Federal Register** prior to the expiration of the two-year period.

The lands will be subject to the following reservations when patented:

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 U.S.C. 945.

2. All valid existing rights and reservations of record.

3. All minerals will be reserved to the United States as required by Sec. 209(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719.

The public auction will be held on May 18, 1983 at 1:00 P.M.

ADDRESS: The public auction will be held at the Burley District Office, 200 S. Oakley Highway, Burley, Idaho 83318.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the land, terms and conditions of the sale, and bidding instructions may be obtained from Nick James Cozakos, District Manager, at the above address or by calling (208) 678–5514.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager regarding the proposed action. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

Dated: March 14, 1983.

Nick James Cozakos,

District Manager.

[FR Doc. 83-7506 Filed 3-22-83; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Mines

Environmental Statement, Impact; Bruceton, Pa.

AGENCY: Bureau of Mines, Interior.

ACTION: Notice.

SUMMARY: Based on an Environmental Assessment for the construction of an administrative office building at Bruceton, Pennsylvania, a "Finding of No Significant Impact" on the environment has been determined by the Department of the Interior, Bureau of Mines.

ADDRESSES: A copy of the Environmental Assessment is available for review at the Branch of Property and Facilities Management, Bureau of Mines, Cochrans Mill Road, Bruceton, Pennsylvania, and at the Division of Property and General Services, Bureau of Mines, 2401 E Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: For additional information contact the Chief, Branch of Property and Facilities Management, Bureau of Mines, Bruceton, Pennsylvania, on (412) 675–6795 or the Chief, Division of Property and General Services, Bureau of Mines, Washington, D.C., on (202) 634–1032.

Robert C. Horton,

Director.

[FR Doc. 83-7407 Filed 3-22-83; 8:45 am]

BILLING CODE 4310-53-M

National Park Service

Assateague Island National Seashore; Intent To Modify Existing Hunting Plan; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of public meetings.

SUMMARY: The National Park Service is considering modification of the existing hunting plan regulating hunting activities on those portions of Assateague Island and the adjacent waters under NPS jurisdiction within Assateague Island National Seashore in Maryland. Changes in the manner in which waterfowl hunting is conducted, modification of the bow and firearms deer hunting program, and changes in authorized hunting boundaries are among the elements to be addressed. Any modifications to the present plan will be compatible with Maryland State hunting laws and made in consultation with the Department of Natural Resources. Public meetings will be held at various locations to provide information on existing hunting activities and to solicit comments and suggestions for modifications.

DATES: Public meetings will be held as follows:

April 12, 1983, 7:00–8:45 p.m., Public Library meeting room No. 1, 122 South Division Street, Salisbury, Md.

April 14, 1983, 7:00–9:00 p.m., National Seashore Visitor Center, Route 611, Berlin, Md.

April 19, 1983, 7:00–8:45 p.m., Public Library meeting room, 1270 Odenton Road, Odenton, Md.

FOR FURTHER INFORMATION CONTACT: Michael V. Finley, Superintendent, Assateague Island National Seashore, Route 2, Box 294, Berlin, Md. 21811 (301/641–1441).

SUPPLEMENTARY INFORMATION: The Act of September 21, 1965, which authorized the national seashore, specifies that hunting shall be permitted on National Park Service-controlled lands and waters within the boundaries of Assateague Island National Seashore in accordance with appropriate State and Federal laws. In the Maryland portion of Assateague Island, hunting seasons and hours, bag limits, and permitted hunting devices are regulated under the laws and regulations of the State of Maryland. In addition, Federal law provides that no-hunting zones and no-hunting periods may be established for reasons of public safety, administration, fish or wildlife management, for public use and enjoyment.

Public waterfowl hunting in Maryland is restricted to 25 waterfowl blinds and two boat stakes, which are provided at no cost. The two boat stakes and five blinds are claimed on a first-come, first-served basis. All others are assigned by a lottery conducted at 4:30 each morning of the waterfowl season. During the 1-week firearms deer season, each deer hunter is checked in and out of the open hunting area. The present program results in accurate recording of deer kills and numbers of deer and waterfowl hunters. Reporting of waterfowl kills is done on a voluntary basis and the resulting figures are less accurate. In 1982 there were 56 deer killed on the National Park Service-owned portion of Assateague, and 375 waterfowl were reported taken.

This reappraisal of the seashore's hunting program is prompted by a steady decrease in the amount of private land available to public hunting, which has resulted in an incease in hunting pressure on Assateague. It is likely that this trend will continue. In addition, the cost of administering the present hunting system is rising each year and alternate more cost-effective approaches must be examined. Various alternatives are being formulated, and among the elements being addressed are the following:

1. Use of hunter-owned portable blinds at designated blind sites in lieu of Government-maintained blinds.

2. Charging of fees for use of waterfowl blinds if present system of Government-maintained blinds is retained.

3. Changes in the number and locations of waterfowl blind sites.

4. Methods of hunting access and maintenance standards of access roads.

5. Limitations of the number of hunters during deer season.

6. Training and proficiency requirements for bow hunters.

7. Boundary changes for the no-hunting zones.

The hunting program on the Virginia portion of Assateague Island is administered by the U.S. Fish and Wildlife Service. No changes in that program are proposed in this notice. National Park Service jurisdictional interests in Virginia extend from mean low water to the external water boundary. No changes in the manner in which hunting is conducted in Virginia are being proposed at this time.

For those unable to attend a public meeting, written comments and suggestions are invited on these and other facets of the hunting program on the portion of Assateague Island National Seashore under National Park Service jurisdiction. The deadline for written comments is April 30, 1983.

Bernard C. Fagan,

Acting Superintendent.

February 9, 1983.

[FR Doc. 83-7513 Filed 3-22-83; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-123]

Certain CT Scanner and Gamma Camera Medical Diagnostic Imaging Apparatus; Commission Hearing on the Presiding Officer's Recommendation and on Remedy, the Public Interest, and Bonding, 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-123, Certain CT Scanner and Gamma Camera Medical Diagnostic Imaging Apparatus.

Notice is hereby given that the presiding officer in this investigation has isued a recommended determination that there is no violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the unauthorized importation into the United States and in the sale of the CT scanner and gamma camera imaging apparatus that are the subject of the investigation. The presiding officer's recommendation and the record upon which it is based 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 (as well as any other public documents on the record of the investigation) by contacting the Office of the Secretary, Docket Section, U.S. International Trade Commission, 701 E Street NW., room 156, Washington, D.C. 20436, telephone 202-523-0176.

Commission Hearing: The Commission will hold a public hearing on April 22, 1983, 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 officers recommended determination that there is no violation of section 337 of the Tariff Act of 1930 in this case. Second, the Commission will hear presentations concerning the appropriate remedy, the effect that such remedy 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 by law and to minimize the burden upon the parties.

Oral Arguments: Parties to the investigation and interested Government agencies may present oral arguments concerning the presiding officer's recommended determination. That portion of the total time allocated to each party or agency for oral argument may be used in any way the party or agency presentng arguments 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 arguments are reminded that such arguments must be based upon the evidentiary record certified to the Commission by the presiding officer.

Oral Presentations on Remedy, the Public Interest, and Bonding: 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 remedy, the public interest, and bonding. 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 remedy, the public interest, and bonding 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 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 a remedy, it must consider the effect of that remedy 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 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 a remedy, 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 therefore is interested in hearing presentations concerning the amount of the bond, if any, which should be imposed.

Time Limit for Oral Argument and Oral Presentation: Complainant, respondents (collectively), the Commission investigative attorney, 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 presenting both oral arguments on violation and oral presentations on remedy, the public interest, and bonding. Persons making only oral presentations on remedy, the public interest, and bonding 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, the public interest, and bonding. The complainant and the Commission investigative attorney also are 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, the public interest, and bonding. Written submissions on the question of violation must be filed not later than the close of business on April 4, 1983; written submissions on the questions of relief, the public interest, and bonding must be filed not later than the close of business

on April 8, 1983. 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 April 15, 1983.

Additional Information: Persons submitting briefs and/or written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines states above. Any person desiring to discuss confidential information or to submit a document (or a portion thereof) of 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 to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Secretary's Office.

Notice of this investigation was published in the **Federal Register** of June 3, 1982, 47 FR 24232.

FOR FURTHER INFORMATION CONTACT: P. N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0350.

Issued: March 15, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83–7530 Filed 3–22–83; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–141]

Certain Copper-Clad Stainless Steel Cookware; Order

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Janet D. Saxon as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register.**

Issued: March 14, 1983.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 83–7531 Filed 3–22–83; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–112]

Certain Cube Puzzles; Denial of Petition for Reconsideration

AGENCY: International Trade Commission.

ACTION: Denial of petition for reconsideration.

SUPPLEMENTARY INFORMATION: On December 29, 1982, the Commission concluded the above-captioned investigation under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) with a determination that there is a violation of that section in the importation into and sale in the United States of certain cube puzzles. On January 12, 1982, complainant Ideal Toy Corp. (Ideal) filed a petition for reconsideration pursuant to § 210.58 of the Commission's Rules of Practice and Procedure (19 CFR 210.58) requesting that the Commission issue cease and desist orders and broaden its exclusion order to include 4 by 4 and other cube puzzles. On February 17, 1983, Ideal withdrew its request for cease and desist orders.

On March 16, 1983, the Commission denied the petition for reconsideration.

Copies of the Commission's Action and Order and all other nonconfidential 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: William E. Perry, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0499.

Issued: March 17, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83–7534 Filed 3–22–83; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–123 (Preliminary)]

Certain Flat-Rolled Carbon Steel Products From Brazil

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Briazil of hot-rolled carbon steel plate, provided for in items 607.6615, 607.9400, 608.0710, and 608.1100 of the Tariff Schedules of the United States Annotated (TSUSA), and hot-rolled carbon steel products in coils, provided for in item 607.6610 of the TSUSA, which are alleged to be sold, or likely to be sold, in the United States at less than fair value (LTFV).[2]

Background

On January 31, 1983, a petition was filed with the Commission and the Department of Commerce by counsel on behalf of Bethlehem Steel Corp. alleging that imports of certain flat-rolled carbon steel products from Brazil are being, or are likely to be, sold in the United States at LTFV within the meaning of section 731 of the Tariff Act of 1930 (19 U.S.C. 1673). Accordingly, effective January 31, 1983, the Commission instituted a preliminary antidumping investigation under section 733(a) of the Act (19 U.S.C. 1673b(a)) 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 of such merchandise

Notice of the institution of the Commission's investigation 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** on February 9, 1983, (48 FR 6042). The conference was held in Washington, D.C., on February 17, 1983, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on the investigation to the Secretary of Commerce on March 17, 1983. A public version of the Commission's report, Certain Flat-Rolled Carbon Steel Products from Brazil (investigation No. 731–TA–123 (Preliminary), USITC publication 1361, March 1983), contains the views of the Commissioners and information developed during the investigation. Copies may be obtained by contacting the Office of the

[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 Stern dissenting with respect to products provided for in item 607.6610 of the TSUSA.

Secretary, 701 E Street NW., Washington, D.C. 20436, telephone (202) 523–5178.

Issued: March 17, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83–7535 Filed 3–22–83; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 731–TA–120, 121, and 122 (Preliminary)]

Certain Tapered Roller Bearings and Parts Thereof From Japan, the Federal Republic of Germany, and Italy

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan (investigation No. 731–TA–120 (Preliminary)), the Federal Republic of Germany (investigation No. 731–TA–121 (Preliminary)), and Italy (investigation No. 731–TA–122 (Preliminary)) of certain tapered roller bearings and parts thereof,[3] provided for in item 680.39 of the Tariff Schedules of the United States, which are alleged to be sold, or likely to be sold, in the United States at less than fair value (LTFV).

Background

On January 26, 1983, a petition was filed with the Commission and the Department of Commerce by counsel on behalf of Brenco, Inc. alleging that imports of certain tapered roller bearings and parts thereof from Japan, the Federal Republic of Germany, and Italy are being, or are likely to be, sold in the United States at LTFV within the meaning of section 731 of the Tariff Act of 1930 (19 U.S.C. 1673). Accordingly, effective January 26, 1983, the Commission instituted preliminary antidumping investigations under section 733(a) of the Act (19 U.S.C. 1673b(a)) 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 of such merchandise.

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** on February 2, 1983 (48 FR 4743). The conference was held in Washington, D.C., on February 16, 1983, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on the investigations to the Secretary of Commerce on March 4, 1983. A public version of the Commission's report, Certain Tapered Roller Bearings and Parts Thereof from Japan, the Federal Republic of Germany, and Italy (investigations Nos. 731–TA–120, 121, and 122 (Preliminary), USITC Publication 1359, March 1983), contains the views of the Commissioners and information developed during the investigations. Copies may be obtained by contacting the Office of the Secretary, 701 E Street NW., Washington, D.C. 20436, telephone (202) 523–5178.

Issued: March 14, 1983.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83–7528 Filed 3–22–83; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–124]

Certain Textile Spinning Frames With Automatic Doffers; Change of the Commission Investigative Attorney

Notice is hereby given that, as of this date, Wilhelm Zeitler, Esq., of the Unfair Import Investigations Division will be the Commission investigative attorney in the above-cited investigation instead of Jeffrey Neeley, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: March 15, 1983.

David I. Wilson,

Chief, Unfair Import Investigations Division.

[FR Doc. 83–7529 Filed 3–22–83; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–131]

Certain Variable Character Display Devices; Change of the Commission Investigative Attorney

Notice is hereby given that, as of this date, Arthur Wineburg, Esq., of the Unfair Import Investigations Division will be the Commission investigative attorney in the above-cited investigation instead of Jeffrey Neeley, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: March 15, 1983.

David I. Wilson,

Chief, Unfair Import Investigations Division.

[FR Doc. 83–7533 Filed 3–22–83; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 701–TA–152 (Final)]

Prestressed Concrete Steel Wire Strand From Brazil

Determination

On basis of the record [1] developed in its countervailing duty investigation on prestressed concrete steel wire strand from Brazil, the Commission unanimously determines, pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1617d(b)), that an industry in the United States is not materially injured or threatened with material injury, not is the establishment of an industry in the United States materially retarded, by reason of imports of steel wire strand for prestressing concreter (PC strand), provided for in item 642.11 of the Tariff Schedules of the United States, upon which bounties or grants are being paid.

Background

On August 10, 1982, the Department of Commerce made a preliminary determination that there is reason to believe or suspect that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930 (19 U.S.C. 1671) are being provided to manufacturers, producers, or exporters of PC strand in Brazil.

Accordingly, effective August 25, 1982, the Commission instituted an investigation under section 705(b) to determine whether 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 of PC strand from Brazil.

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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] Commissioner Stern dissenting and Commissioner Haggart not participating.

[3] For purposes of these investigations, the term "certain tapered roller bearings and parts there" covers 2-row tapered roller bearings having outside diameters of between 6.5 and approximately 11 inches and parts thereof, including cone and cup assemblies in sets, cone assemblies and cups sold separately, and other parts which may or may not be lubricated, sealed at the manufacturer's factory, and/or unitized, all the foregoing meeting the specifications established by the Association of American Railroads in Specification M–934–81.

[1] The "record" is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

On October 22, 1982, however, the Department of Commerce suspended its countervailing duty investigation concerning PC strand from Brazil because of an agreement by the Government of Brazil to offset all benefits which Commerce found to constitute subsidies with an export tax on all exports of the subject merchandise to the United States (47 FR 47048, Oct. 22, 1982). Accordingly, pursuant to section 704(f)(1)(B) of the Tariff Act (19 U.S.C. 1671c(f)(1)(B)), the Commission also suspended its investigation (47 FR 49908, Nov. 3, 1982). On November 12, 1982, a request to continue the investigation was filed with Commerce and the Commission pursuant to section 704(g)(2)) of the Tariff Act (19 U.S.C. 1671c(g)(2)) by counsel for petitioners. Accordingly, effective November 12, 1982, the Commission continued its investigation (47 FR 54189, December 1, 1982).

The final determination by the Department of Commerce that subsidies are being provided in Brazil to manufactures, producers, or exporters of PC strand was published in the **Federal Register** on February 1, 1983 (48 FR 4516).

If the final determination by the Commission in this continued investigation had been affirmative, the agreement would have remained in effect and no countervailing duty order would have been issued unless the agreement were terminated, violated or otherwise failed to meet the requirements of section 704. However, because the Commission's final determination is negative, the agreement will have no force or effect and the investigation will be terminated. (19 U.S.C. 1671c(f)(3)).

Notice of the institution of the Commission's investigation and of a hearing 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** on September 1, 1982, (47 FR 38647). The hearing was held in Washington, D.C. on October 19, 1982, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on the investigation to the Secretary of Commerce on March 14, 1983. A public version of the Commission's report, *Prestressed Concrete Steel Wire Strand from Brazil* (investigation No. 701–TA–152 (Final), USITC Publication 1358, 1983), contains the views of the Commission and information developed during the investigation.

Issued: March 14, 1983.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-7530 Filed 3-22-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 104–TAA–13]

Rayon Staple Fiber From Sweden

Determination

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 104(b) of the Trade Agreements Act of 1979, that an industry in the United States would be materially injured by reason of imports from Sweden of rayon staple fiber, provided for in item 309.43 of the Tariff Schedules of the United States and covered by an outstanding countervailing duty order, if the order were to be revoked.

Background

On October 28, 1980, the U.S. International Trade Commission received a request from counsel for Svenska Rayon, AB, the sole Swedish producer of rayon staple fiber, for an investigation under section 104 of the Trade Agreements Act of 1979 with respect to rayon staple fiber imported from Sweden. Accordingly, effective November 16, 1982, the Commission instituted investigation No. 104–TAA–13 under section 104(b) to determine whether an industry in the United States would be materially injured or threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of rayon staple fiber from Sweden, currently covered by a countervailing duty order, if the order were to be revoked.

Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notices in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notices in the **Federal Register** (47 FR 53151, Nov. 24, 1982, and 47 FR 56217, Dec. 15, 1982). The hearing was held in Washington, D.C. on February 7, 1983, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on the investigation to the Secretary of Commerce on March 15, 1983. A public version of the Commission's report, *Rayon Staple Fiber from Sweden* (investigation No. 104–TAA–13, USITC Publication 1360, 1983), contains the views of the Commission and information development during the investigation.

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

Issued: March 16, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-7532 Filed 3-22-83; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Investigation and Suspension Docket No. M–29788]

Charge for Shipments Moving on Order—Notify Bill of Lading N.M.F.T.A.

AGENCY: Interstate Commerce Commission.

ACTION: Final decision on reopening.

SUMMARY: The Commission finds unlawful the publication in the National Motor Freight Classification of the proposed order—notify rule and charge. The Commission clarifies and implements its policy regarding the subject matter appropriate for inclusion in freight classifications. Publishers of other freight classifications are directed either (1) to comply with this decision, or (2) to submit comments under their approved 5a or 5b agreements to show why the policy adopted here should not apply to them.

EFFECTIVE DATES: This decision is effective as of March 22, 1983. However, parties are given until September 19, 1983 to comply with the decision. Comments requested in the decision are due April 21, 1983.

FOR FURTHER INFORMATION CONTACT:

Jane Morris, (202) 275–6434

or

Howell I. Sporn, (202) 275–7691.

SUPPLEMENTARY INFORMATION: The Commission finds that the National Motor Freight Traffic Association's section 5a agreement does not authorize the National Classification Committee (NCC) to publish in the National Motor Freight Classification (NMFC) the proposed order—notify rule and charge, or any other rule and/or charge unrelated to classification and not prescribed by the Commission. The NCC shall remove all such rules and/or charges from the NMFC. Publishers of other freight classifications shall either: (1) Comply with this decision, or (2) submit comments under their approved

5a or 5b agreements to show why the policy clarification adopted here should not be applied to them.

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, Washington, DC, 20423, or call 289–4357 in the DC metropolitan area or toll free (800) 424–5403.

Decided: March 14, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison. Commissioner Andre was absent and did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83–7484 Filed 3–22–83; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Finance Applications; Decision—Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931, and 10932.

We find:

Each transaction is exempt from section 11343 of the Interstate Commerce Act, and complies with the appropriate transfer rules.

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.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsideration; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1181.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 20 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

Agatha L. Mergenovich,

Secretary.

For status, please call Team 2 at 202–275–7030.

Vol. No. OP2–FC–81230

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC–FC–81230. By decision of March 11, 1983, issued under 49 U.S.C. 10926 and the transfer rules of 49 CFR 1181, Review Board Number 3 approved the transfer to ATENHAN TRUCKING, INC., Deshler, NE, or Permit No. MC–153692 (Sub-Nos. 1, 2, 3, 4, and 5), issued June 29, 1981, June 15, 1981, February 4, 1982, June 11, 1982, and November 23, 1982, respectively, to NEBRASKALAND CONTRACT CARRIERS, INC., Kearney, NE, authorizing the transportation of such commodities as are dealt in by manufacturers and distributors of lumber yards and hardware stores, between points in the U.S., under continuing contract(s) with Payless Building Center, Inc., of Kearney, NE, and Georgia-Pacific Corporation, of Portland, OR; metal products, machinery, and building materials, between points in the U.S., under continuing contract(s) with Modern Farm Systems, Inc., of Webster City, IA; general commodities (except classes A and B explosives, and household goods), between points in the U.S., under continuing contract(s) with Our Own Hardware Company, of Minneapolis, MN; general commodities (except classes A and B exlposives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with (1) AIFP Trading Group, of Portland, OR, and its subsidiaries, and (2) Moose Creek, of Spokane, WA. A temporary authority application has been filed. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501.

For status, please call Team 4 at 202–275–7669.

Vol. No. OP4–FC–160

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC–FC–81287. By decision of March 16, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, Review Board Number 2 approved the transfer to FEDERAL TRANSPORT, INC., Dallas, TX, of Certificate No. MC–60157 (Sub-No. 36), issued February 15, 1983, to C. A. WHITE TRUCKING COMPANY, Dallas, TX, authorizing the transportation of *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except HI). Representative: Michael D. McCormick, 1301 Merchants Plaza, East Tower, Indianapolis, IN 46204. (317) 638–1301, for both transferee and transferor.

[FR Doc. 83–7479 Filed 3–22–83; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions

Motor Common and Contract Carriers of Property (fitness-only); Motor Common Carriers of Passengers (fitness-only); Motor Contract Carriers of Passengers; Property Brokers (other than household goods). The following applications for motor common or contract carriage of property and for a broker of property (other than household goods) are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** on December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common or contract carriage of passengers filed on or after November 19, 1982, are governed by Subpart D of the Commission's Rules of Practice. See 49 CFR Part 1160, Subpart D, published in the **Federal Register** on November 24, 1982, at 49 FR 53271. For compliance procedures, see 49 CFR 1160.86. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E.

These applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative of $10.00.

Amendments to the requrest 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, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated 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 says 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.

Agatha L. Mergenovich,

Secretary.

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 Team 2, (202) 275-7030.

Vol. No. OP2-124

Decided: March 17, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 100853 (Sub-16), filed February 23, 1983. Applicant: PINKETT'S SHORE LINES, INC., P.O. Box 451, Route 313, Greensboro Rd., Denton, MD 21629. Representative: J. Raymond Clark, 1225 Nineteenth St. NW., Suite 350, Washington, DC 20036-2441. Transporting *passengers*, in charter and special operations between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 162823, filed February 24, 1983. Applicant: TIM BATEMAN, d.b.a. TLD CHARTER, 233 W. Ridgecrest Blvd. #C, Ridgecrest, CA 93555. Representative: Tim Bateman, 237 Holly Canyon, Ridgecrest, CA 93555, 619-375-5950. Transporting *passengers*, in charter operations, beginning and ending at points in Kern and San Bernardino Counties, CA, and extending to points in NV and AZ.

Note.—Applicant seeks to provide privately-funded charter transportation.

MC 166433, filed February 24, 1983. Applicant: I.C.F. TRUCK LINE, 2637 So. 15 Lane, Kansas City, KS 66103. Representative: Frank C. Harvey (same address as applicant), 913-236-8583. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

For the following, please direct status calls to Team 4 at 202-275-7669.

Vol. No. OP4-162

Decided: March 17, 1983.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 166636, filed March 7, 1983. Applicant: LOUIS PATRICK MATTINGLY, Rt. 2, Box 45B, Springfield, KY 40069. Representative: Herbert D. Liebman, 403 W. Main St., P.O. Box 478, Frankfort, KY 40602, (502) 875-3493. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 166687, filed March 7, 1983. Applicant: ROEHLIG FORWARDING, INC., 32 Broadway, Suite 1600, New York, NY 10004. Representative: Jochen Rathert (same address as applicant), (212) 344-8510. As a *broker of general commodities* (except household goods), between points in the U.S.

For the following, please direct status calls to Team 5 at 202-275-5223.

Vol. No. OP5-123

Decided: March 14, 1983.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 61599 (Sub-143(a) filed March 2, 1983. Applicant: TRAILWAYS SOUTHEASTERN LINES, INC., 200 Spring St., NW, Atlanta, GA 30303. Representative: G.W. Hanthorn, 1500 Jackson St., Dallas, TX 75201, (214) 655-7937. (1) Transporting *Passengers*, in charter or special operations, betwen points in the U.S. (except HI). (2) Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI). NOTE: Applicant seeks other authority in MC-61599 Sub-143(b) published in this same issue.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 164049, filed February 28, 1983. Applicant: HAI VAN TRAN AND DAN NGOC PHAM, d.b.a. ROSE'S TOURS, 414 E. William St., Suite 3, San Jose, CA 95112. Representative: Hai Van Tran (same address as applicant), (408) 947-8533. Transporting *Passengers*, in special and charter operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded special and charter transportation.

MC 164669, filed February 28,1983. Applicant: FLEET LINES INC., P.O Box 715, Arcadia, CA 91006. Representative: Eva Magness, 817 Wigwam, Arcadia, CA 91006, (213) 446-7400. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 165179 (Sub-1), February 24, 1983. Applicant: CHAPARRAL TRUCKING COMPANY, Inc., 3003 Titleist St., Sprint, TX 77373. Representative: Robert L. Russell (same address as applicant), (713) 350-1065. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 166409, filed February 25, 1983. Applicant: PETER L. MCKENNA d.b.a. MACKENNA BROKERS, 4150-B Pleasantdale Road, Doraville, GA 30340.

Representative: Kim G. Meyer, P.O. Box 56282, Atlanta, GA 30303, (404) 523–1717. To operate as a *broker* of *general commodities* (except household goods), between points in the U.S., (except AK and HI).

MC 166598, filed March 4, 1983. Applicant: STARDUST TOURS, INC., P.O. Box 120396, Nashville, TN 37212. Representative: Robert L. Baker, Sixth Floor, U.S. Bank Bldg., Nashville, TN 37219, (615) 244–8100. Transporting *passengers*, in charter and special operations, between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

[FR Doc. 83-7486 Filed 3-22-83; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. OP5-121]

Motor Carries; Permanent Authority Decision

Decided: March 14, 1983.

The following operating rights applications, filed on or after July 3, 1980, are filed in connection with pending finance applications under 49 U.S.C. 10926, 11343 or 11344. The applications are governed by Special Rule 252 of the Commission's General Rules of Practice (49 CFR 1100.252).

Persons wishing to oppose an application must follow the rules under 49 CFR 1160.40–1160.49. Persons submitting protests to applications filed in connection with pending finance applications are requested to indicate across the front page of all documents and letters submitted that the involved proceeding is directly related to a finance application and the finance docket number should be provided. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. However, the Commission may have modified the application to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically 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 protests in the form of verified statements as to the finance application *or* to the following operating rights applications directly related thereto filed within 45 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except where the application involves duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

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.

By the Commission, Review Board Number 2, Members Carleton, Williams and Ewing.

Agatha L. Mergenovich,

Secretary.

MC 166429, filed February 23, 1983. Applicant: KEN-DALE EXPRESS, INC., 785 Union Commerce Bldg., Cleveland, OH 44115. Representative: John C. Bradley, Suite 1301, 1600 Wilson Blvd., Arlington, VA 22209, 703–522–0900. 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.—Applicant has filed a directly-related petition for continuance in control-exemption in No. MC-F 15171, published in this same issue.

[FR Doc. 83-7481 Filed 3-22-83; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. OP2-123]

Motor Carriers; Permanent Authority Decisions

Decided: March 16, 1983.

90-Day Intrastate Motor Common Carriers of Passengers. The following applications, filed on or after November 19, 1982, are governed by Part 1168 of the Commission's Rules of Practice. See 49 CFR Part 1168, published in the Federal Register on Novembr 24, 1982, at 47 FR 53275. For compliance procedures, see 49 CFR 1168.6 and 49 U.S.C. 10922(c)(2)(E).

Persons wishing to oppose an application must follow the rules under 49 CFR Part 1168. In addition to fitness grounds, applications may be opposed on the grounds that the transportation to be authorized would directly compete with a commuter bus operation and would have a significant adverse effect on all commuter bus service in the area in which the competing service will be performed. Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative of $10,000.

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, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated 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 25 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 30 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.

By the Commission, Review Board Number 1, Members Parker, Chandler, and Fortier.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are filed under 49 U.S.C. 10922(c)(2)(A) for authority to operate as a motor common carrier of passengers in intrastate commerce on a route over which applicant has interstate, regular-route authority on November 19, 1982.

Please direct status inquiries to Team 2, (202) 275-7030.

MC 134303 (Sub-7), filed March 1, 1983. Applicant: O'HARE WISCONSIN LIMOUSINE SERVICE, INC., 530 S. Michigan Ave., Chicago, IL 60605. Representative: Allan C. Zuckerman, 221 N. LaSalle St., Suite 826, Chicago, IL 60601, (312) 641-5900. Applicant seeks authority in intrastate commerce to conduct service at all intermediate points on the entire route in MC-134303 Sub 2 which traverse over the entire routes in IL and WI.

[FR Doc. 83-7482 Filed 3-22-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions

Motor Common and Contract Carriers of Property (except fitness-only); Motor Common Carriers of Passengers (public interest); Freight Forwarders; Water Carriers; Household Goods Brokers. The following applications for motor common or contract carriers of property, water carriage, freight forwarders, and household goods brokers are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common carriage of passengers, filed on or after November 19, 1982, are governed by Subpart D of 49 CFR Part 1160, published in the **Federal Register** on November 24, 1982 at 47 FR 53271. For compliance procedures, see 49 CFR 1160.86. Carriers operating pursuant to an intrastate certificate also must comply with 49 U.S.C. 10922(c)(2)(E). Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E. In addition to fitness grounds, these applications may be opposed on the grounds that the transportation to be authorized is not consistent with the public interest.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon 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 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.

We make an additional preliminary finding with respect to each of the following types of applications as indicated: common carrier of property-that the service proposed will serve a useful public purpose, responsive to a public demand or need; water common carrier-that the transportation to be provided under the certificate is or will be required by the public convenience and necessity; water contract carrier, motor contract carrier of property, freight forwarder, and household goods broker-that the transportation will be consistent with the public interest and the transportation policy of section 10101 of chapter 101 of Title 49 of the United States Code.

These presumptions 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.

Agatha L. Mergenovich,

Secretary.

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." Applications filed under 49 U.S.C. 10922(c)(2)(B) to operate in intrastate commerce over regular routes as a motor common carrier of passengers are duly noted.

Please direct status inquiries to Team 2, (202) 275-7030.

Vol. No. OP2-125

Decided: March 17, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 87113 (Sub-31), filed February 24, 1983. Applicant: WHEATION VAN LINES, INC., 8010 Castleton Rd., Indianapolis, IN 46250. Representative: Alan F. Wohlstetter, 1700 K St., NW, Washington, DC. 20006, (202) 833-8884. Transporting *household goods*, between points in the U.S. (except AK and HI), under continuing contract(s) with The Stroh Company, Inc., and its subsidiaries, Stroh Brewing Co., Jos. Schlitz Brewing Co., and Shaffer Brewing Co., all of Milwaukee, WI.

MC 107012 (Sub-801), filed February 24, 1983. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop, (same address as applicant), (219) 429-2110. Transporting *general*

commodities (except classes A and B explosives and commodities in bulk), between points in the U.S., under continuing contract(s) with Texas Instruments, Inc., of Dallas, TX.

MC 107012 (Sub-803), filed February 24, 1983. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant), (219) 429–2110. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S., under continuing contract(s) with R. R. Donnelley & Sons Company, of Chicago, IL.

MC 142672 (Sub-195), filed February 16, 1983. Applicant: DAVID BENEUX PRODUCE & TRUCKING, INC., P.O. Drawer F, Mulberry, AR 72947. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72701, (501) 521–8121. Transporting *general commodities* (except household goods and classes A and B explosives), between points in the U.S. (except AK and HI).

MC 144843 (Sub-8) (correction), filed January 31, 1983, published in the **Federal Register**, issue of February 24, 1983, and republished, as corrected this issue. Applicant: GRACE DISTRIBUTION SERVICES, INC., P.O. Box 308, Duncan, SC 29334. Representative: Paul M. Daniell, 1200 Atlanta Gas Light Tower, 235-Peachtree St. NE., Suite 1200, Atlanta, GA 30303. Transporting *general commodities* (except classes A and B explosives, and household goods), between points in the U.S. (except AK and HI).

Note.—The purpose of this republication is to correctly identify the exceptions as classes A and B explosives and household goods, only.

MC 149142 (Sub-5), filed February 25, 1983. Applicant: WESLEY J. REYNOLDS d.b.a. W.R. TRUCKING, 3022 MacArthur Blvd., Oakland, CA 94602. Representative: Wesley J. Reynolds (same address as applicant), 415–482–3165. Transporting (1) *paper and paper products*, between points in Navajo County, AZ, on the one hand, and, on the other, points in the U.S., under continuing contract(s) with Southwest Forest Industries, Inc., of Phoenix, AZ, and (2) *plastic pipe and plastic pipe fittings*, between points in CA, AZ, OR, WA, NV, ID, and UT, under continuing contract(s) with Apache Plastics, Inc., of Stockton, CA.

MC 163252, filed February 22, 1983. Applicant: M & W HOTSHOT, INC., P.O. Box 1967, Evanston, WY 82930. Representative: Melvin Johnson (same address as applicant), (307) 789–6858. Transporting *machinery, materials, equipment, materials, and supplies* used in or in connection with the discovery, development, production, refining, manufacturing, processing, storage, transmission and distribution of natural gas and their products and byproducts, between Houston, Corpus Christie, and Odessa, TX, Lafayette, LA, Haleyville, and Mobile, AL, Oklahoma City, OK, Long Beach, CA, and Seattle, WA, and points in San Juan County, NM, Uintah County, UT, Yellowstone County, MT, Valley County, MT, Bottineau County, ND, Moffat County, CO, and points in WY.

For the following, please direct status calls to Team 3 at 202–275–5223.

Vol. No. OP3–111

Decided: March 10, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 166445, filed February 25, 1983. Applicant: DEMAR BOREN, d.b.a. DEMAR BOREN CONTRACTING, P.O. Box 8, Bonanza, UT 84078. Representative: Rick J. Hall, P.O. Box 2465, Salt Lake City, UT 84110, (801) 531–1777. Transporting *ores and minerals*, between points in UT and CO, under continuing contract(s) with American Gilsonite Company of Salt Lake City, UT.

For the following, please direct status calls to Team 4 at 202–7669.

Vol. No. OP4–158

Decided: March 16, 1983.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing. (Member Williams not participating.)

MC 33037 (Sub-28), filed February 28, 1983. Applicant: STUDER TRUCK LINE, INC., Beattie, KS 66406. Representative: William B. Barker, P.O. Box 1979, Topeka, KS 66601. (913) 234–0565. Transporting *food and related products* between Los Angeles, CA, and points in Shawnee County, KS, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 116077 (Sub-442), filed March 10, 1983. Applicant: DSI TRANSPORTS, INC., P.O. Box 1505, Houston, TX 77001. Representative: E. Stephen Heisley, 1919 Pennsylvania Ave. NW., Suite 500, Washington, DC 20006, (202) 828–5015. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Texaco, Inc., of Bellaire, TX.

MC 144386 (Sub-8), filed March 10, 1983. Applicant: WILLIAM B. BLANEY, JOHN D. BLANEY, JR., AND JAMES M. BLANEY, d.b.a. BLANEY FARMS, R.D. #1, Box 218B, Perryopolis, PA 15473. Representative: William A. Gray, 2310 Grant Bldg., Pittsburgh, PA 15219, (412) 471–1800. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with Stroh Brewery Co., of Detroit, MI.

MC 146846 (Sub-7), filed March 4, 1983. Applicant: LOUIS LANE, INC., 1025 S. 3rd Ave., Wausau, WI 54401. Representative: Richard A. Westley, 4506 Regent S., Suite 100, P.O. Box 5086, Madison, WI 53705, (608) 238–3119. Transporting *paper and paper products*, between points in Lincoln County, WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 148576 (Sub-12), filed March 7, 1983. Applicant: DOTSON TRUCKING COMPANY, INC., 1220 Murphy Ave., SW., Atlanta, GA 30310. Representative: Brian S. Stern, North Springfield Professional Centre II, 5411–D Backlick Rd., Springfield, VA 22151, (703) 941–8200. Transporting (1) *telephone communication systems and equipment*, (2) *wire and cable*, (3) *cable reels*, between points in KY, TN, NC, SC, GA, AL, MS, LA, and FL, and (4) Waste or *scrap materials* and *copper rod*, between points in KY, TN, NC, SC, GA, AL, MS, LA, FL, AR, VA, MD, WV, and DC.

MC 151087 (Sub-13), filed March 7, 1983. Applicant: AREA INTERSTATE TRUCKING, INC., 15224 Dixie Hwy., Harvey, IL 60426. Representative: Leonard R. Kofkin, Suite 1515, 140 S. Dearborn St., Chicago, IL 60603, (312) 580–2210. 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 Santiam Midwest Lumber Co., of Grand Rapids, MI, Koos, Inc., of Kenosha, WI, Chicago Extruded Metals Co., of Cicero, IL, Chaparral Steel Company, of Midlothian, TX, and CertainTeed Corporation, of Valley Forge, PA.

MC 151607 (Sub-5), filed March 10, 1983. Applicant: TRANS–OVERLAND XPRESS, INC., 2222 East Grauwyler Rd., Irving, TX 75061. Representative: Russell R. Sage, P.O. Box 11278, Alexandria, VA 22312, (703) 750–1112. 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 153287 (Sub-6), filed March 8, 1983. Applicant: DRESSER TRANSPORTATION SERVICES, INC.,

400 W. Wilson Bridge Rd., Worthington, OH 43085. Representative: Geroge C. Sanders, 4445 Weaver Court N., Hilliard, OH 43026, (614) 438-3455. Transporting *mud, gas and oil well drillings compounds and related products,* between points in the U.S. (except HI), under continuing contract(s) with Dresser Industries, Inc. Magcobar Group, of Houston, TX.

MC 153516 (Sub-5), filed March 8, 1983. Applicant: INTERSTATE EXPRESS, INC., P.O. Box 37144, Millard, NE 68137. Representative: William J. Boyd, 2021 Midwest Rd., Suite 205, Oak Brook, IL 60521, (312) 629-2900. 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 158846 (Sub-1), filed March 8, 1983. Applicant: MONARCH MARKET STREET CORP., 505 Long Beach Blvd., Long Beach, NY 11561. Representative: William J. Augello, 120 Main St., Huntington, NY 11743, (516) 427-0100. Transporting *beverages,* between points in the U.S., (except AK and HI), under continuing contract(s) with Island Park Beverage Corp., of Island Park, NY, Monarch Long Beach Corporation, of Long Beach, NY, Lou Pat Enterprises, Ltd., of Freeport, NY, Brush Hollow Distributing, of Bay Shore, NY, Chicago Beverage System, of Chicago, IL, East Northport Beverage Co., Inc., of East Northport, NY, and The Lion Inc., of Wilkes-Barre, PA.

MC 159736 (Sub-1), filed March 7, 1983. Applicant: DTX, INC., 500 Hogsback Rd., Mason, MI 48854. Representative: John R. Frederick (same address as applicant), (517) 676-3800. Transporting *rubber and plastic products,* between points in the U.S., under continuing contract(s) with Dart Polymers, Inc., of Owensboro, KY.

MC 160977, filed March 7, 1983. Applicant: MAX R. GOULD, 205 West Main, Teton, ID 83451. Representative: J. D. Hancock, 30 South 2nd West, P.O. Box 427, Rexburg, ID 83440, (208) 356-5493. Transporting *coal, fertilizer, bulk rock, and road salt,* between points in ID, UT, MT, WY, and WA, under continuing contract(s) with Grant Produce, of Menan, ID, Reinke Grain Co., Inc., of Ashton, ID, Western Farm Service, of Parker, ID Madison Cooperative Association, of Rexburg, ID, City Transfer & Storage Co., Inc., of Soda Springs, ID, and Jefferson Co-op Supply, of Rigby, ID.

MC 166187, filed March 7, 1983. Applicant: W. L. STRENGTH, JR. d.b.a. PRATTVILLE TRANSPORTATION CO., 122 Oak Creek Circle, Prattville, AL 36067. Representative: Terry P. Wilson, 428 South Lawrence St., Montgomery, AL 36104, (205) 262-2756. Transporting *pulp, paper, and related products,* and *machinery,* between points in the U.S. (except AK and HI), under continuing contract(s) with Albany International Corp., Appleton Wire Division, of Montgomery, AL. Condition: The persons or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. 11343(A), or 49 U.S.C. 11343(e), or submit an affidavit indicating why such approval is unnecessary to the Secretary's office. In order to expedite issuance of any authority please submit a copy of the affidavit or proof of filing the application(s) for common control to Team 4, Room 2410.

MC 166597, filed March 4, 1983. Applicant: PAGE & BARNHILL TRUCKING, INC., Rt. 3, Box 176, Paris, TN 38242. Representative: James Page, 407 N. Market St., P.O. Box 1275, Paris, TN 38242, (901) 642-1755. Transporting *food products, and clay and minerals,* between points in the U.S. (except AK and HI).

Vol. No. OP4-161

Decided: March 17, 1983.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 129746 (Sub-2), filed March 11, 1983. Applicant: ARBE TRANSFER CO., INC., 675 New County Rd., Secaucus, NJ 07094. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934, (201) 234-0301. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between Secaucus, NJ, on the one hand, and, on the other, points in CT, RI, MA, NY, NJ, PA, OH, DE, MD, VA, and DC.

MC 138226 (Sub-1), filed March 11, 1983. Applicant: CHEVALLEY MOVING & STORAGE OF DEWEY, INC., 323 N. Osage St., P.O. Box 70, Dewey, OK 74029. Representative: Billy R. Reid, 1721 Carl St., Fort Worth, TX 76103, (817) 332-4718. 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 Phillips Petroleum Company and its subsidiaries, of Bartlesville, OK.

MC 143956 (Sub-38), filed March 11, 1983. Applicant: GARDNER TRUCKING CO., INC., P.O. Drawer 493, Walterboro, SC 29488. Representative: Steven W. Gardner, P.O. Box 393, Berne, IN 46711, (219) 589-8883. Transporting *malt beverages, food and related products,* and *wine,* between points in the U.S. (except AK and HI), under continuing contract(s) with Anheuser-Busch Companies, Inc., of St. Louis, MO.

MC 159587, filed March 10, 1983. Applicant: BREMER SUGAR AND DISTRIBUTING COMPANY, INC., 10034 Gordon St., Zeeland, MI 49464. Representative: Edward N. Button, 835 Oak Hill Ave., Hagerstown, MD 21740, (301) 739-4860. 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 Hi-Life Packing Company of Hamilton, MI.

MC 166527, filed February 24, 1983. Applicant: NORTH EAST ICE & TRUCKING CO., P.O. Box 2011, Wilmington, DE 19899. Representative: Maxwell A. Howell, 2554 Massachusetts Ave., NW, Washington, DC 20008, (202) 483-8633. Transporting *food and related products,* between those points in the U.S. in and east of WI, IL, MO, AR, and LA.

MC 166666, filed March 7, 1983. Applicant: PAVLICH, INC., 801 N. 5th, Kansas City, KS 66101. Representative: William B. Barker, 641 Harrison St., P.O. Box 1979, Topeka, KS 66601, (913) 234-0565. Transporting *nonmetallic minerals,* between points in KS, MO, IA and NE.

MC 166667, filed March 7, 1983. Applicant: T & M TRUCKING, INC., 35480 Cold Springs Rd., Lebanon, OR 97355. Representative: Hulan Miller (same address as applicant), (503) 451-1269. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Cascade West Transportation Brokers, of Lake Oswego, OR; Farmers Union Central Exchange, Inc., a/k/a Cenex, of Grove Heights, MN; and Willamette Industries, Inc., Lebanon Trucking Division, of Lebanon, OR.

MC 166677, filed March 7, 1983. Applicant: MOTOR TRANSPORT CORPORATION OF AMERICA, 7233 N. 16th Ave., Phoenix, AZ 85021. Representative: David Robinson, 2228 W. Northern Ave., Suite B-201, Phoenix, AZ 85021, (602) 864-0999. 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 166686, filed March 9, 1983. Applicant: GWALTNEY OF SMITHFIELD, LTD., P.O. Box 489, Smithfield, VA 23430. Representative: Frank L. Willard, Suite #1001, First & Merchants National Bank Bldg., Norfolk,

VA 23510, (804) 627-0070. Transporting *such commodities* as are dealt in or use by grocery stores and food business houses, between points in the U.S. (except AK and HI), under continuing contract(s) with Camellia Food Stores Cooperative, Inc., and Richfood, Inc., both of Richmond, VA; Military Distributors of Virginia, Inc., of Norfolk, VA; and Giant Food, Inc., of Washington, D.C.

MC 166707, filed March 9, 1983. Applicant: D & D DISTRIBUTION, INC., 340 Patterson St., Springfield, MO 65804. Representative: Raymond Talipski, 121 S. Main St., Taylor, PA 18517, (717) 344-4447. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in MO, on the one hand, and, on the other, points in the U.S. (except AK and HI).

For the following, please direct status calls to Team 5 at 202-275-7289.

Vol. No. OP5-122

Decided: March 14, 1983.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 61599 (Sub-143(b)), filed March 2, 1983. Applicant: TRAILWAYS SOUTHEASTERN LINES, INC., 200 Spring St., NW., Atlanta, GA 30303. Representative: G. W. Hanthorn, 1500 Jackson St., Dallas, TX 75201, (214) 655-7937. Over regular routes, transporting *passengers* between Greensboro, NC, and Knoxville, TN, serving all intermediate points, over Interstate Hwy 40.

Note (1).—Applicant seeks to provide regular-route service in interstate or foreign commerce.

Note (2).—Applicant seeks other authority in MC-61599 Sub 143(a) published in this same issue.

MC 117699 (Sub-6), filed March 3, 1983. Applicant: MILLER BROS. CO., INC., P.O.B. EA, Hyrum, UT 84319. Representative: Bruce W. Shand, Suite 280, 311 S. State St., Salt Lake City, UT 84111, 801-531-1300. Transporting *paper, and paper products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Crown Zellerbach Corporation of San Francisco, CA.

MC 162239 (Sub-3), filed March 4, 1983. Applicant: SALEM CARRIERS, INC., 245 Charlois Blvd., Winston-Salem, NC 17103. Representative: Steven J. Kalish, Suite 1105, 1750 Pennsylvania Ave., NW., Washington, DC 20006, (202) 393-5710. Transporting *textile mill products,* between points in the U.S. under continuing contract(s) with Unifi, Inc., of Greensboro, NC.

MC 166449, filed February 28, 1983. Applicant: SOUTHSIDE MOBILE HOME SERVICE, INC., 1321 West Danville St., South Hill, VA 23970. Representative: Archie W. Andrews, P.O. Box 1166, Eden, NC 27288, 919-635-4711. Transporting (1) *mobile homes,* (2) *buildings, complete, knocked down, or in sections,* and (3) *trailers,* between points in DE, MD, VA, NC, and DC.

[FR Doc. 83-7487 Filed 3-22-83; 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 protestants shall specify the service it 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 protestants 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-247

The following applications were filed in Region 5. Send protest to: Consumer Assistance Center, Interstate Commerce Commission, 411 West 7th Street, Suite 500, Fort Worth, TX 76102.

MC 33037 (Sub-5-4TA), filed March 11, 1983. Applicant: STUDER TRUCK LINE, INC., Rt. 1, Beattie, Kansas 66406. Representative: William B. Barker, P.O. Box 1979, Topeka, Kansas 66601. *Prepared Animal Food and Prepared Animal Food Supplements, and Materials and Supplies used in the Manufacture and Distribution of Prepared Animal Foods and Supplements,* Between City of Commerce, CA and Topeka, KS on the one hand, and, on the other, points in the United States (except AK and HI). Supporting Shipper: Hill's Pet Products, Inc., Topeka, Kansas.

MC 119766 (Sub-5-1TA), filed March 9, 1983. Applicant: NATIONAL OIL & SUPPLY CO., INC., d.b.a. ELLIS TRANSPORT, 2345½ W. Kearney, Springfield, MO 65803. Representative: Bruce McCurry, 910 Plaza Towers, Springfield, MO 65803. *Gasoline, distillate fuels, diesel fuels, automotive fuels, aviation fuels, industrial fuels, distillate and residual fuels, compounded lubricating oils and petroleum solvents,* in bulk, in tank vehicles, between points in AR, CO, IA, IL, KS, LA, MO, NB, TN and TX. Supporting shippers: Wood Petroleum Company, Branson, MO; Midwest Petroleum Company, Camdenton, MO; TransChemical, Inc., St. Louis, MO.

MC 128449 (Sub-5-3TA), filed March 9, 1983. Applicant: JIMMIE TUCKER TRUCKING, INC., P.O. Box 428, Broken Bow, OK 74728. Representative: William P. Parker, P.O. Box 54657, Oklahoma City, OK 73154. *Plywood,* between the facilities of Speltz Plywood Corporation at or near Memphis, TN on the one hand, and, on the other, points in AL, AR, CO, GA, IL, IN, KS, KY, LA, MI, MO, MS, NM, OK, TN, TX and WI. Supporting shipper: Speltz Plywood Corporation, Memphis, TN.

MC 143389 (Sub-5-6TA), filed March 9, 1983. Applicant: MERCHANTS DUTCH EXPRESS, INC., 2019 Jackson Street, Monroe, LA 71201. Representative: James K. Adams (same as above). Contract, Irregular. *Insulation and material and supplies used in the manufacture and distribution of insulation, except in tank vehicles,* between points in TX on the one hand, and points in AR, LA, OK, and MS on the other. Supporting shipper: Manville Service Corp., West Monroe, LA.

MC 150836 (Sub-5-4TA), filed March 11, 1983. Applicant: JOHN A. FOWLER, d.b.a. JOHN FOWLER TRUCKING, Route 4, #12 Robin Dale Lane, Burleson, TX 76028. Representative: A. William Brackett, 623 S. Henderson, 2nd Floor, Fort Worth, TX 76104. Contract,

Irregular: *Such merchandise as is dealt in by retail grocery chains and food business houses and equipment, materials and supplies used in the conduct of such business* from points in Dallas County, TX, to points in CA under a continuing contract with Shedd's Food Products, a Division of Beatrice Foods. Supporting shipper: Shedd's Food Products, Dallas, TX.

MC 161767 (Sub-5–3TA), filed March 9, 1983. Applicant: ROBBY SMITH BROKERAGE, INC., P.O. Box 7026, Forth Worth, TX 76111. Repesentative: Harry F. Horak, Suite 115, 5001 Brentwood Stair Rd., Forth Worth, TX 76112. *Frozen foods,* between points in WA, ID, CA, and UT, on the one hand, and, on the other, points in KS, OK, TX, AR, LA, and NM. Supporting shipper: The Lemons Co., Inc., Dallas, TX.

MC 165466 (Sub-5–4TA), filed March 11, 1983. Applicant: RICHARD GILBERT d.b.a. GILBERT & SONS, Route 4, Box 528, Tecumseh, OK 74873. Representative: William P. Parker, P.O. Box 54657, Oklahoma City, OK 73154. *Lumber and wood products,* between points in AR, AZ, CO, LA, NM, OK, OR, and TX. Restricted to traffic moving for the account of the supporting shippers. Supporting shippers: Higgins & Sons Roof Truss Co., Inc., Tecumseh, OK, Buford White Lumber Company, Inc., Shawnee, OK.

MC 166367 (Sub-5–1TA), filed March 11, 1983. Applicant: ROBERT AMBLER, Route 2, Box 122, Burleson, TX 76028. Representative: A. William Brackett, 623 S. Henderson, 2nd Floor, Forth Worth, TX 76104. Contract, irregular: *Travel and recreational trailers* between points in Johnson County, TX, on the one hand, and, on the other, points in states in the U.S. east of a line consisting of the eastern boundaries of the States of NM, CO, WY and MT. Supporting shipper: Komfort Industries of Texas, Inc., Burleson, TX.

MC 166675 (Sub-5–1TA), filed March 10, 1983. Applicant: C. R. WILSON & SONS VAN LINES, INC., 6706 Charles, Shawnee, KS 66216. Representative: Clyde N. Christey, Ks. Credit Union Bldg., 1010 Tyler, Suite 110–L, Topeka, KS 66612. Common: Irregular. *Household Goods, as defined in Practices of Motor Carriers of Household Goods, 17 MCC467,* Part 1) Between points in Wyandotte & Johnson Counties, KS, on the one hand, and points in CO east of U.S. Interstate Hwy. 25; points in AR north of U.S. Interstate Hwy. 40; points in OK north of U.S. Interstate Hwy. 40 and points in MO, on the other hand. Part 2) Between points in Jackson County, MO, on the one hand, and points in KS, those points in CO east of U.S. Interstate Hwy. 25; those points in AR north of U.S. Interstate Hwy. 40 and those points in OK north of U.S. Interstate Hwy. 40, on the other hand. Part 3) Between points in the Kansas City, KS/Kansas City, MO. Commercial zone, on the one hand, and points in NE on and south of U.S. Interstate Hwy. 80, on the other hand. Supporting shippers: There are 8 supporting shippers.

MC 166691 (Sub-5-1TA), filed March 9, 1983. Applicant: EMERSON ELECTRIC CO., 514 Earth City Expressway, Suite 100, Earth City, MO 63045. Representative: Fred Lenkman (same address as applicant). Contract; Irregular. *Primary metal products, fabricated metal products, electrical machinery, equipment, and supplies thereof,* between Washington, MO and its commercial zone on the one hand, and, on the other, points in the U.S., in and east of MN, IA, MO, OK, and TX under continuing contract(s) with Pauwels-Chance, Inc., Washington, MO. Supporting shipper: Pauwels-Chance, Inc., Washington, MO.

MC 166733 (Sub-5-1TA), filed March 11, 1983. Applicant: PETE WOLFE AND MALCOLM GRAVETTE, d.b.a. LAKESIDE TRUCKING CO., P.O. Box 667, Hughes, AR 72348. Representative: Pete Wolfe (same as applicant). *Building materials, and clay, concrete, glass or stone products* between points in AL, AR, FL, GA, IL, IN, KY, LA, MS, MO, NC, OK, SC, TN, TX and VA. Supporting shippers: Concrete Products, Inc., Memphis, TN; A & H Glass, Inc., Memphis, TN: Heath & House Construction Co., West Memphis, AR.

MC 166736 (Sub-5-1TA), filed March 11, 1983. Applicant: RKM EQUIPMENT & TRUCKING, INC., P.O. Box 767, Yukon, OK 73099. Representative: William P. Parker, P.O. Box 54657, Oklahoma City, OK 73154. *Metal products,* from Compton, Carson, Annaheim and Santa Ana, CA to points in the U.S. (except AK and HI). Supporting shippers: There are 5 supporting shippers.

The following applications were filed in Region 6. Send Protests to: Interstate Commerce Commission, Region 6 Motor Carrier Board, 211 Main St., Suite 501, San Francisco, CA 94105.

MC 152691 (Sub-6–2TA), filed March 8, 1983. Applicant: SANTOS RICO, d.b.a. AUTO TRANSPORTES, 521 San Miguel Dr., Corona, CA 91720, Representative: Santos Rico (same address as applicant). *Contract Carrier,* irregular routes: *Lock parts* between Los Angeles, CA and the U.S. Border at Mexicali, MX for the account of Weslock, Div of TRE Corp. for 270 days. Supporting shipper: Weslock, Div of TRE Corp., 13344 S. Main St., Los Angeles, CA 90061.

MC 42487 (Sub-6–76TA), filed March 11, 1983. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V.R. Oldenburg, P.O. Box 3062, Portland, OR 97208. *Contract Carrier,* irregular routes: *General commodities,* (except Classes A and B explosives, household goods and commodities in bulk), between points in the United States, (except Alaska and Hawaii, under continuing contract(s) with Montgomery Ward & Co. and its wholly-owned subsidiaries, Jefferson Ward Stores and Standard-T-Chemical, Inc, for 270 days. Supporting shipper(s): Montgomery Ward & Co., Jefferson Ward Stores, Standard-T-Chemicals, Inc., Montgomery Ward Plaza, Chicago, IL 60671.

MC 152014 (Sub-6–1TA), filed March 11, 1983. Applicant: MARSHALL DILLON TRANSPORT, INC., 7357 East Fayette St., Tucson, AZ 85730. Representative: Billy R. Reid, 1721 Carl St., Fort Worth, TX 76103. *Electronics, sub assemblies, and parts,* between points in AZ, AL, CA, GA and FL, for 270 days. Supporting shipper: Hughes Missiles Electronics, Inc., a div. Hughes Aircraft Co., P.O. Box 579, Eufaula, AL 36027.

MC 160345 (Sub-6–5TA), filed March 11, 1983. Applicant: EATON TRANSPORTATION COMPANY, INC., 2951 Coors Court, Santa Rosa, CA 95401. Representative: William D. Taylor, 100 Pine St., #2550, San Francisco, CA 94111. *Contract,* irregular; *Food and kindred products,* between points in Los Angeles, Orange, Riverside and San Bernardino Counties, CA on the one hand, and, on the other, points in Adams County, CO, under a continuing contract(s) with Food Products for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Food Products, 4303 Brighton Blvd., Denver, CO, 80216.

MC 263 (Sub-6–8TA), filed March 8, 1983. Applicant: GARRETT FREIGHTLINES, INC., P.O. Box 4048, Pocatello, ID 83201. Representative: Bruce A Bullock, One Woodward Avenue—26th Floor, Detroit, MI 48226. *Contract Carrier,* irregular routes. *General Commodities* (except Classes A and B explosives, commodities in bulk and those requiring special equipment, and household goods as defined by the Commission), between points in the U.S. (except AK and HI), under continuing contract with Montgomery Ward & Co., for 270 days. Supporting shipper:

Montgomery Ward & Co., Montgomery Ward Plaza, Chicago, IL 60671.

MC 41098 (Sub-6–19TA), filed March 10, 1983. Applicant: GLOBAL VAN LINES, INC., One Global Way, Anaheim, CA 92803. Representative: Alan F. Wohlstetter, 1700 K Street, NW., Washington, D.C. 20006. *Contract carrier,* irregular routes, *household goods* between points in the U.S. under continuing contract(s) with Amica Mutual Insurance Co. for 270 days. Supporting shipper: Amica Mutual Insurance Co., 10 Weybosset Street, Providence, RI 02904.

MC 41098 (Sub-6–20TA), filed March 10, 1983. Applicant: GLOBAL VAN LINES, INC., One Global Way, Anaheim, CA 92803. Representative: Alan F. Wohlstetter, 1700 K St., NW., Washington, D.C. 20006. *Contract carrier,* irregular routes, *computerized electronic communications switching systems and related parts and components* between points in the U.S. under continuing contract(s) with InteCom, Inc. of Allen, TX for 270 days. Supporting shippoer: InteCom, Inc., 601 InteCom Dr., Allen, TX 75002.

MC 41098 (Sub-6–21TA), filed March 11, 1983. Applicant: GLOBAL VAN LINES, INC., One Global Way, Anaheim, CA 92803. Representative: Alan F. Wohlstetter, 1700 K Street, NW., Washington, D.C. 20006. *Contract,* irregular; *Household goods,* between points in the U.S. for 270 days. Supporting shippers: Eads Transfer & Storage Company, dba Eads Moving Brokerage, 2730 S. Harbor Blvd. Suite J, Santa Ana, CA 92704.

MC 166281 (Sub-6–1 TA), filed March 7, 1983. Applicant: L. W. MILLER TRANSPORTATION, INC., 1180 W. 2nd N., Logan, UT 84321. Representative: Bruce W. Shand, Ste. 280, 311 S. State St., Salt Lake City, UT 84111. *Contract carriage,* irregular routes, transporting, *building and construction materials* between points in UT on the one hand and on the other points in CA, ID, OR, NV, WA, and MT, for 270 days, under a continuing contract(s) with Fullmer's Mill & Supply. An underlying ETA seeks 90 days authority. Shipper: Fullmer's Mill & Supply, 290 W. 400 S., Logan, UT 84321.

MC 140622 (Sub-6–1 TA), filed March 8, 1983. Applicant: JESSE NICHOLSON, d.b.a. JESSE NICHOLSON TRUCKING COMPANY, 2714 N. Compton Ave., Compton, CA 90220. Representative: Wilmer B. Hill, Suite 366, 1030 Fifteenth St., NW., Washington, D.C. 20005. *Contract carrier,* irregular routes: *Paper products and plastic products,* from Buena Park, CA to points in AZ, under continuing contract(s) with Williamette Industries, Inc., of Buena Park, CA, for 270 days. Supporting shipper: Williamette Industries, Inc., 6485 Descanso Ave., Buena Park, CA 90620.

MC 166699 (Sub-6–1TA), filed March 7, 1983. Applicant: PEERLESS ENTERPRISE OF EVANSTON, 927 Main St., Evanston, WY 82930. Representative: Willie Stogner, Sr. (same as applicant). *General Commodities, with usual exceptions,* between Unita County, WY; and Rich, Davis, Morgan, Summit, Weber and Salt Lake Counties, UT, for 270 days. Supporting shippers: There are 15 shippers. There statements may be examined at the Regional Office listed.

MC 166722 (Sub-6–1TA), filed March 10, 1983. Applicant: PERMAGAS, INC., 7605–222nd Street S.E., Woodinville, WA 98072. Representative: Frank Willson, 2828 Colby, Suite 400, Everett, WA 98201. (1) *Anhydrous ammonia, propane, butane and freon* between points in WA, on the one hand, and, on the other, between points in WA, OR, CA, and ID; (2) *building and roofing materials* between points in WA on the one hand, and on the other, points in OR, CA, NM, ID and NV; (3) *wood products, steel and machinery* between points in MT on the one hand, and on the other, points in WA, OR, and CA; (4) *floor tiles, building tiles, carpeting and glass products* between points in WA and CA on the one hand, and on the other, points in ID and OR; *liquid petroleum gases* between ports of entry on the international boundary line between U.S. and Canada, in Washington, on the one hand, and on the other, points in WA, OR and ID; *building materials, rock products and heavy machinery* between points in WA on the one hand, and on the other, points in NM, UT and ports of entry on the international boundary line between U.S. and Canada; *lime cement* in bulk and bag between points in WA, on the one hand, and on the other, points in ORM ID, CA and ports of entry on the international boundary line between U.S. and Canada; *heavy machinery, machine tools and steel* between points in WA and OR on the one hand, and on the other, points in OR, ID and MT; *frozen seafoods and perishables* between points in WA and ports of entry on the international boundary line between U.S. and Canada on the one hand, and, on the other, between points in OR and CA; *liquid, bulk and socked fertilizer* between points in WA and ports of entry on the international boundary line between U.S. and Canada on the one hand, and on the other, points in OR and CA, for 270 days. Supporting shippers: There are 7 shippers. Their statements may be examined in the office listed.

MC 166724 (Sub-6–1TA), filed March 11, 1983. Applicant: SHASTA-SISKIYOU TRANSPORT, INC., P.O. Box 604, Redding, CA 96001. Representative: Ronald C. Chauvel, 100 Pine St., #2550, San Francisco, CA 94111. *Petroleum and petroleum products,* between points in CA, OR and NV for 270 days. Supporting shippers: There are five shippers. Their statements may be examined at the Regional Office listed above.

MC 164104 (Sub-6–5TA), filed March 7, 1983. Applicant: SITTER'S TRANSPORT LIMITED, 406 1st Ave., Kindersley, Saskatchewan, CD SOL 1SO. Representative: James Robert Evans, 145 W. Wisconsin Ave., Neenah, WI 54956. *Hides* from ports of entry on the U.S.-Canadian border at points in MT to Manteca, CA, Chicago, IL, Sioux City, IA, Detroit, MI, Minneapolis, MN, St. Joseph and St. Louis, MO, Portland, OR, Seattle, WA, and their commercial zones for 270 days. An ETA seeks 120 days authority. Supporting shippers: EX-IM Trading Corporation, 1000 Valley Forge Circle, Suite 108, King of Prussia, PA 19406.

MC 154571 (Sub-6–2TA), filed March 9, 1983. Applicant: SOUTHERN INTERIOR HOLDINGS LTD., d.b.a. SOUTHERN INTERIOR EXPRESS, P.O. Box 1519, Creston, B.C., CD VOB IGO. Representative: Herb Rennich, (same as applicant). *Contract Carrier,* irregular routes: *Bituminous Coal,* Between ports of entry on the U.S./CD border at or near Boundry and Northport, WA on the one hand, WA, MT, ID and OR on the other, for the account of Byron Creek Colleries Ltd. for 270 days. Supporting shipper: Byron Creek Colleries, 237 4 Avenue S.W., Calgary, Alberta, Rm. 509 E.T.—T2P OH6.

MC 147044 (Sub-6–2TA) filed March 4, 1983. Applicant: SOUTHWEST TRAILS, INC., 6510 Cherry Avenue, Long Beach, CA 90805. Representative: John C. Russell, 1545 Wilshire Blvd., Suite 606, Los Angeles, CA 90017. *Contract Carrier,* irregular routes: *aviation gasoline in bulk* from El Segundo, CA to Fort Huachaca, AZ, Davis Monthan A.F.B., AZ and Nellis A.F.B., NV, for 270 days.

MC 166716 (Sub-6–1TA), filed March 10, 1983. Applicant: TITAN TRANSPORTATION, INC., 746 North Texas St., Fairfield, CA 94533. Representative: Ronald C. Chauvel, 100 Pine St., #2550, San Francisco, CA 94111. *Contract Carrier,* irregular routes; *non-hazardous chemical fertilizer in bags,* between Stockton and Los Angeles, CA, on the one hand, and, on

the other, Yuma and Phoenix, AZ, under continuing contract with Capel Klang Company for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Capel Klang, P.O. Box 5487, Stockton, CA 95205.

MC 166698 (Sub-6-1TA), filed March 8, 1983. Applicant: TOMCO TRANSPORTATION, INC., 8306 Stevenson Ave., Sacramento, CA 95828. Representative: Arden Riess, P.O. Box 7965, Stockton, CA 95828 *Refrigerated meat, wine and soap* except for bulk shipments in tank vehicles, between points in Northern California, including the counties of Monterey, King, Tulare and Inyo and all counties north thereof up to the Oregon state line; AZ: Flagstaff, Phoenix, Prescott and Tucson; OR: Points within 5 air miles of I-5 from Medford to Portland and Klamath Falls, Bend, and The Dalles, WA: Points within 5 air miles of I-5 from Vancouver to Seattle and Walla Walla, Pasco, Kennewick and Spokane. Also, within Northern California as described above for the movement of rail piggyback trailers used in Interstate Commerce, for 270 days Supporting shipper: D & D Services, 1984 Holmes St., Livermore, CA 94550.

MC 148791 (Sub-6-22TA), filed March 10, 1983. Applicant: TRANSPORT-WEST, INC., 1850 S. 1100 W., Woods Cross, UT 84087. Representative: Rick J. Hall, P.O. Box 2465, Salt Lake City, UT 84116. *Contract Carrier*, Irregular routes: *Paper and paper products*, from Denver, Co to Memphis, TN, for the account of Packaging Corporation of America, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Packaging Corporation of America, 1603 Orrington Avenue, Evanston, IL. 60204.

MC 166700 (Sub-6-1TA), filed March 9, 1983. Applicant: SHELDON R. MOWER & ROBERT E. READ, d.b.a. Two Rivers Trading Company, 5670 Leon Drive, Sparks, NV 89431. Representative: Sheldon R. Mower (same as applicant). *Ores and minerals, metal products, machinery, building materials, heavy equipment, and transportation equipment*, between points in CA, WA, OR, ID, WY, CO, OK, TX, NM, AZ, NV, UT, for 270 days. Supporting shippers: Values Mining, Inc., 5670 Leon Dr., Sparks, NV 89431; Carson Tahoe Rents, 1108 S. Stewart St., Carson City, NV 89701; Hurst Equipment Co., 311 Sutro St., Reno, NV 89512.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-7480 Filed 3-22-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30135]

Rail Carriers; Baltimore & Ohio Railroad Co. and Western Maryland Railway Co.; Trackage Rights Over Conrail in Baltimore, MD; Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts, under 49 U.S.C. 10505, the acquisition of trackage rights by the Baltimore and Ohio Railroad Company and Western Maryland Railway Company over 1.47 miles of Consolidated Rail Corporation track in Baltimore, MD, from the requirements of 49 U.S.C. 11343-45, subject to standard employee protective conditions.

DATES: This decision is effective on March 23, 1983. Petitions to reopen must be filed by April 12, 1983.

ADDRESSES: Send petitions to reopen to:

(1) Rail Section, Room 5349, Interstate Commerce Commission, Washington, DC 20423

and

(2) Petitioners' representative: Peter J. Shudtz, P.O. Box 6419, Cleveland, OH 44101.

Pleadings should refer to Finance Docket No. 30135.

FOR FURTHER INFORMATION CONTACT:

Louis E. Gitomer, (202) 275-7245

or

Anne K. Quinlan, (202) 275-6458.

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 toll free (800) 424-5403 or, in the DC metropolitan area, 289-4357.

Decided: March 16, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison. Commissioner Andre was absent and did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-7483 Filed 3-22-83; 8:45 am]

BILLING CODE 7035-01-M

[No. MC-F-15128; OP 4F-159]

Rail Carriers; Royal Lines, Inc.; Purchase Exemption; Universe Company, Inc., and Irving, L. Johnson; Control Exemption-Royal Lines, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemptions.

SUMMARY: Pursuant to 49 U.S.C. 11343(e), and Commission's regulations in Ex Parte N. 400 (Sub-No. 1), *Procedures for Handling Exemptions Filed by Motor Carriers of Property Under 49 U.S.C. 11343*, 47 FR 53303 (November 24, 1982), Royal Lines, Inc. seeks an exemption from the requirement under section 11343 of prior regulatory approval for its purchase of a portion of the operating rights of The Universe Company Inc., a motor carrier, (i.e., Certificates Nos. MC-136816 (Sub-Nos. 3, 10, 11, 13, 14 and 15), which certificates, collectively, authorize the irregular-route motor common carrier transportation of meats, food and related products, and building materials from and to various points and States located primarily east of the Mississippi River). Additionally, pursuant to 49 U.S.C. 11343(e) and the Commission's regulations in *Proceedings for Handling Exemptions Filed by Motor Carriers* 367 I.C.C. 113 (1982), Irving L. Johnson who owns 100 percent of the stock of the Universe Company, Inc., seeks an exemption from the requirement under section 11343 of prior regulatory approval for his acquisition of 100 percent of the stock of Royal Lines, Inc.

DATES: Comments must be received within 30 days after the date of publication in the **Federal Register.**

ADDRESSES:

(1) Motor Section, Room 2353, Interstate Commerce Commission, Washington, D.C. 20423

and

(2) Petitioner's representative, Arlyn L. Westergren, Suite 201, 9202 West Dodge Road, Omaha, NE 68114.

Comments should refer to No. MC-F-15128.

FOR FURTHER INFORMATION CONTACT: Warren C. Wood, (202) 275-7977.

SUPPLEMENTARY INFORMATION: Please refer to the petition for exemptions, which may be obtained free of charge by contacting petitioner's representative. In the alternative, the petition for exemption may be inspected at the offices of the Interstate Commerce Commission during usual business hours.

Decided: March 17, 1983.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-7488 Filed 3-22-83; 8:45 am]

BILLING CODE 7035-01-M

[OP 5-MCF-120; No. MC-F-15171]

Rail Carriers; U.S. Truck Lines, Inc. of Delaware, Continuance in Control Exemption; Ken-Dale Express, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Pursuant to 49 U.S.C. 11343(e) and the Commission's regulations in Ex Parte No. 400 (Sub-No. 1), *Procedures for Handling Exemptions filed by Motor Carriers of Property under 49 U.S.C. 11343, 47 FR 55303* (November 24, 1982), U.S. Truck Lines, Inc. of Delaware, seeks and exemption from the requirement under section 11343 of prior regulatory approval for their continuance in control of Ken-Dale Express, Inc. Under the proposed transaction, U.S. Truck Lines, Inc. of Delaware a non carrier holding company, would directly control Ken-Dale Express, Inc. through a majority stock interest. Petitioner also controls through stock ownership (1) Be-Mac Transport Company, Inc., MC-10872 and subs thereto, (2) Brown Express, Inc., MC-46054 and subs thereto, (3) Central Truck Lines, Inc., MC-36473 and subs thereto, (4) The Cleveland, Columbus & Cincinnati Highway, Inc., MC-3419 and 3420 and subs thereto, (5) Kanawha Cartage Company, MC-150148 and subs thereto, (6) Mercury Freight Lines, Inc., MC-113528 and subs thereto, (7) Motor Express, Inc. of Indiana, MC-28813 and subs thereto, (8) Motor Express, Inc. (NJ), MC-1778 and subs thereto, (9) National Tank Truck Delivery, Inc., MC-116132 and subs thereto, (10) Ohio Delivery, Inc., MC-142758 and subs thereto, and (11) Motor Express Rentals Corporation, MC-164862 and subs thereto.

DATES: Comments must be received within 30 days after the date of publication in the **Federal Register.**

ADDRESS: Send comments to:

(1) Motor Section, Team 5, Room 2414, Interstate Commerce Commission, Washington, DC 20423
and
(2) Petitioner's representative, John C. Bradley, Suite 1301, 1600 Wilson Boulevard, Arlington, VA 22209.

Comments should refer to No. MC-F-15171.

FOR FURTHER INFORMATION CONTACT: Lois Thompson, (202) 275-7289.

SUPPLEMENTARY INFORMATION: Please refer to the petition for exemption, which may be obtained free of charge by contacting petitioner's representative. In the alternative, the petition for exemption may be inspected at the offices of the Interstate Commerce Commission during usual business hours.

Note.—Ken-Dale Express, Inc., has filed a directly-related application in No. MC-166429, published in this same issue.

Decided March 14, 1983.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-7489 Filed 3-22-83; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387]

Rail Carriers; Exemptions for Contract Tariffs

AGENCY: Interstate Commerce Commission

ACTION: Notices of provisional exemptions

SUMMARY: Provisional exemptions are granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the below-listed contract tariffs may become effective on one day's notice. These exemptions 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: Douglas Galloway, (202) 275-7278.

SUPPLEMENTARY INFORMATION: The 30-day notice requirement is not necessary in these instances 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 requests meet the requirements of 49 U.S.C. 10505(a) and are granted subject to the following conditions:

These grants neither shall be construed to mean that the Commission has approved the contracts for purposes of 49 U.S.C. 10713(e) not 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.

Sub-No.	Name of railroad, contract No. and specifics	Review Board [1]	Decided date
862	Norfolk and Western Railway Co., ICC-NW-C-6012, supplement 1, (coal) via Port of Lamberts Point, VA	2	3-16-83
865	Denver & Rio Grande Western Railroad Co. ICC-DRGW-C-0089, (household products)	2	3-16-83
866	Norfolk and Western Railway Co., ICC-NW-C-0051, (bone chips, degreased)	3	3-16-83
867	Richmond, Fredericksburg and Potomac Railroad Co., ICC-RFP-C-0014, (used motor vehicles)	1	3-16-83
868	Richmond, Fredericksburg and Potomac Railroad Co.; ICC-RFP-C-0015, (used motor vehicles)0	2	3-16-83

[1] Review Board No. 1, members Parker, Chandler, and Fortier. Review Board No. 2., Members Carleton, Williams, and Ewing. Member Williams not participating. Review Board No. 3, Members Krock, Joyce, and Dowell.

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

(49 U.S.C 10505)

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-7336 Filed 3-22-83; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL SCIENCE FOUNDATION

Subcommittee on Millimeter- and Submillimeter-Wavelength Astronomy of the Advisory Committee for Astronomical Sciences; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Subcommittee on Millimeter- and Submillimeter-Wavelength Astronomy.

Date and time: April 7, 1983, 9:00 a.m. to 4:00 p.m.

Place: Rotunda Building, O'Hare Airport Terminal Chicago, Illinois.

Type of meeting: Open.

Contact person: Dr. Vernon L. Pankonin, Division of Astronomical Sciences, Room 618, National Science Foundation, Washington, DC, 20550, 202/357-9696.

Summary Minutes: May be obtained from the contact person.

Purpose of committee: To study future needs for this field of millimeter- and submillimeter-wavelength astronomy.

Agenda: Discussion on the text of the report and the recommendations which this Subcommittee is preparing for submission to the Astronomy Advisory Committee on April 28, 1983.

Dated: March 17, 1983.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 83-7407 Filed 3-22-83; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed meetings of the ACRS Subcommittees and of the full Committee, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published February 23, 1983 (48 FR 7660). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. Those Subcommittee meetings for which it is anticipated that there will be a portion or all of the meeting open to the public are indicated by an asterisk (*). It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 a.m. and Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the April 1983 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone 202/634-3267, ATTN: Barbara Jo White) between 8:15 a.m. and 5:00 p.m., Eastern Time.

ACRS Subcommittee Meetings

**Joint Metal Components and Combination of Dynamic Loads*, March 29, 1983, Washington, DC. The Subcommittee will review the reevaluation of double-ended guillotine pipe break design requirements for Westinghouse PWR plants.

**Clinch River Breeder Reactor (CRBR)*, March 30, 1983 (Tentative), Washington, DC. The Subcommittee will continue the review of the CRBR construction permit application.

**Seabrook Nuclear Power Station Units 1 and 2*, April 1-2, 1983, Hampton Beach, NH. The Subcommittee will visit the plant and review the application of the Public Service Company of New Hampshire for an operating license.

**Reactor Operations*, April 6, 1983, Washington, DC. The Subcommittee will review the draft final rules, "Immediate Notification Requirements," 10 CFR 50.72, and the revised "Licensee Event Report (LER) Rule," 10 CFR 50.73.

**Systematic Evaluation Program*, April 7, 1983, Washington, DC. The Subcommittee will discuss the Systematic Evaluation Program review of Haddam Neck.

**Joint Reliability and Probabilistic Assessment and Extreme External Phenomena*, April 13, 1983, Washington, DC. The Subcommittee will discuss NREP (National Reliability Evaluation Program) and the use of probabilistic assessment in the licensing process, systems interactions, the Safety Goal Policy Evaluation plan, seismic design margins, and the reevaluation of design basis earthquakes for plants in the Eastern United States.

**General Electric Water Reactors*, April 21-22, 1983, Los Angeles, CA. The Subcommittee will review the application of General Electric for a final design approval of the GESSAR II (a GESSAR 238 Nuclear Island).

**Waste Management*, April 21-23, 1983 (Tentative), Washington, DC. The Subcommittee will review and comment on the Department of Energy's Site Characterization Report for the Basalt Waste Isolation Project (Hanford).

**Class-9 Accidents*, April 25, 1983, Washington, DC. The Subcommittee will review "The Industry Degraded Core Rulemaking (IDCOR) Program".

**Electrical Systems*, April 26, 1983, Washington, DC. The Subcommittee will review the status of the NRC sponsored research and the status of the NRC Generic Safety Issues relating to the electrical systems in nuclear plants.

**Westinghouse Water Reactors*, April 26, 1983, Washington, DC. The Subcommittee will discuss preliminary design information for the Westinghouse advanced pressurized water reactor (APWR).

**Reactor Radiological Effects*, April 28-30, 1983 (Tentative), Washington, DC. The Subcommittee will discuss NRC Staff's response to the ACRS comments and recommendations on control room habitability, Shippingport decommissioning, the potassium iodide (KI) issue, and generic safety issues.

**Anticipated Transient Without Scram (ATWS)*, Date to be determined (April, Tentative), Washington, DC. The Subcommittee will continue review of the proposed rule on ATWS.

**AC/DC Power Systems Reliability*, May 10, 1983, Washington, DC. The Subcommittee will discuss the status of the NRC work on its reliability of AC/DC power systems with the principal item of discussion being the NRC work on station blackout.

**Safety Research Program*, May 11, 1983, Washington, DC. The Subcommittee will review the NRC Safety Research Program and Budget for FY 1985 and 1986, along with the Office of Research responses to ACRS recommendations included in a recent ACRS report to Congress (NUREG-0963).

**Joint Reliability and Probabilistic Assessment and Extreme External Phenomena*, May 11, 1983, Washington, DC. The Subcommittee will review the status of the NRC sponsored research relating to reliability and probabilistic assessment and external events.

**Human Factors*, May 19, 1983, Washington, DC. The Subcommittee will meet: (a) To review the adequacy of the application of the generic safety issue prioritization methodology to human factors related safety issues; (b) to review proposed human factors related modifications to the "General Design Criteria for Nuclear Power Plants," 10 CFR Part 50 Appendix A; (c) to be briefed by the Office of Inspection and Enforcement on recent activities at the NRC's incident response center; (d) to review the Human Factors Research Budget for FY 1985 and 1986; and (e) to discuss Dr. G. Salvendy's proposal for training human factors engineers relative to the safe design and operation of nuclear power plants.

**Joint Metal Components and Reactor Fuels*, May 19, 1983, Washington, DC. The Subcommittee will discuss BWR pipe cracking, turbine disk cracking, reactor coolant pump seal failure and fuel cladding degradation.

**Emergency Core Cooling Systems (ECCS)*, May 24-25, 1983, Idaho Falls, ID. The Subcommittee will review the NRC research programs in loss of collant accidents (LOCA) and transient research.

**Systematic Evaluation Program*, Date to be determined (May, Tentative), Washington, DC. The Subcommittee will review the integrated safety assessment of systematic evaluation program for La Crosse Boiling Water Reactor.

**Human Factors*, Date to be determined (May, Tentative), Washington, DC. The Subcommittee will review the question of what qualifications would be desirable for members of a nuclear power plant operating staff.

**Plant Features Important to Safety*, June 7, 1983, Washington, DC. The Subcommittee will obtain from the NRC Staff a status report and program plans on Equipment Qualification and Classification Systems dealing with both mechanical and electrical components.

New initiatives in the quality assurance area will be explored.

*Safety Research Program, June 8, 1983, Washington, DC. The Subcommittee will discuss the draft ACRS report to the Commission on the NRC Safety Research Program and Budget for FY 1985 and 1986.

*Midland Plant Units 1 and 2, Date to be determined, Washington, DC. The Subcommittee will review Consumers Power Company's (CPCo) plan for an audit of plant quality at Midland Plant Units 1 and 2. In addition, representatives of CPCo will report on design and construction problems at Midland, their disposition, and the overall effectiveness of the effort to assue appropriate plant quality. The Committee will be briefed on CPCo's Construction Completion Plan.

*Metal Components, Date to be determined, Washington, DC. The Subcommittee will discuss the NRC action plan on integrity of bolts.

ACRS Full Committee Meeting

April 14–16, 1983: Items are tentatively scheduled.

*A. *Clinch River Breeder Reactor (CRBR)*—Consider the request for a construction permit for this facility.

*B. *Seabrook Nuclear Power Station Units 1 and 2*—Consider the request for an operating license for this facility.

*C. *Yankee Nuclear Power Station*—Review the results of the systematic evaluation program for this facility.

*D. *Haddem Neck Plant*—Review the results of the systematic evaluation program for this facility.

*E. *Prioritization of Generic Issues*—Discuss application of proposed prioritization methodology to unresolved generic issues.

*F. *Reporting of Operating Events*—Discuss proposed changes in NRC rules (10 CFR Part 50) regarding submittal of licensee event reports.

*G. *Meeting with NRC Commissioners*—Discuss activities related to consideration of Class-9 Accidents in the regulatory process and the related Accident Source Term Program.

*H. *ACRS Subcommittee Activities*—Reports of designated ACRS Subcommittees regarding ongoing activities related to matters such as: *Waste Management and Disposal* including proposed DOE guidelines for selection of waste repositories for high level radioactive wastes (10 CFR Part 960); *Regulatory Requirements* including proposed NRC Regulatory Guide on Instrument Sensing Lines (Task No. IC 126–5); *Regulatory Policies and Practices* including proposed legislative and administrative changes to change the regulatory process; *Regionalization* of NRC activities; *Safety Philosophy, Technology and Criteria* including items related to precursor study of operating events, the NREP program, NRC systems interaction program, and seismic events; and consideration of the double-ended pipe break as the DBA in the regulatory process.

*I. *Recent Operating Experience*—Hear and discuss NRC Staff reports regarding recent operating experiences including failure of scram circuit breakers to operate properly at the Salem Nuclear Plant.

May 12–14, 1983—Agenda to be announced.

June 9–11, 1983—Agenda to be announced.

Dated: March 17, 1983.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 83-7408 Filed 3-22-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-348 and 50-364]

Alabama Power Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 30 to Facility Operating License No. NPF–2 and Amendment No. 22 to Facility Operating License No. NPF–8 issued to Alabama Power Company (the licensee), which revised Technical Specifications for operation of the Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2 (the facilities) located in Houston County, Alabama. The amendments are effective as of the date of issuance.

The amendments delete Technical Specification Limiting Conditions for Operation and surveillance requirements for the boron injection tank and the heat tracing system.

The application for the amendments 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 amendments. Prior public notice of these amendments was not required since these amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 651.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see: (1) The application for amendments dated December 30, 1982, as supplemented February 11 and March 4, 1983, (2) Amendment Nos. 30 and 22 to License Nos. NPF–2 and NPF–8, 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, N.W., Washington, D.C. and at the George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303. 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 15th day of March, 1983.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch #1, Division of Licensing.

[FR Doc. 83-7409 Filed 3-22-83; 8:45 am]

BILLING CODE 7590-01-M

Alabama Power Co. (Joseph M. Farley Nuclear Plant, Unit No. 1); Order Confirming Licensee Commitments on Post-TMI Related Issues

[Docket No. 50-348]

I.

Alabama Power Company (the licensee) is the holder of Facility Operating License No. NPF–2 which authorizes the operation of the Farley Nuclear Plant, Unit No. 1 (the facility) at steady-state power level not in excess of 2652 megawatts thermal. The facility consists of a pressurized water reactor (PWR) located at the licensee's site near the City of Dothan, Alabama.

II.

Following the accident at Three Mile Island Unit No. 2 (TMI–2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities based on the experience from the accident at TMI–2 and the official studies and investigations of the accident. The

staff's proosed requirements and schedule for inplementation are set forth in NUREG–0737, "Clarification of TMI Action Plan Requirements." Among these requirements are a number of items, consisting of hardware modifications, administrative procedure implementation and specific information to be submitted by the licensee, scheduled to be completed on or after July 1, 1981. On March 17, 1982, a letter (Generic Letter 82–05) was sent to all licensees of operating power reactors for those items that were scheduled to be implemented from July 1, 1981 through March 1, 1982. Subsequently, on May 5, 1982, a letter (Generic Letter 82–10) was also sent to all licensees of operating power reactors for those items that were scheduled for implementation after March 1, 1982. These letters are hereby incorporated by reference. In these letters each licensee was requested to furnish within 30 days pursuant to 10 CFR 50.54(f) the following information for items which the staff had proposed for completion on or after July 1, 1981:

(1) For applicable items that have been completed, confirmation of completion and the date of completion, (2) for items that have not been completed, a specific schedule for implementation, which the licensee committed to meet, and (3) justification for delay, demonstration of need for the proposed schedule, and a description of the interim compensatory measures being taken.

III.

Alabama Power Company responded to Generic Letter 82–05 by letter dated April 16, 1982; Alabama Power Company responded to Generic Letter 82–10 by letter dated June 4, 1982. In these submittals, Alabama Power Company confirmed that all except for one of the items identified in the Generic Letters had been completed and made a firm commitment to complete the remainder. The attached Tables summarizing the licensee's schedular commitments or status were developed by the staff from the Generic Letters and the licensee-provided information.

There are six items from Generic Letter 82–10 that, as noted in the Table (Attachment 2), have licensee schedules to be determined and are therefore not included in this Order. Some of the items addressed in this Order are considered by the licensee to be completed or to require no modifications. The staff's evaluation of the licensee's delays for the remaining item is provided herein:

II.B.2 Plant Shielding

Part of this item will be delayed by the licensee and will be completed during the next refueling outage, R.O.V. R.O.V is scheduled to start in January 1983 and to continue for about 10 weeks. The delay was caused by late delivery of electrical disconnect devices for eight motor-operated valves (MOV's). The electrical disconnect devices have been received and are installed. During R.O.V the devices will be electrically connected and energized. All shielding required by this item has been installed. The licensee has stated that temporary shielding methods and procedures to allow operation of the eight MOV's will be used as a compensatory measure until final installation of the electrical disconnect devices has been completed.

We find, based on the above evaluation, that: 1) the licensee has taken corrective actions regarding the delays and has made a responsible effort to implement the NUREG–0737 requirement noted; 2) there is good cause for the one delay (equipment delay); and 3) as noted above, interim compensatory measures have been provided.

In view of the foregoing, I have determined that these modifications and actions are required in the interest of public health and safety and, therefore, the licensee's commitment should be confirmed by Order.

IV.

Accordingly, pursuant to Sections 103, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered effective immediately that the licensee shall: Implement and maintain the specific items described in the Attachments to this Order in the manner described in the licensee's submittals noted in Section III herein no later than the dates in the Attachments.

V.

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register.** A request for a hearing shall be addressed to the Director, 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 licensee, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order. This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 14th day of March, 1983.

For the Nuclear Regulatory Commission.

Robert A. Purple,

Deputy Director, Division of Licensing, Office of Nuclear Reactor Regulation.

PLANT NAME: JOSEPH M. FARLEY, NUCLEAR PLANT, UNIT 1

ATTACHMENT 1—LICENSEE'S COMMITMENTS ON APPLICABLE NUREG–0737 ITEMS FROM GENERIC LETTER 82–05

Item	Title	NUREG–0737 schedule	Requirement	Licensee's Completion Schedule (or Status)[1]
I.A.3.1	Simulator Exams	10/1/81	include simulator exams in licensing examinations	Complete.
II.B.2	Plant Shielding	1/1/82	Modify facility to provide access to vital areas under accident conditions.	Refueling outage V (1/83).
II.B.3	Post-accident sampling	1/1/82	Install upgrade post-accident sampling capability	Complete.
I.I.B.4	Training for Mitigating Core Damage.	10/1/81	Complete training program	Do.
II.E.1.2	Aux FW Indication & Flow Indicator.	7/1/81	Modify instrumentation to level of safety grade	Do.
II.E.4.2	Containment Isolation Dependability.	7/1/81	Part 5—lower containment pressure setpoint to level compatible with normal operation.	Do.
II.E.4.2	Containment Isolation Dependability.	7/1/81	Part 7—isolate purge and vent valves on radiation signal.	Do.
II.F.1	Accident Monitoring	1/1/81	(1) Install noble gas effluent monitors	Do.
		1/1/82	(2) Provide capability for effluent monitoring of iodine	Do.
		1/1/82	(3) Install in-containment radiation-level monitor	Do.

PLANT NAME: JOSEPH M. FARLEY, NUCLEAR PLANT, UNIT 1—Continued

Item	Title	NUREG-0737 schedule	Requirement	Licensee's Completion Schedule (or Status)[1]
		1/1/82	(4) Provide continuous indication of containment pressure.	Do.
		1/1/82	(5) Provide continuous indication of containment water level.	Do.
		1/1/82	(6) Provide continuous indication of hydrogen concentration in containment.	Do.

[1] Where completion date refers to a refueling outage (the estimated date when the outage begins), the item will be completed prior to the restart of the facility.

ATTACHMENT 2.—LICENSEE'S COMMITMENTS ON APPLICABLE NUREG-0737 ITEMS FROM GENERIC LETTER 82-10

Item	Title	NUREG-0737 schedule	Requirement	Licensee's completion schedule (or status)[1]
I.A.1.3.1	Limit Overtime	10/1/82 per Gen. Ltr. 82-12 dtd. 6/15/82.	Revise administrative procedures to limit overtime in accordance w/NRC Policy Statement issud by Gen. Ltr. No. 82-12, dtd. June 15, 1982.	Do.
I.A.1.3.2	Minimum Shift Crew [2]	To be superseded by Proposed Rule.	To be addressed in the Final Rule on Licensed Operator Staffing at Nuclear Power Units.	To be addressed when Final Rule is issued.
I.C.1	Revise Emergency Procedures [2]	Superseded by SECY 82-111	Reference SECY 82-111, Requirements for Emergency Response Capability.	To be determined.
II.D.1.2	RV and SV Test Programs	7/1/82	Submit plant specific reports on relief and safety valve program.	Complete.
II.D.1.3	Block Valve Test Program	7/1/82	Submit report of results of test program	Do.
II.K.3.30 & 31	SBLOCA Analysis [2]	One year after staff approval of model.	Submit plant specific analyses	To be determined following staff approval of model.
III.A.1.2	Staffing Levels for Emergency Situations.[2]	Superseded by SECY 82-111	Reference SECY 82-111, Requirements for Emergency Response Capability.	To be determined.
III.A.1.2	Upgrade Emergency Support Facilities.[2]	do	do	Do.
III.A.2.2	Meteorological Data [2]	do	do	Do.
III.D.3.4	Control Room Habitability	To be determined by licensee	Modify facility as identified by licensee study	Complete.

[1] Where completion date refers to a refueling outage (the estimated date when the outage begins), the item will be completed prior to the restart of the facility.
[2] Not Part of Confirmatory Order.

[FR Doc. 83-7777 Filed 3-22-83; 8:45 am]
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[Docket No. 50-26]

Carolina Power and Light Co. (H. B. Robinson Steam Electric Plant, Unit No. 2); Order Confirming Licensee Commitments on Post-TMI Related Issues

I.

Carolina Power and Light Company (the licensee) is the holder of Facility Operating License No. DPR-32 which authorizes the operation of the H. B. Robinson Steam Electric Plant, Unit No. 2 (the facility) at steady-state power level not in excess of 2300 megawatts thermal (rated power). The facility is a pressurized water reactor (PWR) located at the licensee's site in Darlington County, South Carolina.

II.

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The staff's proposed requirements and schedule for implementation are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements." Among these requirements are a number of items, consisting of hardware modifications, administrative procedure implementation and specific information to be submitted by the licensee, scheduled to be completed on or after July 1, 1981. On March 17, 1982, a letter (Generic Letter 82-05) was sent to all licensees of operating power reactors for those items that were scheduled to be implemented from July 1, 1981 through March 1, 1982. Subsequently, on May 5, 1982, a letter (Generic Letter 82-10) was also sent to all licensees of operating power reactors for those items that were scheduled for implementation after March 1, 1982. These letters are hereby incorporated by reference. In these letters each licensee was requested to furnish within 30 days pursuant to 10 CFR 50.45(f) the following information for items which the staff had proposed for completion on or after July 1, 1981:

(1) For applicable items that have been completed, confirmation of completion and the date of completion, (2) for items that have not been completed, a specific schedule for implementation, which the licensee committed to meet, and (3) justification for delay, demonstration of need for the proposed schedule, and a description of the interim compensatory measures being taken.

III.

Carolina Power and Light Company responded to Generic Letter 82-05 letter dated April 15, 1982, as supplemented by letters dated December 21, 1982 and February 7, 1983; Carolina Power and Light Company responded to Generic Letter 82-10 by letter dated June 9, 1982, as supplemented by letter dated December 7, 1982. In these submittals, the licensee confirmed that some of the items identified in the Generic Letters has been completed and made firm commitments to complete the remainder. The attached Tables summarizing the licessee's schedular commitments or status were developed by the staff from the Generic Letters and the licensee-provided information.

There are six items from Generic Letter 82-10 that, as noted in the Table (Attachment 2), have licensee schedules to be determined and are therefore not included in this Order. Some of the items addressed in this Order are considered by the licensee to be

completed or to require no modifications. The staff's evaluation of the licensee's delays for the remaining items is provided herein:

II.B.3 Post Accident Sampling

This item will be delayed by the licensee and will be completed by July 1983. The portion of this work requiring an outage was completed during the last refueling outage. The outage was extensive because it included a 10 year inservice inspection program requiring engineering and construction resources to be redirected from the design and construction of the movable shield wall portion of the modification. Installation has been slowed due to a number of vendor recommended field changes which has delayed the systems initial start-up, flush and testing. Additional problems are expected during the initial start-up sequence due to design complexity and newness. During the interim period, previously estabished procedures for obtaining post-accident samples will remain in effect that were approved as TMI Lessons Learned Category A items.

III.D.3.4 Control Room Habitability

The licensee is not required by NUREG–0737 to adhere to an implementation date. However, the licensee is required to furnish a schedule indicating a completion date for this activity. The licensee's letter dated June 9, 1982, in response to Generic Letter 82–10, committed to a completion date of January 1984. However, NRC letter dated October 1, 1982 required the licensee to address all deficiencies identified in their contractors report. The licensee's letter dated December 7, 1982 committed to a response on or by June 1, 1983 and to provided a new schedule for implementation for any modifications and corrections found necessary with their resposes to our letter dated October 1, 1982. Therefore, the the licensee's commitment date for III.D.3.4 implementation is to be re-determined by June 1983.

We find, based on the above evaluation, that: (1) the licensee has taken corrective actions regarding the delays and has made a responsible for the effort to implement the NUREG–0737 requirements noted; 2) there is good cause several delays (unexpected design complexity, interface problems, and equipment delays); and 3) as noted above, interim compensatory measures have been provided.

In view of the foregoing, I have determined that these modifications and actions are required in the interest of public health and safety and, therefore, the licensee's commitment should be confirmed by Order.

IV.

Accordingly, pursuant to Sections 103, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered effective immediately that the licensee shall:

Implement and maintain the specific items described in the Attachments to this Order in the manner described in the licensee's submittals noted in Section III herein no later than the dates in the Attachments.

V.

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register** . A request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Wahington, 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 licensee, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order. This Order is effective upon issuance.

For the Nuclear Regulatory Commision.

Dated at Bethesda, Maryland, this 14th day of March, 1983.

Robert A. Purple,

Deputy Director, Division of Licensing, Office of Nuclear Reactor Regulation.

PLANT NAME: H. B. ROBINSON, STEAM ELECTRIC PLANT, UNIT 2

ATTACHMENT 1—LICENSEE COMMITMENTS ON APPLICABLE NUREG–0737 ITEM FROM GENERIC LETTER 82–05

Item	Title	NUREG–0737 schedule	Requirement	Licensee's completion schedule (or status)[1]
I.A.3.1	Simulator Exams	10/1/81	Include simulator exams in licensing examinations	Complete.
II.B.2	Plant Shielding	1/1/82	Modify facility to provide access to vital areas under accident conditions.	Do.
II.B.3	Post-accident sampling	1/1/82	Install upgrade post-accident sampling capability	July 1983.
II.B.4	Training for Mitigating Core Damage.	10/1/81	Complete training program	Complete.
II.E.1.2	Aux FW Indication & Flow Indicator.	7/1/81	Modify instrumentation to level of safety grade	Do.
II.E.4.2	Containment Isolation Dependability.	7/1/81	Part 5—lower containment pressure setpoint to level compatible with normal operation.	Do.
II.E.4.2	Containment Isolation Dependability.	7/1/81	Part 7—isolate purge and vent valves on radiation signal.	Do.
II.F.1	Accident Monitoring	1/1/82	(1) Install noble gas effluent monitors	Do.
		1/1/82	(2) Provide capability for effluent monitoring of iodine.	Do
		1/1/82	(3) Install in-containment radiation-level monitor	Do.
		1/1/82	(4) Provide continuous indication of containment pressure.	Do.
		1/1/82	(5) Provide continuous indication of containment water level.	Do.
		1/1/82	(6) Provide continuous indication of hydrogen concentration in containment.	Do.

[1] Where completion date refers to a refueling outage (the estimated date when the outage begins), the item will be completed prior to the restart of the facility.

ATTACHMENT 2—LICENSEE'S COMMITMENTS ON APPLICABLE NUREG-0737 ITEMS FROM GENERIC LETTER 82-10

Item	Title	NUREG-0737 Schedule	Requirement	Licensee's completion schedule (or status) [1]
I.A.1.3.1	Limit Overtime	10/1/82 per Gen. Ltr. 82-12 dtd. 6/15/82.	Revise administrative procedures to limit overtime in accordance w/NRC Policy Statement issued by Gen. Ltr. No. 82-12, dtd. June 15, 1982.	Complete.
I.A.1.3.2	Minimum Shift Crew [2]	To be superseded by Proposed Rule.	To be addressed in the Final Rule on Licensed Operator Staffing at Nuclear Power Units.	To be addressed when Final Rule is issued.
I.C.1	Revise Emergency Procedures [2]	Superseded by SECY 82-111	Reference SECY 82-111, Requirements for Emergency Response Capability.	To be determined.
II.D.1.2	RV and SV Test Programs	7/1/82	Submit plant specific reports on relief and safety valve programs.	Complete.
II.D.1.3	Block Valve Test Program	7/1/82	Submit report of results of test program.	Do.
II.K.3.30 & 31	SBLOCA Analysis [2]	1 yr. after staff approval of model.	Submit plant Specific analyses.	To be determined following staff approval of model.
III.A.1.2	Staffing Levels for Emergency Situations [2]	Superseded by SECY 82-111	Reference SECY 82-111, Requirements for Emergency Response Capability.	To be determined.
III.A.1.2	Upgrade Emergency Support Facilities [2]	do	do	Do.
III.A.2.2	Meteorological Data [2]	do	do	Do.
III.D.3.4	Control Room Habitability	To be determined by licnesee	Modify facility as identified by licensee study	To be determined in June 1983.

[1] Where completion date refers to a refueling outrage (the estimated date when the outage begins), the item will be completed prior to the restart of the facility.
[2] Not Part of Confirmatory Order.

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[Dockets Nos. 50-237/249]

Commonwealth Edison Co. (Dresden Nuclear Power Station, Units 2 and 3); Order Confirming Licensee Commitments on Post-TMI Related Issues

I.

Commonwealth Edison Company (CECo or the licensee) is the holder of Provisional Operating License No. DPR-19 and Facility Operating License No. DPR-25 which authorize the operation of the Dresden Nuclear Power Station, Units 1 and 2 (Dresden or the facilities) at steady-state power levels not in excess of 2527 megawatts thermal for each unit. The facilities are boiling water reactors located at the licensee's site in Grundy County, Illinois.

II.

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The staff's proposed requirements and schedule for implementation are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements." Among these requirements are a number of items, consisting of hardware modifications, administrative procedure implementation and specific information to be submitted by the licensee, scheduled to be completed on or after July 1, 1981. On March 17, 1982, a letter (Generic Letter 82-05) was sent to all licensees of operating power reactors for those items that were scheduled to be implemented from July 1, 1981 through March 1, 1982. Subsequently, on May 5, 1982, a letter (Generic Letter 82-10) was also sent to all licensees of operating power reactors for those items that were scheduled for implementation after March 1, 1982. These letters are hereby incorporated by reference. In these letters each licensee was requested to furnish within 30 days pursuant to 10 CFR 50.54(f) the following information for items which the staff had proposed for completion on or after July 1, 1981:

(1) For applicable items that have been completed, cofirmation of comletion and the date of completion, (2) For items that have not been completed, a specific schedule for implementation, which the licensee committed to meet, and (3) Justification for delay, demonstration of need for the proposed schedule, and a description of the interim compensatory measures being taken.

III.

Commonwealth Edison Company responded to Generic Letter 82-05 by an initial letter dated April 15, 1982 and subsequently by letters dated June 1 and 11, July 8, August 5, September 2 and 3, October 4 and 14, and December 20 and 29, 1982 and January 14, 1983. The licensee responded to Generic Letter 82-10 by an initial letter dated June 4, 1982 and subsequently by letters dated June 28, September 20 and 22, October 15, and December 28 and 29, 1982 and January 6 and 14, 1983. In these submittals, the licensee confirmed that some of the items identified in the Generic Letters had been completed and made firm commitments to complete the remainder. The attached Tables (Attachments 1 and 2) summarizing the licensee's schedular commitments or status were developed by the staff from the Generic Letters and the licensee-provided information.

There are several items in Generic Letter 82-10 that, as noted in Attachment 2, have licensee schedules which are yet to be determined. These items are, therefore, not included in this Order. The licensee considers some of the items addressed in this Order to be completed or to require no modifications. These items are so noted in Attachments 1 and 2. The staff's evaluation of the licensee's delay for implementation of the remaining item is provided herein.

III.D.3.4 Control Room Habitability

The licensee's control room habitability study was completed and originally submitted in September 1981. Additional information was provided in December 1981 and June 1982. The modifications called for in the study are underway. Based on current information, the licensee has committed to completion of the modification by January 1, 1984. The modifications are subject to a post-implementation review by the staff.

For Dresden, there are three items from Generic Letter 82-05 that are incomlete, II.F.1.(1), II.F.1.(2) and II.F.1.(6). All others are, in the staff's view, complete. The staff evaluation of

the incomplete items, including compensatory measures, is as follows:

II.F.1.(1) Install Noble Gas Effluent Monitors

This item is delayed because of continuing difficulties by the licensee to develop an accurate correlation of the instrument reading to plant release. Purchase of a new source and further tests are required. CECo now projects that the completion date for this effort is July 1, 1983. In the interim, as a compensatory measure, the already installed SPING-4 monitors will be used. When possible the existing Main Chimney and Reactor Building ventilation exhaust noble gas monitor can be used as a back-up.

II.F.1.(2) Monitoring for Iodine in Post-Accident Releases

This item has been delayed due to vendor delivery problems. The latest information from the licensee is that they still expect delivery from the vendor in time to meet their installed and operable date of July 1, 1983. In the interim, as a compensatory measure, the licensee has installed and is operating an Eberline SPING-4 High Range Noble Gas Monitoring System which incorporates three noble gas monitoring channels (low, medium and high) and particulate and iodine filters all on one skid.

II.F.1.(6) Provide Continuous Monitoring of H_2 in Containment

This item is delayed because of licensee difficulties in procuring environmentally and seismically qualified hydrogen monitoring equipment. Based on current information, the licensee believes that properly qualified equipment can be delivered by September 1983 and made operable by December 31, 1983. In the interim, as a compensatory measure, the containment atmospheric monitor in the High Range Sample System will be relied on for hydrogen indication.

We find, based on the above evaluation, that: (1) The licensee has taken corrective actions regarding the delays and has made a responsible effort to implement the NUREG–0737 requirements noted; (2) there is good cause for the delays; and (3) as noted above, interim compensatory measures have been provided.

In view of the foregoing, I have determined that these modifications and actions are required in the interest of public health and safety and, therefore the licensee's commitments should be confirmed by Order.

IV.

Accordingly, pursuant to Sections 103, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered effective immediately that the licensee shall:

Implement and maintain the specific items described in the Attachments to this Order in the manner described in the licensee's submittals noted in Section III herein no later than the dates in the Attachments.

V.

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. A request for a hearing shall be addressed to the Director, 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 a hearing shall not stay the immediate effectiveness of this order.

If a hearing is requested by the licensee, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland, this 14 day of March, 1983.

Robert A. Purple,

Deputy Director Division of Licensing, Office of Nuclear Reactor Regulation.

ATTACHMENT 1.—DRESDEN STATION, UNITS 2 AND 3 LICENSEE'S COMMITMENTS ON APPLICABLE NUREG-0737 ITEMS FROM GENERIC LETTER 82-05

Item	Title	NUREG-0737 schedule	Requirement	Licensee's completion schedule (or status)
I. A.3.1	Simulator Exams	10/01/81	Include simulator exams in licensing examinations	Complete.
II.B.2	Plant Shielding	01/01/82	Modify facility to provide access to vital areas under accident conditions.	Do.
II.B.3	Post-Accident Sampling	01.01.82	Install upgrade post-accident sampling capability	Do.
II.B.4	Training for Mitigating Core Damage.	10/01/81	Complete training program	Do.
II.E.4.2	Containment Isolation Dependability.	07/01/81	Part 5-lower containment pressure setpoint to level compatible w/normal operation.	Do
		07/01/81	Part 7-isolate purge & vent valves on radiation signal	Do.
II.F.1	Accident Monitoring	01/01/82	(1) Install noble gas effluent monitors	July 1983.
		01/01/82	(2) Provide capability for effluent monitoring of iodine	Do.
		01/01/82	(3) Install incontainment radiation-level monitors	Do.
		01/01/82	(4) Provide continuous indication of containment pressure.	Do.
		01/01/82	(5) Provide continuous indication of containment water level.	Do.
		01/01/82	(6) Provide continuous indication of hydrogen concentration in containment.	December 1983.
II.K.3.15	Isolation of HPCI & RCIC Modification.	07/01/81	Modify pipe break detection logic to prevent inadvertent isolation.	Complete.
II.K.3.24	Space Cooling for HPIC/RCIC	01/01/82	Confirm adequacy of space cooling for HPCI/RCIC	Do.
II.K.2.27	Common Reference Level	07/01/81	Provide common Reference Level for Vessel Level Instrumentation.	Do.

ATTACHMENT 2.—DRESDEN STATION, UNITS 2 AND 3 LICENSEE'S COMMITMENTS ON APPLICABLE NUREG-0737 ITEMS FROM GENERIC LETTER 82-10

Item	Title	NUREG-0737 schedule	Requirement	Licensee's completion schedule (or status)
I.A.1.3.1	Limit Overtime	10/01/82 per Gen Ltr 82-12 dtd. 6/15/82.	Revise administrative procedures to limit overtime in accordance w/NRC Policy Statement issued by Generic Ltr. No. 82-12. dtd 6/15/82.	Complete.
I.A.1.3.2	Minimum Shift Crew [1]	To be superseded by Proposed Rule.	To be addressed in the Final Rule on Licensed Operator Staffing at Nuclear Power Units.	To be addressed when Final Rule is issued.

ATTACHMENT 2.—DRESDEN STATION, UNITS 2 AND 3 LICENSEE'S COMMITMENTS ON APPLICABLE NUREG-0737 ITEMS FROM GENERIC LETTER 82-10—Continued

Item	Title	NUREG-0737 schedule	Requirement	Licensee's completion schedule (or status)
I.C.1	Revise Emergency Procedures [1]	Superseded by SECY 82-111	Reference SECY 82-111, Requirements for Emergency Response Capability.	To be determined.
II.D.1.1	RV and SV Test Programs	10/01/82	Submit plant specific reports on relief valve and safety valve program.	Complete.
II.K.3.18	ADS Actuation	09/30/82	Submit revised position on need for modifications	Do.
II.K.3.30 & 31	SBLOCA Analysis [1]	1 year after staff approval of model.	Submit plant specific analyses	To be determined following staff approval of model.
III.A.1.2	Staffing Levels for Emergency Situations [1]	Superseded by 82-111	Reference SECY 82-111, Requirements for Emergency Response Capability.	To be determined.
III.A.1.2	Upgrade Emergency Support Facilities [1]	do	do	Do.
III.A.2.2	Meteorological Data [1]	do	do	Do.
III.D.3.4	Control Room Habitability	To be determined by licensee	Modify facility as identified by licensee study	January 1984.

[1] Not Part of Confirmatory Order.

[FR Doc. 83-7412 Filed 3-22-83; 8:45 am]
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[Docket Nos. 50-295 and 50-304]

Commonwealth Edison Co. (Zion Station, Unit Nos. 1 and 2); Order Confirming Licensee Commitments on Post-TMI Related Issues

I.

Commonwealth Edison Company (the licensee) is the holder of Facility Operating License Nos. DPR-39 and DPR-48 which authorizes the operation of the Zion Station, Unit Nos. 1 and 2 (the facilities) at power levels not in excess of 3250 megawatts thermal. The facilities are pressurized reactors (PWRs) located at the licensee's site in Zion, Illinois.

II.

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The staff's proposed requirements and schedule for implementation are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements." Among these requirements are a number of items, consisting of hardware modifications, administrative procedure implementation and specific information to be submitted by the licensee, scheduled to be completed on or after July 1, 1981. On March 17, 1982, a letter (Generic Letter 82-05) was sent to all licensees of operating power reactors for those items that were scheduled to be implemented from July 1, 1981 through March 1, 1982. Subsequently, on May 5, 1982, a letter (Generic Letter 82-10) was also sent to all licensees of operating power reactors for those items that were scheduled for implementation after March 1, 1982. These letters are hereby incorporated by reference. In these letters each licensee was requested to furnish within 30 days pursuant to 10 CFR 50.54(f) the following information for items which the staff had proposed for completion on or after July 1, 1981:

(1) For applicable items that have been completed, confirmation of completion and the date of completion, (2) for items that have not been completed, a specific schedule for implementation, which the licensee committed to meet, and (3) justification for delay, demonstration of need for the proposed schedule, and a description of the interim compensatory measures being taken.

III.

Commonwealth Edison Company responded to Generic Letter 82-05 by letters dated April 15, 1982, November 29, 1982 and January 14, 1983; the licensee responded to Generic Letter 82-10 by letter dated July 24, 1982. In these submittals, the licensee confirmed that some of the items identified in the Generic Letters had been completed and made firm commitments to complete the remainder. The attached Tables summarizing the licensee's schedular commitments or status were developed by the staff from the Generic Letters and the licensee-provided information.

There are six items from Generic Letter 82-10 that, as noted in the Table (Attachment 2), have licensee schedules to be determined and are therefore not included in this Order. Some of the items addressed in this Order are considered by the licensee to be completed or to require no modifications. The staff's evaluation of the licensee's delays for the remaining items is provided herein:

II.B.2 Plant Shielding

As part of the plant shielding task, the radiation monitor which controls the control room air intake is being upgraded. The licensee has obtained the SPING monitors for this application. Upon installation and checkout, it was determined that the monitor has an apparent generic electronic problem. The licensee is working with the manufacturer to correct the problem. However, in the interim, there is an existing monitor that is serving the air control function until the SPING problem can be fixed. This interim operation using the existing monitor is acceptable. All other immediate requirements for this task item have been completed.

II.B.3 Post Accident Sampling

The containment air sample radiation monitor is also being upgraded with the SPING monitor discussed above. There is an existing radiation monitor providing containment air sampling measurements and its operation during the interim period is acceptable. All other immediate requirements for this task have been completed.

II.F.1.1 and II.F.1.2 Accident Monitoring Instrumentation

The vent stack radiation monitor is also being replaced by a SPING monitor. In addition to the SPING problem, the velocity panel which automatically samples a constant bypass stream from the vent also has an electronic related problem which was discovered during equipment checkout. The vent stack has

an existing monitor and its operation for the interim period is acceptable. All other immediate requirements for this task have been completed.

III.D.3.4 Control Room Habitability

In the NRC letter dated June 24, 1982, this item was approved with a number of commitments made by the licensee. The commitment to tie the outside air intake damper closure to the safety-injection signal from either unit will require a unit shutdown for refueling or for a sufficient period of time to make the modifications. The last tie should be complete before the estimated January 1984 date. The other commitments to make this task acceptable have been completed. Sufficient protection exists in the control room to make the interim operation, without ESF tie-in, acceptable.

We find, based on the above evaluation, that: 1) the licensee has taken corrective actions regarding the delays and has made a responsible effort to implement the NUREG–0737 requirements noted; 2) there is good cause for the several delays (unexpected design complexity, interface problems, and equipment delays); and 3) as noted above, interim compensatory measures have been provided.

In view of the foregoing, I have determined that these modifications and actions are required in the interest of public health and safety and, therefore, the licensee's commitment should be confirmed by Order.

IV.

Accordingly, pursuant to Sections 103, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered effective immediately that the licensee shall:

Implement and maintain the specific items described in the Attachments to this Order in the manner described in the licensee's submittals noted in Section III herein no later than the dates in the Attachments.

V.

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. A request for a hearing shall be addressed to the Director, 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 licensee, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order. This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 14th day of March, 1983.

For the Nuclear Regulatory Commission.

Robert A. Purple,

Deputy Director, Division of Licensing, Office of Nuclear Reactor Regulation.

PLANT NAME: ZION UNIT 1 AND 2 Attachment 1.—LICENSEE COMMITMENTS ON APPLICABLE NUREG-0737 ITEMS FROM GENERIC LETTER 82-05

Item	Title	NUREG-0737 schedule	Requirement	Licensee's completion schedule (or status) [1]
I.A.3.1	Simulators Exams	10/1/81	Include simulator exams in licensing examinations	Complete.
II.B.2	Plant Shielding	1/1/82	Modify facility to provide access to vital areas under accident conditions.	March 1983.
II.B.3	Post-accident sampling	1/1/82	Install upgrade post-accident sampling capability	Do.
II.B.4	Training for Mitigating Core Damage.	10/1/81	Complete training program	Complete.
II.E.1.2	Aux FW Indication & Flow Indicator.	7/1/81	Modify instrumentation to level of safety grade	Do.
II.E.4.2	Containment Isolation Dependability.	7/1/81	Part 5—lower containment pressure setpoint to level compatible with normal operation.	Do.
II.E.4.2	Containment Isolation Dependability.	7/1/81	Part 7—isolate purge and vent valves on radiation signal.	Do.
II.F.1	Accident Monitoring	1/1/82	(1) Install noble gas effluent monitors	July 1983.
		1/1/82	(2) Provide capability for effluent monitoring of iodine	March 1983.
		1/1/82	(3) Install in-containment radiation-level monitor	Complete.
		1/1/82	(4) Provide continuous indication of containment pressure.	Do.
		1/1/82	(5) Provide continuous indication of containment water level.	Do.
		1/1/82	(6) Provide continuous indication of hydrogen concentration in containment.	Do.

[1] Where completion date refers to a refueling outage (the estimated date when the outrage begins), the item will be completed prior to the restart of the facility.

ATTACHMENT 2.—LICENSEE'S COMMITMENTS ON APPLICABLE NUREG-0737 ITEMS FROM GENERIC LETTER 82-10

Item	Title	NUREG-0737 schedule	Requirement	Licensee's completion schedule (or status) [1]
I.A.1.3.1	Limit Overtime	10/1/82 per Gen Ltr. 82-12 dtd. 6/15/82.	Revise administrative procedures to limit overtime in accordance w/NRC Policy Statement issued by Gen. Ltr. No. 82-12, dtd. June 15, 1982..	Complete.
I.A.1.3.2	Minimum Shift Crew [2]	To be superseded by Proposed Rule.	To be addressd in the Final Rule on Licensed Operator Staffing at Nuclear Power Units.	To be addressed when Final Rule is issued.
I.C.1	Revise Emergency Procedures [3]	Superseded by SECY 82-111	Reference SECY 82-111, Requirements for Emergency Response Capability.	To be determined.
II.D.1.2	RV and SV Test Programs	7/1/82	Submit plant specific reports on relief and safety valve program.	Complete.
II.D.1.3	Block Valve Test Program	7/1/82	Submit report of results of test program	Do.
II.K.3.30 & 31	SBLOCA Analysis [2]	1 year after staff approval of model.	Submit plant specific analyses	To be determined following staff approval of model.
III.A.1.2	Staffing Levels for Emergency Situations [2].	Superseded by 82-111	Reference SECY 82-111, Requirements for Emergency Response Capability.	To be determined.
III.A.1.2	Upgrade Emergency Support Facilities [2].	do	do	Do.
III.A.2.2	Meteorological Data [3]	do	do	Do.

ATTACHMENT 2.—LICENSEE'S COMMITMENTS ON APPLICABLE NUREG-0737 ITEMS FROM GENERIC LETTER 82-10—Continued

Item	Title	NUREG-0737 schedule	Requirement	Licensee's completion schedule (or status)[1]
III.D.3.4	Control Room Habitability	To be determined by licensee	Modify facility as identified by licensee study	During refueling to occur before January 1984.

[1] Where completion date refers to a refueling outage (the estimated date when the outage begins), the item will be completed prior to the restart of the facility.
[2] Not Part of Confirmatory Order.

[FR Doc. 83-7413 Filed 3-22-83; 8:45 am]
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[Docket No. 50-245]

The Connecticut Light and Power Co., et al; Order Confirming Licensee Commitments on Post-TMI Related Issues

I.

In the Matter of The Connecticut Light and Power Co., The Hartford Electric Light Co., Western Massachusetts Electric Co., and Northeast Nuclear Energy Co. (Millstone Nuclear Power Station, Unit 1).

Northeast Nuclear Energy Company et al. (licensee) is a holder of Provisional Operating License No. DPR-21 which authorizes the operation of the Millstone Nuclear Power Station, Unit No. 1 (the facility) at steady-state power level not in excess of 2011 megawatts thermal. The facility is a boiling water reactor (BWR) located at the licensee's site in Waterford, Connecticut.

II.

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The staff's proposed requirements and schedule for implementation are set forth in NUREG-0737, "Clarification of TMI Action Plant Requirements." Among these requirements are a number of items, consisting of hardware modifications, administrative procedure implementation and specific information to be submitted by the licensee, scheduled to be completed between July 1, 1981 and March 1, 1982. On March 17, 1982, a letter (Generic Letter 82-05) was sent to all licensees of operating power reactors for those items that were scheduled to be implemented from July 1, 1981 through March 1, 1982. Subsequently, on May 5, 1982, a letter (Generic Letter 82-10) was also sent to all licensees of operating power reactors for those items that were scheduled for implementation after March 1, 1982. These letters are hereby incorporated by reference. In these letters each licensee was requested to furnish within 30 days pursuant to 10 CFR 50.54(f) the following information for items which the staff had proposed for completion on or after July 1, 1981:

(1) For applicable items that have been completed, confirmation of completion and the date of completion, (2) For items that have not been completed, a specific schedule for implementation, which the licensee committed to meet, and (3) Justificaton for delay, demonstration of need for the proposed schedule, and a description of the interim compensatory measures being taken.

III.

Northeast Nuclear Energy Company responded by letters dated April 16, June 4, 10 and 24, and December 30, 1982 and February 11 and 28, 1983. In these submittals, Northeast Nuclear Energy Company confirmed that most of the items identified in the March 17 letter have been completed and made firm commitments to complete the remainder. The attached Table summarizing the licensee's schedular commitment or status were developed by the staff from the Generic Letters and the licensee-provided information.

There are several items in Generic Letter 82-10 that, as noted in Attachment 2, have licensee schedules which are yet to be determined. These items are, therefore, not included in this Order. The licensee considers some of the items addressed in this Order to be completed or to require no modifications. These items are so noted in Attachments 1 and 2. The staff's evaluation of the licensee's delays for implementation of the remaining items is provided herein.

The licensee's schedule for a few items does not meet the NUREG-0737 implementation dates. The licensee has identified other plant modifications to compensate for delays in completing NRC-TMI requirements, unavailability of qualified components, and necessity for plant outage and lost-power production as some of the reasons for delaying the implementation of these modifications. The licensee has proposed to complete these modifications in accordance with the attached schedule.

The staff has not completed the evaluation of item II.E.4.2 part 7, "Isolation of Purge and Vent Valves on Radiation Signal," or item II.F.1.6, "Continuous Indication of Containment Hydrogen Concentration." These items will be considered later for a separate order after final resolution, and therefore are not included in this Order.

We have reviewed the licensee's submittals and determined that the proposal is an integrated approach to satisfy all the requirements as soon as practical. We find the proposed schedule delay to be acceptable considering costs and interim measures that are being taken by the licensee.

Since the post-TMI requirements are being imposed to improve the level of safety of nuclear power plants, the delay in schedule for implementation of certain items identified in the attached tables does not detract from the level of safety existing at the Millstone Station, Unit 1. We find that the licensee has made a diligent effort to satisfy all the proposed requirements and the proposed schedule is acceptable.

In view of the foregoing, I have determined that the commitments are required in the interest of public health and safety and should, therefore, by confirmed by Order.

Accordingly, pursuant to Section 103, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered effective immediately that the licensee shall:

Implement and maintain the specific items described in the Attachments to this Order in the manner described in the licensee's submittals noted in

Section III herein no later than the dates in the Attachments.

IV.

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the Federal Register. A request for a hearing shall be addressed to the Director, 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 a hearing shall not stay the immediate effectiveness of this order.

If a hearing is requested by the licensee, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether, the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 14 day of March, 1983.

For the Nuclear Regulatory Commission.

Robert A. Purple,

Deputy Director, Division of Licensing, Office of Nuclear Reactor Regulation.

ATTACHMENT 1.—MILLSTONE STATION, UNIT 1 LICENSEE'S COMMITMENT ON APPLICABLE NUREG-0737 ITEMS FROM GENERIC LETTER 82-05

Item	Title	NUREG-0737 schedule	Requirement	Licensee's completion schedule (or status)
I.A.3.1	Simulator Exams	10/01/81	Include simulator exams in licensing examinations	Complete.
II.B.2	Plant Shielding	01/01/82	Modify facility to provide access to vital areas under accident conditions.	Do.
II.B.3	Post-Accident Sampling	01/01/82	Install upgrade post-accident sampling capability	April 1, 1983.
II.B.4	Training for Mitigating Core Damage.	10/01/81	Complete training program	Complete.
II.E.4.2	Containment Isolation Dependability.	07/01/81	Part 5-lower containment pressure setpoint to level compatible w/normal operation.	Do.
		07/01/81	Part 7-isolate purge & vent valves on radiation signal [2]	Under evaluation by the staff.
II.F.1	Accident Monitoring	01/01/82	(1) Install noble gas effluent monitors	[1]
		01/01/82	(2) Provide capability for effluent monitoring of iodine	[1]
		01/01/82	(3) Install incontainment radiation-level monitors	Complete.
		01/01/82	(4) Provide continuous indication of containment pressure.	Do.
		01/01/82	(5) Provide continuous indication of containment water level.	Do.
		01/01/82	(6) Provide continuous indication of hydrogen concentration in containment [2].	Under evaluation by the staff.
II.K.3.15	Isolation of HPCI & RCIC Modification.	07/01/81	Modify pipe break detection logic to prevent inadvertent isolation.	N/A.
II.K.3.22	RCIC Suction	01/01/82	Modify design of RCIC suction to provide automatic transfer to torus.	N/A.
II.K.3.24	Space Cooling for HPCI/RCIC	01/01/82	Confirm adequacy of space cooling for HPCI/RCIC	N/A.
II.K.3.27	Common Reference Level	07/01/81	Provide common Reference Level for Vessel Level Instrumentation.	Complete.

[1] End of outage prior to cycle 10 currently scheduled for spring 1984.
[2] Not part of confirmatory order.

ATTACHMENT 2.—MILLSTONE STATION, UNIT, 1 LICENSEE'S COMMITMENTS ON APPLICABLE NUREG-0737 ITEMS FROM GENERIC LETTER 82-10

Item	Title	NUREG-0737 schedule	Requirement	Licensee's completion schedule (or status)
I.A.1.3.1	Limit Overtime [1]	10/01/82	Revise administrative procedures to limit overtime in accordance w/NRC Policy Statement issued by Generic Ltr. No. 82-12, dtd 6/15/82.	Under evaluation by the staff NNECO Letter dated October 1, 1982.
I.A.1.3.2	Minimum Shift Crew [1]	To be superseded by Proposed Rule.	To be addressed in the Final Rule on Licensed Operator Staffing At Nuclear Power Units.	To be addressed when Final Rule is issued.
I.C.1	Revise Emergency Procedures [1]	Superseded by SECY 82-111	Reference SECY 82-111, Requirements for Emergency Response Capability.	To be determined.
II.D.1.2	RV and SV Test Programs	07/01/82	Submit plant specific reports on relief valve and safety valve program.	Complete.
II.K.3.18	ADS Actuation	09/30/82	Submit revised position on need for modifications	Complete in accordance with NNECO submittal February 22, 1983.
II.K.3.30 & 31	SBLOCA Analysis [1]	1 year after staff approval of model.	Sumbit plant specific analyses	To be determined following staff approval of model.
III.A.1.2	Staffing Levels for Emergency Situations [1].	Superseded by 82-111	Reference SECY 82-111, Requirements for Emergency Response Capability.	To be determined.
III.A.1.2	Upgrade Emergency Support Facilities [1].	do	do	Do.
III.A.2.2	Meterological Data [1]	do	do	Do.
III.D.3.4	Control Room Habitability	To be determined by licensee	Modify facility as identified by licensee study	December 31, 1984.

[1] Not Part of Confirmatory Order.

[FR Doc. 83-7423 Filed 3-22-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co. (Haddam Neck Plant); Order Confirming Licensee Commitments on Post-TMI Related Issues

I.

Connecticut Yankee Atomic Power Company (licensee) is the holder of Facility Operating License No. DPR-61 which authorizes the operation of the Haddam Neck Plant (the Facility) at steady-state power level not in excess of 1825 megawatts thermal. The facility is a pressurized water reactor (PWR) located at the licensee's site in Middlesex County, Connecticut.

II.

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory

Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities based on the experience from the accident at TMI-and the official studies and investigations of the accident. The staff's proposed requirements and schedule for implementation are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements." Among these requirements are a number of items, consisting of hardware modifications, administrative procedure implementation and specific information to be submitted by the licensee, scheduled to be completed between July 1, 1981 and March 1, 1982. On March 17, 1982, a letter (Generic Letter 82-05) was sent to all licensees of operating power reactors for those items that were scheduled to be implemented from July 1, 1981 through March 1, 1982. Subsequently, on May 5, 1982, a letter (Generic Letter 82-10) was also sent to all licensees of operating power reactors for those items that were scheduled for implementation after March 1, 1982. These letters are hereby incorporated by reference. In these letters each licensee was requested to furnish within 30 days pursuant to 10 CFR 50.54(f) the following information for items which the staff had proposed for completion on or after July 1, 1981:

(1) For applicable items that have been completed, confirmation of completion and the date of completion, (2) For items that have not been completed, a specific schedule for implementation, which the licensee committed to meet, and (3) Justification for delay, demonstration of need for the proposed schedule, and a description of the interim compensatory measures being taken.

III.

Connecticut Yankee Atomic Company responded by letters dated April 16, and June 4 and 10, and December 15, 29, and 30, 1982 and February 28, 1983. In these submittals Connecticut Yankee Atomic Power Company confirmed that most of the items identified in the March 17 letter have been completed and made firm commitments to complete the remainder. The attached Tables were developed by the staff from the Generic Letters and the licensee-provided information.

There are several items in Generic Letter 82-10 that, as noted in Attachment 2, have licensee schedules which are yet to be determined. These items are, therefore, not included in this Order. The licensee considers some of the items addressed in this Order to be completed or to require no modifications. These items are so noted in Attachments 1 and 2. The staff's evaluation of the licensee's delays for implementation of the remaining items is provided herein.

The licensee's schedule for a few items does not meet the NUREG-0737 implementation dates. The license has identified other compensations for delays in completing NRC-TMI requirements, unavailability of qualified components, and necessity for plant outage and lost-power production as some of the reasons for delaying the implementation of these modifications. The licensee has proposed to complete these modifications in accordance with the attached schedule.

We have reviewed the licensee's submittals and determined that the proposal is an integrated approach to satisfy all the requirements as soon as practical. We find the proposed schedule delay to be acceptable considering costs and interim measures that are being taken by the licensee.

Since the post-TMI requirements are being imposed to improve the level of safety of nuclear power plants, the delay in schedule for implementation of certain items identified in the attached tables does not detract from the level of safety existing at the Haddam Neck Plant. We find that the licensee has made a diligent effort to satisfy all the proposed requirements and the proposed schedule is acceptable.

In view of the foregoing, I have determined that the commitments are required in the interest of public health and safety and should, therefore, be confirmed by Order.

IV.

Accordingly, pursuant to Section 103, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered effective immediately that the licensee shall:

Implement and maintain the specific items described in the Attachments to this Order in the manner described in the licensee's submittals noted in Section III herein no later than the dates in the Attachments.

The licensee 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, 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 a hearing shall not stay the immediate effectiveness of this order.

If a hearing is requested by the licensee, the Commission will issue an order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 14th day of March, 1983.

For the Nuclear Regulatory Commission.

Robert A. Purple,

Deputy Director, Division of Licensing, Office of Nuclear Reactor Regulation.

ATTACHMENT 1—HADDAM NECK LICENSEE'S COMMITMENTS ON APPLICABLE NUREG-0737 ITEMS FROM GENERIC LETTER 82-05

Item	Title	NUREG-0737 schedule	Requirement	Licensee's completion schedule (or status)[1]
I.A.3.1	Simulator Exams	10/01/81	Include simulator exams in licensing examinations	Complete.
II.B.2	Plant Shielding	01/01/82	Modify facility to provide access to vital areas under accident conditions.	Do.
II.B.3	Post-Accident Sampling	01/01/82	Install upgrade post-accident sampling capability	Mar. 31, 1983.
II.B.4	Training for Mitigating Core Damage.	10/01/81	Complete training program	Complete.
II.E.1.2	Aux. Feedwater Initiation & Flow Indication.	07/01/81	Modify instrumentation to level of safety grade	Do.
II.E.4.2	Containment Isolation Dependability.	07/01/81	Part 5-lower containment pressure setpoint to level compatible w/normal operation.	Do.
		07/01/81	Part 7-isolate purge & vent valves on radiation signal	Do.

ATTACHMENT 1—HADDAM NECK LICENSEE'S COMMITMENTS ON APPLICABLE NUREG-0737 ITEMS FROM GENERIC LETTER 82-05—Continued

Item	Title	NUREG-0737 schedule	Requirement	Licensee's completion schedule (or status)[1]
II.F.1	Accident Monitoring	01/01/82	(1) Install noble gas effluent monitors	Do.
		01/01/82	(2) Provide capability for effluent monitoring of iodine	Do.
		01/01/82	(3) Install incontainment radiation-level monitors	Do.
		01/01/82	(4) Provide continuous indication of containment pressure.	Do.
		01/01/82	(5) Provide continuous indication of containment water level.	Do.
		01/01/82	(6) Provide continuous indication of hydrogen concentration in containment[2].	Under evaluation by the staff.

[1] Completion date refrs to a refueling outage.
[2] The item will be completed prior to the restart of the facility. Not part of Confirmatory Order.

ATTACHMENT 2.—HADDAM NECK LICENSEE'S COMMITMENTS ON APPLICABLE NUREG-0737 ITEMS FROM GENERIC LETTER 82-10

Item	Title	NUREG-0737 schedule	Requirement	Licensee's completion schedule (or status)[1]
I.A.1.3.1	Limit Overtime [2]	10/01/82 per Gen Ltr 82-12 dtd. 6/15/82.	Revised administrative procedures to limit overtime in accordance w/NRC Policy Statement issued by Generic Ltr. No. 82-12, dtd. 6/15/82.	Under evaluation by the staff.
I.A.1.3.2	Minimum Shift Crew [2]	To be superseded by Proposed Rule.	To be addressed in the Final Rule on Licensed Operator Staffing at Nuclear Power Units.	To be addressed when Final Rule is issued.
I.C.1	Revised Emergency Procedures.[2]	Superseded by SECY 82-111	Reference SECY 82-111, Requirements for Emergency Response Capability.	To be determined.
II.D.1.2	RV and SV Test Programs	07/01/82	Submit plant specific reports on relief valve and safety valve program.	Complete.
II.D.1.3	Block Valve Test Program	07/01/82	Submit report of results of test program	Do.
II.K.3.30 & 31	SBLOCA Analysis [2]	1 year after staff approval of model.	Submit plant specific analyses	To be determined following staff approval of model.
III.A.1.2	Staffing Levels for Emergency Situations.[2]	Superseded by 82-111	Reference SECY 82-111, Requirements for Emergency Response Capability.	To be determined.
III.A.1.2	Upgrade Emergency Support Facilities.[2]	do	do	Do.
III.A.2.2	Meteorological Data [2]	do	do	Do.
III.D.3.4	Control Room Habitability	To be determined by licensee	Modify facility as identified by licensee study	December 1984.

[1] Where completion date refers to a refueling outage, the item will be completed prior to the restart of the facility.
[2] Not Part of Confirmatory Order.

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[Docket No. 50-155]

Consumers Power Co. (Big Rock Point Plant); Order Confirming Licensee Commitments on Post-TMI Related Issues

I.

Consumers Power Company (the licensee) is the holder of Facility Operating License No. DPR-6 which authorizes the operation of the Big Rock Point Plant (the facility) at steady-state power level not in excess of 240 megawatts thermal. The facility is a boiling water reactor (BWR) located at the licensee's site in Charlevoix County, Michigan.

II.

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The staff's proposed requirements and schedule for implementation are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements." Among these requirements are a number of items, consisting of hardware modifications, administrative procedure implementation and specific information to be submitted by the licensee, scheduled to be completed on or after July 1, 1981. On March 17, 1982, a letter (Generic Letter 82-05) was sent to all licensees of operating power reactors for those items that were scheduled to be implemented from July 1, 1981 through March 1, 1982.[1] Subsequently, on May 5, 1982, a letter (Generic Letter 82-10) was also sent to all licensees of operating power reactors for those items that were scheduled for implementation after March 1, 1982. These letters are hereby incorporated by reference. In these letters each licensee was requested to furnish within 30 days pursuant to 10 CFR 50.54(f) the following information for items which the staff has proposed for completion on or after July 1, 1982:

(1) For applicable items that have been completed, confirmation of completion and the date of completion, (2) For items that have not been completed, a specific schedule for implementation, which the licensee committed to meet, and (3) Justification for delay, demonstration of need for the proposed schedule, and a description of the interim compensatory measures being taken.

III.

Consumers Power Company (CPC) responded to the Generic Letter 82-05 by letter dated May 14, 1982; CPC responded to the Generic Letter 82-10 by letter dated May 25, 1982. In these submittals, CPC confirmed that some of the items identified in the Generic Letters had been completed and made firm commitments to complete the remainder. The attached Tables summarizing the licensees's schedule commitments or status were developed by the staff from the Generic Letters and licensee-provided information.

[1] The letter sent to Cosumers Power Company was lost in the mail and this was not determined until they were questioned about their response on April 30, 1982. The letter was then telecopied to them and they responded 30 days after receipt.

There are several items in GL 82–10 that as noted in Attachment 2 have licensee schedules which are yet to be determined. These items are, therefore, not included in this Order. The licensee considers some of the items addressed in this Order to be completed or to require no modifications. These items are so noted in Attachments 1 and 2. The staff's evaluation of the licensee's delays for implementation of the remaining items is provided herein.

II.B.2 Plant Shielding

II.B.3 Post Accident Sampling

II.F.1.6 Containment Hydrogen Monitor

III.D.3.4 Control Room Habitability

By letter dated March 31, 1981, CPC submitted a Probablistic Risk Assessment (PRA) for the Big Rock Point Plant to the NRC. CPC also requested that implementation of several NUREG–0737 items to be deferred for Big Rock Point pending completion of the NRC's review of PRA.

The basis for this request was that the PRA would show that these items are not necessary for Big Rock Point. By letter dated August 12, 1981, NRC informed CPC that implementation of these four items, among others, would be deferred for Big Rock Point pending completion of the NRC's review of the PRA. The NRC's review of the PRA is presently scheduled to be completed in early 1983. After completion of the NRC review, the NRC will decide if these four items should be implemented at Big Rock Point. Therefore, items II.B.2, II.B.3, II.F.1.6 and IV.D.3.4 are not included in this Order.

II.F.1.1 Noble Gas Monitor

II.F.1.2 Iodine/Particulate Monitor

By letter dated February 16, 1983, CPC committed to have the stack monitoring system which fulfills both TMI Items II.F.1.1 and II.F.1.2 fully operational by December 31, 1983. Installation was delayed from previous commitments by failure of the instrument vendor to deliver the proper equipment in a timely fashion. The equipment is now on-site at Big Rock Point and installation is essentially complete. However, the licensee has been unable to obtain spare parts from the vendor to ensure that the system can be restored to operation in a timely manner if the equipment breaks down and needs repair. The current monitoring system used to quantify high level releases from the stack is still operational and will remain operational as an interim compensatory measure until the new monitoring system is ready to be declared fully operational.

We find, based on the above evaluation, that: (1) The licensee has taken corrective actions regarding the delays and has made a responsible effort to implement the NUREG–0737 requirements noted; (2) there is good cause for the delays (delay of vendor delivery of equipment); and (3) as noted above, interim compensatory measures have been provided.

In view of the foregoing, I have determined that these commitments are required in the interest of public health and safety and should, therefore, the licensee's commitment should be confirmed by the Order.

IV.

Accordingly, pursuant to Sections 103, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered effective immediately that the licensee shall:

Implement and maintain the specific items described in the Attachments to this Order in the manner described in the licensee's submittals noted in Section III herein no later than the dates in the Attachments.

The licensee 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, 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 licensee, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether, the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland, this 14 day of March, 1983.

Robert A. Purple,

Deputy Director, Division of Licensing, Office of Nuclear Reactor Regulation.

ATTACHMENT 1—BIG ROCK POINT, LICENSEE'S COMMITMENTS ON APPLICABLE NUREG–0737 ITEMS FROM GENERIC LETTER 82–05

Item	Title	NUREG–0737 Schedule	Requirement	Licensee's completion schedule (or status)[1]
I.A.3.1	Simulator Exams	10/01/81	Include simulator exams in licensing examinations	Complete.
II.B.2	Plant Shielding [2]	01/01/81	Modify facility to provide access to vital areas under accident conditions.	Deferred until NRC completes review of PRA.
II.B.3	Post-Accident Sampling [2]	01/01/82	Install upgrade post-accident sampling capability	Do.
II.B.4	Training for Mitigating Core Damage.	10/01/81	Complete training program	Complete.
II.E.4.2	Containment Isolation Dependability.	07/01/81	Part 5-lower containment pressure setpoint to level compatible w/normal operation.	Do.
		07/01/81	Part 7-isolate purge & vent valves on radiation signal	Do.
II.F.1	Accident Monitoring	01/01/82	(1) Install noble gas effluent monitors	12/83.
		01/01/82	(2) Provide capability for effluent monitoring of iodine	Do.
		01/01/82	(3) Install in containment radiation-level monitors	Complete.
		01/01/82	(4) Provide continuous indication of containment pressure.	Do.
		01/01/82	(5) Provide continuous indication of containment water level.	Do.
		01/01/82	(6) Provide continuous indication of hydrogen concentration in containment.[2]	Deferred until NRC completes review of PRA.
II.K.3.19	Interlock on Recirculation Pump	07/01/81	Install interlocks on recirculation pump loops	Complete, NRC concluded that modification was not necessary for Big Rock Point.
II.K.3.27	Common Reference Level	07/01/81	Provide common reference level for vessel level instrumentation.	Complete.

[1] Where completion date refers to a refueling outage (the estimated date when the outage begins), the item will be completed prior to the restart of the facility.
[2] Not part of Confirmatory Order.

ATTACHMENT 2—BIG ROCK POINT, LICENSEE'S COMMITMENTS ON APPLICABLE NUREG-0737 ITEMS FROM GENERIC LETTER 82-10

Item	Title	NUREG-0737 schedule	Requirement	Licensee's completion schedule (or status)
I.A.1.3.1	Limit Overtime	10/01/82 per Gen Ltr 82-12 dtd. 6/15/82.	Revise administrative procedures to limit overtime in accordance w/NRC Policy Statement issued by Generic Ltr. No. 82-12, dtd 6/15/82.	Complete.
I.A.1.3.2	Minimum Shift Crew [1]	To be superseded by Proposed Rule.	To be addressed in the Final Rule on Licensed Operator Staffing at Nuclear Power Units.	To be addressed when Final Rule is issued.
I.C.1	Revise Emergency Procedures [1]	Superseded by SECY 82-111	Reference SECY 82-111, Requirements for Emergency Response Capability.	To be determined.
II.D.1.2	RV and SV Test Programs	07/01/82	Submit plant specific reports on relief valve and safety valve tests.	Complete.
II.K.3.16	ADS Actuation	09/30/82	Submit revised position on need for modifications	Complete, NRC concluded that modification was not necessary.
II.K.3.30 & 31	SBLOCA Analysis [1]	1 year after staff approval of model.	Submit plant specific analyses	To be determined following staff approval of model.
III.A.1.2	Staffing Levels for Emergency Situations [1].	Superseded by 82-111	Reference SECY 82-111, Requirements for Emergency Response Capability.	To be Determined.
III.A.1.2	Upgrade Emergency Support Facilities [1].	do	do	Do.
III.A.2.2	Meteorological Data [1]	do	do	Do.
III.D.3.4	Control Room Habitability [1]	To be determined by licensee	Modify Facility as identified by licensee study	Deferred until NRC completes review of PRA.

[1] Not Part of Confirmatory Order.

[FR Doc. 83-7415 Filed 3-22-83; 8:45]
BILLING CODE 7590-01-M

[Docket No. 50-255]

Consumers Power Co. (Palisades Plant); Order Confirming Licensee Commitments on Post-TMI Related Issues

I.

Consumers Power Company (the licensee) is the holder of Provisional Operating License No. DPR-20 which authorizes the operation of the Palisades Plant (the facility) at steady-state power level not in excess of 2530 megawatts thermal. The facility is a pressurized water reactor (PWR) located at the licensee's site in Covert Township, Van Buren County, Michigan.

II.

Following the accident at Three Mile Island Unit No.2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The staff's proposed requirements and schedule for implementation are set forth in NUSEG-0737, "Clarification or TMI Action Plan Requirements." Among these requirements are a number of items, consisting of hardware modifications, administrative procedure implementation and specific information to be submitted by the licensee, scheduled to be completed on or after July 1, 1981. On March 17, 1982, a letter (Generic Letter 82-05) was sent to all licensees of operating power reactors for those items that were scheduled to be implemented from July 1, 1981 through March 1, 1982 [1]. Subsequently, on May 5, 1982, a letter (Generic Letter 82-10) was also sent to all licensees of operating power reactors for those items that were scheduled for implementation after March 1, 1982. These letters are hereby incorporated by reference. In these letters each licensee was requested to furnish within 30 days pursuant to 10 CFR 50.54(f) the following information for items which the staff had proposed for completion on or after July 1, 1981:

(1) For applicable items that have been completed, confirmation of completion and the date of completion, (2) For items that have not been completed, a specific schedule for implementation, which the licensee committed to meet, and (3) Justification for delay, demonstration of need for the proposed schedule, and a description of the interim compensatory measures being taken.

Consumers Power Company responded to the Generic Letter 82-05 by letters dated June 1, July 20, and October 25, 1982; Consumers Power Company responded to the Generic Letter 82-10 by letters dated June 7 and 30, 1982. In these submittals, Consumers Power Company confirmed that some of the items identified in the Generic Letters had been completed and made firm commitments to complete the remainder. The attached Tables summarizing the licensee's schedular commitments or status were developed by the staff from the Generic Letters and the licensee-provided information.

There are several items in Generic Letter 82-10 that as noted in Attachment 2 have licensee schedules which are yet to be determined. These items are, therefore, not included in this Order. The licensee considers some of the items addressed in this Order to be completed or to require no modifications. These items are so noted in Attachments 1 and 2. The staff's evaluation of the licensee's delays for implementation of the remaining items is provided herein.

II.B.3 Post Accident Sampling

This item will be delayed by the licensee and will be completed by June 1983. Delay in completion was caused by a design deficiency concerning the method by which a sample is drawn to determine the hydrogen content of the primary coolant. In addition, the containment hydrogen sample line will remain isolated until the isolation valve for the containment hydrogen monitor is reinstalled at the next shutdown longer than 15 days. As compensatory measures, plant procedures for handling and analyzing post-accident samples were developed and implemented using the existing NSSS sampling panel. These will be utilized until the post-accident sampling equipment becomes operational.

[1] The letter sent to Consumers Power Company was lost in the mail and this was not determined until they were questioned about their response on April 30, 1982. The letter was then telecopied to them and they responded 30 days after receipt.

II.E.1.2 Auxiliary Feedwater (AFW) Initiation and Flow Indication

This item is completed except for the electro-pneumatic converters for the auto-initiation of the auxiliary feedwater. Converters with safety grade certification were not available at the time this modification was installed but will be installed at the next refueling outage. In the interim, the licensee has installed control grade converters and the system is operational.

II.F.1 (1–6) Post-Accident Monitoring (6 items)

The licensee will delay four items, II.F.1(1), (2), (3), and (6). For Item II.F.1(1), Noble Gas Effluent Radiological Monitor, the present schedule for completion is March 1, 1983. Faulty detectors were delivered with the monitor and the vendor has delayed sending replacement detectors. In the interim, a collimated ion chamber which views the steam released from the atmospheric steam dump and code safety valves provides the capability to monitor radio-active releases from the secondary side steam system. For Item II.F.1(2), Continuous Sampling of Plant Effluents, the present schedule for completion is July 1, 1983. The equipment, as delivered, has some deficiencies including filter leakage which required ordering a new filter package from another vendor. In the interim, the radioactivity of the gas released from the Plant Stack is monitored by a collimated ion chamber which views the stack. For Item II.F.1(3), Containment High Range Monitor, the present schedule for completion is June 1, 1983. The only thing lacking to complete this item is a calibration source which the vendor is unable to provide. Consumers Power Company believes this can be resolved by June 1, 1983. In the interim, monitoring high levels of radiation in the Containment Building can be provided by the containment isolation area monitors and by containment atmosphere sampling. For Item II.F.1(6), Containment Hydrogen Monitor, the present schedule for completion is at the first outage of more than 15 days duration after December 15, 1982. The next scheduled outage is the refueling in September 1983. This delay was caused by leakage of the monitor's isolation valves which required their removal for repair and capping of the sample lines to preserve containment integrity during operation. In the interim, containment air samples can be drawn through the NSSS sampling panel when desired for analysis.

III.D.3.4. Control Room Habitability

The licensee has proposed modifications to the control room ventilation system. These modifications will be completed at the next refueling outage presently scheduled for September 1983.

We find, based on the above evaluation, that: (1) the licensee has taken corrective actions regarding the delays and has made a responsible effort to implement the NUREG–0737 requirements noted; (2) there is good cause for the delays (unexpected design complexity, interface problems, delivered equipment deficiencies and equipment delays); and (3) as noted above, interim compensatory measures have been provided.

In view of the foregoing, I have determined that these modifications and actions are required in the interest of public health and safety and, therefore should be confirmed by order.

IV.

Accordingly, pursuant to Sections 103, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered effective immediately that the licensee shall:

Implement and maintain the specific items described in the Attachment to this Order in the manner described in the licensee's submittals noted in Section III herein no later than the dates in the Attachments.

V.

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. A request for a hearing shall be addressed to the Director, 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 licensee, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether, the licensee should apply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 14th day of March 1983.

For the Nuclear Regulatory Commission.

Robert A. Purple,

Deputy Director, Division of Licensing, Office of Nuclear Reactor Regulation

ATTACHMENT 1—PALISADES PLANT, LICENSEE'S COMMITMENTS ON APPLICABLE NUREG-0737 ITEMS FROM GENERIC LETTER 82–05

Item	Title	NUREG–0737 schedule	Requirement	Licensee's completion schedule (or status)[1]
I.A.3.1	Simulator Exams	10/01/81	Include simulator exams in licensing examinations	Complete.
II.B.2	Plant Shielding	01/01/82	Modify facility to provide access to vital areas under accident conditions.	Do.
II.B.3	Post-Accident Sampling	01/01/82	Install upgrade post-accident sampling capability	Installed, being tested but isolate To be operational by 6/1/83 except dependent on H, Monitor II.1.1.(6).
II.B.4	Training for Mitigating Core Damage.	10/01/81	Complete training program	Complete.
II.E.1.2	Aux. Feedwater Initiation & Flow Indication.	07/01/81	Modify instrumentation to level of safety grade	Replace converters 9/83.[1]
II.E.4.2	Containment Isolation Dependability.	07/01/81	Part 5-lower containment pressure setpoint to level compatible w/normal operation.	Complete.
		07/01/81	Part 7-isolate purge & vent valves on radiation signal	Do.
II.F.1	Accident Monitoring	01/01/82	(1) Install noble gas effluent monitors	Vendor delay Operational by 3/1/83.
		01/01/82	(2) Provide capability for effluent monitoring of iodine	Vendor delay Operational by 7/1/83.
		01/01/82	(3) Install incontainment radiation-level monitors	Vendor delay Operational by 6/1/83.
		01/01/82	(4) Provide continuous indication of containment pressure.	Complete.
		01/01/82	(5) Provide continuous indication of containment water level.	Do.

ATTACHMENT 1—PALISADES PLANT, LICENSEE'S COMMITMENTS ON APPLICABLE NUREG-0737 ITEMS FROM GENERIC LETTER 82-05—Continued

Item	Title	NUREG-0737 schedule	Requirement	Licensee's completion schedule (or status) [1]
		01/01/82	(6) Provide continuous indication of hydrogen concentration in containment.	Complete except isolated because valve removed for repair. Return to service at next outage greater than 15 days.

[1] Where completion date refers to a refueling outage (the estimated date when the outage begins), the item will be completed prior to the restart of the facility.

ATTACHMENT 2—PALISADES PLANT, LICENSEE'S COMMITMENTS ON APPLICABLE NUREG-0737 ITEMS FROM GENERIC LETTER 82-10

Item	Title	NUREG-0737 schedule	Requirements	Licensee's completion schedule (or status) [1]
I.A.1.3.1	Limit Overtime	10/01/82 per Gen Ltr. 82-12 dtd. 6/15/82.	Revise administrative procedures to limit overtime in accordance w/NRC Policy Statement issued by Generic Ltr. No. 82-12, dtd 6/15/82.	Complete.
I.A.1.3.2	Minimum Shift Crew [2]	To be superseded by proposed Rule.	To be addressed in the Final Rule on Licensed Operator Staffing at Nuclear Power Units.	To be addressed when Final Rule is issued.
I.C.1	Revise Emergency Procedures [2]	Superseded by SECY 82-111	Reference SECY 82-111, Requirements for Emergency Response Capability.	To be determined.
II.D.1.2	RV and SV Test Programs	07/01/82	Submit plant specific reports on relief valve and safety valve program.	Complete.
II.D.1.3	Block Valve Test Program	07/01/82	Submit report of results of test program	Do.
II.K.3.30 & 31	SBLOCA Analysis [2]	1 year after staff approval of model.	Submit plant specific analyses	To be determined following staff approval of model.
III.A.1.2	Staffing Levels for Emergency Situations [2].	Superseded by 82-111	Reference SECY 82-111, Requirements for Emergency Response Capability.	To be determined.
III.A.1.2	Upgrade Emergency Support Facilities [2].	do	do	Do.
III.A.2.2	Meteorological Data [2]	do	do	Do.
III.D.3.4	Control Room Habitability	To be determined by licensee Modify facility as identified by licensee study.	9/15/81 [1]	Do.

[1] Where completion date refers to a refueling outage (the estimated date when the outage begins), the item will be completed prior to the restart of the facility.
[2] Not part of Confirmatory Order.

[FR Doc. 83-7416 Filed 3-22-83; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-409]

Dairyland Power Cooperative (La Crosse Boiling Water Reactor); Order Confirming Licensee Commitments on Post-TMI Related Issues

I.

Dairyland Power Cooperative (the licensee) is the holder of Provisional Operating License No. DPR-45 which authorizes the operation of the La Crosse Boiling Water Reactor (the facility) at steady-state power level not in excess of 165 megawatts thermal. The facility is a boiling water reactor (BWR) located at the licensee's site in Genoa, Vernon County, Wisconsin.

II.

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Relgulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operation Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The staff's proposed requirements and schedule for implementation are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements." Among these requirements are a number of items, consisting of hardware modifications, administrative procedure implementation and specific information to be submitted by the licensee, scheduled to be completed on or after July 1, 1981. On March 17, 1982, a letter (Generic Letter 82-05) was sent to all licensees of operating power reactors for those items that were scheduled to be implemented from July 1, 1981 through March 1, 1982. Subsequently, on May 5, 1982, a letter (Generic Letter 82-10) was also sent to all licensees of operating power reactors for those items that were scheduled for implementation after March 1, 1982. These letters are hereby incorporated by reference. In these letters each licensee was requested to furnish within 30 days pursuant to 10 CFR 50.54(f) the following information for items which the staff had proposed for completion on or after July 1, 1981:

(1) For applicable items that have been completed, confirmation of completion and the date of completion, (2) For items that have not been completed, a specific schedule for implementation, which the licensee committed to meet, and (3) Justification for delay, demostration of need for the proposed schedule, and a description of the interim compensatory measures being taken.

III.

Dairyland Power Cooperative responded to the Generic Letter 82-05 by letters dated May 7, 1982 and October 20, 1982; Dairyland Power Cooperative responded to the Generic Letter 82-10 by letters dated June 9, 1982 and October 20, 1982.

In these submittals, Dairyland Power Cooperative confirmed that most of the items identified in the Generic Letters had been completed and made firm commitments to complete the remainder, except for technical deviations requested for items II.F.1.3 and II.K.3.27. The attached Tables summarizing the licensee's schedular commitments or status were developed by the staff from the Generic Letters and the licensee-provided information.

There are several items in Generic Letter 82-10 that as noted in Attachment 2 have licensee schedules which are yet to be determined. These items are, therefore, not included in this Order. The licensee considers some of the items addressed in this Order to be

completed or to require no modifications. These items are so noted in Attachments 1 and 2. The staff's evaluation of the licensee's technical deviations and delays for implementation of the remaining items is provided herein.

Generic Letter 82-18 and SECY 82-232 revised the NRC position on Item I.A.3.1, Simulator Exams, by removing the requirement for plants which do not have a plant specific simulator. Therefore, this item is considered resolved for La Crosse.

Item III.D.3.4, Control Room Habitability, is scheduled for completion by March 1, 1983. This schedule represents a 2 month delay from the licensee's originally proposed schedule of January 1, 1983 and is necessary since the original supplier of the monitoring equipment was unable to provide adequate equipment as previously claimed. No compensatory measures are necessary since the schedule for implementation of this item was to be determined by the licensee.

Item II.K.3.27, Common Reference Level, will be reviewed in the upcoming control room design review after which appropriate modifications will be implemented. Interim modifications to mark a common zero on operating scales have been reviewed and approved by the NRC on March 31, 1982.

A minor technical deviation in the calibration of item II.F.1.3, Radiation Level Monitors, resulted when La Crosse installed this equipment prior to the final NUREG-0737 guidance. Since the licensee complied with the NRC guidance at the time of installation, this deviation was reviewed and approved by the NRC on June 22, 1982.

We find, based on the above evaluation, that: (1) The licensee has made a responsible effort to implement the NUREG-0737 requirements noted; (2) there is good cause for the delay (unexpected design complexity, interface problems, and equipment delays); and (3) as noted above, interim compensatory measures have been provided.

In view of the foregoing, I have determined that these modifications and actions are required in the interest of public health and safety and, therefore the licensee's commitments should be confirmed by Order.

IV.

Accordingly, pursuant to Sections 103, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered effective immediately that the licensee shall:

Implement and maintain the specific items described in the Attachment to this Order in the manner described in the licensee's submittals noted in Section III herein no later than the dates in the Attachments.

V.

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. A request for a hearing shall be addressed to the Director, 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 hearing is requested by the licensee, the Commission will issue an Order designating the time and place of any such heraing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether, the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland, this 14th day of March 1983.

Robert A. Purple,

Deputy Director, Division of Licensing, Office of Nuclear Reactor Regulation.

ATTACHMENT 1-LA CROSSE, LICENSEE'S COMMITMENTS ON APPLICABLE NUREG-0737 ITEMS FROM GENERIC LETTER 82-05

Item	Title	NUREG-0737 schedule	Requirement	Licensee's completion schedule (or status) [1]
I.A.3.1	Simulator Exams	10/01/81	Include simulator exams in licensing examinations	Complete, as superseded by Generic Letter 82-18.
II.B.2	Plant Shielding	01/01/82	Modify facility to provide access to vital areas under accident conditions.	Complete; no modif. needed; per LAC-6979; June 12, 1980.
II.B.3	Post-Accident Sampling	01/01/82	Install upgrade post-accident sampling capability	Complete.
II.B.4	Training for Mitigating Core Damage.	10/01/81	Complete training program	Complete 9/30/81.
II.E.4.2	Containment Isolation Dependability.	07/01/81	Part 5—lower containment pressure setpoint to level compatible w/normal operation.	Complete; NRC approved 7/28/81.
		07/01/81	Part 7—isolate purge & vent valves on radiation signal.	Complete; 7/7/81.
II.F.1	Accident Monitoring	01/01/82	(1) Install nobel gas effluent monitors	Complete.
		01/01/82	(2) Provide capability for effluent monitoring of iodine	Do.
		01/01/82	(3) Install incontainment radiation-level monitors	Complete; minor deviations as noted in 3/25/82 ltr., LAC-8178.
		01/01/82	(4) Provide continuous indication of containment pressure.	Completed. 12/23/81 Submittal LAC-7990.
		01/01/82	(5) Provide continuous indication of containment water level.	Do.
		01/01/82	(6) Provide continuous indication of hydrogen concentration in containment.	Do.
II.K.3.19	Interlock on Recirculation Pump	07/01/82	Install interlocks on recirc. pump loops	Complete; NRC Approval Ltr. dated 4/27/82.
II.K.3.27	Common Reference Level [2]	07/01/82	Provide Common reference Level for vessel level instrumentation.	Technical Deviation, request to evaluate during performance of I.D.1 Control Room Design Review.

[1] Where completion date refers to a refueling outage (the estimated date when the outage begins), the item will be completed prior to the restart of the facility.
[2] Not Part of Confirmatory Order.

ATTACHMENT 2.—LA CROSSE, LICENSEE'S COMMITMENTS ON APPLICABLE NUREG-0737 ITEMS FROM GENERIC LETTER 82-10

Item	Title	NUREG-0737 schedule	Requirement	Licensee's completion schedule (or status) [1]
I.A.1.3.1	Limit Overtime	10/01/82 per Gen Ltr 82/12 dtd. 6/15/82.	Revise administrative procedures to limit overtime in accordance w/NRC Policy Statement issued by Generic Ltr. No. 82-12, dtd. 6/15/82.	Complete.
I.A.1.3.2	Minimum Shift Crew [2]	Superseded by Proposed Rule dtd. 8/30/82.	To be addressed in the Final Rule on Licensed Operator Staffing at Nuclear Power Units.	To be addressed when final Rule is issued.
I.C.1	Revised Emergency Procedures [2].	Superseded by SECY 82-111	Reference SECY 82-111, Requirements for Emergency Response Capability.	To be determined.
II.D.1.2	RV and SV Test Programs	07/01/82	Submit plant specific reports on relief valve and safety valve program.	Complete.
II.K.3.16	ADS Actuation	09/30/82	Submit revised position on need for modifications	Do.
II.K.3.30 & 31	SBLOCA Analysis [2]	1 year after staff approval of model.	Submit plant specific analyses	To be determined following staff approval of model.
III.A.1.2	Staffing Levels for Emergency Situations [2].	Superseded by 82-111	Reference SECY 82-111, Requirements for Emergency Response Capability.	To be Determined.
III.A.1.2	Upgrade Emergency Support Facilities [2].	do	do	Do.
III.A.2.2	Meteorological Data [2]	do	do	Do.
III.D.3.4	Control Room Habitability	To be determined by licensee	Modify facility as identified by licensee study	03/01/83

[1] Where completion date refers to a refueling outage (the estimated date when the outage beings), the item will be completed prior to the restart of the facility.
[2] Not Part of Confirmatory Order.

[FR Doc. 83-7417 Filed 3-22-83; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-370]

McGuire Nuclear Station, Unit No. 2, Issuance of Facility Operating License

Notice is hereby given that the Nuclear Regulatory Commission (the Commission) has issued Facility Operating License No. NPF-17 to the Duke Power Company (the licensee) which authorizes operation of the McGuire Nuclear Station, Unit 2, (the facility) at reactor core power levels not in excess of 3411 megawatts thermal in accordance with the provisions of the License, the Technical Specifications and the Environmental Protection Plan with a condition currently limiting operation to five percent of full power (170 megawatts thermal). Authorization to operate beyond five percent of full power will require specific Commission approval.

The McGuire Nuclear Station, Unit 2 is a pressurized water reactor located in Mecklenburg County, North Carolina, approximately 17 miles northwest of Charlotte, North Carolina. The license is effective as of its date of issuance and shall expire at midnight on February 28, 2013.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations. Issuance of this license has been authorized by the Atomic Safety and Licensing Board by its Initial Decision, dated April 18, 1979, and its Supplemental Initial Decision dated May 26, 1981. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on October 7, 1974 (39 FR 36037).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details in respect to this action, see (1) Facility Operating License NFP-17 complete with Technical Specifications and the Environmental Protection Plan; (2) the report of the Advisory Committee on Reactor Safeguards, dated April 12, 1978; (3) the Commission's Safety Evaluation Report, dated March 1978 (NUREG-0422), and Supplements 1 through 6; (4) the Final Safety Analysis Report and Amendments thereto; (5) the Final Environmental Statement, dated May 1974 and supplements thereto; (6) the Floodplain Aspects of the McGuire Nuclear Plant Site, dated September 3, 1980; and (7) the Initial Decisions of the Atomic Safety and Licensing Board, dated April 18, 1979, and May 26, 1981, the Decision of the Atomic Safety and Licensing Appeal Board dated March 30, 1982, and the Commission's Memorandum dated July 27, 1982.

These items are available at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555, and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223. A copy of Facility Operating License NPF-17 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing. Copies of the Safety Evaluation Report and its Supplements (NUREG-0422) and the Final Environmental Statement may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and through the NRC GPO sales program by writing to the U.S. Nuclear Regulatory Commission, Attention: Sales Manager, Washington, D.C. 20555. GPO deposit account holders may call 301-492-9530.

Dated at Bethesda, Maryland this 3rd day of March 1983.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 83-7418 Filed 3-22-83; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-334]

Duquesne Light Co. (Beaver Valley Nuclear Station, Unit No. 1); Order Confirming Licensee Commitments on Post-TMI Related Issues

I.

Duquesne Light Company (the licensee) is the holder of Facility Operating License No. DPR-66 which authorizes the operation of the Beaver Valley Nuclear Station, Unit No. 1 (the facility) at steady-state power level not in excess of 2660 megawatts thermal. The facility is a pressurized water reactor (PWR) located at the licensee's site in Beaver County, Pennsylvania.

II.

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The staff's proposed requirements and schedule for implementation are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements." Among these requirements are a number of items, consisting of hardware modifications, administrative procedure implementation and specific information to be submitted by the licensee, scheduled to be completed on or after July 1, 1981. On March 17, 1982, a letter (Generic Letter 82-05) was sent to all licensees of operating power reactors for those items that were scheduled to be implemented from July 1, 1981 through March 1, 1982. Subsequently, on May 5, 1982, a letter (Generic Letter 82-10) was also sent to all licensees of operating power reactors for those items that were scheduled for implementation after March 1, 1982. These letters are hereby incorporated by reference. In these letters each licensee was requested to furnish within 30 days pursuant to 10 CFR 50.54(f) the following information for items which the staff had proposed for completion on or after July 1, 1981:

(1) For applicable items that have been completed, confirmation of completion and the date of completion, (2) for items that have not been completed, a specific schedule for implementation, which the licensee committed to meet, and (3) justification for delay, demonstration of need for the proposed schedule, and a description of the interim compensatory measures being taken.

III.

Duquesne Light Company responded to Generic Letter 82-05 by letter dated April 16, 1982; to Generic Letter 82-10 by letter dated June 8, 1982. In these submittals, the Duquesne Light Company confirmed that some of the items identified in the Generic Letters had been completed and made firm commitments to complete the remainder. The attached Tables summarizing the licensee's schedular commitments or status were developed by the staff from the Generic Letters and the licensee-provided information.

There are six items from Generic Letter 82-10 that, as noted in the Table (Attachment 2), have licensee schedules to be determined and are therefore not included in this Order. Some of the items addressed in this Order are considered by the licensee to be completed or to require no modifications. The staff's evaluation of the licensee's delays for the remaining items is provided herein:

I.A.1.3.1 Limit Overtime

In the June 8, 1982 submittal, the licensee stated that he is unable to meet the objective of having his operating personnel work a normal 8-hour day, 40-day week. This is due to a large attrition rate of licensed personnel, the need for work schedules which support the minimum shift crew during periods of time when employees are on retraining, vacations, or sick leave. The licensee expects to have additional licensed personnel late in 1983 such that a five-shift schedule may be implemented. The licensee intends to be in conformance with Generic Letter 82-12 by March 31, 1984. We find that the implemented and planned actions by the licensee meet the objective of the requirement.

II.B.3 Post Accident Sampling

In the April 16, 1982 submittal the licensee stated that this plant modification was in progress with completion expected prior to plant start-up with the exception of Boron and Chloride on-line analyzers. All modifications have been made as of today. Due to equipment delivery problems, the licensee does not commit to installation of the analyzers by a specific date. However, as an interim method of determining boron and chloride concentrations the licensee will analyze samples collected from the Post-Accident Sampling System in the Chemistry Laboratory.

We find the licensee's position acceptable since NUREG-0737 requires only that the capability to analyze boron and chloride samples exists, and does not require the installation of on-line analyzers.

Equipment Qualification for Item II.F.1.5—Containment Water Level Monitors

For these items the licensee has stated that the modification is complete with the exception that some of the equipment is not fully qualified. Installed accident monitoring instrumentation will be upgraded in accordance with the schedule in 10 CFR 50.49(g).

The attached Tables were developed by the staff from the April 16 and June 8, 1982 letters and licensee-provided information. The NRC has not completed the post implementation review, now in progress, of all the items given in the Table. The results of this review may identify alterations to the licensee's method of implementing the requirement. Any identified alteration will be the subject of a separate action.

We find, based on the above evaluation, that: (1) the licensee has taken corrective actions regarding the delays and has made a responsible effort to implement the NUREG-0737 requirements noted; (2) there is good cause for the several delays (unexpected design complexity, interface problems, and equipment delays); and (3) as noted above, interim compensatory measures have been provided.

In view of the foregoing, I have determined that these modifications and actions are required in the interest of public health and safety and, therefore, the licensee's commitment should be confirmed by Order.

IV.

Accordingly, pursuant to Sections 103, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered effective immediately that the licensee shall:

Implement and maintain the specific items described in the Attachments to this Order in the manner described in the licensee's submittals noted in Section III herein no later than the dates in the Attachments.

V.

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register.** A request for a hearing shall be addressed to the Director, 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 held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order. This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 14th day of March, 1983.

For the Nuclear Regulatory Commission.

Robert A. Purple,

Deputy Director, Division of Licensing, Office of Nuclear Reactor Regulation.

PLANT NAME: BEAVER VALLEY UNIT 1

ATTACHMENT 1—LICENSEE COMMITMENTS ON APPLICABLE NUREG–0737 ITEMS FROM GENERIC LETTER 82–05

Item	Title	NUREG–0737 schedule	Requirement	Licensee's completion schedule (or status)
I.A.3.1	Simulator Exams	10/1/81	Include simulator exams in licensing examinations	Complete.
II.B.2	Plant Shielding	1/1/82	Modify facility to provide access to vital areas under accident conditions.	Do.
II.B.3	Post-accident sampling	1/1/82	Install upgrade post-accident sampling capability	Do.
II.B.4	Training for Mitigating Core Damage.	10/1/81	Complete training program	Do.
II.E.1.2	Aux FW Indication & Flow Indicator.	7/1/81	Modify instrumentation to level of safety grade	Do.
II.E.4.2	Containment Isolation Dependability.	7/1/81	Part 5—lower containment pressure setpoint to level compatible with normal operation.	Do.
II.E.4.2	Containment Isolation Dependability.	7/1/81	Part 7—isolate purge and vent valves on radiation signal.	Do.

PLANT NAME: BEAVER VALLEY UNIT 1

LICENSEE COMMITMENTS ON APPLICABLE NUREG–0737 ITEMS FROM GENERIC LETTER 82–05

Item	Title	NUREG–0737 schedule	Requirement	Licensee's completion schedule (or status)
II.F.1	Accident Monitoring	1/1/82	(1) Install noble gas effluent monitors	Complete.
		1/1/82	(2) Provide capability for effluent monitoring of iodine	Do.
		1/1/82	(3) Install in-containment radiation-level monitor	Do.
		1/1/82	(4) Provide continuous indication of containment pressure.	Do.
		1/1/82	(5) Provide continuous indication of containment water level.	Do.[1]
		1/1/82	(6) Provide continuous indication of hydrogne concentration in containment.	Do.

[1] Except equipment qualification to be completed in accordance with the schedule in 10 CFR 50.49(g).

PLANT NAME: BEAVER VALLEY UNIT 1

LICENSEE COMMITMENTS ON APPLICABLE NUREG–737 ITEMS FROM GENERIC LETTER 82–10

Item	Title	NUREG–0737 schedule	Requirement	Licensee's completion schedule (or status)
I.A.1.3.1	Limit Overtime	10/1/82 per Gen. Ltr. 82-12 dtd. 6/15/82.	Revise administrative procedures to limit overtime in accordance w/NRC Policy Statement issued by Gen. Ltr. No. 82–12, dtd. June 15, 1982.	March 31, 1984.
I.A.1.3.2	Minimum Shift Crew [1]	To be superseded by Proposed Rule.	To be addressed in the Final Rule on Licensed Operator Staffing at Nuclear Power Units.	To be addressed when Final Rule is issued
I.C.1	Revise Emergency Procedures [1]	Superseded by SECY 82–111	Reference SECY 82–111, Requirements for Emergency Response Capability.	To be determined.
II.D.1.2	RV and SV Test Programs	7/1/82	Submit plant specific reports on relief and safety valve program.	Complete.
II.D.1.3	Block Valve Test Program	do	Submit report of results of test program	Do.
II.K.3.30 & 31	SBLOCA Analysis [1]	1 yr. after staff approval of model.	Submit plant specific analyses	To be determined following staff approval of model.
III.A.1.2	Staffing Levels for Emergency Situations [1].	Superseded by SECY 82–111	Reference SECY 82–111, Requirements for Emergency Response Capability.	To be determined.
III.A.1.2	Upgrade Emergency Support Facilities [1].	do	do	Do.
III.A.2.2	Meteorological Data [1]	do	do	Do.
III.D.3.4	Control Room Habitability	To be determined by licensee	Modify facility as identified by licensee study	Complete.

[1] Not Part of Confirmatory Order.

[FR Doc. 83-7419 Filed 3-22-83; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-250 and 50-251]

Florida Power and Light Co. (Turkey Point Plant, Unit Nos. 3 and 4); Order Confirming Licensee Commitments on Post-TMI Related Issues

I.

Florida Power and Light Company (the licensee) is the holder of Facility Operating License Nos. DPR-31 and DPR-41 which authorize the operation of the Turkey Point Plant, Unit Nos. 3 and 4 (the facilities) at steady-state power level not in excess of 2200 megawatts thermal. The facilities are pressurized water reactors (PWRs) located at the licensee's site in Dade County, Florida.

II.

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The staff's proposed requirements and schedule for implementation are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements." Among these requirements are a number of items, consisting of hardware modifications, administrative procedure implementation and specific information to be submitted by the licensee, scheduled to be completed on or after July 1, 1981. On March 17, 1982, a letter (Generic Letter 82-05) was sent to all licensees of operating power reactors for those items that were scheduled to be implemented from July 1, 1981 through March 1, 1982. Subsequently, on May 5, 1982, a letter (Generic Letter 82-10) was also sent to all licensees of operating power reactors for those items that were scheduled for implementation after March 1, 1982. These letters are hereby incorporated by reference. In these letters each licensee was requested to furnish within 30 days pursuant to 10 CFR 50.54(f) the following information for items which the staff had proposed for completion on or after July 1, 1981:

(1) For applicable items that have been completed, confirmation of completion and the date of completion, (2) for items that have not been completed, a specific schedule for implementation, which the licensee committed to meet, and (3) justification for delay, demonstration of need for the proposed schedule, and a description of the interim compensatory measures being taken.

III.

Florida Power and Light Company responded to Generic Letter 82-05 by letters dated April 8, April 27, June 9, July 9, August 12, November 15, 1982, January 28, February 10 and 28, 1983; Florida Power and Light Company responded to Generic Letter 82-10 by letters dated July 2, July 22, and October 12, 1982. In these submittals, Florida Power and Light Company confirmed that some of the items identified in the Generic Letters had been completed and made firm commitments to complete the remainder. The attached Tables summarizing the licensee's schedular commitments or status were developed by the staff from the Generic Letters and the licensee-provided information.

There are six items from Generic Letter 82-10 that, as noted in the Table (Attachment 2), have licensee schedules to be determined and are therefore not included in this Order. Some of the items addressed in this Order are considered by the licensee to be completed or to require no modifications. The staff's evaluation of the licensee's delays for the remaining items is provided herein:

II.B.2 Plant Shielding

For this item all modifications have been completed except for replacing containment isolation valves CV 2819 and CV 2826 (air bleed valves used in the "pump back system") with valves that are qualified to operate in a post-LOCA environment. The delay in installing these valves is the result of late delivery of the valves and the necessity of at least a seven day outage for installation and checkout. The valves will be installed in Unit No. 4 during the current steam generator repair (SGR) outage (October 1982-June 1983) and Unit No. 3 during the next refueling outage currently scheduled for September 1983.

II.B.3 Post-Accident Sampling

The Post-Accident Sampling System has been installed with the exception of the chloride analyzer and boronmeter. The chloride analyzer has not been shipped from the manufacturer and the boronmeter was returned due to operability problems. The expected delivery of the chloride analyzer is March 4, 1983 and the boronmeter is March 14, 1983. The licensee has committed to have the system operable by August 1, 1983.

The licensee is evaluating onsite or offsite methods to be used to analyze the backup grabe samples the system is designed to take. In addition, they are participating with the Westinghouse Owners Group in assessing the relationship between radionuclide concentrations and core damage. Both of these items will be complete by March 1, 1984.

II.E.1.2 Auxiliary Feedwater Automatic Initiation and Flow Indication

A. Automatic Initiation

The as-built system is safety-grade. The actuation of the pressure regulating valves for the steam supply to the AFW pumps, which are shared by both units, is not designed in accordance with the single failure criteria. These valves are being removed and long-term modifications (new turbines and redundant piping) are being installed during the current Unit No. 4 SGR outage (October 1982-June 1983).

Two of three AFW steam supply valve actuators are being changed from AC to DC. This is being accomplished for Unit No. 4 during the SGR outage. The Unit No. 3 valves will be modified during the next refueling outage currently scheduled for September 1983.

II.F.1 (1-6) Post-Accident Monitoring (6 items)

(1) Noble Gas Monitor—System installed. Modifications being implemented to provide isokinetic sampling due to initial system operability problems. Modifications scheduled for completion by June 30, 1983.

(2) Iodine Particulate Monitoring—The systems have experienced severe problems due to moisture accumulation. New moisture traps are scheduled for installation February 28, 1983 for Unit 3 and the system will be operable by March 1, 1983. Unit 4 system will be modified and operational by September 15, 1983.

(6) Containment Hydrogen Monitor—Installation complete. Both trains in Unit 4 and one train in Unit 3 will be complete by March 31, 1983. The other train in Unit 3 is a one-inch pipe compared to ¾ inch for the other trains. A temperature of 300 F is necessary and heat tracing is a problem which may require a redesign. The train will be operable by March 1, 1984.

III.D.3.4 Control Room Habitability

The proposed "short-term" and "long-term" modifications identified as the result of the licensee's control room

habitability study have been combined into a single completion date of July 1, 1983 for both Unit Nos. 3 and 4. The combined schedule is due to the interrelationship between control room design review covered by NUREG–0737 Item II.D.1 and problems with equipment procurement and delivery.

We find, based on the above evaluation, that: 1) the licensee has taken corrective actions regarding the delays and has made a responsible effort to implement the NUREG–0737 requirements noted; 2) there is good cause for the delays (unexpected design complexity, interface problems, and equipment delays); and 3) as noted above, iterim compensatory measures have been provided.

In view of the foregoing, I have determined that these modifications and actions are required in the interest of public health and safety and, therefore, the licensee's commitment should be confirmed by Order.

IV.

Accordingly, pursuant to Sections 103, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered effective immediately that the licensee shall:

Implement and maintain the specific items described in the Attachments to this Order in the manner described in the licensee's submittals noted in Section III herein no later than the dates in the Attachments.

The licensee 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, 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 effective of this order.

If a hearing is requested by the licensee, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order. This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 14th day of March 1983.

For the Nuclear Regulatory Commission.

Robert A. Purple,

Deputy Director Division of Licensing Office of Nuclear Reactor Regulation.

PLANT NAME: TURKEY POINT, UNITS 3 AND 4

ATTACHMENT 1—LICENSEE'S COMMITMENTS ON APPLICABLE NUREG–0737 ITEMS FROM GENERIC LETTER 82–05

Item	Title	NUREG–0737 schedule	Requirement	Licensee's completion schedule (or status)[1]
I.A.3.1	Simulator Exams	Superseded by Generic Ltr. 82-18.	Include simulator exams in licensing examinations	Complete.
II.B.2	Plant Shielding	1/1/82	Modify facility to provide access to vital areas under accident conditions.	Unit 3—Refueling outage (9/83; Unit 4—Steam Generator Repair (SGR) Outage (10/82-6/83).
II.B.3	Post-accident sampling	1/1/82	Install upgrade post-accident sampling capability	Units 3 & 4—March 1984.
II.B.4	Training for Mitigating Core Damage.	10/1/81	Complete training program.	complete.
II.E.1.2	Aux FW Indication & Flow Indicator.	7/1/81	Modify instrumentation to level of safety grade.	Unit 3—reflg. outage (9/83), Unit 4—SGR outage (10–82–6/83).
II.E.4.2	Containment Isolation Dependability.	7/1/81	Part 5—Lower containment pressure setpoint to level compatible with normal operation.	Complete.
II.E.4.2	Containment Isolation Dependability.	7/1/81	Part 7—Isolate purge and vant valves on radiation signal.	Complete.
II.F.1	Accident Monitoring	1/1/82	(1) Install noble gas effluent monitors	June 30, 1983.
		1/1/82	(1) Install noble gas effluent moinitors	June 30, 1983
		1/1/82	(2) Provide capability for effluent monitoring of iodine	Unit 3—March 1983; Unit 4—September 1983.
		1/1/82	(3) Install in-containment radiation-level monitor	Complete.
		1/1/82	(4) Provide continuous indication of containment pressure.	Do.
		1/1/82	(5) Provide continuous indication of containment water level.	Do.
		1/1/82	(6) Provide continuous indication hydrogen concentration in containment.	Unit 3—Train B March 1983, Train A March 1984; Unit 4—Both trains March 1983.

[1] Where completion date refers to a refueling outage (the estimated date when the outage begins), the item will be completed prior to the restart of the facility.

ATTACHMENT 2—LICENSEE'S COMMITMENTS ON APPLICABLE NUREG–0737 ITEMS FROM GENERIC LETTER 82–10

Item	Title	NUREG–0737 schedule	Requirement	Licensee's completion schedule (or status)[1]
I.A.1.3.1	Limit Overtime	10/01/82 per Gen Ltr 82-12 dtd. 6/15/82.	Revise administrative procedures to limit overtime in accordance w/NRC Policy Statement issued by Generic Ltr. No. 82-12, dtd. June 15, 1982.	Complete.
I.A.1.3.2	Minimum Shift Crew [2]	To be superseded by Proposed Rule.	To be addressed in the Final Rule on Licensed Operator Staffing at Nuclear Power Units.	To be determined when Final Rule is issued.
I.C.1	Revise Emergency Procedures [2]	Superseded by SECY 82-111	Reference SECY 82-111, Requirements for Emergency Response Capability.	To be determined.
II.D.1.2	RV and SV Test Programs	07/1/82	Submit plant specific reports on relief and safety valve program.	Complete.
II.D.1.3	Block Valve Test Program	7/1/82	Submit report of results of test program	Do.
II.K.3.30 & 31	SBLOCA Analysis [2]	1 year after staff approval of model.	Submit plant specific analyses	To be determined following staff approval of model.
III.A.1.2	Staffing Levels for Emergency Situations [2].	Superseded by SECY 82-111	Reference SECY 82-111, Requirements for Emergency Response Capability.	To be determined.
III.A.1.2	Upgrade Emergency Support Facilities [2].	do	do	Do.
III.A.2.2	Meteorological Data [2]	do	do	Do.

ATTACHMENT 2—LICENSEE'S COMMITMENTS ON APPLICABLE NUREG-0737 ITEMS FROM GENERIC LETTER 82-10—Continued

Item	Title	NUREG-0737 schedule	Requirement	Licensee's completion schedule (or status)[1]
III.D.3.4	Control Room Habitability	To be determined by licensee	Modify facility as indentified by licensee study	Unit 3 and 4—7/83.

[1] Where completion date refers to a refueling outage (the estimated date when the outage begins), the item will be completed prior to the restart of the facility.
[2] Not Part of Confirmatory Order.

[FR Doc. 83-7421 Filed 3-22-83; 8:45 am]
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[Docket No. 50-219]

GPU Nuclear Corp. and Jersey Central Power and Light Co. (Oyster Creek Nuclear Generating Station); Order Confirming Licensee Commitments on Post-TMI Related Issues

I.

GPU Nuclear Corporation and Jersey Central Power and Light Company (the licensees) are the holders of Provisional Operating License No. DPR-16 which authorizes the operation of the Oyster Creek Nuclear Generating Station (the facility) at steady-state reactor power levels not in excess of 1930 megawatts thermal. The facility consists of a boiling water reactor (BWR) located in Ocean County, New Jersey.

II.

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The staff's proposed requirements and schedule for implmentation are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements." Among these requirements are a number of items, consisting of hardware modifications, administrative procedure implementation and specific information to be submitted by the licensee, scheduled to be completed on or after July 1, 1981. On March 17, 1982, a letter (Generic Letter 82-05) was sent to all licensees of operating power reactors for those items that were scheduled to be implemented from July 1, 1981 through March 1, 1982. Subsequently on May 5, 1982, a letter (Generic Letter 82-10) was also sent to all licensees of operating power reactors for those items that were scheduled for implementation after March 1, 1982. These letters are herby incorporated by reference. In these letters each licensee was requested to furnish within 30 days pursuant to 10 CFR 50.54(f) the following information for items which the staff has proposed for completion on or after July 1, 1981:

(1) For applicable items that have been completed, confirmation of completion and the date of completion, (2) For items that have not been completed, a specific schedule for implementation, which the licensee committed to meet, and (3) Justification for delay, demonstration of need for the proposed schedule, and a description of the interim compensatory measures being taken.

III.

GPU Nuclear Corporation responded to the Generic Letter 82-05 by letters dated April 20 and June 15, 1982 and February 18, 1983. GPU Nuclear Corporation responded to the Generic Letter 82-10 by letters dated October 8 and 19, 1982 and January 7, 1983. In these submittals, GPU Nuclear Corporation confirmed that some of the items identified in the Generic Letters had been completed and made firm commitments to complete the remainder. The attached Tables summarizing the licensee's schedular commitments or status were developed by the staff from the Generic Letters and the licensee-provided information.

Generic Letters 82-05 and 82-10 applied to fourteen and ten items respectively. Of the fourteen items listed in Generic Letter 82-05, two items are not included in this Order. You have requested that implementation of item II.B.3, "Post Accident Sampling," be deferred until the Cycle 11 refueling/maintenance outage. We believe that postponement of equipment installation beyond the Cycle 10 outage is not in the best interest of a sound emergency response position. Therefore item II.B.3 will be removed from this Order and its disposition will be determined under a separate licensing action. In addition, you have also taken the position that item II.E.4.2(7), "Isolate Purge and Vent Valves on Radiation Signal," is not applicable to the Oyster Creek Plant. We do not concur with this conclusion and therefore, item II.E.4.2(7) will be removed from this Order and disposition will be determined under separate licensing action.

There are several items in Generic Letter 82-10 that, as noted in Attachment 2, have licensee schedules which are yet to be determined. These items are therefore not included in this Order. The licensee considers some of the items addressed in this Order to be completed or to require no modifications. These items are so noted in Attachments 1 and 2. The staff's evaluation of the licensee's delays for implementation of the remaining items is provided herein.

II.B.2 Plant Shielding

This item is complete with the exception of tie-in for the Standby Gas Treatment System (SBGTS). The SBGTS modifications will be completed during the present refueling outage (Cycle 10) which began February 12, 1983. This tie-in could only be accomplished during a refueling outage. During the interim there were two trains of SBGT, and in the event one filter train became saturated, the redundant train would have been available.

II.F.1 Accident Monitoring (1-6)

A plant shutdown is required to accomplish the modifications. The current refueling outage which began on February 12, 1983 is the first available outage of sufficient duration which has occurred since the issuance of NUREG-0737. Items II.F.1.1, 2, 4, 5 and 6 will be completed during the Cycle 10 refueling outage. For II.F.1.1, 4, 5 and 6 there are existing monitors, however, the instruments ranges are not as specified in NUREG-0737. The licensee believes that these monitors would be acceptable for all but the most severe accidents. Emergency response recommendations to local agencies would be based on other plant parameters and inputs from offsite monitoring teams. For II.F.1.2 the licensee states that presently there are charcoal filters in the stack gas monitoring system, however, for severe accidents they would not be accesible

due to high radiation levels. In such cases the recommendations to local agencies would be accomplished based upon other plant parameters and inputs from offsite monitoring teams. For item II.F.1.3 completion can only be accomplished during a refueling outage and it has been deferred to the Cycle 11 outage because of the magnitude of the work scheduled for the present outage. The licensee has stated that there are other methods for detecting a major accident within containment such as high drywell pressure, low reactor water level, torus water level, and neutron monitoring.

II.K.3.19 Interlock of Recirculation Pump

Completion of this item can only be accomplished during a refueling outage and it has been deferred to the Cycle 11 outage because of the magnitude of the work scheduled for the present outage.

The Oyster Creek Technical Specifications (TS) safety limits require that at least two recirculation loop suction valves and their associated discharge valves be in the full open position. This requirement is also addressed in the plant operating procedures, and in addition, the licensee has installed hinged covers over each valve operating switch which serves as a warning to the operator not to violate the requirement.

We find, based on the above evaluation, that (1) the licensee has taken corrective actions regarding the delays and has made a responsible effort to implement the NUREG–0737 requirements noted; (2) there is good cause for the several delays (unexpected design complexity, interface problems, and equipment delays); and (3) as noted above, interim compensatory measures have been provided.

In view of the foregoing, I have determined that these modifications and actions are required in the interest of public health and safety, and therefore the licensee's commitments should be confirmed by Order.

IV.

Accordingly, pursuant to sections 103, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered effective immediately that the licensees shall:

Implement and maintain the specific items described in the Attachments to this Order in the manner described in the licensee's submittals noted in Section III herein no later than the dates in the Attachments.

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, 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.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether, the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 14th day of March 1983.

For the Nuclear Regulatory Commission.

Robert A. Purple,

Deputy Director, Division of Licensing, Office of Nuclear Reactor Regulation.

ATTACHMENT 1—OYSTER CREEK LICENSEE'S COMMITMENTS ON APPLICABLE NUREG-0737 ITEMS FROM GENERIC LETTER 82-05

Item	Title	NUREG-0737 schedule	Requirement	Licensee's completion schedule (or status) [1]
I.A.3.1	Simulator Exams	10/01/81	Include simulator exams in licensing examinations	Complete.
II.B.2	Plant Shielding	01/01/82	Modify facility to provide access to vital areas under accident conditions.	Refueling outage 10 (2-83).
II.B.3	Post Accident Sampling [2]	01/01/82	Install upgrade post accident sampling capability	To be determined.
II.B.4	Training for Mitigating Core Damage.	10/01/81	Complete training program	Complete.
II.E.4.2	Containment Isolation Dependability.	07/01/81	Part 5—lower containment pressure setpoint to level compatible w/normal operation.	Do.
		07/01/81	Part 7—isolate purge & vent valves on radiation signal.[2]	To be determined.
II.F.1	Accident Monitoring	01/01/82	(1) Install noble gas effluent monitors	Refueling outage 10 (2-83).
		01/01/82	(2) Provide capability for effluent monitoring of iodine	Do.
		01/01/82	(3) Install incontainment radiation-level monitors	Refueling outage 11 (4-85).
		01/01/82	(4) Provide continuous indication of containment pressure.	Refueling outage 10 (2-83).
		01/01/82	(5) Provide continuous indication of containment water level.	Do.
		01/01/82	(6) Provide continuous indication of hydrogen concentration in containment.	Do.
II.K.3.19	Interlock on Recirculation Pumps	07/01/81	Install interlocks on recirculation pump loops	Refueling outage 11 (4-85).
II.K.3.27	Common Reference Level	07/01/81	Provide common reference level for vessel level instrumentation.	Complete.

[1] Where completion date refers to a refueling outage (the estimated date when the outage begins), the item will be completed prior to the restart of the facility.
[2] Not part of confirmatory order.

ATTACHMENT 2—OYSTER CREEK LICENSEE'S COMMITMENTS ON APPLICABLE NUREG-0737 ITEMS FROM GENERIC LETTER 82-10

Item	Title	NUREG-0737 schedule	Requirement	Licensee's completion schedule (or status) [1]
I.A.1.3.1	Limit Overtime	10/01/82 per Gen Ltr 82-12 dtd. 6/15/82.	Revise administrative procedures to limit overtime in accordance w/NRC Policy Statement issued by Generic Ltr. No. 82-12, dtd 6/15/82.	Complete.
I.A.1.3.2	Minimum Shift Crew [2]	To be superseded by Proposed Rule.	To be addressed in the Final Rule on Licensed Operator Staffing at Nuclear Power Units.	To be addressed when Final Rule is issued.
I.C.1	Revised Emergency [2] Procedures.	Superseded by SECY 82-111	Reference SECY 82-111, Requirements for Emergency Response Capability.	To be determined.
II.D.1.2	RV and SV Test Programs	04/01/82	Submit plant specific reports on relief valve and safety valve program.	Complete.
II.K.3.18	ADS Actuation	09/30/82	Submit revised postion on need for modifications	Do.

ATTACHMENT 2—OYSTER CREEK LICENSEE'S COMMITMENTS ON APPLICABLE NUREG-0737 ITEMS FROM GENERIC LETTER 82-10—Continued

Item	Title	NUREG-0737 schedule	Requirement	Licensee's completion schedule (or status) [1]
II.K.3.30 & 31	SBLOCA Analysis [2]	1 year after staff approval of model.	Sumbit plant specific analyses	To be determined following staff approval of model.
III.A.1.2	Staffing Levels for Emergency Situations. [2]	Superseded by 82-111	Reference SECY 82-111, Requirements for Emergency Response Capability.	To be Determined.
III.A.1.2	Upgrade Emergency Support Facilities. [2]	do.	do.	Do.
III.A.2.2	Meterological Data	do.	do.	Do.
III.D.3.4	Control Room Habitability [2]	To be determined by licensee	Modify facility as identified by licensee study	Refueling outage 11 (4-85).

[1] Where completion date refers to a refueling outage (the estimated date when the outage begins) the item will be completed prior to the restart of the facility.
[2] Not Part of Confirmatory Order.

[FR Doc. 83-7420 Filed 3-22-83; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-315 and 50-316]

Indiana and Michigan Electric Co. (Donald C. Cook Nuclear Plant Unit Nos. 1 and 2); Order Confirming Licensee Commitments on Post-TMI Related Issues

I.

Indiana and Michigan Electric Company (the licensee) is the holder of Facility Operating License Nos. DPR-58 and DPR-74 which authorizes the operation of the Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2 (the facilities) at steady-state power levels not in excess of 3350 and 3391 megawatts thermal, respectively, for each unit. The facilities consist of pressurized water reactors (PWR) located at the licensee's site in Barrien County, Michigan.

II.

Following the accident at Three Mile Island Unit No.2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The staff's proposed requirements and schedule for implementation are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements." Among these requirements are a number of items, consisting of hardware modifications, administrative procedure implementation and specific information to be submitted by the lecensee, scheduled to be completed on or after July 1, 1981. On March 17, 1982, a letter (Generic Letter 82-05) was sent to all licensees of operating power reactors for those items that were scheduled to be implemented from July 1, 1981 through March 1, 1982. Subsequently, on May 5, 1982, a letter (Generic Letter 82-10) was also sent to all licensees of operating power reactors for those items that were scheduled for implementation after March 1, 1982. These letters are hereby incorporated by reference. In these letters each licensee was requested to furnish within 30 days pursuant to 10 CFR 50.54(f) the following information for items which the staff had proposed for completion on or after July 1, 1981:

(1) For applicable items that have been completed, confirmation of completion and the date of completion, (2) for items that have not been completed, a specific schedule for implementation, which the licensee committed to meet, and (3) justification for delay, demonstration of need for the proposed schedule, and a description of the interim compensatory measures being taken.

III.

Indiana and Michigan Electric Company responded to Generic Letters 82-05 and 82-10 by letters dated December 23, 1981 and May 14, 1982, respectively. These letters were further supplemented by letters on November 5, 1982 and December 14, 1982. In these submittals Indiana and Michigan Electric Company confirmed that some of the items identified in the Generic Letters had been completed and made firm commitments to complete the remainder. The attached Tables summarizing the licensee's schedular commitments or status were developed by the staff from the Generic Letters and the licensee-provided information.

There are six items from Generic Letter 82-10 that, as noted in the Table (Attachment 2), have licensee schedules to be determined and are therefore not included in this Order. Some of the items addressed in this Order are considered by the licensee to be completed or to require no modifications. The staff's evaluation of the licensee's delays for the remaining items is provided herein:

II.D.1.2 Relief and Safety Valve Test Program

The licensee has completed the plant specific evaluation of the safety (Crosby) and relief (Masoneilan) valves. These valves are the same size and series as those valves tested in the EPRI valve test program and the EPRI valve test conditions envelop the range of expected operating and accident conditions for the D. C. Cook Nuclear Plant. During the EPRI tests, pressure oscillations occurred in the valve inlet piping as a result of valve chattering. The Owners Group, of which D.C. Cook is a member, has authorized Westinghouse to perform an operability study of the safety valves. In addition, EPRI is performing an evaluation of the piping structural response to incorporate the observed loads on the piping system. Plant specific submittals on safety and relief valve piping and its supports are also required and this evaluation has been delayed by the above operability tests and evaluations. The licensee, however, has completed their review of these piping systems and supports as a requirement of Bulletin 79-14 on seismic stresses on piping and supports. The adjusted loads due to safety valve operation will be used to confirm earlier findings on acceptability of the piping and supports. At the D. C. Cook Nuclear Plant, the pressurizer safety valves have never lifted.

II.F.1.1 Noble Gas Effluent Monitors
II.F.1.2 Iodine and Particulate Monitors

The licensee has encountered environmental interface problems with the design and location of noble gas effluent monitors for the main steam lines and for the steam jet air ejector and gland steam condenser vents. Modifications are being made to correct the deficiencies to make the installed system operable. In the interim, there are two high range and one low range noble gas monitors on the unit vent and

noble gas monitors on the steam jet air ejector and gland steam exhaust. There is one particulate monitor on the unit vent. Particulate monitoring on the air ejector and gland steam exhaust are by grab samples; procedures are available for this.

For the main stram lines, procedures are available for the temportary use of strap-on monitors should they be necessary. The permanent monitors had been installed but are not operable.

Although the existing monitors and procedures are not consistent with the NUREG–0737 requirements, they are acceptable for the short period of time until the new systems can be made operable.

We find, based on the above evaluation, that: (1) the licensee has taken corrective actions regarding the delays and has made a responsible effort to implement the NUREG–0737 requirements noted; (2) there is good cause for the several delays (interface problems); and (3) as noted above, interim compensatory measures have been provided.

In view of the foregoing, I have determined that these modifications and actions are required in the interest of public health and safety and, therefore, the licensee's commitment should be confirmed by Order.

IV.

Accordingly, pursuant to Sections 103, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered effective immediately that the licensee shall:

Implement and maintain the specific items described in the Attachments to this Order in the manner described in the licensee's submittals noted in Section III herein no later than the dates in the Attachments.

The licensee 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, Office of Nuclear Reactor Regulations, 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 licensee, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order. This Order is effecive upon issuance.

Dated at Bethesda, Maryland, this 4th day of March, 1983.

For the Nuclear Regulatory Commission.

Robert A. Purple,

Deputy Director, Division of Licensing, Office of Nuclear Reactor Regulation.

PLANT NAME: D. C. COOK; UNITS 1 and 2

ATTACHMENT 1—LICENSEE COMMITMENTS ON APPLICABLE NUREG–0737 ITEMS FROM GENERIC LETTER 82–05

Item	Title	NUREG–0737 schedule	Requirement	Licensee's completion schedule (or status)[1]
I.A.3.1	Simulator Exams	10/1/81	Include simulator exams in licensing examinations	Complete.
II.B.2	Plant Shielding	1/1/82	Modify facility to provide access to vital areas under accident conditions.	Do.
II.B.3	Post-accident sampling	1/1/82	Install upgrade post-accident sampling capability	Do.
II.B.4	Training for Mitigating Core Damage.	10/1/81	Complete training program	Do.
II.E.1.2	Aux FW Indication & Flow Indicator.	7/1/81	Modify instrumentation to level of safety grade	Do.
II.E.4.2	Containment Isolation Dependability.	7/1/81	Part 5—Lower containment pressure setpoint to level compatible with normal operation.	Do.
II.E.4.2	Containment Isolation Dependability.	7/1/81	Part 7—Isolate purge and vent valves on radiation signal.	Do.
II.F.1	Accident Monitoring	1/1/82	(1) Install noble gas effluent monitors	May 1983.
		1/1/82	(2) Provide capability for effluent monitoring of iodine	Apr. 1983.
		1/1/82	(3) Install in-containment radiation-level monitor	Complete.
		1/1/82	(4) Provide continuous indication of containment pressure.	Do.
		1/1/82	(5) Provide continuous indication of containment water level.	Do.
		1/1/82	(6) Provide continuous indication of hydrogen concentration in containment.	Do.

[1] Where completion date refers to a refueling outage (the estimated date when the outage begins), the item will be completed prior to the restart of the facility.

ATTACHMENT 2—LICENSEE'S COMMITMENTS ON APPLICABLE NUREG–0737 ITEMS FROM GENERIC LETTER 82–10

Item	Title	NUREG–0737 schedule	Requirement	Licensee's completion schedule (or status)[1]
I.A.1.3.1	Limit Overtime	10/1/82 per Gen. Ltr. 82–12 dtd. 6/15/82.	Revise administrative procedures to limit overtime in accordance w/NRC Policy Statement issued by Gen. Ltr. No. 82–12, dtd. June 15, 1982.	Complete.
I.A.1.3.2	Minimum Shift Crew[2]	To be superseded by Proposed Rule.	To be addressed in the Final Rule on Licensed Operator Staffing at Nuclear Power Units.	To be addressed when Final Rule is issued
I.C.1	Revise Emergency Procedures[2]	Superseded by SECY 82–111	Reference SECY 82–111, Requirements for Emergency Response Capability.	To be determined.
II.D.1.2	RV and SV Test Programs	7/1/82	Submit plant specific reports on relief and safety valve program.	July 1, 1983.
II.D.1.3	Block Valve Test Program	7/1/82	Submit report of results of test program	Complete.
II.K.3.30 & 31	SBLOCA Analysis[2]	1 yr. after staff approval of model.	Submit plant specific anatyses	To be determined following staff approval of model.
III.A.1.2	Staffing Levels for Emergency Situations[2].	Superseded by SECY 82–111	Reference SECY 82–111, Requirements for Emergency Response Capability.	To be determined.
III.A.1.2	Upgrade Emergency Support Facilities[2].	do	do	Do.
III.A.2.2	Meteorological Data[2]	do	do	Do.
III.D.3.4	Control Room Habitability	To be determined by licensee	Modify facility as identified by licensee study	Complete.

[1] Where completion date refers to a refueling outage (the estimated date when the outage begins), the item will be completed prior to the restart of the facility.
[2] Not Part of Confirmatory Order.

[FR Doc. 83-7422 Filed 3-22-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-443-OL 50-444-OL; (ASLBP 82-471-02-OL)]

Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2); Order Rescheduling Prehearing Conference

March 16, 1983.

Pursuant to 10 CFR 2.752, the Board hereby schedules a prehearing conference to commence on Thursday, April 7, 1983 at 10:00 a.m. and terminate no later than 6:00 p.m., on Friday, April 8, 1983. This conference will be held at the U.S. Tax Court, 13th Floor, U.S. Customs House, No. 2 India Street, Boston, Massachusetts. Representatives of all parties, interested states, and interested municipalities are directed to attend.

At the prehearing conference, each representative must be familiar with all details of the case and possess complete authority to enter into any necessary agreements, including settlement agreements and stipulations. The parties shall be prepared to discuss the pending motions for summary disposition, adjustments to the schedule set forth in our September 13, 1982 order, and those other matters specified in 10 CFR 2.752(a)(1)–(6) and pertaining to admitted contentions.[1]

The intervenors representing states and municipalities involved in formulating emergency plans shall be prepared to state and discuss their authority to make commitments with respect to those plans. In addition, the Board requests that the NRC Staff arrange for the presence of a FEMA representative at this prehearing conference. Participants should also be prepared to discuss the scheduling for off-site emergency planning contentions.

It is so ordered.

Dated: Bethesda, Maryland, March 16, 1983. For the Atomic Safety and Licensing Board.

Helen F. Hoyt,
Chairperson, Administrative Judge.

[FR Doc. 83-7424 Filed 3-22-83; 8:45 am]
BILLING CODE 7590-01-M

[1] The matters for consideration specified in 10 CFR 2.752 are:
(1) Simplification, clarification, and specification of the issues;
(2) The necessity or desirability of amending the pleadings;
(3) The obtaining of stipulations and admissions of fact and of the contents and authenticity of documents to avoid unnecessary proof;
(4) Identification of witnesses and the limitation of the number of expert witnesses, and other steps to expedite the presentation of evidence;
(5) The setting of a hearing schedule; and
(6) Such other matters as may aid in the orderly disposition of the proceeding.

[Docket No. 50-272]

Public Service Electric and Gas Co. (Salem Nuclear Generating Station Unit No. 1); Order Confirming Licensee Commitments on Post-TMI Related Issues

I.

Public Service Electric and Gas Company (the licensee) is the holder of Facility Operating License No. DPR-70 which authorizes the operation of the Salem Nuclear Generating Station Unit No. 1 (the facility) at steady-state power level not in excess of 3338 megawatts thermal. The facility consists of a pressurized water reactor (PWR) located at the licensee's site in Salem County, New Jersey.

II.

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The staff's proposed requirements and schedule for implementation are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements." Among these requirements are a number of items, consisting of hardware modifications, administrative procedure implementation and specific information to be submitted by the licensee, scheduled to be completed on or after July 1, 1981. On March 17, 1982, a letter (Generic Letter 82-05) was sent to all licensees of operating power reactors for those items that were scheduled to be implemented from July 1, 1981 through March 1, 1982. Subsequently, on May 5, 1982, a letter (Generic Letter 82-10) was also sent to all licensees of operating power reactors for those items that were scheduled for implementation after March 1, 1982. These letters are hereby incorporated by reference. In these letters each licensee was requested to furnish within 30 days pursuant to 10 CFR 50.54(f) the following information for items which the staff had proposed for completion on or after July 1, 1981:

(1) For applicable items that have been completed, confirmation of completion and the date of completion, (2) for items that have not been completed, a specific schedule for implementation, which the licensee committed to meet, and (3) justification for delay, demonstration of need for the proposed schedule, and a description of the interim compensatory measures being taken.

III.

Public Service Electric and Gas Company responded to Generic Letter 82-05 by letters dated April 15 and June 11, 1982; Public Service Electric and Gas Company responded to Generic Letter 82-10 by letter dated July 15, 1982. In these submittals, Public Service Electric and Gas Comapny confirmed that some of the items identified in the Generic Letters had been completed and made firm commitments to complete the remainder. The attached Tables summarizing the licensee's schedular commitments or status were developed by the staff from the Generic Letters and the licensee-provided information.

There are six items from Generic Letter 82-10 that, as noted in the Table (Attachment 2), have licensee schedules to be determined and are therefore not included in this Order. Some of the items addressed in this Order are considered by the licensee to be completed or to require no modifications.

We find, based on the above evaluation, that: 1) the licensee had taken corrective actions regarding the delays and has made a responsible effort to implement the NUREG-0737 requirements noted; 2) there is good cause for the several delays (unexpected design complexity, interface problems, and equipment delays); and 3) as noted above, interim compensatory measures have been provided.

In view of the foregoing, I have determined that these modifications and actions are required in the interest of public health and safety and, therefore, the licensee's commitment should be confirmed by Order.

IV.

Accordingly, pursuant to Sections 103, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered effective immediately that the licensee shall:

Implement and maintain the specific items described in the Attachments to this Order in the manner described in the licensee's submittals noted in section III herein no later than the dates in the Attachments.

V.

The licensee may request a hearing on this order within 20 days of the date of publication of this Order in the **Federal Register**. A request for a hearing shall be addressed to the Director, 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 licensee, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order. This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 14th day of March, 1983.

For the Nuclear Regulatory Commission.

Robert A. Purple,

Deputy Director, Division of Licensing, Office of Nuclear Reactor Regulation.

Plant Name: Salem Nuclear Generating Unit 1

ATTACHMENT 1—LICENSEE COMMITMENTS ON APPLICABLE 0737 ITEMS FROM GENERIC LETTER 82-05

Item	Title	NUREG-0737 schedule	Requirement	Licensee's completion schedule (or status)
I.A.3.1	Simulator Exams	10/1/81	Include simulator exams in licensing examinations	Complete.
II.B.2	Plant Shielding	1/1/82	Modify facility to provide access to vital areas under accident conditions.	Do.
II.B.3	Post-accident sampling	1/1/82	Install upgrade post-accident sampling capability	Do.
II.B.4	Training for Mitigating Core Damage.	10/1/81	Complete training program	Do.
II.E.1.2	Aux FW Indication & Flow Indicator.	7/1/81	Modify instrumentation to level of safety grade	Do.
II.E.4.2	Containment Isolation Dependability.	7/1/81	Part 5—Lower containment pressure setpoint to level compatible with normal operation.	Do.
II.E.4.2	Containment Isolation Dependability.	7/1/81	Part 7—Isolate purge and vent valves on radiation signal.	Do.
II.F.1	Accident Monitoring	1/1/82	(1) Install noble gas effluent monitors	Do.
2		1/1/82	(2) Provide capability for effluent monitoring of iodine	Do.
		1/1/82	(3) Install in-containment radiation-level monitor	Do.
		1/1/82	(4) Provide continuous indication of containment pressure.	Do.
		1/1/82	(5) Provide continuous indication of containment water level.	Do.
		1/1/82	(6) Provide continous indication of hydrogen concentration in containment.	Do.

ATTACHMENT 2.—LICENSEE COMMITMENT ON APPLICABLE 0737 ITEMS FROM GENERIC LETTER 82-10

Item	Title	NUREG-0737 schedule	Requirement	Licensee's schedule (or status) [1]
I.A.1.3.1	Limit Overtime	10/1/82 per Gen. Ltr. 82-12 dtd. 6/15/82.	Revise administrative procedures to limit overtime in accordance w/NRC Policy Statement issued by Gen. Ltr. No. 82-12, dtd. June 15, 1982.	Complete.
I.A.1.3.2	Minimum Shift Crew [2]	To be superseded by Proposed Rule.	To be addressed in the Final Rule on Licensed Operator Staffing at Nuclear Power Units.	To be addressed when Final Rule is issued.
I.C.1	Revise Emergency Procedures [2]	Superseded by SECY 82-111	Reference SECY 82-111, Requirements for Emergency Response Capability.	To be determined.
II.D.1.2	RV and SV Test Programs	7/1/82	Submit plant specific rpts on relief and safety valve test program.	Complete.
II.D.1.2	Block Valve Test Program	7/1/82	Submit report of results of test program	Do.
II.K.3.30 & 31	SBLOCA Analysis [2]	1 yr. after staff approval of model.	Submit plant specific analyses	To be determined following staff approval of model.
III.A.1.2	Staffing Levels for Emergency Situations [2].	Superseded by SECY 82-111	Reference SECY 82-111, Requirements for Emergency Response Capability.	To be determined.
III.A.1.2	Upgrade Emergency Support Facilities [2].	do	do	Do.
III.A.2.2	Meteorological Data	do	do	Do.
III.D.3.4	Control Room Habitability	To be determined by licensee	Modify facility as identified by licensee study	Complete.

[1] Where completion date refers to a refueling outage (the estimated date when the outage begins), the item will be completed prior to the restart of the facility.
[2] Not Part of Confirmatory Order.

[FR Doc. 83-7425 Filed 3-22-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-244]

Rochester Gas and Electric Corp. (R. E. Ginna Nuclear Power Plant); Order Confirming Licensee Commitments on Post-TMI Related issues

I

Rochester Gas and Electric Corporation (the licensee) is the holder of Provisional Operating License No. DPR-18 which authorizes the operation of the R. E. Ginna Nuclear Power Plant (the facility) at steady-state power level not in excess of 1520 megawatts thermal. The facility is a pressurized water reactor (PWR) located at the licensee's site in Wayne County, New York.

II.

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28,

1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities based on the experience from the accident at TMI–2 and the official studies and investigations of the accident. The staff's proposed requirements and schedule for implementation are set forth in NUREG–0737, "Clarification of TMI Action Plan Requirements." Among these requirements are a number of items, consisting of hardware modifications, administrative procedure implementation and specific information to be submitted by the licensee, scheduled to be completed on or after July 1, 1981. On March 17, 1982, a letter (Generic Letter 82–05) was sent to all licensees of operating power reactors for those items that were scheduled to be implemented from July 1, 1981 through March 1, 1982. Subsequently, on May 5, 1982, a letter (Generic Letter 82–10) was also sent to all licensees of operating power reactors for those items that were scheduled for implementation after March 1, 1982. These letters are hereby incorporated by reference. In these letters each licensee was requested to furnish within 30 days pursuant to 10 CFR 50.54(f) the following information for items which the staff had proposed for completion on or after July 1, 1981:

(1) For applicable items that have been completed, confirmation of completion and the date of completion, (2) For items that have not been completed, a specific schedule for implementation, which the licensee committed to meet, and (3) Justification for delay, demostration of need for the proposed schedule, and a description of the interim compensatory measures being taken.

III.

Rochester Gas and Electric Corporation responded to the Generic Letter 82–05 by letters dated April 23, 1982, June 17, 1982, September 16, 1982 and December 2, 1982 and March 3, 1983. Rochester Gas and Electric Corporation responded to the Generic Letter 82–10 by letters dated June 11, 1982 and December 2, 1982 and March 7, 1983. In these submittals, Rochester Gas and Electric Corporation confirmed that most of the items identified in the Generic Letters had been completed and made firm commitments to complete the remainder. The attached Tables summarizing the licensee's schedular commitments or status were developed by the staff from the Generic Letters and the licensee-provided information.

There are several items in Generic Letter 82–10 that, as noted in Attachment 2, have licensee schedules which are yet to be determined. These items are, therefore, not included in this Order. The licensee considers some of the items addressed in this Order to be completed or to require no modifications. These items are so noted in Attachments 1 and 2. The staff's evaluation of the licensee's delays for implementation of the remaining items is provided herein.

II.B.2 Plant Shielding

This item will be completed in May 1983 and will be operational in July, 1983. The delay was caused by equipment delivery problems and the fact that the design was more complex, requiring a greater number of cables to be routed than originally expected. The licensee has stated that the experience at TMI has shown that existing radwaste equipment will probably not be used for long term recovery and cleanup following accidents with similar fuel damage. Existing radwaste equipment may be used following less significant accidents. In such cases the dose rates at the existing equipment will be reduced from the conservatively high doses calculated in their study. Because of the difficulty defining when the radwaste equipment may be used, the licensee has committed to relocate the radwaste control panel. This relocation may be prudent for some long term recovery actions to minimize radiation exposure.

II.B.3 Post-Accident Sampling

This item will be delayed by the licensee and will be completed three (3) weeks after achieving criticality following the Spring 1983 refueling outage or by June 30, 1983, whichever is later. Originally the licensee had proposed to provide additional shielding to the existing sampling system. That proposal was found to be impractical and the licensee then began formulating plans for a post-accident sampling system. The system was to have been installed by July 1, 1982, but due to the work load during the outage following the steam generator tube rupture (January 25, 1982) the completion date slipped to September 1, 1982. Subsequent to the outage, contractor-employed labor personnel involved in the installation of the system initiated a strike. The strike began on June 2, 1982, and ended July 21 1982. Installation was resumed but additional delays developed when a valve in the discharge line of the post-accident sampling system failed. The valve is inside containment and cannot be replaced before March 1983 shutdown. The utility has committed to have the post-accident sampling system installed and operational in three (3) weeks after achieving criticality following the Spring 1983 refueling outage or by June 30, 1983, whichever is later. In the interim, post accident sampling can be accomplished through the use of revised procedures, upgraded sample shields and transport equipment, and the addition of recently installed permanent shielding.

IID.1.2 Relief Valve and Safety Valve Test Programs

The licensee plans to issue its final report on the relief valve and safety valve test program in March 1983. The necessary pipe support modifications identified in the analyses will be completed during the refueling outage scheduled for the Spring of 1983. A preliminary evaluation shows that the valves tested represent the Ginna safety and relief valve designs and that the conditions tested envelope the range of expected operating and accident conditions for the Ginna plant.

III.D.3.4 Control Room Habitability

The licensee has completed the evaluations of the Ginna control room HVAC system that are part of Item III.D.3.4, and has identified certain plant modifications. The modifications were reviewed by the staff and were found to be acceptable provided the licensee addressed the single failure criterion of the intake and exhaust ductwork. RG&E has committed in a letter dated March 7, 1983, to install redundant dampers on the intake and exhaust ductwork which have direct access to the atmosphere to ensure that the single failure criterion is met. Due to the extensive design modifications that have been proposed, the completion of all of the modifications will be accomplished by July, 1984.

We find, based on the above evaluation, that: 1) the licensee has taken corrective actions regarding the delays and has made a responsible effort to implement NUREG–0737 requirements noted; 2) there is good cause for the several delays (unexpected design complexity, contractor labor problems, and equipment delays); and 3) as noted above, interim compensatory measures have been provided.

In view of the foregoing, I have determined that these modifications and actions are required in the interest of public health and safety and, therefore, the licensee's commitments should be confirmed by Order.

IV.

Accordingly, pursuant to Sections 103, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered effective immediately that the licensee shall:

Implement and maintain the specific items described in the Attachments to this Order in the manner described in the licensee's submittals noted in Section III herein no later than the dates in Attachments.

V.

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. A request for a hearing shall be addressed to the Director, 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 a hearing shall not stay the immediate effectiveness of this order.

If a hearing is requested by the licensee, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 14th day of March 1983.

For the Nuclear Regulatory Commission.

Robert A. Purple,

Deputy Director, Division of Licensing, Office of Nuclear Reactor Regulation.

ATTACHMENT 1.—GINNA PLANT LICENSEE'S COMMITMENTS ON APPLICABLE NUREG-0737 ITEMS FROM GENERIC LETTER 82-05

Item	Title	NUREG-0737 schedule	Requirement	Licensee's completion schedule (or status) [1]
I.A.3.1	Simulator Exams	10/01/81	Include simulator exams in licensing examinations	Complete.
II.B.2	Plant Shielding	01/01/82	Modify facility to provide access to vital areas under accident conditions.	07/83.
II.B.3	Post-Accident Sampling	01/01/82	Install upgrade post-accident sampling capability	3 weeks after achieving criticality following Spring 1983 refueling outage or June 30, 1983, whichever is later.
II.B.4	Training for Mitigating Core Damage.	10/01/81	Complete training program	Complete.
II.1.1.2	Aux. Feedwater Initiation & Flow Indication.	07-01-81	Modify instrumentation to level of safety grade	Do.
II.E.4.2	Containment Isolation Dependability.	07/01/81	Part 5—lower containment pressure setpoint to level compatible w/normal operation.	Do.
		07/01/81	Part 7—isolate purge & vent valves on radiation signal	Do.
II.F.1	Accident Monitoring	01/01/82	(1) Install noble gas effluent monitors	Do.
		01/01/82	(2) Provide capability for effluent monitoring of iodine	Do.
		01/01/82	(3) Install incontainment radiation-level monitors	Do.
		01/01/82	(4) Provide continuous indication of containment pressure.	Do.
		01/01/82	(5) Provide continuous indication of containment water level.	Do.
		01/01/82	(6) Provide continuous indication of hydrogen concentration in containment.	Do.

[1] Where completion date refers to a refueling outage (the estimated date when the outage begins), the item will be completed prior to the restart of the facility.

ATTACHMENT 2—GINNA PLANT LICENSEE'S COMMITMENTS ON APPLICABLE NUREG—0737 ITEMS FROM GENERIC LETTER 82-10

Item	Title	NUREG-0737 schedfule	Requirement	Licensee's completion schedule (or status) [1]
I.A.1.3.1	Limit Overtime	10/10/82 per Gen Ltr 82-12 dtd. 6/15/82.	Revise administrative procedures to limit overtime in accordance w/NRC Policy Statement issued by Generic Ltr. No. 82-12, dtd 6/15/82.	Complete.
I.A.1.3.2	Minimum Shift Crew [2]	To be superseded by Pro proposed Rule.	To be addressed in the Final Rule on Licensed Operator Staffing at Nuclear Power Units.	To be addressed when Final Rule is issued.
I.C.1	Revise Emergency Procedures [2]	Superseded by SECY 82-111	Reference SECY 82-111, Requirements for Emergency Response Capability.	To be determined.
II.D.1.2	RV and SV Test Programs	07/01/82	Submit plant specific reports on relief valve and safety valve program.	03/83.
II.D.1.3	Block Valve Test Program	07/01/82	Submit report of results of test program	Complete.
II.K.3.30 & 31	SBLOCA Analysis [2]	1 year after staff approval of model.	Submit plant sepcific analyses	To be determined following staff approval of model.
III.A.1.2	Staffing Levels for Emergency Situations [2].	Superseded by 82-111	Reference SECY 82-111, Requirements for Emergency Response Capability.	To be Determined.
III.A.1.2	Upgrade Emergency Support Facilities [2].	do	do	Do.
III.A.2.2	Meteorological Data [2]	do	do	Do.
III.D.3.4	Control Room Habitability	To be determined by licensee	Modify facility as identified by licensee study	07/84.

[1] Where completion date refers to a refueling outage (the estimated date when the outage begins), the item will be completed prior to the restart of the facility.
[2] Not Part of Confirmatory Order.

[FR Doc. 83-7428 Filed 3-22-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-206]

Southern California Edison Co. and San Diego Gas and Electric Co. (San Onofre Nuclear Generating Station, Unit 1); Order Confirming Licensee Commitments on Post-TMI Related Issues

I.

Southern California Edison Company (SCE) and San Diego Gas and Electric Company (the licensees) are the holders of Provisional Operating License No. DPR-13 which authorizes the operation of the San Onofre Nuclear Generating Station, Unit 1 (the facility) at steady-state power levels not in excess of 1347 megawatts thermal. The facility is a pressurized water reactor (PWR) located in San Diego County, California.

II.

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The staff's proposed requirements and schedule for implementation are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements." Among these requirements are a number of items, consisting of hardware modifications, administrative procedure implementation and specific information to be submitted by the licensee, scheduled to be completed on or after July 1, 1981. On March 17, 1982, a letter (Generic Letter 82-05) was sent to all licensees of operating power reactors for those items that were scheduled to be implemented from July 1, 1981 through March 1, 1982. Subsequently, On May 5, 1982, a letter (Generic Letter 82-10) was also sent to all licensees of operating power reactors for those items that were scheduled for implementation after March 1, 1982. These letters are hereby incorporated by reference. In these letters each licensee was requested to furnish within 30 days pursuant to 10 CFR 50.54(f) the following information for items which the staff had proposed for completion on or after July 1, 1981:

(1) For applicable items that have been completed, confirmation of completion and the date of completion, (2) For items that have not been completed, a specific schedule for implementation, which the licensee committed to meet, and (3) Justification for delay, demonstration of need for the proposed schedule, and a description of the interim compensatory measures being taken.

III.

Southern California Edison Company (SCE) responded to Generic Letter 82-05 by-letters dated April 16, October 12, October 14, November 19, 1982, and February 16, 1983. SCE responded to the Generic Letter 82-10 by letters dated June 4, 1982 October 12, 1982, November 19, 1982 and February 16, 1983. In these submittals, SCE confirmed that some of the items identified in the Generic Letters had been completed and made commitments to complete the remainder. The attached Tables summarizing SCE's schedular commitments or status were developed by the staff from the Generic Letters and the information provided by SCE.

There are several items Generic Letter 82-10 that as noted in Attachment 2 have licensee schedules which are yet to be determined. These items are, therefore, not included in this Order. The licensee considers some of the items addressed in this Order to be completed or to require no modifications. These items are so noted in Attachments 1 and 2. The staff's evaluation of the licensee's delays for implementation of the remaining items is provided herein.

II.B.3 Post Accident Sampling

By letter dated April 15, 1982, SCE informed the NRC of their intention to expand the post-accident sampling system to include on-line chloride and oxygen monitors. Subsequently, by letter dated December 3, 1982, SCE indicated that an undiluted sample facility would be provided rather than an on-line chloride monitor. SCE's letter dated February 16, 1983 stated that the O_2 analyzer and the undiluted sample facility is targeted for completion during the Cycle 9 refueling outage (next refueling outage). The NRC staff interprets this to mean that these items will be completed no later than the next refueling outage. A diluted grab sample capability currently exists. The other requirements of item II.B.3 will be completed prior to startup from the current outage that began on February 27, 1982.

II.E.1.2 Auxiliary Feedwater Initiation and Flow Indicator

Three safety-grade relays and a safety-grade ammeter and transducer will be installed during the current outage which began on February 27, 1982. This will complete the electrical upgrades necessary to comply with this item.

There is also mechanical equipment that needs to be upgraded to safety-grade to complete this item. The delay in installing this equipment is due to the need on the part of the licensees to undertake programs to qualify this mechanical equipment. These items will be installed no later than the next refueling outage. The control grade equipment will be operational in the interim.

II.F.1(3-6) Accident Monitoring (4 items)

This requirement will be completed during the current outage that began on February 27, 1982.

II.D.1.3 Block Value Test Program

A PORV block valve adequacy report will be provided by June 1, 1983. The delay in the PORV report is due to a basic difference in the actuator used in the EPRI tests compared to the San Onofre Unit 1 actuators. Additional valve-specific analyses are needed to reach any conclusions regarding the adequacy of the PORV block valves installed at San Onofre Unit 1.

III.D.3.4 Control Room Habitability

The scheduled completion of the planned modifications to the control room will be established in conjunction with the schedule for completion of any modifications identified during the Systematic Evaluation Program Integrated Assessment. SCE also indicated that the schedule could be impacted by the requirements of TMI Action Plan Item I.D.1—Control Room Design Reviews.

We find, based on the above evaluation, that: (1) SCE has taken corrective actions regarding the delays and has made a responsible effort to implement the NUREG-0737 requirements noted: (2) there is good cause for the several delays (expansion of the post accident sampling system and qualification of mechanical equipment); and (3) as noted above, interim compensatory meaures have been provided.

In view of the foregoing, I have determined that these modifications and actions are required in the interest of public health and safety and, therefore

SCE's commitments should be confirmed by Order.

IV.

Accordingly, pursuant to Sections 103, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered effective immediately that the licensee shall:

Implement and maintain the specific items described in the Attachments to this Order in the manner described in SCE's submittals notes in Section III herein no later than the dates in the Attachments.

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 should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is requested by the licensees, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether, the licensees should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 14th day of March 1983.

For the Nuclear Regulatory Commission.

Robert A. Purple,

Deputy Director, Division of Licensing, Office of Nuclear Reactor Regulation.

ATTACHMENT 1—SAN ONOFRE UNIT 1 LICENSEE'S COMMITMENTS ON APPLICABLE NUREG-0737 ITEMS FROM GENERIC LETTER 82-05

Item	Title	* NUREG-0737 schedule	Requirement	Licensee's completion schedule (or status)[1]
I.A.3.1	Simulator Exams	10/01/81	Include simulator exams in licensing examinations	Complete.
II.B.2	Plant Shielding	01/01/82	Modify facility to provide access to vital areas under accident conditions.	Do.
II.B.3	Post-Accident Sampling	01/01/82	Install upgrade post-accident sampling capability	No later than next refueling outage.
II.B.4	Training for Mitigating Core Damage.	10/01/81	Complete training program	Complete.
II.E.1.2	Aux. Feedwater Initiation & Flow Indication.	07/01/81	Modify instrumentation to level of safety grade	No later than next refueling outage.
II.E.4.2	Containment Isolation Dependability.	07/01/81	Part 5—lower containment pressure setpoint to level compatible w/normal operation.	Complete.
		07/01/81	Part 7—isolate purge & vent valves on radiation signal	Do.
II.F.1	Accident Monitoring	01/01/82	(1) install noble gas effluent monitors	Do.
		01/01/82	(2) Provide capability for effluent monitoring of iodine	Do.
		01/01/82	(3) Install incontainment radiation-level monitors	During the current outage that began on February 27, 1982.
		01/01/82	(4) Provide continuous indication of containment pressure.	Do.
		01/01/82	(5) Provide continuous indication of containment water level.	Do.
		01/01/82	(6) Provide continuous indication of hydrogen concentration in containment.	Do.

[1] Where completion date refers to a refueling outage (the estimated date when the outage begins), the item will be completed prior to the restart of the facility.

ATTACHMENT 2—SAN ONOFRE UNIT 1 LICENSEE'S COMMITMENTS ON APPLICABLE NUREG-0737 ITEMS FROM GENERIC LETTER 82-10

Item	Title	NUREG-0737 schedule	Requirement	Licensee's completion schedule (or status)[1]
I.A.1.3.1	Limit Overtime	10/01/82 per Gen Ltr 82-12 dtd. 6/15/82.	Revise administrative procedures to limit overtime in accordance w/NRC Policy Statement issued by Generic Ltr. No. 82-12, dtd. 5/15/82.	Complete.
I.A.1.3.2	Minimum Shift Crew [2]	Superseded by Proposed Rule dtd. 8/30/82.	To be addressed in the Final Rule on Licensed Operator Staffing at Nuclear Power Units.	To be addressed when Final Rule is issued.
I.C.1	Revise Emergency Procedures [2]	Superseded by SECY 82-111	Reference SECY 82-111, Requirements for Emergency Response Capability.	To be determined.
II.D.1.2	RV and SV Test Programs	7/1/82	Submit plant specific reports on relief valve and safety valve program.	Complete.
II.D.1.3	Block Valve Test Program	7/01/82	Submit report of results of test program	To be submitted by June 1, 1983.
II.K.3.30 & 31	SBLOCA Analysis [2]	1 year after staff approval of model.	Submit plant specific analyses	To be determined following staff approval of model.
III.A.1.2	Staffing Levels for Emergency Situations [2].	Superseded by 82-111	Reference SECY 82-111, Requirements for Emergency Response Capability.	To be determined.
III.A.1.2	Upgrade Emergency Support Facilities [2].	...do	...do	Do.
III.A.2.2	Meteorological Data [2]	...do	...do	Do.
III.D.3.4	Control Room Habitability	To be determined by licensee	Modify facility as identified by licensee study	Modifications to be scheduled in conjunction with the schedule for completion of any modifications identified during the SEP Integrated Assessment.

[1] Where completion date refers to a refueling outage (the estimated date when the outage begins), the item will be completed prior to the restart of the facility.
[2] Not Part of Confirmatory Order.

[FR Doc. 83-7427 Filed 3-22-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-280 and 50-281]

Virginia Electric and Power Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 86 to Facility Operating License No. DPR-32 and Amendment No. 87 to Facility Operating License No. DPR-37 issued to Virginia Electric and Power Company (the licensee), which revised Technical Specifications for operation of the Surry Power Station, Unit Nos. 1 and 2, respectively, (the facilities), located in Surry County, Virginia. The amendments are effective as of the date of issuance.

The amendments revise the Technical Specifications to restore the core thermal limits and overtemperature and overpower ΔT setpoints to values consistent with 100% of thermal design flow.

The application for amendments 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 amendments. Prior public notice of these amendments was not required since these amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments 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 these amendments.

For further details with respect to this action, see (1) the application for amendments dated November 22, 1982, (2) Amendment Nos. 86 and 87 to License Nos. DPR-32 and DPR-37, 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 Swem Library, College of William and Mary, Williamsburg, Virginia 23185. 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 14th day of March, 1983.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 83-7428 Filed 3-22-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-280 and 50-281]

Virginia Electric and Power Co. (Surry Power Station, Units 1 and 2); Order Confirming Licensee Commitments on Post-TMI Related Issues

I.

Virginia Electric and Power Company (the licensee) is the holder of Facility Operating License Nos. DPR-32 and DPR-37 which authorize the operation of the Surry Power Station, Unit Nos. 1 and 2 (the facilities) at power levels not in excess of 2441 megawatts thermal. The facility is a pressurized water reactor (PWR) located at the licensee's site in Surry County, Virginia.

II.

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The staff's proposed requirements and schedule for implementation are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements." Among these requirements are a number of items, consisting of hardware modifications, administrative procedure implementation and specific information to be submitted by the licensee, scheduled to be completed on or after July 1, 1981. On March 17, 1982, a letter (Generic Letter 82-05) was sent to all licensees of operating power reactors for those items that were scheduled to be implemented from July 1, 1981 through March 1, 1982. Subsequently, on May 5, 1982, a letter (Generic Letter 82-10) was also sent to all licensees of operating power reactors for those items that were scheduled for implementation after March 1, 1982. These letters are hereby incorporated by reference. In these letters each licensee was requested to furnish within 30 days pursuant to 10 CFR 50.54(f) the following information for items which the staff had proposed for completion on or after July 1, 1981:

(1) For applicable items that have been completed, confirmation of completion and the date of completion, (2) for items that have not been completed, a specific schedule for implementation, which the licensee committed to meet, and (3) justification for delay, demonstration of need for the proposed schedule, and a description of the interim compensatory measures being taken.

III.

Virginia Electric and Power Company responded to Generic Letter 82-05 by letters dated April 16, May 17, June 18, June 23, August 23, October 1, December 27 and 29, 1982, and March 1 and March 11, 1983; the licensee responded to Generic Letter 82-10 by letters dated May 24, June 30, July 17 and November 16, 1982. In these submittals, the licensee confirmed that some of the items identified in the Generic Letters had been completed and made firm commitments to complete the remainder. The attached Tables summarizing the licensee's schedular commitments or status were developed by the staff from the Generic Letters and the licensee-provided information.

There are six items from Generic Letter 82-10 that, as noted in the Table (Attachment 2), have licensee schedules to be determined and are therefore not included in this Order. Some of the items addressed in this Order are considered by the licensee to be completed or to require no modifications. The staff's evaluation of the licensee's delays for the remaining items is provided herein:

II.B.3 Post Accident Sampling

This item will be delayed by the licensee and will be completed by June 1, 1983. At present, all sampling and analysis equipment is installed. The schedule extension is required because the installation of permanent supply and sample lines is delayed by the need to redesign and reroute portions of the lines to accommodate recent concerns associated with iodine plateout and equipment problems. Also, there have been procurement difficulties with the heat tracing materials and control circuitry. The interim sampling procedure required by the short-term TMI requirements will be in effect until the permanent system is operational.

Item II.D.1.2 RV and SV Test Programs

The licensee has submitted a plant-specific assessment regarding adequacy of the installed safety and relief valves and block values. The discharge piping evaluations for Surry depend on the results obtained from North Anna evaluations which were submitted December 21, 1982. The licensee has committed to complete the Surry evaluations by December 31, 1983.

II.E.1.2 Auxiliary Feedwater (AFW) Initiation and Flow Indication

All requirements for part 1 of Item II.E.1.2, automatic initiation, have been closed out for Unit No. 1 with the exception of the requirement for bypass indication for the motor-driven AFW pumps. Completion of part 1 exceeds the implementation date of July 1, 1982, as a result of clarification of the bypass indication requirement subsequent to the NRC staff/consultant submittals. This item will be completed during the next refueling outage for Unit No. 1. In the interim, indication will be determined by switch position and light status.

II.F.1 Accident Monitoring

Parts 1 and 2 deal with noble gas, iodine and particulate monitoring. Installation is complete except for an electric heat tracing system and startup testing for the Process and Vent Effluent Monitoring System, and the in-situ calibration and startup testing of the Steam Driven Auxiliary Feedwater Pump Exhaust Effluent Monitoring System. The schedule is extended to accommodate delays in the heat tracing system delivery. The new date for completion is March 1, 1983. The effluent monitoring system installed for the short-term TMI will be used as an interim measure unit this permanent system is operational.

Part 3 deals with the Containment High Range Radiation Monitors. The containment range monitor has been calibrated at the vendor plant and the system has been installed and tested. However, the licensee does not consider the system to be operational until such time that a final in-situ calibration has been completed. A prototype calibration source has been developed by the vendor and will be available by March 1983. The licensee is in the process of procuring the prototype calibration source so that a final in-situ calibration will be completed during the fall maintenance outage currently scheduled to be completed on October 15, 1983 for Unit 1 and November 30, 1983 for Unit 2.

Part 6 deals with Containment Hydrogen Monitors, which are installed and tested but are not connected to permanent sample supply and return lines. The slip to April 15, 1983 is due to delays in procurement of a qualified heat trace system. In the interim, the new hydrogen analyzers will be utilized by connecting them to existing containment air sample lines.

Item III.D.3.4 Control Room Habitability Requirements

Due to long lead times on procurement of materials, modifications to the control room will be complete by December 31, 1983.

We find, based on the above evaluation, that: (1) the licensee has taken corrective actions regarding the delays and has made a responsible effort to implement the NUREG–0737 requirements noted; (2) there is good cause for the several delays (unexpected design complexity, interface problems, and equipment delays); and (3) at noted above, interim compensatory measures have been provided.

In view of the foregoing, I have determined that these modifications and actions are required in the interest of public health and safety and, therefore, the licensee's commitment should be confirmed by Order.

IV.

Accordingly, pursuant to Sections 103, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered effective immediately that the licensee shall:

Implement and maintain the specific items described in the Attachments to this Order in the manner described in the licensee's submittals noted in Section III herein no later than the dates in the Attachments.

The licensee 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, 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 licensee, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order. This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 15th day of March 1983.

For the Nuclear Regulatory Commission.

Robert A. Purple,

Deputy Director, Division of Licensing, Office of Nuclear Reactor Regulation.

PLANT NAME: SURRY POWER STATION, UNIT NOS.1 AND 2

ATTACHMENT 1—LICENSEE COMMITMENTS ON APPLICABLE NUREG—0737 ITEMS

Item	Title	NUREG-0737 Schedule	Requirement	Licensee's completion schedule (or status)
I.A.3.1	Simulator exams	10/1/81	Include simulator exams in licensing examinations.	Complete.
II.B.2	Plant Shielding	1/1/82	Modify facility to provide access to vital areas under accident conditions.	Do.
II.B.3	Post-accident sampling	1/1/82	Install upgrade post-accident sampling capability	Reactor Coolant Sampling Sys. & Containment Atmos. Sampling Sys.—June 1, 1983.
II.B.4	Training for Mitigating Core Damage.	10/1/81	Complete training program.	Complete.
II.E.1.2	Aux FW Indication & Flow Indicator.	7/1/81	Modify instrumentation to level of safety grade.	Unit 1—February/April 1983 refueling outage; Unit 2—Complete.
II.E.4.2	Containment Isolation Dependability.	7/1/81	Part 5—Lower containment pressure setpoint to level compatible with normal operation.	Complete.
II.E.4.2	Containment Isolation Dependability.	7/1/81	Part 7—Isolate purge and vent valves on radiation signal.	Do.
II.F—1	Accident Monitoring	1/1/82	(1) Install noble gas effluent monitors.	Mar. 1, 1983.
		1/1/82	(2) Provide capability for effluent monitoring of iodine.	Do.

PLANT NAME: SURRY POWER STATION, UNIT NOS.1 AND 2—Continued

Item	Title	NUREG-0737 Schedule	Requirement	Licensee's completion schedule (or status)
		1/1/82	(3) Install in-containment radiation-level monitor	Fall maintenance outages scheduled to be completed for Unit 1 (October 15, 1983) & Unit 2 (November 30, 1983).
		1/1/82	(4) Provide continuous indication of containment pressure.	Complete.
		1/1/82	(5) Provide continuous indication of containment water level.	Do.
		1/1/82	(6) Provide continuous indication of hydrogen concentration in containment.	Apr. 15, 1983.

ATTACHMENT 2—LICENSEE COMMITMENTS ON APPLICABLE NUREG-0737 ITEMS FROM GENERIC LETTER 82-10

Item	Title	NUREG-0737 schedule	Requirement	Licensee's completion schedule (or status) [1]
I.A.1.3.1	Limit Overtime	10/1/82 per Gen. Ltr. 82-12 dtd. 6/15/82.	Revise administrative procedures to limit overtime in accordance w/NRC Policy Statement issued by Gen. Ltr. No. 82-12, dtd. June 15, 1982.	Complete.
I.A.1.3.2	Minimun Shift Crew[2]	To be superseded by Proposed Rule.	To be addressed in the Final Rule on Licensed Operator Staffing at Nuclear Power Units.	To be addressed when Final Rule is issued.
I.C.1	Revise Emergency Procedures[2]	Superseded by SECY 82-111	Reference SECY 82-111, Requirements for Emergency Response Capability.	To be determined.
II.D.1.2	RV and SV Test Programs	7/1/82	Submit plant specific rpt on relief and safety valve program.	Dec. 31, 1983.
II.D.1.3	Block Valve Test Program	7/1/82	Submit report of results of test program	Complete.
II.K.3.30 & 31	BLOCA Analysis[2]	1 yr. after staff approval of model.	Submit plant specific analyses	To be determined following staff approval of model.
III.A.1.2	Staffing Levels for Emergency Situations[2].	Superseded by SECY 82-111	Reference SECY 82-111, Requirements for Emergency Response Capability.	To be determined.
III.A.1.2	Upgrade Emergency Support Facilities[2].	do	do	Do.
III.A.2.2	Meteorological Data[2]	do	do	Do.
III.D.3.4	Control Room Habitability	To be determined by licensee	Modify facility as identified by licensee study	Dec>31, 1983.

[1] Where completion date refers to a refueling outage (the estimated date when the outage begins), the item will be completed prior to the restart of the facility.
[2] Not Part of Confirmatory Order.

[FR Doc. 83-7429 Filed 3-22-83; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-305]

Wisconsin Public Service Corp. (Kewaunee Nuclear Power Plant); Order Confirming Licensee Commitments on Post-TMI Related Issues

I.

Wisconsin Public Service Corporation (the licensee) is the holder of Facility Operating License No. DPR-43 which authorizes the operation of the Kewaunee Nuclear Power Plant (the facility) at steady-state power level not in excess of 1650 megawatts thermal. The facility consists of a pressurized water reactor (PWR) located at the licensee's site in Kewaunee County, Wisconsin.

II.

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The staff's proposed requirements and schedule for implementation are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements." Among these requirements are a number of items, consisting of hardware modifications, administrative procedure implementation and specific information to be submitted by the licensee, scheduled to be completed on or after July 1, 1981. On March 17, 1982, a letter (Generic Letter 82-05) was sent to all licensees of operating power reactors for those items that were scheduled to be implemented from July 1, 1981 through March 1, 1982. Subsequently, on May 5, 1982, a letter (Generic Letter 82-10) was also sent to all licensees of operating power reactors for those items that were scheduled for implementation after March 1, 1982. These letters are hereby incorporated by reference. In these letters each licensee was requested to furnish within 30 days pursuant to 10 CFR 50.54(f) the following information for items which the staff had proposed for completion on or after July 1, 1981:

(1) For applicable items that have been completed, confirmation of completion and the date of completion, (2) for items that have not been completed, a specific schedule for implementation, which the licensee committed to meet, and (3) justification for delay, demonstration of need for the proposed schedule, and a description of the interim compensatory measures being taken.

III.

Wisconsin Public Service Corporation responded to Generic Letter 82-05 by letters dated April 23, July 30, and October 14 and November 30, 1982; Wisconsin Public Service Corporation responded to Generic Letter 82-10 by letter dated June 7, July 12, September 27, November 15 and 23, and December 10, 1982. In these submittals, Wisconsin Public Service Corporation confirmed that all but one of the items identified in the Generic Letters had been completed and made a firm commitment to complete the remainder. The attached Tables summarizing the licensee's schedular commitments or status were developed by the staff from the Generic Letters and the licensee-provided information.

There are six items from Generic Letter 82-10 that, as noted in the Table (Attachment 2), have licensee schedules to be determined and are therefore not included in this Order. Some of the

items addressed in this Order are considered by the licensee to be completed or to require no modifications. The staff's evaluation of the licensee's delays for the remaining item is provided herein:

III.D.3.4 Control Room Habitability

In the licensee's April 24, 1981 letter he committed to correcting deviations identified in the Control Room Habitability Evaluation Report. The remaining modification necessary to correct the identified deviations is adding one isolation damper and rewiring two additional dampers to provide redundancy.

The physical modification identified above is scheduled to be completed by June of 1983.

We find, based on the above evaluation, that: (1) The licensee has made a responsible effort to implement the NUREG–0737 requirements noted: (2) there is good cause for the delay of the remaining item (unexpected design complexity, interface problems, and equipment delays. In view of the foregoing, I have determined that these modifications and actions are required in interest of public health and safety and, therefore, the licensee's commitment should be confirmed by Order.

IV.

Accordingly, pursuant to Sections 103, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered effective immediately that the licensee shall:

Implement and maintain the specific items described in the Attachments to this Order in the manner described in the licensee's submittals noted in Section III herein no later than the dates in the Attachments.

V.

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register.** A request for a hearing shall be addressed to the Director, 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 licensee, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order. This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 14th day of March, 1983.

For the Nuclear Regulatory Commission.

Robert A. Purple,

Deputy Director, Division of Licensing, Office of Nuclear Reactor Regulation.

PLANT NAME: KEWAUNEE NUCLEAR POWERPLANT

ATTACHMENT 1—LICENSEE COMMITMENTS ON APPLICABLE NUREG–0737 ITEMS FROM GENERIC LETTER 82–05

Item	Title	NUREG–0737 schedule	Requirement	Licensee's completion schedule (or status)[1]
I.A.3.1	Simulator Exams	Superceded by Generic Ltr. 82–18 dtd. 10/12/82.	Include simulator exams in licensing examinations	Complete.
II.B.2	Plant Shielding	1/1/82	Modify facility to provide access to vital areas under accident conditions.	Do.
II.B.3	Post-accident sampling	1/1/82	Install upgrade post-accident sampling capability	Do.
II.B.4	Training for Mitigating Core Damage.	10/1/81	Complete training program	Do.
II.E.1.2	Aux FW Indication & Flow Indicator.	7/1/81	Modify instrumentation to level of safety grade	Do.
II.E.4.2	Containment Isolation Dependability.	7/1/81	Part 5—Lower containment pressure setpoint to level compatible with normal operation.	Do.
II.E.4.2	Containment Isolation Dependability.	7/1/81	Part 7—Isolate purge and vent valves on radiation signal.	Do.
II.F.1	Accident Monitoring	1/1/82	(1) Install noble gas effluent monitors	Do.
		1/1/82	(2) Provide capability for effluent monitoring of iodine	Do.
		1/1/82	(3) Install in-containment radiation-level monitor	Do.
		1/1/82	(4) Provide continuous indication of containment pressure.	Do.
		1/1/82	(5) Provide continuous indication of containment water level.	Do.
		1/1/82	(6) Provide continuous indication of hydrogen concentration in containment.	Do.

[1] Where completion date refers to a refueling outage (the estimated date when the outage begins), the item will be completed prior to the restart of the facility.

ATTACHMENT 2.—LICENSEE'S COMMITMENTS ON APPLICABLE NUREG–0737 ITEMS FROM GENERIC LETTER 82–10

Item	Title	NUREG–0737 schedule	Requirement	Licensee's completion schedule (or status)[1]
I.A.1.3.1	Limit Overtime	10/1/82 per Gen Ltr 82–12 dtd. 6/15/82.	Revise administrative procedures to limit overtime in accordance w/NRC Policy Statement issued by Gen. Ltr. No. 82–12, dtd. June 15, 1982.	Complete.
I.A.1.3.2	Minimum Shift Crew [2]	To be superseded by Proposed Rule.	To be addressed in the Final Rule on Licensed Operator Staffing at Nuclear Power Units.	To be addressed when Final Rule is issued.
I.C.1	Revise Emergency Procedures [3]	Superseded by SECY 82–111	Reference SECY 82–111, Requirements for Emergency Response Capability.	To be determined.
II.D.1.2	RV and SV Test Programs	7/1/82	Submit plant specific rpts. on relief and safety valve program.	Complete.
II.D.1.3	Block Valve Test Program	7/1/82	Submit report of results of test programs	Do.
II.K.3.30 & 31	SBLOCA Analysis [4]	1 yr. after staff approval of model.	Submit plant specific analyses	To be determined following staff approval of model.
III.A.1.2	Staffing Levels for Emergency Situations [5].	Superseded by SECY 82–111	Reference SECY 82–111, Requirements for Emergency Response Capability.	To be determined.
III.A.1.2	Upgrade Emergency Support Facilities [5].	do	do	Do.
III.A.2.2	Meteorological Data [5]	do	do	Do.

ATTACHMENT 2.—LICENSEE'S COMMITMENTS ON APPLICABLE NUREG-0737 ITEMS FROM GENERIC LETTER 82-10—Continued

Item	Title	NUREG-0737 schedule	Requirement	Licensee's completion schedule (or status)[1]
III.D.3.4	Control Room Habitability	To be determined by licensee	Modify facility as identified by licensee study	Scheduled for completion by June 1983.

[1]Where completion date refers to a refueling outage (the estimated date when the outage begins), the item will be completed prior to the restart of the facility.
[2]Not Part of Confirmatory Order.

[FR Doc. 83-7430 Filed 3-22-83; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-29]

Yankee Atomic Electric Co. (Yankee Nuclear Power Station); Order Confirming Licensee Commitments On Post-TMI Related Issues

I.

Yankee Atomic Electric Company (YAEC) (the licensee) is the holder of Facility Operating License No. DPR-3 which authorizes the operation of the Yankee Nuclear Power Station (the facility) at steady-state power level not in excess of 600 megawatts thermal. The facility is a pressurized water reactor (PWR) located at the licensee's site in Franklin County, Rowe, Massachsetts.

II.

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities based on the experience from the accident at TMI-2 and the offical studies and investigations of the accident. The staff's proposed requirements and schedule for implementation are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements." Among these requirements are a number of items, consisting of hardware modifications, administrative procedure implementation specific information to be submitted by the licensee, scheduled to be completed on or after July 1,1981. On March 17, 1981. On March 17, 1982, a letter (Generic Letter 82-05) was sent to all licensees of operating power reactors for those items that were scheduled to be implemented from July 1, 1981 through March 1, 1982. Subsequently, on May 5, 1982, a letter (Generic Letter 82-10) was also sent to all licensees of operating power reactors for those items that were scheduled for implementation after March 1, 1982. These letters are hereby incorporated by reference. In these letters each licensee was requested to furnish within 30 days pursuant to 10 CFR 50.54(f) the following information for information for items which the staff had proposed for completion on or after July 1, 1981:

(1) For applicable items that have been completed, confirmation of completion and the date of completion, (2) For items that have not been completed, a specific schedule for implementation, which the licensee committed to meet, and (3) Justification for delay, demonstration of need for the proposed scheldule, and a description of the interim compensatory measures being taken.

III.

Yankee Atomic Electric Company responded to the Generic Letter 82-05 by letter dated May 14, 1982. YAEC responded to the Generic Letter 82-10 by Letter dated June 14, August 1, November 16, and December 28, 1982.

In these submittals, YAEC confirmed that some of the items identified in the Generic Letters had been completed and made firm commitments to complete the remainder. The attached tables summarizing the licensee's schedular commitments or status were developed by the staff from the Generic Letters and the licensee-provided information.

There are several items in Generic Letter 82-10 that as noted in Attachment 2, have licensee schedules which are yet to be determined. These items are, therefore, not included in this Order. The licensee considers some of the items addressed in this Order to be completed or to require no modifications. These items are so noted in Attachments 1 and 2. The staff's evaluation of the licensee's delays for implementation of the remaining items is provided herein.

II.D.1.2 Relief Valve and Safety Valve Testing

By letters dated March 30, July 1, August 1, and December 28, 1982, the licensee provided information regarding the testing of the Safety and Relief Valves. The licensee committed to provide a final plant specific piping evaluation by April 1, 1983 and a new justification for safety valve operability prior to the installation of new pressurizer code safety valves which would be installed during the first extended cold shutdown following their receipt. The new code safety valves are expected to be delivered in March 1984, and therefore would be installed during the Spring 1984 refueling outage that is tentatively scheduled to begin in late March. In support of this delay, the licensee noted that none of the pressurizer safety or relief valves have ever been challenged in the 22 year operating history of the plant, and that due to its conservative design, the most limiting transient without valve operation would result in a maximum primary pressure of 2505 psia. In addition, successful in situ testing of the valves in the early 1960's provides justification of existing safety valve operability until the new safety valves can be installed.

III.D.3.4 Control Room Habitability

By letter dated November 16, 1982, the licensee informed the staff that modifications to the Control Room Ventilation System would be delayed until May 1, 1983. This delay was attributed to equipment delivery delays and the fact that turbine overhaul work during the recently completed Core 16 refueling physically interfered with the installation of portions of the system.

We find, based on the above evaluation, that (1) the licensee has taken corrective actions regarding the delays and has made a responsible effort to implement the NUREG-0737 requirements noted; (2) there is good cause for the several delays (interference with other equipment and equipment delays); and (3) as noted above, interim compensatory measures have been provided.

In view of the foregoing, I have determined that these modifications and actions are required in the interest of public health and safety and, therefore the YAEC commitments should be comfirmed by Order.

IV.

Accordingly, pursuant to Sections 103, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered effective immediately that the licensee shall:

Implement and maintain the specific items described in the Attachments to this Order in the manner described in the licensee's submittals noted in Section III herein no later than the dates in the Attachments.

The licensee 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, 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 licensee, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order. This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 14th day of March 1983.

For the Nuclear Regulatory Commission.

Robert A. Purple,

Deputy Director, Division of Licensing, Office of Nuclear Reactor Regulation.

ATTACHMENT 1.—YANKEE LICENSEE'S COMMITMENTS ON APPLICABLE NUREG-0737 ITEMS FROM GENERIC LETTER 82-05

Item	Title	NUREG-0737 schedule	Requirement	Licensee's completion schedule (or status) [1]
I.A.3.1	Simulator Exams	10/01/81	Include simulator exams in licensing examinations	Complete.
II.B.2	Plant Shielding	01/01/82	Modify facility to provide access to vital areas under accident conditions.	Do.
II.B.3	Post-Accident Sampling	01/01/82	Install upgrade post-accident sampling capability	Do.
II.B.4	Training for Mitigating Core Damage.	10/01/81	Complete training program	Do.
II.E.1.2	Aux. Feedwater Initiation & Flow Indication.	07/01/81	Modify instrumentation to level of safety grade	Do.
II.E.4.2	Containment Isolation Dependability.	07/01/81	Part 5-lower containment pressure setpoint to level compatible w/normal operation.	Do.
		07/01/81	Part 7-isolate purge & Vent valves on radiation signal	Do.
II.F.1	Accident Monitoring	01/01/82	(1) Install noble gas effluent monitors	Do.
		01/01/82	(2) Provide capability for effluent monitoring of iodine	Do.
		01/01/82	(3) Install incontainment radiation-level monitors	Do.
		01/01/82	(4) Provide continuous indication of containment pressure.	Do.
		01/01/82	(5) Provide continuous indication of containment water level.	Do.
		01/01/82	(6) Provide continuous indication of hydrogen concentration in containment.	Do.

[1] Where completion date refers to a refueling outage (the estimated date when the outage begins), the item will be completed prior to the restart of the facility.

ATTACHMENT 2—YANKEE LICENSEE'S COMMITMENTS ON APPLICABLE NUREG-0737 ITEMS FROM GENERIC LETTER 82-10

Item	Title	NUREG-0737 schedule	Requirement	Licensee's completion schedule (or status) [1]
I.A.1.3.1	Limit Overtime	10/01/82 per Gen Ltr 82-12 dtd. 6/15/82.	Revise administrative procedures to limit overtime in accordance w/NRC Policy Statement issued by Generic Ltr. No. 82-12, dtd 6/15/82.	Complete.
I.A.1.3.2	Minimum Shift Crew [2]	To be superseded by proposed Rule.	To be addressed in the Final Rule on Licensed Operator Staffing at Nuclear Power Units.	To be addressed when Final Rule is issued.
I.C.1	Revise Emergency [2] Procedures	Superseded by SECY 82-111	Reference SECY 82-111, Requirements for Emergency Response Capability.	To be determined.
II.D.1.2	RV and SV Test Programs	4/1/82	Submit plant specific reports on relief valve and safety valve program.	3/84. [1]
II.D.1.3	Block Valve Test Program	07/01/82	Submit report of results of test program	Complete.
II.K.3.30 & 31	SBLOCA Analysis [2]	1 year after staff approval of model.	Submit plant specific analyses	To be determined following staff approval of model.
III.A.1.2	Staffing Levels for Emergency Situations [2].	Superseded by 82-111	Reference SECY 82-111, Requirements for Emergency Response Capability.	To be Determined.
III.A.1.2	Upgrade Emergency Support Facilities [2].	do.	do.	Do.
III.A.2.2	Meterological Data [2]	do.	do.	Do.
III.D.3.4	Control Room Habitability	To be determined by licensee	Modify facility as identified by licensee study	5/1/83.

[1] Where completion date refers to a refueling outage (the estimated date when the outage begins), the item will be completed prior to the restart of the facility.
[2] Not Part of Confirmatory Order.

[FR Doc. 83-7431 Filed 3-22-83; 8:45 am]
BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

Arizona; Region IX Advisory Council; Meeting

The Small Business Administration Region IX Advisory Council, located in the geographical area of Phoenix, Arizona, will hold a public meeting at 10:30 a.m. on Thursday, April 7, 1983, at the Ramada Inn, Tucson, Arizona, to be followed by an awards luncheon at the same location for the purpose of honoring the Small Business Person of the Year and the advocate honorees.

For futher information, write or call Walter Fronstin, District Director, U.S. Small Business Administration, 3030 North Central Avenue, Suite 1201, Phoenix, Arizona 85012 (602) 241-2206.

Dated: March 18, 1983.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.

[FR Doc. 83-7527 Filed 3-22-83; 8:45 am]

BILLING CODE 8025-01-M

Florida; Region IV Advisory Council Meeting

The Small Business Administration Region IX Advisory Council, located in the geographical area of Jacksonville, Florida, will hold a public meeting at 9:30 a.m.to 4:00 p.m., Thursday, April 14, 1983, at The Foxfire (Caverns), 1515 E. Silver Springs Boulevard, Ocala, Florida 32670, 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, contact Douglas E. McAllister, District Director, U.S. Small Business Administration, Box 35067, 400 West Bay Street, Jacksonville, Florida 32202; telephone (904) 791-3103.

Dated: March 18, 1983.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.

[FR Doc. 83-7523 Filed 3-22-83; 8:45 am]

BILLING CODE 8025-01-M

Idaho; Region X Advisory Council; Meeting

The Small Business Administration Region X Advisory Council, located in the geographical area of Boise, Idaho, will hold a public meeting at 9:30 a.m., Thursday, April 14, 1983, at the Owyhee Plaza "Rainier Room", 1109 Main Street, Boise, Idaho, 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 Verne A. Leighton, District Director, U.S. Small Business Administration, 1005 Main Street, Boise, Idaho—(208) 334-1096.

Dated: March 18, 1983.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.

[FR Doc. 83-7525 Filed 3-22-83; 8:45 am]

BILLING CODE 8025-01-M

Rhode Island; Region I Advisory Council Meeting

The Small Business Administration Region I Advisory Council, located in the geographical area of Providence, Rhode Island, will hold a public meeting at 12:00 noon, on Wednesday, April 20, 1983, at the Holiday Inn, Providence-Downtown, Rhode Island, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call James A. Hague, District Director, U.S. Small Business Administration, 40 Fountain Street, Providence, Rhode Island 02903. Telephone number (401) 528-4580.

Dated: March 18, 1983.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.

[FR Doc. 83-7522 Filed 3-22-83; 8:45 am]

BILLING CODE 8025-01-M

South Carolina; Region IV Advisory Council; Meeting

The Small Business Administration Region IV Advisory Council, located in the geographical area of Columbia, will hold a public meeting at 9:30 a.m. on Monday, April 18, 1983, at the Carolina Inn, 937 Assembly Street, Columbia, South Carolina, to discuss such matters as may be presented by members, staff of the Small Business Administration, and others attending.

For further information, write or call John C. Patrick, Jr., District Director, U.S. Small Business Administration, 1835 Assembly Street, Room 358, Columbia, South Carolina 29201—(803) 765-5373.

Dated: March 18, 1983.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.

[FR Doc. 83-7524 Filed 3-22-83; 8:45 am]

BILLING CODE 8025-01-M

Virginia; Region III Advisory Council; Meeting

The Small Business Administration Region III Advisory Council, located in the geographical area of Washington, D.C. will hold a public meeting at 9:00 a.m. on Wednesday, April 6, 1983, at the Officer's Club, Fort Myer, Virginia, 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 Bernard Layne, District Director, U.S. Small Business Administration, 1111 Eighteenth Street, NW, Washington, D.C. 20417, (202) 634-1805.

Dated: March 18, 1983.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.

[FR Doc. 83-7526 Filed 3-23-83; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supp. to Dept. Cir. Public Debt Series—No. 7-83]

Series S-1985; Interest Rate

March 17, 1983.

The Secretary announced on March 16, 1983, that the interest rate on the notes designated Series S-1985, described in Department Circular—Public Debt Series—No. 7-83 dated March 10, 1983, will be 9⅝ percent. Interest on the notes will be payable at the rate of 9⅝ percent per annum.

Carole J. Dineen,

Fiscal Assistant Secretary.

[FR Doc. 83-7405 Filed 3-22-83; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 57
Wednesday, March 23, 1983

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:30 p.m. on Friday, March 18, 1983, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Pan American National Bank, Union City, New Jersey, which was closed by the Comptroller of the Currency on Friday, March 18, 1983; (2) accept the bid for the transaction submitted by Hudson United Bank, Union City, New Jersey; (3) approve the application of Hudson United Bank, Union City, New Jersey, for consent to purchase the assets of and assume the liability to pay deposits made in Pan American National Bank, Union City, New Jersey, and for consent to establish the sole office of Pan American National Bank as a branch of Hudson United Bank; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and(c)(9)(B)).

Dated: March 21, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-400-83 Filed 3-21-83; 3:29 pm]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, March 28, 1983, 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 ot 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 information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: March 21, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-397-83 Filed 3-21-83; 3:20 pm]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, March 28, 1983, 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 the minutes of previous meetings.

Application for Federal deposit insurance:

Lewis County Bank, a proposed new bank to be located at the southeast corner of West Linden Street and North Court Street, Hohenwald, Tennessee.

Application for Federal deposit insurance for a federally licensed United States branch of a foreign bank:

Metropolitan Bank and Trust Company, Manila, Philippines, for Federal deposit insurance of deposits received at and

recorded for the account of its federally licensed branch located at One World Trade Center, New York, New York.

Applications for consent to merge and establish branches:

People's Savings Bank—Bridgeport, Bridgeport, Connecticut, an insured mutual savings bank, for consent to merge, under its charter and title, with State Bank for Savings, Hartford, Connecticut, and to establish the ten existing offices and two approved but unopened offices of State Bank for Savings as branches of the resultant bank.

Branch Banking and Trust Company, Wilson, North Carolina, an insured State nonmember bank, for consent to merge, under its charter and title, with City National Bank, Charlotte, North Carolina, and to establish the five offices of City National Bank as branches of the resultant bank.

Recommendation with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities:

Reynolds, Ridings & Hargis, Oklahoma City, Oklahoma, in connection with the receivership of Penn Square Bank, National Association, Oklahoma City, Oklahoma.

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.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Audit Report re: Review and Confirmation of Lodging Claims, dated February 9, 1983

Audit Report re: Joint Audits Performed by the Office of Corporate Audits and Internal Investigations and Public Accounting Firms, dated January 7, 1983

Audit Report re: Liquidation Audit Report—Summary of Five, dated February 16, 1983

Discussion Agenda:

No matters scheduled.

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: March 21, 1983.

Federal Deposit Insurance Corp.

Hoyle L. Robinson,

Executive Secretary.

[S-398-83 Filed 3-21-83; 3:27 pm]

BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:22 p.m. on Friday, March 18, 1983, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider the following matter:

Application for assistance under section 13(c) of the Federal Deposit Insurance Act: Name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii).

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: March 21, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-399-83 Filed 3-21-83; 3:28 pm]

BILLING CODE 6714-01-M

5

FEDERAL HOME LOAN MORTGAGE CORPORATION

DATE AND TIME: March 22, 1983, 2:15 p.m.

PLACE: Chairman's Conference Room, fifth floor, 1770 G Street, N.W., Washington, D.C.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION: Scott R. Daugherty.

MATTERS TO BE CONSIDERED: Closed meeting:

Pricing of Long-term Capital Debentures
Financial Strategy April 1983 Minute Entry
Short-term Debt Resolution
Hedging Contract Limitation Resolution
Amendment of General Policy on Investments of Funds
Minutes of February 18, 1983 Board of Director's Meetings
President's Report
Complete January Financial Statements
Complete February Financial Statements
Minute Entry

Dated: March 21, 1983.

[S-396-83 Filed 3-21-83; 1:45 pm]

BILLING CODE 6719-01-M

6

FEDERAL RESERVE SYSTEM

Board of Governors

TIME AND DATE: 10:00 a.m., Monday, March 28, 1983.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed follow-up report to Congress on the International Banking Act of 1978. (This item was originally announced for a meeting on February 28, 1983.)

2. Personnel actions (appointments, promotions, assignments, reassignments and salary actions) involving individual Federal Reserve System employees.

3. 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: March 18, 1983.

James McAfee,

Associate Secretary of the Board.

[S-392-83 Filed 3-18-83; 4:09 p.m.]

BILLING CODE 6210-01-M

7

NATIONAL MEDIATION BOARD

TIME AND DATE: 2 p.m., Wednesday, April 6, 1983.

PLACE: Board Hearing Room, Eighth floor, 1425 K. Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of Board actions taken by notation voting during the month of March, 1983.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Secretary's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rowland K. Quinn, Jr., Executive Secretary; Tel: (202) 523–5920.

Dated: March 21, 1983.

[S-395-83 Filed 3-21-83; 1:43 pm]

BILLING CODE 7550-01-M

8

NUCLEAR REGULATORY COMMISSION

DATE: Week of March, 21, 1983 (Revised).

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE DISCUSSED: *Thursday, March 24:*

9:30 a.m.:
Briefing on Salem Post-Trip Report (Public Meeting) (New Item) (Replaces Discussing of Notice and Standing in Materials Licensing Cases)

11:00 a.m.:
Affirmation/Discussion and Vote (Public Meeting) (Time Change)
a. Regulations to Implement Pub. L. 97–415 (Tentative) (*Postponed* from March 17)
b. San Onofre Memorandum and Order Re Arrangements for Medical Services (Tentative) (As Announced)

2:00 p.m.:
Briefing by Ad Hoc Committee on Regulatory Reform—Administrative Proposals (Public Meeting) (As Announced)

Friday, March 25:

3:00 p.m.:
Discussion of Notice and Standing in Materials Licensing Cases (Closed—Exemption 10) (New Item)

ADDITIONAL INFORMATION: Affirmation of 10 CFR Part 60—Disposal of High Level Radioactive Wastes in:

Geologic Repositories scheduled for March 24, *postponed.*
Hearing on NFS-Erwin scheduled for March 25, *postponed.*

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634–1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634–1410.

March 17, 1983.

Walter Magee,

Office of the Secretary.

[S-401-83 Filed 3-21-83; 3:48 pm]

BILLING CODE 7590-01-M

9

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of March 28, 1983, at 450 5th Street, N.W., Washington, D.C.

A closed meeting will be held on Wednesday, March 30, 1983, at 10:00 a.m. Open meetings will be held on Thursday, March 31, 1983, at 10:00 a.m. and 3:00 p.m. in Room 1C30.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Evans, Thomas, Longstreth and Treadway voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Wednesday, March 30, 1983, at 10:00 a.m., will be:

Formal orders of investigation.
Institution of injunctive actions.
Settlement of administrative proceeding of an enforcement nature.

The subject matter of the open meeting scheduled for Thursday, March 31, 1983, at 10:00 a.m., will be:

1. Consideration of whether to grant the application of Norman A. Weiner for reinstatement of the privilege of practicing before the Commission as an accountant. For further information, please contact Laura R. Singer at (202) 272–2454.

2. Consideration of whether to grant the application of The Travelers Insurance Company and several of its registered separate accounts requesting a commission order pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") granting exemptions from various provisions of the Act, including Section 12(b) and Rule 12b–1 thereunder, to the extent necessary to permit them to offer certain variable annuity contracts. For further information, please contact Joan Boros at (202) 272–3038.

3. Consideration of whether to issue a notice on an application filed by ML Venture Partners I, L.P. ("Partnership"), a limited partnership registered with the Commission as a buiness development company, and Merrill Lynch Venture Captial Co., L.P. ("Managing General Partner"), a registered investment adviser which serves as managing general partner of the Partnership, requesting an order pursuant to Section 206A of the Investment Advisers Act of 1940 exempting them from the provisions of Section 205(l) thereof to permit the Managing General Partner to receive, under certain circumstances, a performance fee on the basis of unrealized capital gains upon the Partnership's portfolio securities. For further information, please contact Brian Kaplowitz at (202) 272–2028.

The subject matter of the open meeting scheduled for Thursday, March 31, 1983, at 3:00 p.m., will be:

The Commission will meet with representative of the Financial Analysts Federation to discuss issues of mutual interest including the utility of the disclosure system to the professional financial analyst. For further information, please contact John Mooney at (202) 272–3188.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Steve Boehm at (202) 272–2467.

March 18, 1983.

[S-393-83 Filed 3-21-83; 10:36 am]

BILLING CODE 8010-01-M

10

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published.

STATUS: Closed meeting.

PLACE: 450 5th Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Wednesday, March 9, 1983.

CHANGES IN THE MEETING: Additional item. The following additional item was considered at a closed meeting scheduled for Tuesday, March 15, 1983, at 10:00 a.m.:

Regulatory matter bearing enforcement implications.

Chairman Shad and Commissioners Evans, Longstreth and Treadway determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any matters have been added, deleted or postponed, please contact: Jerry Marlatt at (202) 272–2092.

March 18, 1983.

[S-394-83 Filed 3-21-83; 10:36 am]

BILLING CODE 8010-01-M

federal register

Wednesday
March 23, 1983

Part II

Federal Communications Commission

Radio Services

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 15, and 96

[PR Docket No. 83-26; RM-4121; FCC 83-19]

Rules To Create a New Citizens Band Land Mobile Private Radio Communications Service in the 898-902 MHz and 937-941 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to amend the rules to create a new Private Radio Communications Service (PRCS) in the 898-902 MHz and 937-941 MHz bands. The rule amendments are being proposed to address an unmet communications need for low-cost, short-distance directed communications between people in private vehicles and other persons.

DATES: Comments are due by June 10, 1983 and replies by July 11, 1983.

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

FOR FURTHER INFORMATION CONTACT: John J. Borkowski or Steve Lett, Private Radio Bureau, Special Services Division, (202) 632-4964.

List of Subjects

47 CFR Part 2

Frequency allocation, Radio.

47 CFR Parts 15 and 96

Radio.

Proposed Rule Making

Adopted: January 20, 1983.

Released: March 4, 1983.

In the matter of; Creation of an Additional Private Radio Service; General Docket No. 83-26, RM-4121.

By the Commission; Commissioners Quello and Rivera concurring and issuing a joint statement; Commissioner Fogarty absent; Commissioner Jones concurring in the result; Commissioner Dawson issuing a separate statement.

I. Introduction

1. The Federal Communications Commission proposes to create a Citizens Band Land Mobile Private Radio Communications Service to address the communications needs identified in PR Docket No. 79-140.

II. Background

2. On June 25, 1979, we released a *Notice of Inquiry* [1] for the purpose of seeking public comment on whether the allocation of additional frequencies for the creation of a new personal radio service is necessary, and, if so, to determine the communications requirements which need to be satisfied. This Inquiry was precipitated by the PURAC [2] recommendation that the Commission should plan for a new Personal Radio Service which would be relatively noise-free and having the capability for direct dailing, automatic trunking, and selective calling. Moreover, the Commission's own studies [3] indicated that a new personal radio service could better satisfy some of the public's personal radio needs.

3. We received several hundred comments in response to the *Notice of Inquiry*. These comments, by and large, confirmed the findings of our independent study and of PURAC group. It is evident that the public does have a need for additional radio communications services, primarily for directed communications between people in private vehicles and other persons, and that this need cannot be met with existing radio services.[4] Having reviewed the comments, and having determined that the matter merits additional consideration, we have terminated the Inquiry in PR Docket No. 79-140 and instead will commence a new proceeding with this notice of proposed rule making to further address these issues.

III. The GE Proposal

4. On May 11, 1982, the General Electric Company (GE) filed supplemental comments in PR Docket No. 79-140 which included a petition to expedite initiation of rulemaking proceedings (RM-4121). GE stated that its objective was "* * * to inaugurate at the earliest possible time a new, dynamic radio communications service specifically designed to meet the growing and unfulfilled consumer demand for a reasonably priced, private mobile communications capability." In its filing, GE described a new Personal Radio Communications Service (PRCS) it has developed: "Much more than an advanced CB, the PRCS is designed to provide discrete communications functionality which cannot be obtained by any existing personal radio service." *GE Petition* at 4. Our analysis in the *Report and Order* in PR Docket No. 79-140 and our evaluation of the comments filed in RM-4121 lead us to believe there is sufficient justification to warrant creation of an additional private radio service. This *Notice of Proposed Rulemaking* will set out our specific proposals for spectrum to be allocated for the service and the regulatory structure to be applied to the service.

5. In its *Petition* GE claimed that a new PRCS would meet the individual consumer's need for reliable and affordable mobile radio communications. GE indicated that it built its proposal upon the general concepts outlined in our *Notice of Inquiry* (PR Docket No. 79-140). GE views a PRCS as complementing the existing radio services by "* * * fulfilling unique mass market-oriented communications functions which the CB, mobile telephone, PLMR (private land mobile radio) and even cellular radio services are not intended nor likely to serve." *Id.* at 3-4.

6. GE stated that: "By obtaining the substantial economies available from large scale manufacturing and component procurement processes and retail distribution techniques, radios with functions previously unaffordable to the consumer can be designed and implemented * * *" *Id.* at 6. It said that the functions of the PRCS are made possible "* * * by the burgeoning development of computer-controlled radio trunking technology * * *" *Id.* However, by "* * * limiting the functionality of the new service to that necessary to meet the distinct requirements of individual consumers, complex and costly centralized control facilities can be avoided—control of channel usage can instead be decentralized into each individual's radio station." *Id.*

7. PRCS users would be able to communicate with their own or other PRCS units, typically over a distance of up to five miles. The user initiating communications could speak with another PRCS user, or could place a telephone call through a PRCS unit interconnected with the public switched telephone network (PSTN) at the user's premises. GE proposed that communications would be limited generally to three minutes except during periods of light channel occupancy. The user could extend his or her communicating range to 15-30 miles by using a repeater station. Additionally, a person using the PSTN to call someone who has a PRCS system could reach them by way of automatic activation of an interconnected PRCS unit if the call's

[1] PR Docket No. 79-140, 44 FR 37522 (June 27, 1979).

[2] Personal Use Radio Advisory Committee, charter filed pursuant to Pub. L. 92-463 on April 16, 1976, after Commission action establishing the Committee on March 18, 1976. *See Public Notice*, FCC 76-282 (March 26, 1976).

[3] *Final Report, Alternatives for Future Personal Radio Services*, May 1978.

[4] *See Report and Order*, PR Docket No. 79-140, FCC 83-18 (March 4, 1983), for a summary of the comments in response to the *Notice of Inquiry* in that proceeding.

recipient is not at home, providing that the call's recipient is within range of the transmissions from the interconnected unit or an associated repeater station. There would be no common point interconnection at repeater stations. Repeater stations would not be linked, as in cellular common carrier systems, for wide-area operation. Repeater stations could not be "dialed up" directly through the public switched telephone network. Channel selection, selective calling, maximum conversation duration and transmitter identification would all be automatic, that is, beyond the control of the operator.

8. The characteristics of the PRCS system proposed by GE are as follow:

Transmitting frequencies: Two segments in the 900 MHz band.
Segment bandwidth: 4.5 MHz each.
Segment separation: 45 MHz.
Channel bandwidth: 30 kHz.
Modulation type: FM.
Power output: 10 watts maximum.
Number of channels: 151 total.
Control channels: 5 (pairs).
Local talk channels: 32 (pairs).
Repeater talk channels: 112 (pairs).
Party line channels: 2 (simplex).
Cost range: $400 for two units (one with interconnect capability).

9. In RM–4121, GE reported on the results of a survey they commissioned to identify the mobile communications requirements of the public and how these requirements are being met. Heads of households who own and operate private passenger vehicles were surveyed. The results appear to indicate that the unfilled mobile communciations requirements of some 12 million consumer households could be met with a PRCS-type service.

10. The technology involved in bringing the PRCS system cost down to consumer levels can also be utilized to great advantage in repeater stations, according to GE. GE expects that the operation of repeater stations will become a highly competitive entrepreneurial activity, and it advocates that as many stations as the marketplace can support should be authorized.

IV. Summary of Comments, RM–4121

11. On June 4, 1982, pursuant to Section 1.403 of the Commission's Rules, Public Notice of RM–4121 was given (Report No. 1356). Nine comments were filed. Although some of these comments were not timely filed and did not show proof of service to the petitioner, GE stated in its reply comments filed on July 21, 1982, that it was in receipt of and had replied to all nine comments. Therefore, in the interest of completeness of the record, all nine comments are accepted for filing. They were filed by: Bennett Z. Kobb (Kobb); Edward N. Simth (Smith); REACT International (REACT); Uniden Corporation of America (Uniden); Personal Communications Section, Communications Division of the Electronics Industries Association (EIA); Dynascan Corporation (Dynascan); Association of Maximum Service Telecasters (AMST); Metro Mobile Communications, Inc. (MMC); and the American Telecasters and Telegraph Company (AT&T).[5]

12. Kobb, an amateur radio operator, believes the GE-proposed PRCS would represent the best use of the 900 MHz spectrum. He reported that he has been able to assist in a number of emergency situations by using a hand-held VHF radio, and he stated that this type of capability should be available to the consumer. he indicated that operation of repeaters in the PRCS would be an excellent business opportunity, and that he would apply for a repeater license.

13. Smith agreed that the FCC should issue a Notice of Proposed Rulemaking in this matter "expeditiously," provided that the Notice include "* * * discussion and action based upon open discussion of previously raised issues and such topics as may be raised by those submitting comments." *Comments* of Smith. Additionally, he commented: "Many of the concepts presented would be very valuable and viable in a new Personal Radio Service * * *," *id.*, although he does not agree with some of the specific proposals.

14. REACT, "an independent non-profit public service organization providing organized citizens two-way radio communications in local emergencies," *Comments* of REACT, indicated that the GE-proposed PRCS deserves serious attention. REACT expressed its concern that the structure of the PRCS, "* * * and particularly the cost of repeater operations, will limit its public access." *Id.* REACT urged the Commission to reserve 9 MHz of spectrum for a personnal radio communications service in the 900 MHz frequency range.

15. Uniden stated that the proposed PRCS "* * * offers the opportunity to provide valuable low-cost radio communications to the mobile personal radio user." *Comments* of Uniden. However, it expressed doubts about GE's cost estimates.

16. Dynascan, "a major supplier of consumer communications electronics and electronic systems including both citizens band radios and cordless telephones" found the GE-proposed PRCS "* * * a novel and imaginative service considerably unlike the 27 MHz Citizens Radio Service, and unique enough to warrant serious consideration by the Commission and the consuming public." *Comments* of Dynascan. It pointed to the "* * * explosive growth of short range cordless telephone(s) within the United States over the past twelve months * * *" as proof that the U.S. consuming public is "* * * demanding telecommunications over and above those available by cord connected telephones." *Id.*

17. EIA "* * * has among its members manufacturers of telecommunications equipment intended for personal use by consumers * * *" such as "* * * cordless telephones, citizens band radios and similar devices." *Comments* of EIA. It stated that the GE-proposed PRCS is a "* * * service which would fill a need not presently met by any other radio service authorized or contemplated." *Id.* EIA commented that the petition merits closer consideration and thoughtful public comment.

18. AMST urged the FCC not to release unused private land mobile reserve frequencies until a compelling need is shown, "* * * to guard against land mobile encroachment on the full complement of UHF television channels * * *" *Comments* of AMST. AMST claimed that "* * * the evidence GE submits does not show that the public interest compels releasing land mobile frequencies in order to accommodate its new service." *Id.* AMST indicated it would support a new personal radio service in the 800–900 MHz band in order to phase out CB-type operations in the 27 MHz band, but that GE has shown no propensity for existing CB users to switch to the proposed service.

19. MMC commented that existing two-way radio services can be modified to meet the demand for mobile communications without the allocation of additional spectrum. MMC said: "* * * viewed from functional and cost standpoints, trunked SMR operations already provide the service proposed by GE * * * and * * * the Commission should modify the eligibility criteria for users of trunked SMR facilities to allow use of such facilities for non-business ends * * *." *Comments* of MMC.

20. AT&T argued that the GE-proposed PRCS would be an inefficient use of the radio frequency spectrum for the following reasons: it would not be as spectrally efficient as other technologies such as cellular because it is limited in capacity and its design lacks growth capability; it has the inherent potential

[5] Uniden's *Comments* were accompanied by a *Motion for Extension of Time to File Comments*. For the reasons stated above, this Motion is granted.

for being a poor quality service; it lacks operational control; and it is unlikely that the cost objectives can be met. Further, AT&T suggested that portions of the 806–902 MHz and 928–947 band mobile reserve allocation will be needed to expand cellular systems and recommends "* * * that the Commission exercise caution in allocating any spectrum for such speculative and limited service * * *." *Comments* of AT&T. Finally, AT&T suggested that a PRCS be tested in a developmental trial and in a computer simulation should the Commission perceive a need for it.

V. Summary of GE's Reply Comments

21. With particular regard to the comments of Kobb, Smith, REACT, Uniden, Dynascan and EIA, GE noted that a majority of parties commenting on RM–4121 favored initiation of the rulemaking proceedings necessary to explore in depth the specifics of the proposed PRCS. GE summarized the opposition of AMST, MMC and AT&T as: (a) that the petition has not demonstrated a consumer need for mobile communications capabilities which cannot be met adequately with cellular radio mobiletelephone or other public land mobile radio services; and (b) that the petition has not demonstrated the technical and operational viability of the GE-proposed PRCS.

22. GE noted that "* * * none of these (opposing) parties disputes that consumers have a significant need for, and desire to have, an advanced mobile radio capability for use in their personal vehicles while driving in their local environments. The only difference of opinion between those favoring the PRCS and those opposing its adoption appears to be where (i.e., in what part of the frequency spectrum) and how (i.e., in what radio service) to fulfill these needs and satisfy these demands." *Id.* Adoption of MMC's proposal to expand the eligibility for users of SMR systems to include individuals not otherwise eligible under Part 90, GE claimed, "* * * would lead, in short order, to a service degradation for Part 90 licensees." *Id.* In response to the opposing parties' claims that consumer demand to be accommodated within the celluar radio service, GE stated that the price the consumer would pay for PRCS equipment and for PRCS repeater service would be substantially lower than the cost of cellular equipment and service, and that these differentials could be a significant element in determining the viability of a new consumer-oriented radio service.

23. In answer to AT&T's comment that the PRCS is not "* * * as spectrally efficient as cellular * * *," GE replied that from a spectrum efficiently standpoint, an allocation of 9 MHz to the PRCS is fully justified in meeting the public interest in advanced mobile radio systems.

24. Turning to the contention that a PRCS is neither technically feasible nor operationally sound. GE stated that most of AT&T's objections are related to comparison of operational features of the PRCS to AT&T's cellular radio service. GE indicated that these operational features of the PRCS are the result of deliberate judgments that a lesser (but adequate) grade of service at lesser cost is as appropriate to meet user demand for short-range, short message interconnected mobile radio communication as the higher grade of service is in meeting the demand for advanced mobiletelephone service.

25. GE indicated that AT&T's concerns about potential interference should be obviated by good engineering practice in equipment design. In response to AT&T's statement that GE's proposal could not be implemented because to do so would require re-allocation of frequency bands now reserved for cellular radio, GE stated that it used the frequencies 932–935.5 MHz as a reference because the Commission has recently expressed a desire to reserve this spectrum for the Personal Radio Services (in deference to certain Canadian proposals). *See Notice of Proposed Rule Making*, Gen. Docket No. 82–243, FCC 82–201 (May 10, 1982). GE said that while the optimum 45 MHz separation could result in intrusion into the cellular reserve, the PRCS can be designed with as little as 30 MHz or with as much as 100 MHz separation.

VI. Summary of GE's Supplemental Reply Comments [6]

26. In its Motion for Leave To File Supplemental Reply Comments, GE indicated that it had "recently completed a detailed draft digital protocol for use on the PRCS control channels in establishing a PRCS call." *GE Motion for Leave To File Supplemental Reply Comments* at 2. Additionally, GE stated that it had "continued to study the technical standards for a 'Personal Radio Communications Service * * *' (t)aking into account the comments of other interested parties responding to GE's May 11, 1982 'Supplemental Comments.' " *Id.*

27. GE's Supplemental Reply Comments contain a comprehensive proposal for compatible digital signaling standards and reiterate GE's position that it does "recognize that certain concerns (raised regarding the technical and operational viability of the PRCS proposal) (those that are) the result of system simplifications to obtain consumer price levels might warrant further analyses." GE urged that such analyses were "the very reason for issuing a notice of proposed rulemaking on the subject." *GE Supplemental Reply Comments* at 3. GE stated that it has "determined additional or modified technical requirements necessary to assure inter- and intra-system compability among PRCS users, without unnecessarily limiting the manufacture and design of PRCS equipment." *Id.* at 4. One such suggested modification was to limit the length of conversations only when channel loading exceeds 70%. This would be accomplished by having each PRCS unit check all channels for occupancy every 90 seconds.

VII. Discussion

A. Need for a New Private Radio Communications Service

1. *Notice of Inquiry Finds a Need*

28. The *Report and Order* termination the *Notice of Inquiry* in PR Docket No. 79–140, FCC 83–18 (February 1983) concluded that the question of whether to create a new private radio service, "primarily one that will provide for directed communications from vehicles at a cost the average person can afford, merits further consideration." It is the need for such private directed communications, between a user within a short radius of home or work and a person with whom the user wishes to communicate, or who wishes to communicate with the user, that prompts issuance of this notice.

2. *Not to Replace Present CB*

29. This new private radio service is proposed not to replace the present 27 MHz Citizens Band (CB) Radio Service, but to supplement it by responding to a need met neither by the present 27 MHz CB nor by other available services. All 40 existing CB channels are shared, with no channels available for private or exclusive use (CB Rule 17 (e), (f), and (g)). Thus, on a CB set any channel may be selected on which to transmit or receive a "party-line" type of service.

[6] GE's Supplemental Reply Comments were accompanied by a Motion for Leave To File Supplemental Reply Comments. Because a full and complete discussion of these issues is in the public interest, and because it best conduces to the dispatch of Commission business, GE's Motion for Leave To File Supplemental Reply Comments is granted. *See* 47 U.S.C. 154(j); *see also* 47 CFR 1.405(c).

Additionally, CB Rule 40 permits only manual interconnection with the PSTN. The present 27 MHz Citizens Band Radio Service has generally been intended for and evolved as a service primarily designed for inter-station or intra-station communication. *California Citizens Band Assn., Inc.* v. *United States*, 375 F2d 43, 9 RR2d 2037 (9th Cir. 1967), *cert. den.* 389 U.S. 844, 88 S. Ct. 96, 19 L.Ed.2d 112. A new private radio communications service would neither replace CB as we now know it nor substantially compete with it. Rather, it would be structured to satisfy an identified unmet communications need for addressable, private communications capabilities within a user's normal driving area at affordable prices. It appears that the dedicated "party-line" local emergency channels REACT requested in its *Comments* in PR Docket No. 79–140 would neither be consistent with the nature of the service, nor would they be necessary. A user with a unit in the car and an interconnected unit at home would be able to call home or office if in a traffic jam, or would be able to directly contact a service station or law enforcement authorities in an emergency. Thus, this new service would provide increased communications for emergency situations where limited capabilities now exist.

3. *Other Present Services Do Not Meet This Need.*

30. With regard to current personal radio services, we have found that:

> * * * while CB certainly provides a valuable non-directed communications service, its usefulness is limited by many factors: predominantly, lack of adequate spectrum and propagation characteristics that often subject users to an intolerable level of interference. Both the R/C (Radio Control) and GMRS (General Mobile Radio Service) services suffer from the same problems of congestion and, in apparent recognition of this fact, virtually none of the commenters in this proceeding (PR Docket No. 79–140) identified expansion or modification of any of the current personal radio services as a means of meeting the public's communications requirements. *Report and Order*, PR Docket No. 79–140, FCC 83–16 (February —, 1983), at para. 33.

31. With regard to the current private land mobile radio services, eligibility is limited, and only includes specific classes of persons. Thus, many persons needing the communications services discussed in PR Docket No. 79–140 would not be eligible in the existing private land mobile radio services. Proposals (such as MMC's) to modify the eligibility criteria for users in the existing private land mobile radio services to allow any person to use private land mobile SMRS facilities would not comport with the design of the existing private land mobile radio spectrum allocations, which were intended to accommodate the needs of specific classes of persons identified by us as employing radio for activities and functions in furtherance of the public good.[7]

32. It appears that mobile telephone service currently provided by common carriers may be priced at a level that many individual consumers are not willing to pay the meet their private radio needs. Additionally, the quality of service and geographic coverage are different than contemplated by the new PRCS.

33. Similarly, cellular mobile radio systems, to be developed both by wireline and nonwireline common carriers, are:

> mobile radio systems with a high capacity to serve subscriber units due to the coordinated reuse of a group of radio channels. In such systems, each radio channel can be used many times in separate zones or cells within an area. Mobile units communicate with an array of cell control locations distributed throughout the system; these cell sites are linked to control and switching facilities and thereby interconnected with the telephone network. The frequencies used in the cells are carefully coordinated in such a way as to permit frequency reuse in geographically separated cells without mutual interference. A fully developed cellular system would have the ability to locate a subcriber unit, establish a connection through an appropriate cell site, and transfer ("hand off") that connection to other cell control locations as the subscriber unit moves through the grid of cell locations. The number of cell sites in a system is dependent on the degree of channel reuse, the amount of spectrum available, and the density of traffic on the system. *Report and Order*, CC Docket No. 79–318, FCC 81–161 (April 9, 1981), at note 1.

34. Only two such systems (one wireline-owned and one nonwireline-owned) will be permitted in any given geographic area. The most densely populated areas are most likely to receive service first. While a great interest has been developed in cellular systems, it is difficult in light of our regulatory scheme for disposing of applications to predict how quickly the least populated areas will receive service. A new PRCS may very well serve an important role in making personal and business communications readily available throughout the United States, particularly in areas of lesser population density. In any event, neither a PRCS nor cellular systems would necessarily compete with one another or meet similar communications needs, but rather would provide distinct communications capabilities. Comments on this matter are requested.

4. *Cordless Telephone Acceptance Reflects the Need*

35. Dynascan has pointed to the "explosive growth" of the demand for cordless telephones as indicative of a groundswell of consumer demand for mobile units capable of interconnection to the public switched telephone network (PSTN). We concur in this evaluation. However, cordless telephones have an extremely limited range and do not provide for interstation communications. A new PRCS with longer range allowing use in automobiles and with equivalent PSTN interconnect capability would, we expect, be well received.

5. *Summary*

36. Those private and common carrier services presently available which might partially serve some segment of the communications needs identified in PR Docket No. 79–140 do not, individually or in combination, appear to satisfactorily meet these needs. A New Private Radio Communications Service appears to be necessary, but would not replace these services, which we expect would retain their popularity for the functions they now serve.

B. Technical Structure of a New Private Radio Communications Service

1. *General Description*

37. The proposed Private Radio Communications Service (PRCS) relies heavily on state-of-the-art technology to accomplish actions which ordinarily the station operator would have to manually accomplish. The objective is to allow the greatest number of simultaneous conversations with little or no action on the part of each individual operator. Thus a technically unsophisticated radio operator who is interested primarily in getting a message from one point to another would have a communications device which is simple to operate and is not intimidating. The radio, and its many automatic actions are, in effect, user "transparent."

38. The proposed communications system is based upon the concept of "decentralized trunking." In a trunked system, each user desiring to have access to a channel is assigned, in turn, a clear channel devoid of other interfering communications. The station that the user desires to contact is also assigned to the same channel, at which time the communications exchange can

[7] *See Tentative Decision and Further Inquiry and Notice of Proposed Rule Making*, Docket No. 18921, FCC 81–263 (June 11, 1981), at para. 57.

begin. These trunking assignments can be accomplished by commands issued from some central point (centralized trunking), usually by a computer, or can be accomplished through mutual agreement ("handshaking") between individual radio units (decentralized trunking).

39. A PRCS radio unit would be capable of automatically establishing contact with another PRCS unt, independent of whether a centralized trunking facility is within range. A PRCS unit would also have the capability to respond to centralized trunking commands, when necessary, to make contact with another PRCS unit through a repeater station. In this case, the repeater station is more capable of automatically determining the best channel to be assigned for the communications. Nonetheless, in every instance the radios would first automatically attempt to establish communications without a repeater station so that communications between nearby units would not unnecessarily tie up a channel over a wide area.

40. The key to the success of the PRCS is a carefully selected set of technical standards and regulations to make the service as self-regulating as possible. In many existing services we rely upon user familiarity with detailed regulations to govern the individual's actions on the air. Conversely, the service, we are proposing is designed to control a user's actions by the equipment and the natural limitations of the service's concept. For example, in the present Citizens Band Radio Service, users are limited by regulation to carrying on a conversation for no more than five minutes, at which time they are required to leave the air for one minute. While this regulation is necessary in order to allow an equal opportunity for access to the shared channels, it is not likely that each user precisely times a conversation from beginning to end. For the PRCS, we propose to have the user's equipment automatically time each conversation and terminate the conversation if it runs over the allowed limit. With this proposed regulatory scheme, the burden of familiarity with detailed operating requirements is removed from the many users. Instead, it is replaced with a lesser burden of type-acceptance requirements on the few manufacturers.

41. A carefully selected set of technical standards and regulations is also essential for high-quality service. The PRCS is a service designed to be available to an average individual without a technical background. A typical potential user of this service will not be able to make an informed or logical determination as to which brand of equipment might employ the most technically superior digital control system, modulation scheme or other aspect of system technology. But mandated standards might be costly and unnecessary for individuals with very narrow communications requirements. Therefore, we solicit comment on the extent to which technical standards should be FCC-mandated or voluntary.

42. We are proposing minimal technical regulations. We plan to leave a significant amount of leeway in the final standards so that manufacturers can tailor the radios they market to fit individual user needs. To this end, we are not proposing certain technical standards which GE requested in their petition that we have identified as being determinable in the "market place." We solicit comment on whether the particualr standards we are proposing are sufficient to accomplish the above-stated objectives. We also solicit comment on whether standards short of those we are proposing would accomplish the same goals.

43. In this regard, we request comment on whether "sunset" provisions may be appropriate for certain areas of technical regulation which may promote initiation of the service, but which may be unnecessary after the short term. In addition, we request information on the desirability of applying certain operational technical standards (*e.g.*, automatic disconnect provisions to provide for conservation time limits) only to repeater equipment. Furthermore, given that we expect several manufacturers to enter the market of supplying PRCS radio equipment, we do not believe that a single manufacturer is uniquely suited to determine the technical standards for a PRCS system. So while we are proposing standards based closely on those proposed by GE in its petition, we intend them primarily as a benchmark or guideline for further discussion. We anticipate that manufacturing interests considering entry into the RCS market will determine the technical standards and regulations which would be mutually acceptable and which would serve to meet our minimum stated goals. In any event, we expect and encourage extensive comment and discussion regarding the proposed technical standards.

44. GE, in its Petition and in its Supplmental Reply Comments, provided a very detailed perspective on the concept and technology that it believes will shape a viable personal radio service. GE relied heavily on carefully chosen technical standards—standards which would apply to very complex radio communications equipment. In this *Notice*, we cannot hope to provide the same detailed perspective (GE's Petition and its associated documentation are over 200 pages long) on the practical matters of radio automation, digital signaling and channel assignment protocols and algorithms. Consequently, we will outline GE's system concept, but only include detailed remarks on those issues where we differ with GE on proposed regulation or where we believe a particular issue needs to be addressed more thoroughly. We would recommend that any party, particulary manufacturing interests, desiring to comment on technical issues of the PRCS proposal in detail, carefully examine GE's Petition and Supplemental Reply Comments.[6]

45. As we have stated before, the proposed PRCS is based on the principles of trunking. Each radio would be capable of independent, decentralized trunking when it communicates with a station within its range. If the radio equipment cannot achieve direct contact within its range, it would then automatically attempt centralized trunking through a repeater so that the coverage range could be increased. (This would require that the station be authorized by a repeater operator to have communications access to those repeater facilities.)

46. To accomplish both the decentralized trunking and the centralized trunking there would be five "control channels" upon which only digitally encoded control signals would be tranmitted. There would be 30 "local talk channels" (or LTCs) which could automatically be selected by the radio equipment for conversations between stations close enough for direct contact. There would be 97 "repeater talk channels" (or RTCs) which could be automatically assigned to stations by a repeater if direct communications are not possible.

47. Finally, there would be one channel pair with the designation "party line channel" (or PLC) which would be the only channel which the station operator could actually manually select. This channel pair would be used for communications in the single frequency simplex mode, so there would in fact be two frequencies available for simultaneous conversations. These channel frequencies are intended for

[6] GE's filings in this proceeding, which include GE's specific technical recommendations, may be examined in the Commission's Public Reference Room at its headquarters in Washington, D.C. They may also be obtained from GE.

occasional non-directed communications which an operator may find necessary (for example, highway communications to obtain traffic reports). While we have proposed only one channel pair for "party line" use, we request comment on the desirability of increasing the number of channels for simplex mode communications, and recommendations on whether local or repeater channels should be used for this purpose.

48. Most of the use of system technology with the PRCS would occur while each individual call is being set up on the control channels. Once a channel is selected for the conversation to take place, radio operation is basically similar to any other conventional system. As GE originally proposed it, each control message would have consisted of a total of 464 bits of binary coded information. We have proposed, consistent with GE's *Supplemental Reply Comments*, that each control message would consist of a total of 532 bits of binary coded information. This information would include a source address (the eight digits of the user's selected identification code for his/her station along with the manufacturer's assigned transmitter identification number for the individual transmitter [9]), a destination address (the identification code of the station the operator desires to attempt contact with), a recommended "talk channel," a flag field (which would include coding to determine whether direct contact or contact through a repeater is being attempted, and whether the call is being made to a base station which should automatically interconnect with the public switched telephone network), and a variety of synchronizing and check bits.

49. The actual control channel to be used for establishing contact is determined by the last three digits of the called station's users selected address ("telephone number"). If, for example, a station operator selects for that station's address a number which has as its last three digits a combination between (and including) 000 and 199, that station would always monitor control channel 1 when in the stand-by mode. If the last three digit combination is between 199 and 400, then the station would always monitor control channel 2 when in the stand-by mode, and so forth. Whenever another station attempts to contact that station, it would transmit its control messages on the corresponding control channel. The exchange of control signals would then go according to the algorithm set forth in GE's filings.

[9] We propose to require manufacturers to insert an unchangeable assigned transmitter identification number into the memory of the PRCS unit, and to require that this number be included as part of the station identification made by the unit.

2. *Disconnect and Default*

50. We are including in the proposed rules a requirement that every usage of a local talk channel or a repeater talk channel will be subject to an automatic disconnect capability after 100 seconds if the local or repeater talk channels are, respectively, at least 70% loaded. If the channels are not 70% loaded, the usage of the talk channel may continue for ninety second intervals, subject to automatic disconnect capability at the end of each interval if channels are at least 70% loaded. We have already discussed the advantages of automatically timing each conversation and automatically terminating the conversation if it runs over the allowed time limit.[10] We are also including in the proposed rules a transmitter default capability to assure that each station vacates a channel if contact with another station is lost during a conversation or if contact is never actually established after a channel assignment has been determined. The automatic disconnect capability and transmitter default capability for PRCS units are being proposed to assure maximum frequency re-use in the PRCS in any given local geographic area. Unlike cellular systems, the PRCS system would not provide for a roving mobile unit's communications to be automatically transferred to the closest repeater. Instead, channels would be vacated for use by other local PRCS units or PRCS units having access to a local repeater. We solicit comment on whether, alternatively, leaving all decisions about timing and disconnect to the marketplace may be desirable, particularly if there are no legal constraints upon repeater operators' use of time-of-day or peak-load pricing. We seek comment on whether the profit motive, absent Commission regulation of timing and disconnect decisions, would cause repeater entrepreneurs to adopt spectrum efficient timing schemes.

3. *Telephone Interconnection*

51. Part of GE's proposed interconnection standards requires that each control message to a base station, when interconnection is desired, include a series of binary digits which a user would set as a "combination" for the base station to identify before permitting interconnection. This is to assure that access to a person's telephone line cannot be made without authorization from that person. We believe that such a feature would be desirable, especially where purchasers of these units will generally not be knowledgeable about communications equipment. We propose that such a feature be required, but we will allow manufacturers to offer various alternative balances of system integrity and simplicity. Additionally, we propose that in order to be type accepted, PRCS equipment intended for interconnection with the PSTN, like all equipment intended for such interconnection, must comply with the Commission's existing standards in Part 68 of the Rules designed to protect the public telephone system from harm.

[10] See paragraph 40, *infra*.

4. *Transmitter Power Cut-back*

52. GE has proposed that each PRCS radio be required to be equipped with a power cut-back feature on the transmitter. This feature would reduce the transmitter's radio frequency output power when the received signal strength from the station being communicated with is initially above certain threshold level. GE has proposed this feature as a means of keeping communications range limited only to the minimum necessary distance and thereby increasing channel reuse capability in a given area. We agree that such a feature would be desirable from the standpoint of spectrum efficiency. However, we envision two problems with this proposal. First, AT&T in its comments on GE's Petition expressed concern over a scenario where two stations located near to each other reduce their power to a fraction of the authorized maximum, and then two other stations located some greater distance away (and also distant from each other) perceive that the channel is not in use and assign themselves to it while operating at full power. If this were the case, the two stations initially using the channel could be "overun" by the communications of the second two stations. Second, we anticipate that at some point a manufacturer will be interested in marketing a hand-carried PRCS radio that may not be capable of operating at the full authorized power of 10 watts. In this case, if such a hand-carried unit were communicating with another unit capable of full powered operation, that unit may maintain its power output at an unnecesarily high level because it perceives the low-powered station to be farther away then it actually is. We are proposing this feature but we specifically invite comments as to how such a feature might be made to work more adequately in the proposed PRCS.

5. *Emission Standards*

53. In its proposals, GE appears to have considered the need for low costs, sufficient channels to serve a mass market, and efficient spectrum utilization. GE recommends the use of FM modulation, 30 kHz channels, and a frequency tolerance of 0.0005%.[11] We are proposing these standards as a benchmark for further discussion. Concerning the use of frequency modulation, GE cites its advantages as follows:

> [T]he receiver "capture" effect of FM transmissions, which locks out all but the strongest signal, allows for substantial frequency reuse within larger metropolitan areas. This provides real spectrum efficiency. The "capture" effect of FM also drastically reduces the impact of interference or noise during communications, a feature which simply cannot be obtained using AM technology. *GE Petition* at 22–23.

We request comment on whether FM modulation, as proposed, would best fulfill the needs for low cost equipment, spectrum efficient operation and good quality. We also seek comment on whether amplitude modulation would be preferable for the PRCS. With the use of companding [12], combined with either double sideband AM (A3) of SSB (A3J), amplitude modulation may still provide adequate quality while being more spectrum efficient than FM. Moreover, compandored AM may have an effect similar to the FM capture efficient cited by GE as advantageous. On the other hand, problems caused by frequency instability, the doppler effect, and multipath effects may increase the costs of acceptable AM equipment to prohibitive levels. Additionally, the present technical state of the art in the field of compandored AM may also make it an inappropriate experimental technology for the broad-based and common use intended.

6. *Supervisory Audio Tone*

54. GE has proposed that each station be required to transmit a 2850 Hz tone at all times when the transmitter is enabled in order to facilitate transmitter default capabilities. This tone would also be required to control an interconnected unit's receive/transmit mode which it is being used by a mobile unit for interconnection with the PSTN and the communications are being relayed through a repeater. We are including such a requirement in our proposed rules.

7. *Frequency Capability*

55. We are proposing to require that all user station radios have as a minimum the capability to operate on all of the "local talk channels" (LTCs). This is necessary since there is no provision in the digital control protocols for a particular station to list the channels upon which it is capable of operating and, consequently no way to be certain that a suggested talk channel could be agreed upon without several time consuming iterations. For this same reason we are proposing that if a PRCS user station radio is going to be capable of operating on any one of the " repeater talk channels" (RTCs) it must be capable of operating on all of the (RTCs). We proposed to require that all user station radios be capable of operating on the LTCs, while not making a similar requirement for the RTCs, because operation on the LTCs is clearly the more specturm efficient mode and we would desire that this more spectrum efficient mode be attempted before the less efficient repeater mode is used. We would also not authorize any PRCS station radio to be capable of operation on only the "party line channel" (PLC). This channel is proposed to be include only as an adjunct to the primary service concept. If a user would only have a need for such a channel, then there are other personal radio services which can meet that need, principally the 27 MHz CB Radio Service.

C. Regulatory Structure of a New Private Radio Communications Service

1. *Nature of the Service*

56. We propose to create a new Citizens Band Land Mobile Private Radio Communications Service, and to regulate it under a new Part 96. In abbreviated form, the service would be called the Private Radio Communications Service (PRCS). The service would have features of both the present Citizens Band Radio Service and the present Private Land Mobile Radio Services. As in the present Citizens Band Radio Service, all persons would be eligible to operate individual PRCS units.[13] As in the Private Land Mobile Radio Services, repeater service would be provided to users to permit them to engage in private two-way land mobile communications.

2. *Licensing*

57. *Operators.* GE proposed point-of-sale licensing by postcard notification and temporary authorization upon mailing of the postcard. *See Temporary Licensing, 800 MHz,* 89 FCC2d 638 (April 6, 1982); *Report and Order,* FCC 80–887, PR Docket No. 79–338 (Sept. 4, 1980), *aff'd Telocator Network of America* v *FCC* (D.C. Cir. Aug. 14, 1981), Docket No. 80–2182; *Order,* 44 FR 5288 (Jan. 16, 1979) FCC 78–846 (1979), *Errata,* 44 FR 8878 (Feb. 1, 1979); and *Order,* FCC 76–320 (1976). New Section 307(e)(1) of the Communications Act of 1934, as most recently amended by Pub. L. 97–259 in 1982, states:

> Notwithstanding any licensing requirement established in this Act, the Commission may by rule authorize the operation of radio stations without individual licenses in the radio control service and the citizens band radio service if the Commission determines that such authorization serves the public interest, convenience, and necessity.

The new PRCS would be part Citizens Band and part Private Land Mobile. Since it is a completely different technology it will be governed by a separate set of rules. Nonetheless, like the 27 MHz Citizens Band Radio Service, the PRCS, too, is intended, in large part, to be "a private, two-way, short-distance * * * communications service for personal or business activities." CB Rule 1, 47 CFR § 95.401. It is our preliminary view that no significant aspect of our public interest, convenience and necessity standard would be served by licensing individual PRCS stations, other than repeater stations, particularly where Section 307(e)(2) of the Act, as recently amended, further states:

> (2) Any radio station operator who is authorized by the Commission under paragraph (1) to operate without an individual license shall comply with all other provisions of the Act and with rules prescribed by the Commission under this Act.

58. *Repeaters.* With regard to repeater operation, GE proposed reliance upon the marketplace in conjunction with traditional private land mobile licensing techniques such as fully private repeater systems, cooperatively shared repeaters, multiple licensed repeaters, or repeaters operated by licensed commercial entrepreneurs (i.e., Specialisted Mobile Radio Systems—SMRS's). While we have proposed not to issue individual licenses to operators of units which are not repeater stations, we are of the view

[11] GE proposes a stricter tolerance for repeater stations, 0.00015%, due to their higher operating power and greater range.

[12] Amplitude compandors consist of circuitry that can improve the apparent voice quality of mobile communications, in much the same manner as Dolby circuits are used to improve the signal to noise ratio in high fidelity sound equipment.

[13] Foreign governments, representatives of foreign governments and federal government agencies would not be eligible. 47 U.S.C. 310(a) prohibits the issuance of a license to a foreign government or a representative thereof. 47 U.S.C. 305 prohibits the issuance of a license to stations "belonging to and operated by" the United States.

that licensing of individual repeater stations would still be desirable, because: (1) A repeater in the PRCS, operated improperly, would have the potential to cause substantial disruption to the entire service in its area; and (2) FCC licensing assures that proper Federal Aviation Administration clearance is obtained for repeater antenna structures, a critically important safety of life consideration. In the PRCS, we would permit the following repeater licensing options:

(a) *Individually licensed repeater.* A person obtains a license for a PRCS repeater for his/her own use. This person could be an individual, partnership, corporation, association or governmental entity. A club or association of persons desiring to use the same repeater could be formed to be the licensee of the repeater. A corporation could be licensed to serve its parent corporation, another subsidiary of the same parent corporation, or its own subsidiary. A nonprofit corporation or association organized for the purpose of furnishing PRCS repeater service to its members could be licensed, subject to cooperative use provisions discussed below.

(b) *Cooperatively shared repeater.* A person obtains a license for a PRCS repeater for his/her own use, and for the use of other PRCS users cooperatively sharing the operation of the station with the licensee. In such a cooperative use arrangement, the repeater would be authorized to and controlled by the single licensee. All use of the licensee's facility would take place under the licensee's control. Ordinarily, the capital and operating expenses associated with the shared repeater system would be divided among the system sharers (*i.e.*, the repeater licensee and the other users) on a pro-rated, equitable basis. The licensee would be precluded from profiting from the arrangement. Stage II and stage III cooperative use arrangements, formerly permitted (but not prohibited) in the land mobile radio services, would be prohibited.[14] This approach comports with prior cooperative use decisions and promotes consistency in the application of our rules and procedures.[15]

(c) *Specialized Mobile Radio Systems (SMRS's)* A commercial entrepreneur seeking to operate a PRCS repeater would be licensed for the repeater facility itself. Users of the repeater would operate their PRCS units in connection with a repeater to which they subscribe. Users could be authorized by the SMRS licensee, with the concurrence of the Commission, to operate repeater control points.[16] [17] [18]

59. We have considered, but tentatively rejected, inclusion of the concept of multiple licensing in this service. We believe it could have been included in two different possible forms: (1) Each person in the PRCS would have been separately licensed for the repeater the person intended to use, or (2) each person in the PRCS would have been able to operate their own PRCS systems as well as repeaters without individual station licenses. We tentatively reject the former option on the basis that it substantially detracts from the administrative and cost advantages that we seek to gain by not individually licensing each person in the PRCS. We expect that there would be a relatively high demand by PRCS users to be associated with at least one repeater; should this association be achieved by multiple licensing, we would then issue a large number of licenses to the very persons we sought not to provide licenses in order to achieve administrative and cost savings. We tentatively reject the latter option because it results in no license being issued for the repeater whatever. (And in paragraph 58 above we have aleady indicated why we believe repeater licensing is desirable.) In either case, we believe that multiple licensing would be an unnecessary licensing mechanism in the PRCS. Nonetheless, we solicit comments regarding the propriety or disirability of multiple licensing in this service; any such comments should address the issues mentioned above, including whether repeaters should be licensed.

3. *Permissible Communications*

60. We propose that the new PRCS employ frequency modulation techniques and, accordingly, F9Y emissions are specified in the proposed technical rules for the control channel communications, while F3 emissions are specified for the actual communications exchange. However, by specifying F3 emissions we do not intend to limit communications to voice alone. We propose to allow a communications exchange to consists of any modulating signal which can be accommodated by the voice-grade circuit provided by a PRCS radio. In other words, teleprinting, slow-scan television or any other modulating signal which produces the bandwith characteristics of a voice emission would be permitted in the new service. While we are not proposing that PRCS units or repeaters be allowed any modulation or RF bandwidth other than that equivalent to a voice-grade circuit, we request comment on the effect adopting emission standards only for repeaters would have on the proposed service.

4. *Interconnection*

61. GE proposed interconnection only at user premises. GE did not propose common point interconnection in conjunction with repeater operation. We believe that this is consistent with the nature of the need we intend to meet, and with the requirements of Section 331(c)(1) of the Act. Thus, we will propose only user premises interconnection of PRCS equipment.

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[14] In the *Tentative Decision and Further Inquiry and Notice of Proposed Rule Making* in PR Docket No. 18921, *supra*, we defined a Stage II cooperative as an arrangement in which the licensee owned or leased the base station transmitter and made it available to sharing participants either at no charge or at less than cost, but provided participants with some other equipment or service (e.g., mobile stations/paging receivers or equipment service) on a for-profit basis. A Stage III cooperative is a situation in which an eligible in one of the radio service categories agrees with other eligibles in the same radio service to assume the responsibilities as licensee for the cooperative arrangement but arranges for the needed physical radio gear and maintenance service under an arrangement where the licensee of the system is paid nothing at all by the other participants; instead, all consideration flows directly to the third party supplier of goods and services, with the licensee and each participant paying the third party suppliers individually for any equipment or services provided to them. *Private Land Mobile Radio Services*, PR Docket No. 18921, 89 FCC 2d 766 (April 13, 1982), at para. 10, note 18.

[15] *See Private Land Mobile Radio Services*, PR Docket No. 18921, 89 FCC 2d 766, 786–7 (April 13, 1982).

[16] *See Temporary Licensing, 800 MHz*, 89 FCC2d 638, 639 (April 6, 1982).

[17] Just as we sought to promote new technological development (trunking) and competition in the private land mobile radio services by the creation of the SMRS licensee in Subpart M of Part 90, *see Second Report and Order*, Docket No. 18262, 46 FCC2d 752 (1974), *reconsidered, Memorandum Opinion and Order*, Docket No. 18262, 51 FCC2d 945 (1975), we now seek to achieve the goals of new technological innovation and competition by proposing SMRS licensing as an option in the new PRCS.

[18] For a discussion of our previous authority to create a private carrier such as the SMRS, *see NARUC* v. *FCC*, 525 F.2d 630 (D.C. Cir. 1976), *cert. denied*, 425 U.S. 992 (1976); *see also Temporary Licensing, 800 MHz*, 89 FCC2d 638, 642–644 (April 6, 1982). However, because they are Private Land Mobile Services as defined in new Sections 3(gg) and 331(c) of the Act, none of the repeater licensing arrangements set forth above constitute common carriage. *See* Section 331(c) (1), (2) and (3) of the Communications Act of 1934, as most recently amended by Pub. L. 97–259, enacted September 13, 1982, 47 U.S.C. 331(c) (1), (2) and (3). We do not propose to structure the PRCS as a common carrier service. We question whether the duties and responsibilities of common carrier status or the regulatory burdens associated therewith are appropriate for the use we intend to accommodate. However, to the extent that an entrepreneur may desire to functionally structure his/her repeater service offering as common carriage, we request comment as to whether it would be appropriate to permit the operation of a repeater station in the PRCS under the provisions of Title II of the Communications Act of 1934, as amended.

Unlike radio common carrier (including cellular) systems, a PRCS user in his/her car would be able to initiate a telephone call over the PSTN only if he/she is within range of his/her other PRCS unit interconnected at his/her premises. Also, unlike radio common carrier (including cellular) systems, a person trying to call a PRCS user in his/her car by using the PSTN could do so only by dialing the PRCS user's "home" phone and reaching the PRCS user within range of the user's premises.

5. *Identification*

62. We will require each PRCS unit and each PRCS repeater station to automatically identify itself at some point before, during or at the end of each transmission. We believe this complies with the identification requirements of Article 19 of the International Telecommunication Union (ITU).[19]

6. *Compliance*

63. We propose to structure the PRCS in a manner that would be virtually self-enforcing through the use of type-accepted equipment. Matters that often, in other services, involve the cooperation of a user would be automatically controlled by the equipment. These matters include conversation duration, channel selection and transmitter identification. Additionally, a system designed to accommodate only selective calling (except for "party line" channels) would alleviate many potential co-channel interference problems. Also, PRCS unit power restrictions would be a matter of type-acceptance.

64. The rules proposed are intended to minimize the number of possible operational violations. Conversations would be automatically limited in duration. Each PRCS unit would identify itself automatically at a specified time during each communications exchange rather than requiring operators to identify their stations during communications. After initial contact on "control" channels, the calling and called PRCS units would automatically agree to go to a specific vacant channel, rather than having operators themselves try to locate such a channel, with the possibility of encroachment upon another communication. In the PRCS, it would be impossible, with type-accepted equipment, to deliberately break in on another communication.

65. For compliance purposes, we would treat persons operating in violation of PRCS rules on frequencies assigned to the PRCS in two different ways. Rule violators using non-modified, type accepted PRCS equipment will be treated as operating within the PRCS but in violation of the rules. Rule violators using modified PRCS equipment or equipment not type accepted for use in the PRCS will be treated as operating without proper authorization and, thus, in violation of Sections 301 and 302 of the Act.

66. Repeater operation would always be licensed, either by an individual licensee for his/her own purposes, by one licensee cooperatively sharing the operation of the repeater, or by a commercial entrepreneur (the SMRS). A Commission licensee would always be responsible for an accountable for repeater transmissions. Thus, interference problems could be promptly and effectively resolved by working with a readily identifiable licensee associated with a given repeater. Adequate control of a repeater necessarily includes knowledge of who has access to the repeater. In this regard, we seek comments regarding our proposed rules requiring licensees of repeaters to maintain lists of current users, their addresses, and their automatic identification codes. We also seek comments on whether, in addition, we should require maintenance of logs of repeater usage identifying the user for each repeater use.

D. Feasibility of a New Private Radio Communications Service

1. *Cost*

67. It "is GE's view that a PRCS radio system . . . consisting of one mobile unit and one base unit capable of interconnection to the telephone network, can be manufactured and *sold at retail for under $400.*" *GE Petition* at 9. Both AT&T and Uniden questioned whether this cost objective can be met. GE's studies show that while marketability of PRCS units may drop if costs are increased from $350 to $450, average nationwide consumer interest in purchase of a PRCS system would remain higher than 10% of all households. We seek comment about the likely cost of a PRCS system, and the relationship between cost and consumer interest.

2. *Type Acceptance*

68. We are proposing adherence to certain technical specifications to assure expeditious initiation of service and to assure service self-policing. This is consistent with our desire to avoid the need for users to develop a working knowledge of extensive operating requirements typical of other private Citizens and Land Mobile services. In lieu of instituting detailed operating rules, we propose imposing limited type acceptance requirements on manufacturers. We expect that type acceptance rules directed toward a relatively small number of manufacturers would significantly diminish the otherwise large regulatory burden of more complex operating rules imposed upon each PRCS user. Nonetheless, we seek comment on whether we should forgo use of type acceptance as a means of simplifying the PRCS for the average user, and instead allow various technologies and systems to each use spectrum assigned to the PRCS. We also seek comment on whether the PRCS, as proposed, would preclude existing or new technologies and systems which should be accommodated in the service.

3. *Exclusive versus shared frequencies*

69. We are proposing a regulatory regime where each repeater operator could be licensed for all of the repeater channels. This would result in sharing the repeater channels. We propose no coordination or exclusivity, because the technical characteristics of our proposed trunking scheme should prevent interference. Moreover, frequency exlcusivity necessarily limits entrants, reduces certain scale economies, and requires use of private coordinators or expenditure of additional Commission resources to assure exclusive use in a given geographic area. Nonetheless, we request comment on whether frequency exlusivity (i.e., assigning a block of channels in a given geographic area to only one repeater operator) would be desirable, particularly with regard to considerations of spectrum efficiency, channel splitting, frequency re-use and the use of varied modulation types.

E. Spectum Allocation for a New Private Radio Communications Service

70. GE stated, in its Petition for Rule Making, that "a *minimum* of 9 MHz, split into two 4.5 MHz bands with a 45 MHz separation, is both necessary and appropriate" for a new PRCS. GE stated that the "4.5 MHz bands would be divided into 148 duplex channels and two simplex channels to provide the number of discrete control, local,

[19] ITU Radio Regulation No. 737, Mar 2 (Article 19) states: "A station shall be identified by a call sign or other recognized means of identification. Such recognized means of identification may be one or more of the following necessary for complete identification: name of station, location of station, operating agency, official registration mark, flight identification number, selective call number or signal, selective call identification number or signal, characteristic of emission or other clearly distinguishing features recognized internationally." This provision survives in substance as Radio Regulation No. 2069, Geneva, 1979.

repeater, and party line PRCS channels necessary for a viable service."

71. GE proposed that the requested 9 MHz be taken from the existing land mobile reserve allocations in the 806–902 MHz and 928–947 MHz frequency bands. Additionally, in Exhibit E to its Petition for Rule Making, titled Representative Regulations for the Proposed PRCS, GE illustrated the use of the 887–892.5 MHz and 932–936.5 MHz frequency bands to create 150 two-way 30 kHz radio channels. As AT&T pointed out in its Opposition to GE's Petition, a "portion of the 887–892.5 MHz frequency band is currently allocated to the Domestic Public Cellular Radio Telecommunications Service" for base station frequencies beginning at 880.020 MHz through 889.980 MHz. *AT&T Opposition to Petition* at 6. Thus, the frequencies set forth by GE in its original Petition are not acceptable.

72. We believe, however, that another portion of the land mobile reserve may be appropriate for the new Private Radio Communications Service. Although AT&T expressed the view that portions of the land mobile reserve will be needed to expand cellular systems, we believe that allocating a portion of the reserve above 896 MHz will not preclude expansion of either cellular or private conventional and trunked systems. Although AMST expressed concern that any diminution of the land mobile reserve could result in ultimate land mobile encroachment of UHF television frequencies, we view such a concern as too speculative to warrant rejection of the new PRCS.

73. GE has stated that it is necessary to maintain a two-way frequency separation of 30 to 100 MHz in order to minimize the cost of the PRCS units. To do this, it is apparent that one band of the PRCS must be placed near 896 MHz. We are presently considering allocating the 896–898 MHz and 941–943 MHz bands for a public air-to-ground telephone service. It would therefore seem logical for a proposed allocation to the new PRCS to begin just above the 896–898 MHz band. This approach, however, would limit the lower band of the new service to 4 MHz, rather than the 4.5 MHz proposed by GE, since the shared Government Radiolocation and non-Government Industrial, Scientific, and Medical Equipment band begins at 902 MHz. When paired with another 4 MHz band, the total allocation for the new PRCS would be 8 MHz, rather than the 9 MHz proposed by GE.

74. As noted in paragraph 70, GE has stated that a minimum of 9 MHz is necessary for its proposed PRCS. We note, however, that both the needed number of channels and channel bandwidth for the service is somewhat speculative. Demand for the service can only be approximated at this time, and the 30 kHz FM bandwidth proposed by GE could be reduced by narrowband FM or AM techniques. Thus, we believe that a total of 8 MHz should be sufficient for the new service. However, we request comments both as to the needed number of channels and the desirable channel bandwidth, taking into account their effects on the cost and quality of the service.

75. We are therefore proposing that the 898–902 MHz band be allocated for the new PRCS and that it be paired with a band 30 MHz to 100 MHz higher in frequency. Since, as noted in paragraph 73, the 941–943 MHz band is being considered for a public air-to-ground telephone service, we believe that a desirable location for the upper half of the PRCS is just below this band, at 937–941 MHz. This will allow for a 39 MHz separation between the two portions of the new PRCS band. In making this proposal, we note that in another Commission action today, we are proposing in General Docket No. 82–243 to shift the allocation for a Government and non-Government fixed service from the 899–902 MHz and 938–941 MHz bands to 932–935 MHz and 943–946 MHz. Thus, the 898–902 MHz and 937–941 MHz bands would be available for the new service. However, comments are requested on whether we should maintain the traditional frequency separation of 45 MHz for two-way services.

76. Given the general similarities between the proposed service and cordless telephone devices, it appears it may also be possible to accommodate cordless telephones in the PRCS. Cordless telephones are two-way low power communication devices which eliminate the connecting handset cord of standard telephones, thus allowing users considerably greater freedom of movement. Cordless phones operate in a full duplex mode (i.e., they are capable of simultaneously transmitting and receiving radio signals), which allows a continuous conversation between two parties. This method of operation requires the use of two frequencies for each cordless phone. The system includes a base station low power transmitter and receiver, connected to the telephone network, and a portable handset that incorporates a low power transmitter and receiver. The usual range of the portable unit is less than 1000 feet from the base station. Therefore, we request comments on how best to accommodate cordless telephones in this band along with the PRCS.

VIII. Proposal

77. We are proposing the PRCS in response to unmet personal and business communications needs. It is designed to promote high technology advancement in a field where mass marketing at reasonable prices can afford the average consumer access to a reasonably priced short-range mobile communications alternative for personal and business needs, with limited interconnection. We are proposing a Citizens Band Land Mobile Private Radio Communications Service without the necessity of licensing individual stations.

78. Finally, we would note that with this action three proposals are now before the public for comment—proposals which would consume a total of 18 MHz of the 900 MHz band. The 900 MHz band has been considered to be reserved for future growth to meet land mobile spectrum requirements. It is our intention to consider these proposals in a coordinated manner prior to making final decisions on any of them. Moreover, while we are proposing this allocation of 898–902 MHz and 937–941 MHz for the Privale Radio Communications Service, we would welcome public comment as to whether this choice is optimum or whether other frequencies within this band, or another band altogether, should be selected for this purpose. In providing comment on this point, attention should be given to all three pending proposals for use of the 900 MHz spectrum.[39]

79. We recognize that these proposals may impact upon our ability to satisfy any additional private land mobile spectrum requirements. We are presently engaged in an ongoing *Inquiry in the Matter of Future Private Land Mobile Telecommunications Requirements. Notice of Inquiry*, PR Docket No. 82 10, FCC 82–8 (January 26, 1982). We will publish a *Final Report on Future Private Land Mobile Telecommunications Requirements* and terminate PR Docket No. 82–10 prior to adopting a *Report and Order* in this proceeding. It is our intention to consider the *Report and Order* in this proceeding at the same Agenda meeting

[39] The other two proposals are: (1) a *Further Notice of Proposed Rule Making* in General Docket No. 82–243, FCC 83–15 (February —,1983), proposing Amendment of Part 2 of the Commission's Rules to provide for an allocation of 6 MHz to Government and non-government stations for fixed service usage; and (2) a *Notice of Proposed Rule Making* in general Docket No. 83–17, FCC 83–30 (February —, 1983), proposing amendment of the Commission's Rules to Allocate Spectrum for, and to Establish other Rules and Policies Pertaining to the Use of radio in establishing a Public Air-ground telephone System.

in which we next consider *Reports and Orders* in General Docket Nos. 82-243 and 83-17, so that we can jointly consider each of these proposals for the 896-947 MHz band.

IX. Conclusion

80. Notice is hereby given that we propose to amend 47 CFR by adding a new Part 96 to the Commission's Rules as set forth in the Appendix attached hereto.

X. Procedural Matters

81. Authority for issuance of this Notice is contained in Sections 4(i), 302 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302 and 303. Pursuant to applicable procedures set forth in Section 1.415 of the Commission's Rules, interested persons may file comments on or before June 10, 1983, and reply comments on or before July 11, 1983. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

82. In accordance with Section 1.419 of the Commission's Rules, 47 CFR 1.419, formal paticipants must file an original and five copies of their comments and other materials. Participants who wish each Commissioner to have a personal copy of their comments should file an original and eleven copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. Each set of comments must state on its face the proceeding to which it relates (General Docket Number) and should be submitted to: The Secretary, Federal Communications Commission, Washington, D.C. 20554. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

83. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time a Public Notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final Order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of the oral presentation, that written summary must be served on the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. *See generally* Section 1.231 of the Commission's Rules, 47 CFR 1.231. A summary of the Commission's procedures governing *ex parte* contacts in informal rule makings is avilable from the Commission's Consumer Assistance Office, FCC, Washington, D.C. 20554, (202) 632-7000.

XI. Initial Regulatory Flexibility Analysis

84. Pursuant to 5 U.S.C. 603, the initial regulatory flexibility analysis for this proceeding follows:

85. We propose to adopt a new Private Radio Communications Service (PRCS) to address an identified but as yet unmet need for radio communications. The objective of the proposed rules is to create a new Citizens Band Private Land Mobile Radio Service. Our authority to promulgate such rules, including creation of new radio services, derives from 47 U.S.C. 154(i) and 303.

86. The new rules would make all persons, including all small business entities, eligible in the new service. It is estimated that the combined cost for two PRCS units in this service, where one unit has interconnect capability, will be about $400.

87. Users of PRCS units would not be required to obtain individual station licenses. They would not be required to keep any station records. They would be required to comply with operating rules. Usual FCC enforcement measures would apply to their operation, including: (1) Stations must be available for inspection; (2) forfeitures for violations may be assessed; and (3) users must respond to discrepancy notices.

88. PRCS repeater stations would be licensed. PRCS repeater stations may be required to keep station records for the license term, including: (1) The license; (2) a list of each current user, the user's address, and the user's automatic identification code; (3) copies of letters from the licensee to the FCC concerning name or mailing address changes; (4) copies of answers to discrepancy notices; (5) a waiver of the rules or special temporary authority (STA); (6) a copy of any FCC permission to put an antenna higher than the rules allow; and (7) a copy of any FCC consent to a licensee corporation's change in its corporate control.

89. We believe that reliance upon type-acceptance of PRCS equipment to achieve many operational characteristics of a system which we would otherwise control by restrictions upon the operator results in minimization of burden on the PRCS operator in terms of record-keeping, reporting and enforcement as compared to other existing services.

90. We have included an Initial Regulatory Flexibility Analysis in this document because we cannot, at this juncture, determine with any specificity the number of manufacturers who would avail themselves of the opportunity to make PRCS equipment, or the number of small entities that would be users of the PRCS. Moreover, we are soliciting comment on the very nature of the service and the equipment to be used in the service. We will examine this proceeding's impact on small entities further in the Final Regulatory Flexibility Analysis in this proceeding, upon evaluation of the relevant comments.

XII. Ordering Clauses

91. It is ordered that the Secretary shall cause a copy of this Notice to be served upon the Chief Counsel for Advocacy of the Small Business Administration, and that the Secretary shall also cause a copy of this Notice to be published in the **Federal Register.**

92. For further information about this proceeding contact John Borkowski or Steve Lett (202) 632-4964, Personal Radio Branch, Special Services Division, Private Radio Bureau, FCC, Washington, D.C. 20554.

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

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix

It is proposed that Parts 2 and 15 of the Commission's Rules and Regulations, 47 CFR Parts 2 and 15, be amended as follows, and that a new part, Part 96, 47 CFR Part 96, be added to read as follows:

PART 2—[AMENDED]

§ 2.106 [Amended]

1. In § 2.106, the Table of Frequency Allocations is revised for the band 896–946 MHz as follows:

United States		Federal Communications Commission				
Band (MHz)	Allocation	Band (MHz)	Service	Class of Station	Frequency (MHz)	Nature of services of stations
5	6	7	8	9	10	11
*	*	*	*	*	*	*
896–898	NG. (US 36), (US 100), (US 116).	896–898	LAND MOBILE	BASE. LAND MOBILE		DOMESTIC PUBLIC. (NG 12).
898–902	NG. (US 36),(US 100), (US 116).	898–902	LAND MOBILE			CITIZENS BAND LAND MOBILE PRIVATE RADIO COMMUNICATIONS SERVICE.
*	*	*	*	*	*	*
932–935	G, NG. (US 36), (US 116), (US 215).	932–935	FIXED	Operational Fixed		
*	*	*	*	*	*	*
937–941	NG. (US 36), (US 116), (US 215).	937–941	LAND MOBILE			CITIZENS BAND LAND MOBILE PRIVATE RADIO COMMUNICATIONS SERVICE.
941–943	NG. (US 36), (US 116)	941–943	Land Mobile	Base Land Mobile		DOMESTIC PUBLIC. (NG 12)
943–946	G, NG. (US 36),(US 116)	943–946	FIXED	Operational Fixed		

* * * * * * * * *

2. In the list of footnotes immediately following the table in § 2.106, footnote US116 and NG 12 are revised to read as follows:

* * * * * * * * *

US116—In the bands 890–902 MHz, 928–932 MHz, 935–943 MHz, and 946–947 MHz, no new assignments are to be made to Government radio stations after July 10, 1970 except on a case-by-case basis, to experimental stations and to additional stations of existing Networks in Alaska. Government assignments existing prior to July 10, 1970 to stations in Alaska may be continued. All other existing Government assignments shall be on a secondary basis to stations in the non-Government land mobile service and shall be subject to adjustment or removal from the bands 890–902 MHz 928–932 MHz, 935–943 MHz, and 946–947 MHz at the request of the FCC.

NG 12—Frequencies in the bands 454.40–455 MHz, 459.40–460 MHz, 896–898 MHz for air-to-ground links and 941–943 MHz for ground-to-air links may be assigned to domestic public land and mobile stations to provide air-ground public radio telephone service.

PART 15—[AMENDED]

3. In § 15.63, paragraph (a) would be revised to read as follows (the table in that paragraph would remain unchanged):

§ 15.63 Radiation interference limits.

(a) The radiation from all radio receivers that operate (tune) in the range 30 to 890 MHz, 898 to 902 MHz or 937 to 941 MHz, including frequency modulation broadcast receivers and television broadcast receivers manufactured after the effective date specified in § 15.72, shall not exceed the following field strength limits at a distance of 100 feet or more from the receiver:

* * * * *

4. A new § 15.64, would be added to read as follows:

§ 15.64 Additional emission requirements for PRCS receivers.

The emissions measured at the antenna connection of any receiver (or transceiver when in the receive mode) that operates (tunes) in the range 898 to 902 MHz and 937 to 941 MHz shall be less than −70 dBm. For transceivers operating in the full duplex mode (simultaneous transmission and reception) this limit shall apply, when transmitting, only to those emissions not covered by § 96.427.

5. Section 15.69 would be revised to read as follows:

§ 15.69 Certification of receiver.

Every receiver that operates (tunes) in the range 30 to 890 MHz, 898 to 902 MHz and 937 to 941 MHz shall be certificated pursuant to the procedures in Subpart B of this part to show that the receiver complies with the technical specifications in this subpart.

6. In § 15.72, paragraph (b) would be revised to read as follows:

§ 15.72 Date when certification is required.

* * * * *

(b) For other receivers. All radio receivers other than television broadcast receivers that operate (tune) in the range 30 to 890 MHz manufactured after October 1, 1956, and all receivers that operate (tune) in the range 898 to 902 MHz and 937 to 941 MHz manufactured after (the effective date of the Order in this proceeding), shall comply with the certification requirements with respect to radiation (and conduction for receivers that operate in the range 898 to 902 MHz and 937 to 941 MHz) of radio frequency energy, except as follows:

* * * * *

7. In § 15.79, the introductory paragraph would be revised to read as follows:

§ 15.79 Report of measurements: Receivers other than FM or TV.

The report of measurements for a receiver other than a FM or TV broadcast receiver and for each band in the range 30 to 890 MHz, 898 to 902 MHz and 937 to 941 MHz in a multiband broadcast receiver shall include the following:

* * * * *

8. A new part, Part 96, consisting of three subparts, Subparts A, B and C, would be added to read as follows:

PART 96—CITIZENS BAND LAND MOBILE PRIVATE RADIO COMMUNICATIONS SERVICE

Subpart A—User Regulations

General Provisions

Sec.
96.001 The Citizens Band Land Mobile Private Radio Communications Service (PRCS).
96.003 Using these Rules.
96.005 Key terms used in these Rules.
96.007 No license required.
96.009 Eligibility to manage a PRCS system.
96.011 Channels must be shared.

Considerations When Planning a PRCS System

96.021 PRCS system description.
96.023 User station description.
96.027 Additional restrictions near the Canadian borders.
96.029 Additional restrictions near FCC monitoring points.
96.031 Additional restrictions in the National Radio Quiet Zone.
96.033 Additional restrictions on environmentally or historically important land.
96.035 Additional restrictions on Department of Defense land.
96.037 Antenna height restrictions.

Managing a PRCS System

96.051 PRCS system management requirements.
96.053 Common carrier communications prohibited.
96.055 Automatically controlling a station.
96.057 Remotely controlling a station.
96.059 Station transmitters.
96.061 Servicing station transmitters.
96.063 Modification to station transmitters prohibited.
96.065 Interconnection to a telephone.
96.067 Transmitter power limits.
96.069 Station inspection.
96.071 Penalties for violations.
96.073 Answering a discrepancy notice.
96.075 Instructions in cases of interference.
96.077 Changing these Rules.

Operating a Station

96.101 Station operator required.
96.103 Station operator duties.
96.105 Cooperation in sharing the channels.
96.107 Responsibility for station operator's communications.
96.109 Persons eligible to be a station operator.
96.111 Persons ineligible to be station operators.
96.113 Permissible communications.
96.115 Prohibited communications.

Subpart B—Repeater Station Regulations

General Provisions

Sec.
96.201 PRCS Repeater Stations.
96.203 License required.
96.205 Eligibility for a PRCS repeater station.
96.207 Channels must be shared.

Considerations When Planning a PRCS Repeater Station

96.221 Channels available.
96.223 Number of PRCS repeater stations the same entity may have.
96.225 Cooperative use of PRCS repeater stations.
96.229 Additional restrictions near the Canadian border.
96.231 Additional restrictions near FCC monitoring stations.
96.233 Additional restrictions in the National Radio Quiet Zone.
96.235 Additional restrictions on environmentally or historically important land.
96.237 Additional restrictions on Department of Defense land.
96.239 Type of antenna and antenna height restrictions.
96.241 PRCS repeater station communication points.

Applying for a PRCS Repeater Station License

96.251 Applying for a new license.
96.253 Applying to modify a license.
96.255 Forms to use.
96.257 Basic information required.
96.259 Additional information required for stations in the National Radio Quiet Zone.
96.261 Additional information required for stations on environmentally or historically important land.
96.263 Additional information required for stations with antennas higher than normally allowed.
96.265 Signature required.
96.267 Renewing a license.

Managing a PRCS Repeater Station.

96.281 Licensee responsibilities.
96.283 What the license authorizes.
96.285 License term.
96.287 Keeping the license.
96.289 License not transferable.
96.291 Assignment or transfer of control.
96.293 Changing these rules.
96.295 Penalties for violations.
96.297 Answering a discrepancy notice.
96.299 Station records.
96.301 Station inspection.
96.303 Where to contact the FCC.
96.305 Transmitting channels.
96.307 Station control point required.
96.309 Controlling a station from a remote location.
96.311 Automatic control.
96.313 Station equipment.
96.315 Servicing station tramsmitters.
96.317 Modification to station transmitter prohibited.
96.319 Transmitter power limits.
96.321 Telephone interconnection.
96.323 Managing a PRCS station in an emergency.

Subpart C—Technical Regulations.

General Provisions

Sec.
96.401 Purpose of these rules.
96.403 Complying with these rules.
96.405 Definitions.
96.407 Type acceptance required.
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96.411 Transmitter modification.

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96.421 Transmitter channel frequencies.
96.423 Modulation types.
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96.443 Accessibility of controls.
96.445 Power capability.
96.447 Crystal control required.
96.449 Instructions and warnings.
96.451 Frequency capability.
96.453 External controls.
96.455 Transmitter inhibit, default and disconnect capability.
96.457 Supervisory audio tone.
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96.461 Transmitter identification circuitry.
96.463 Distinct serial number required.
96.465 Determination of channel occupancy.
96.467 Public switched telephone network interface.
96.469 Repeater station access.

Standard Protocols and Algorithms

96.481 General requirements.

Subpart A—User Regulations

General Provisions

§ 96.001 The Citizens Band Land Mobile Private Radio Communications Service (PRCS).

The PRCS is a private radio service for systems of user (mobile and base) stations. The operators exchange communications between the stations directly and through the intermediary of PRCS repeater stations.

§ 96.003 Using these Rules.

(a) These rules must be complied with by each person responsible for a PRCS system and by each station operator.

(b) These rules have been arranged to be useful when:

(1) A person plans a PRCS system (see § 96.021);

(2) A person manages the PRCS system (see § 96.051); and

(3) A station operator operates the station (see § 96.101).

Note.—The technical regulations for PRCS transmitters are contained in Part 96, Subpart C. PRCS repeater station rules are contained in Part 96, Subpart B.

§ 96.005 Key terms used in these rules.

(a) Where the rules of this part use the term *FCC*, it means the Federal Communications Commission. (Congress has given the FCC the responsibility to regulate radio services, including PRCS.)

(b) Where the rules of this Subpart A use the term *person*, it means the responsible individual or organization (see § 96.009) managing a PRCS system.

(c) Where the rules of Subpart B use the term *person* or *licensee*, it means the responsible individual or organization (see § 96.205) managing a PRCS repeater station.

(d) Other key terms are explained in the rules, as follows:

The key item	Is explained in rule (section)
Antenna	96.037
Automatically	96.021
Common carrier communications	96.053
Control link	96.057
Directly (transmit to)	96.023
Land (environmentally or historically important)	96.033
Lines A and C	96.027
Location	96.007
National Radio Quiet Zone	96.031
One-way communications	96.115
Payment (direct/indirect)	96.053
PRCS	96.001
PRCS System	96.021
Repeated	96.023
RF	96.067
STA	96.075
Station operator (duties)	96.003
User station	96.023

§ 96.007 No license required.

(a) No license is required for any user station in a PRCS system to transmit from:

(1) Any *location* (a specific geographic point) within or over the territorial limits of any area where radio services are regulated by the FCC. Those areas are:

(i) *The fifty States:*

(A) State of Alaska (coordination with the Government of Canada may be required (see § 96.027);

(B) State of Hawaii; and

(C) Remaining 48 states (coordination with the Government of Canada may be required (see § 96.027).

(iii) *The District of Columbia.*

(iii) *The Caribbean Insular areas:*

(A) Commonwealth of Puerto Rico;

(B) Navassa Island;

(C) United States Virgin Islands (50 islets and cays).

(iv) *The Pacific Insular areas:*

(A) American Samoa (seven islands);

(B) Baker Island;

(C) Commonwealth of Northern Mariannas Islands;

(D) Guam Island;

(E) Howland Island;

(F) Jarvis Island;

(G) Johnston Island (islets East, Johnston, North and Sand);

(H) Kingman Reef;

(I) Midway Island (islets Eastern and Sand);

(J) Palmyra Island (more than 50 islets); and

(K) Wake Island (islets Peale, Wake and Wilkes).

(b) Before an individual may be a station operator in a PRCS system that individual must either:

(1) Be the person responsible for the PRCS system; or

(2) Have permission to be a station operator from the person responsible for the PRCS system.

(c) A person may not manage a PRCS system or be a station operator in a PRCS system if that person has been issued a cease and desist order by the FCC and the order is still in effect.

WARNING: IF A STATION TRANSMITS IN DISOBEDIENCE TO A CEASE AND DESIST ORDER ISSUED BY THE FCC, IN VIOLATION OF THE COMMUNICATIONS ACT, THE PERSON RESPONSIBLE IS LIABLE TO SEVERE PENALTIES (SEE § 96.071).

§ 96.009 Eligibility to manage a PRCS system.

(a) A person is eligible to manage a PRCS system if:

(1) The person is: (i) 18 years of age or older;

(ii) A partnership, and each partner is 18 years of age or older;

(iii) A corporation;

(iv) An association;

(v) A State, territorial or local governmental unit; or

(vi) Other legal entity.

(2) And the person not: (i) A foreign government;

(ii) A representative of a foreign government; or

(ii) A Federal Government agency.

(b) An agency, such as a civil defense agency, authorized by a state, territorial or local governmental unit, is eligible to manage a PRCS system.

§ 96.011 Channels must be shared.

No PRCS system is permitted exclusive use of any channel. All PRCS channels are subject to being shared with other PRCS systems.

Considerations When Planning a PRCS System

§ 96.021 PRCS system description.

(a) *A PRCS system* is comprised of:

(1) One or more station operators;

(2) One or more user stations; and

(3) Does not include PRCS repeater stations.

(b) Except for the "party line channel" (PLC) the station operator must initiate a call to a particular PRCS system station and establish contact with that station prior to communicating the messages. The transmitting units *automatically* (without immediate thought or action by the station operator) select an appropriate channel for the message transmissions.

(c) A PRCS system may make use of a PRCS repeater station to assist in completing the message transmissions. (Refer to Part 96, Subpart B for PRCS repeater station rules.)

(d) A station in a PRCS system may transmit from any location within or over any area where radio services are regulated by the FCC (see § 96.007), except where additional restrictions apply.

(e) A station in a PRCS system must not transmit from any location within or over the territorial limits of any area where radio services are only regulated by:

(1) A foreign government; or

(2) A United States government agency other than the FCC.

§ 96.023 User station description.

(a) A *user station* is a unit by which communications may be originated (initially transmitted) in the PRCS.

(b) A user station may transmit communications *direclty* (not through a repeater station) or *repeated* (through a PRCS repeater station) to any other user station.

(c) A user station may transmit from any aircraft or ship, with the captain's permission, which is:

(1) Within or over any area where radio services are regulated by the FCC (see § 96.007, except where additional restrictions apply: and

(2) On or over international waters. (Operation of the user station must also comply with any applicable treaties to which the United States is a party.)

(d) A user station may be interconnected with the Public Switched Telephone Network (PSN) (see § 96.065).

(e) A user station must not automatically retransmit communications from any other PRCS station (this function may only be performed by PRCS repeater stations—see Subpart C).

(f) A user station must not transmit communications to any station which is not authorized to communicate in the PRCS.

§ 96.027 Additional restrictions near the Canadian borders.

(a) The United States and the Government of Canada coordinate frequency assignments of certain radio stations in areas along the common border. Coordination is required north of *Line A* and east of *Line C* (see Figure 1).

(b) The FCC may impose additional restrictions on a station in a PRCS system if it is at a location where coordination is required and the Government of Canada objects because the station's transmissions cause harmful interference to stations in Canada. The FCC may order the person managing the PRCS system to discontinue the station's transmissions from that location. If this happens, the person may move the station to another location and/or use a directional

antenna to prevent causing the harmful interference.

§ 96.029 Additional restrictions near FCC monitoring points.

The FCC may impose additional restrictions on a user station in a PRCS system if it is at a fixed location within 1.6 kilometers (1 mile) of an FCC monitoring station and the station's transmissions degrade, obstruct or repeatly interrupt the operation of the monitoring station. Before putting a user station at such a fixed location, or before changing anything in a station already at such a location, the person managing a PRCS system should consult with the FCC by writing to:

Chief, Field Operations Bureau, Federal Communications Commission, Washington, D.C. 20554.

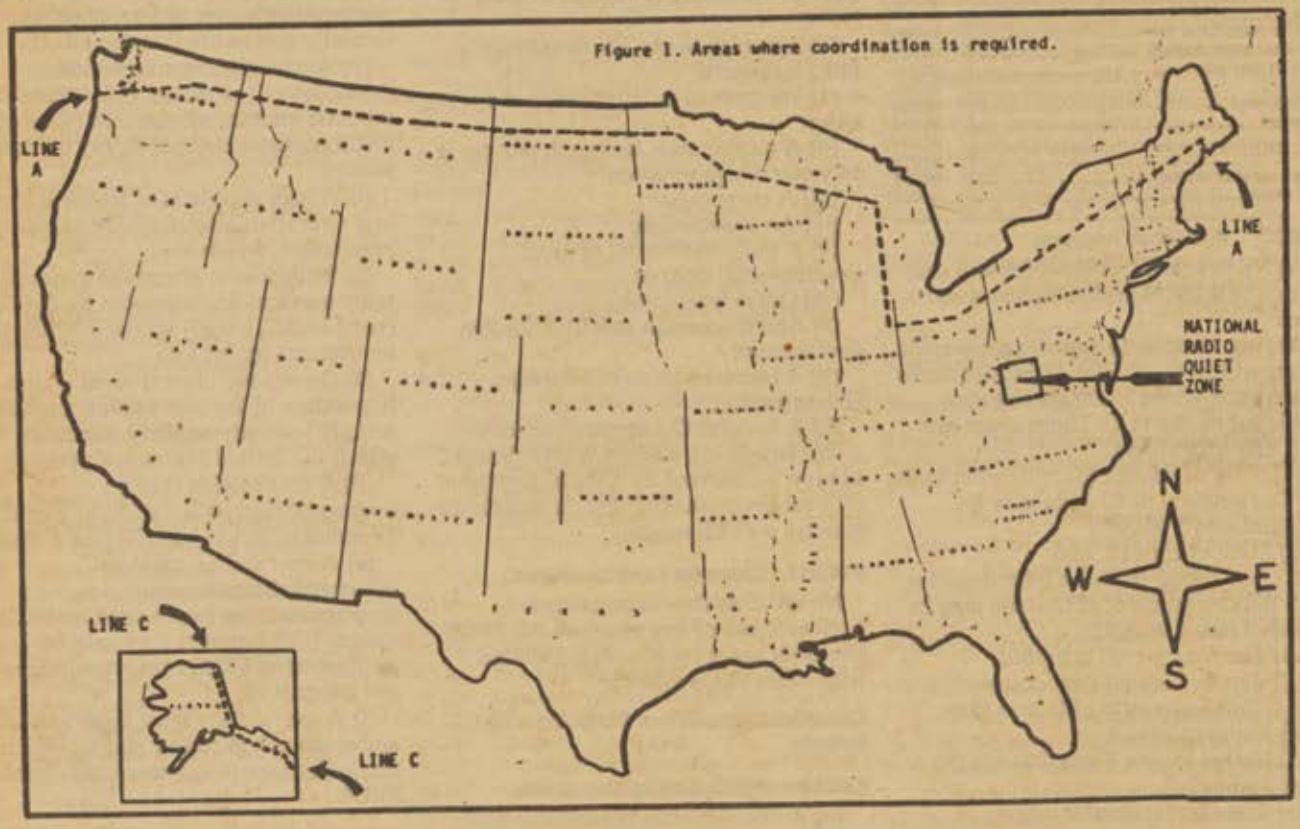
§ 96.031 Additional restrictions in the National Radio Quiet Zone.

(a) The FCC may impose additional restrictions on a user station in a PRCS system if it is at a fixed location within the *National Radio Quiet Zone* (an area within the States of Maryland, Virginia and West Virginia (see Figure 1)), and the National Radio Astronomy Observatory files an objection with the FCC. The National Radio Quiet Zone is the area bounded by:

(1) 39 degrees, 15 minutes North on the north;

(2) 78 degrees, 30 minutes West on the east;

(3) 37 degrees, 30 minutes North on the south; and



(4) 80 degrees, 30 minutes West on the west.

(b) Before putting a user station at a fixed location within the National Radio Quiet Zone, or before changing anything in a user station already at such a fixed location, the person managing the PRCS system must send a notice to:

Director, National Radio Astronomy Observatory, P.O. Box 2, Green Bank, West Virginia 24944

(c) The notice must include the following details about the proposed user station:

(1) Antenna location (latitude and longitude);

(2) Antenna height; and

(3) Antenna directivity and orientation; and

(4) Antenna polarization.

§ 96.033 Additional restrictions on environmentally or historically important land.

No station in a PRCS system may be at a fixed location on *environmentally or historically important land* (significant in American history, architecture or culture). (Before deciding whether to waive this rule for a particular station, the FCC may request public comment or conduct a hearing to determine how the station would affect its immediate surroundings.)

§ 96.035 Additional restrictions on Department of Defense land.

The Department of Defense may impose additional restrictions on a station transmitting from its land. (Before a person places or modifies a station at such a location, the commanding officer in charge of the land should be consulted.)

§ 96.037 Antenna height restrictions.

(a) *Antenna* means the station's radiating structure (for transmitting, receiving or both) and its supporting structure (tower, pole or mast). It includes everything attached to the structures.

(b) If the antenna is mounted on a hand-held portable unit, none of the following restrictions apply.

(c) An antenna must comply with either one of the following:

(1) The highest point must not be more than 6.1 meters (20 feet) higher than the highest point of the building or tree on which it is mounted; or

(2) The highest point must not be more than 18.3 meters (60 feet) above the ground.

(d) If a station is located at a location near an airport, and if the antenna is more than 6.1 meters high, these additional restrictions may apply. The highest point of the antenna must not exceed one meter above the airport elevation for every 100 meters distance from the nearest location of the nearest airport runway. (Differences in ground elevation between the airport runway and the antenna site must be accounted for. Consult Part 17 of the FCC's Rules for more information.)

WARNING: INSTALLING AND REMOVING ANTENNAS NEAR POWERLINES IS DANGEROUS.

Managing a PRCS System

§ 96.051 PRCS system management requirements.

(a) Each PRCS system must be managed as these rules require by the person responsible for the system.

(b) The person responsible for the system must have access to all station equipment and be able to cause a cessation of transmissions.

§ 96.053 Common carrier communications prohibited.

No PRCS system may be used to engage in *common carrier communications* (comunicating messages for pay). A person managing a PRCS system must not accept either *direct payment* (money, goods, food, etc.) or *indirect payment* (good will, publicity, advertising, etc.) for communicating messages for others. [This does not prohibit provision of PRCS repeater station service on a commercial basis (§ 96.205(d)) or the cooperative use of PRCS repeater stations (§ 96.225).]

§ 96.055 Automatically controlling a station.

Where the station operator's duties (see § 96.103) can be performed automatically, a station in a PRCS system may be automatically controlled.

§ 96.057 Remotely controlling a station.

Where the station operator's duties can be performed from a remote location through a *control link* (a connection between the remote control location and the station), a station in a PRCS system may be remotely controlled. The control link must be a wireline control link.

§ 96.059 Station transmitters.

(a) Every station in a PRCS system must use transmitters the FCC has type-accepted for use in PRCS. [Any FCC Field Office can provide information as to whether a particular transmitter model has been type-accepted for PRCS.]

(b) No transmitter may be used at a station in a PRCS system which:

(1) Is not FCC type-accepted for the PRCS;

(2) Has been internally modified to make it different from the FCC type-accepted model (see § 96.063); or

(3) Has been internally adjusted or repaired, by anyone, except a person authorized to do so by § 96.061(a).

§ 96.061 Servicing station transmitters.

(a) Each internal adjustment and each internal repair to a transmitter used at a station in a PRCS system must be made by, or under the direct supervision of, a person holding a commercial (not amateur) first- or second-class, or general radiotelephone operator license. (See Subpart C).

(b) Except as provided in paragraph (c) of this section, test transmissions during internal adjustments to a station transmitter must be made using a non-radiating simulated antenna.

(c) Brief test transmissions using a radiating antenna may be transmitted to adjust the antenna or to detect or measure spurious radiations. These test transmissions must not be longer than one minute during any five minute period.

§ 96.063 Modification to station transmitters prohibited.

(a) No internal changes may be made in a transmitter used at a station in a PRCS system to make the transmitter different from the FCC type-accepted model (see § 96.059).

(b) The FCC does not consider the conversion of one FCC type-accepted model to another FCC type-accepted model as an internal conversion if the conversion is done in accord with the original manufacturer's instructions.

§ 96.065 Interconnection to a telephone.

(a) A user station in a PRCS system may be interconnected to a public telephone system to make calls to and receive calls from another user station.

(b) The interconnection must be through a device which is registered with the FCC and must comply with the standards incorporated in a registration program designed to protect the public telephone system from harm (see Part 68 of the FCC Rules).

§ 96.067 Transmitter power limits.

(a) No station in a PRCS system may transmit with more than 10 watts output power.

(b) An external *RF* (radio frequency) power amplifier must not be attached to or used with any transmitter at a station in a PRCS system.

§ 96.069 Station inspection.

If an authorized FCC representative requests to inspect any station in a PRCS system, the person managing the PRCS system or the station operator must make the station available.

§ 96.071 Penalties for violations.

(a) If the FCC finds that a person has willfully or repeatedly violated the Communications Act, FCC Rules or U.S.C. 1464 (which prohibits the transmissions of obscene, indecent or profane language), the person may have to pay as much as $2,000 for each violation, up to a total of $5,000 (see Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. 503(b)).

(b) If the FCC finds that a person has violated any section of the Communications Act or the FCC Rules, the person may be ordered to stop whatever action caused the violation (see Section 312(b) of the Communications Act of 1934, as amended, 47 U.S.C. 312(b)).

(c) Any person willfully and knowingly violating any provision of the Communications Act may be fined up to $10,000, or be imprisoned for one year, or both (see Section 501 of the Communications Act of 1934, as amended, 47 U.S.C. 501).

(d) Any person willfully and knowingly violating any FCC Rule may be fined up to $500 for each day that the violation was committed (see Section 502 of the Communications Act of 1934, as amended, 47 U.S.C. 502).

§ 96.073 Answering a discrepancy notice.

(a) If it appears to the FCC that a person has violated the Communications Act or these Rules, the FCC may send a discrepancy notice.

(b) Within the time period stated in the notice, the person must answer with:

(1) A complete written statement about the apparent discrepancy;

(2) A complete written statement about any action taken to correct the apparent discrepancy to prevent it from happening again; and

(3) The name of the station operator at the time of the apparent discrepancy.

(c) The person must not shorten the response by references to other communications or notices.

(d) The person must send the answer to the FCC office which sent the notice.

(e) If the discrepancy notice cannot be answered within the time stated, it must be answered at the earliest possible time. The answer must include an explanation of the delay.

(f) If the notice cover a discrepancy related to transmitter technical standards, the station must stop transmitting immediately, except for necessary tests and adjustments. The station must not transmit again until all transmitter technical problems have been corrected. The FCC may require the person managing the PRCS system to conduct specific tests and to report the results of those tests.

§ 96.075 Instructions in cases of interference.

(a) If the FCC notifies a person that the person's station, or a unit of the person's station, is causing interference for technical reasons, the person must follow all instructions in the official FCC notice.

(b) The person must comply with any restricted hours of station operation which may be included in the official FCC notice.

§ 96.077 Changing these Rules.

(a) Any person may ask the FCC to change any Rules in Subpart A by submitting a petition to the FCC (see Part 1 of the FCC's Rules).

(b) Any person may ask the FCC for a waiver of these Rules as they apply to a particular PRCS system. Requests for waiver shall state the nature of the desired exception and the rule(s) to be waived. Waiver requests must plead with particularity the facts and circumstances warranting such action, and must make a compelling showing that it would be impossible for a person to comply with the requirements of a rule, or that it would be inequitable to demand strict compliance with a rule.

Operating a Station

§ 96.101 Station operator required.

When a station in a PRCS system is transmitting, it must have a station operator. The station operator must be at the station control point, unless the station is automatically controlled (see § 96.055).

§ 96.103 Station operator duties.

The station operator's duties are to:

(a) Communicate messages;

(b) Control the station by:

(1) Starting it to transmit communications;

(2) Listening to the communications it transmits; and

(3) Stopping it from transmitting when:

(i) The communications are completed; or

(ii) There is a possibility of a rule violation.

§ 96.105 Cooperation in sharing the channels.

The station operator must cooperate in sharing the channels with station operators at other stations by:

(a) Communicating only necessary messages; and

(b) Stating the messages briefly. (The station transmitter automatically limits the time for each communication in certain circumstances.)

§ 96.107 Responsibility for station operator's communications.

The person managing a PRCS system is responsible for all communications made in the system. (The person should be certain every station operator in the PRCS system understands and complies with these Rules).

§ 96.109 Persons eligible to be a station operator.

The person managing a PRCS system may permit any individual who is not otherwise ineligible (see § 96.111) to be a station operator in the system.

§ 96.111 Persons ineligible to be station operators.

The person managing a PRCS system must not permit any individual to be a station operator if an FCC cease and desist order against that individual is in effect for unlawful operation of a station in a PRCS system.

§ 96.113 Permissible communications.

A station operator may communicate two-way messages about personal or business matters.

§ 96.115 Prohibited communications.

A station operator must not communicate:

(a) Messages for someone for pay (this is not to be construed as preventing retransmission of PRCS signals on a commercial basis by repeater stations pursuant to Subpart B);

(b) Messages in connection with any activity which is against Federal, State or local law;

(c) False or deceptive messages;

(d) Intentional interference;

(e) Music, whistling, sound effects or material to amuse or entertain;

(f) Sounds only to attract attention;

(g) Obscene, profane or indecent words, language or meaning;

(h) Advertisements for the sale of goods or services;

(i) Advertisements for a political candidate or political campaign;

(j) International distress signals (except when on a vehicle in immediate danger to ask for help);

(k) Programs (live or delayed) for broadcast; and

(l) *One-way communications* (messages not intended to establish two-way communications); except:

(1) Emergency messages; or

(2) Test transmissions (see § 96.061).

Subpart B—Repeater Station Regulations

General Provisions

§ 96.201 PRCS Repeater Stations.

(a) A PRCS repeater station is a privately operated station which automatically retransmits the signals of user stations in order to extend their communications ranges.

(b) A PRCS repeater station must not retransmit the signals of another repeater station.

(c) A PRCS repeater station must not originate (initially transmit) any communications other than control signals and station identification.

(d) A PRCS repeater station must not be interconnected to the Public Switched Telephone Network (PSTN).

§ 96.203 License required.

A license for a PRCS repeater station must be obtained from the FCC before operation may be commenced.

§ 96.205 Eligibility for a PRCS repeater station.

The following persons are eligible to hold a license for a PRCS repeater station:

(a) An individual (18 years of age or older), partnership, corporation, association or governmental entity.

(b) Any corporation proposing to furnish PRCS repeater station service to its parent corporation, to another subsidiary of the same parent, or to its own subsidiary. Eligibility under this paragraph is not subject to the cooperative use provisions of § 96.225.

(c) Any nonprofit corporation or association organized for the purpose of furnishing PRCS repeater station service to its members. Eligibility under this paragraph is subject to the cooperative use provisions of § 96.225.

(d) Any person, except a wire line telephone common carrier, eligible under this subpart proposing to provide PRCS repeater station service on a commercial basis as a Specialized Mobile Radio System (SMRS).

§ 96.207 Channels must be shared.

Each PRCS repeater station uses Control Channels and Repeater Talk Channels which must be shared, on a first-come first-served basis, with PRCS user stations, and other repeater stations.

Considerations When Planning a PRCS Repeater Station

§ 96.221 Channels available.

A PRCS repeater station may use all of the Control Channels and Repeater Talk Channels. Local Talk Channels and the Party Line Channels may not be used. (See Subpart C, § 96.421.)

§ 96.223 Number of PRCS repeater stations the same entity may have.

If an applicant is otherwise legally, technically and financially qualified to operate PRCS repeater stations, there is no limit to the number of repeater stations the same entity may have.

§ 96.225 Cooperative use of PRCS repeater stations.

(a) A licensee of a PRCS repeater station authorized under this subpart may share the use of its repeater with other persons eligible under this subpart, subject to the following conditions and limitations:

(1) The repeater must either be individually owned by the licensee, jointly owned by the licensee and the persons engaged in cooperative use with the licensee (the participants), leased individually by the licensee, or leased jointly by the licensee and the participants.

(2) The licensee must maintain access to and control over the repeater.

(3) The repeater may be shared only: (i) Without charge; or (ii) on a non-profit basis, with contributions to capital and operating expenses prorated equitably among all participants.

(4) The cooperative use must be conducted pursuant to a written agreement to be kept as part of the station records. The arrangement for cooperative use must be made directly between the licensee and the participants. Where the repeater is shared on a non-profit basis, the agreement between the licensee and each participant shall set forth the method(s) employed for determining the capital and operating expenses of the shared repeater and for allocating these costs among the participants on a prorated basis. If the repeater is shared without charge, the agreement must so state and must provide sufficient details to show that this is the arrangement.

(5) No person providing any radio equipment, maintenance or repair of equipment dispatching or telephone answering services for profit for use in or in connection with a shared repeater, and no employee or agent of such a person, may be an officer, director, partner or employee of the licensee of that repeater.

(6) Neither the licensee of a shared repeater nor persons engaged in cooperative use of a shared repeater may provide any equipment, maintenance or repair of equipment dispatching, or telephone answering services in connection with use of the shared repeater to any person sharing the repeater, except pursuant to the same restrictions applicable to the sharing of the repeater under § 96.225(a)(3).

§ 96.229 Additional restrictions near the Canadian border.

(a) If a PRCS repeater station is at a location north of Line A or east of Line C (see Subpart A, Figure 1), or if the communications range of the repeater is within those boundaries, its use must be coordinated with the Canadian Government.

(b) The FCC may impose additional restrictions on a PRCS repeater station if the Canadian Government objects because the station's transmissions cause harmful interference to stations in Canada. The FCC may order the licensee of the station to discontinue transmissions from that location. The repeater station licensee may, with the permission of the FCC, move the station to another location and/or use a directional antenna to prevent causing the harmful interference.

§ 96.231 Additional restrictions near FCC monitoring stations.

The FCC may impose additional restrictions on a PRCS repeater station if it is at a location within 4.8 kilometers (3 miles) of an FCC monitoring station, and the repeater station's transmissions degrade, obstruct or repeatedly interrupt the operation of the monitoring station. Before putting a PRCS repeater station at such a location, or before changing anything in a PRCS repeater station already at such a location, the licensee should consult with the FCC by writing to:

Chief, Field Operations Bureau, Federal Communications Commission, Washington, D.C. 20554

§ 96.233 Additional restrictions in the National Radio Quiet Zone.

The FCC may impose additional restrictions on a PRCS repeater station if it is at a location within the National Radio Quiet Zone (NRQZ) (see Subpart A, § 96.031 for the location and boundaries of the NRQZ). The Director, National Radio Astronomy Observatory, shall be notified before a licensee places or modifies a PRCS repeater station at such a location.

§ 96.235 Additional restrictions on environmentally or historically important land.

No PRCS repeater station may be at a location on environmentally or historically important land (see Subpart A, § 96.033). In considering a request for a waiver of this rule, the FCC may request public comment or conduct a hearing to determine how the PRCS repeater station would affect its immediate surroundings.

§ 96.237 Additional restrictions on Department of Defense land.

Additional restrictions may be imposed on a PRCS repeater station if it is at a location on Department of Defense land. The commanding officer in charge of the land should be consulted before a licensee places or modifies a PRCS repeater station at such a location.

§ 96.239 Type of antenna and antenna height restrictions.

(a) A PRCS repeater station antenna means the station's radiating structure (for transmitting, receiving or both). It includes the tower, mast or pole supporting it. It includes everything attached to the structure.

(b) A PRCS repeater station shall use an antenna which is vertically polarized (±10°).

(c) The top of the antenna may be as high as 6.1 meters (20 feet) above the building or tree it is mounted on.

(d) The top of the antenna may be as high as, but not higher than, an existing antenna to which the PRCS repeater station antenna is attached.

(e) The top of the antenna may be as high as 61 meters (200 feet) above the ground, unless it will be within 6.1 kilometers (20,000 feet) of an airport or heliport.

(f) If the antenna is near an airport or heliport listed in the FAA's Airport Facilities Directory, or one operated by the Department of Defense, the top of it must not be higher than:

(1) One meter higher than the airport elevation for every 100 meters from the nearest runway. This applies only if the runway is longer than one kilometer (3281 feet), and is within 6.1 kilometers (20,000 feet) of the antenna; *or*

(2) Two meters higher than the airport elevation for every 100 meters from the nearests runway. This applies only if the runway is no longer than one kilometer (3281 feet), and is within 3.1 kilometers (10,000 feet) of the antenna; *or*

(3) Four meters higher than the heliport elevation for every 100 meters from the nearest landing pad. This applies only if the pad is within 1.5 kilometers (5,000 feet) of the antenna.

(g) The licensee may have to mark the antenna with bright paint and light it up at night (See Part 17 of the FCC Rules).

WARNING: INSTALLING AND REMOVING ANTENNAS NEAR POWER LINES IS DANGEROUS.

§ 96.241 PRCS repeater station communication points.

(a) A PRCS repeater station may automatically retransmit communications only from authorized users initiating communications.

(b) A PRCS repeater station may also repeat communications of an addressed station (the station being called).

Applying for a PRCS Repeater Station License

§ 96.251 Applying for a new license.

(a) A person applies for a license for a new PRCS repeater station by completing an application form, attaching all information required and sending it to the FCC. The address is:

Federal Communications Commission,
Attention: PRCS, Gettysburg,
Pennsylvania 17325

(b) The application will be returned to the applicant if it is defective. An application is defective if:

(1) The form is not correctly completed;

(2) Necessary information is not included; or

(3) Necessary certifications are not made.

§ 96.253 Applying to modify a license.

The licensee applies to modify a license for an existing PRCS repeater station the same way as for a new repeater station. (See § 96.303 for name or mailing address change.)

§ 96.255 Forms to use.

Application for a license for a new or modified PRCS repeater station is made on FCC Form 574. (See § 96.267 for renewing a license without modification.) The applicant must follow the *Instructions for Completion of FCC Form 574.* It is available at FCC Field Offices.

§ 96.257 Basic information required.

The following information is required on all applications for a license for a new or modified PRCS repeater station:

(a) Applicant's *name;*

(b) Applicant's *mailing address* (the location in the United States where mail from the FCC can be received);

(c) Antenna height above average terrain;

(d) Maximum effective radiated power;

(e) The PRCS repeater station location;

(1) Latitude and longitude within one second; and

(2) Street address (if none, local directions to the station);

(f) The street address of the control point for each remotely controlled PRCS repeater station (see § 96.307). If there is no street address, give the local directions to the control point;

(g) Environmental impact (see § 96.261);

(h) Station accessibility and protection certification;

(i) Foreign government certification;

(j) Frequency claim waiver certification;

(k) Applicant's signature (see § 96.265); and

(l) The date the National Radio Astronomy Observatory was notified, if applicable (see § 96.259).

§ 96.259 Additional information required for stations in the National Radio Quiet Zone.

The applicant for a license for a new or modified PRCS repeater station at a location within the National Radio Quiet Zone (see § 96.233) must:

(a) Send a notice to:

Director, National Radio Astronomy
Observatory, P.O. Box 2, Green Bank,
West Virginia 24944

(b) Provide the following details about the proposed station in the notice:

(1) Antenna location (latitude and longitude);

(2) Antenna height;

(3) Antenna directivity and orientation;

(4) Maximum effective radiated power.

§ 96.261 Additional information required for stations on environmentally or historically important land.

The application for a license for a new or modified PRCS repeater station at a location on environmentally or historically important land (see § 96.235) may have to include additional information. The applicant must refer to Subpart I of Part 1 of the FCC Rules to determine whether the information must be included with the application (see § 96.257).

§ 96.263 Additional information required for stations with antennas higher than normally allowed.

If the applicant for a license for a new or modified PRCS repeater station wants permission to have an antenna higher than normally allowed (see § 96.239), he/she must:

(a) Include notification (on FCC Form 574) that the antenna would be higher than normally allowed; and

(b) Notify the Federal Aviation Administration (on FAA Form 7460–1) that the antenna would be higher than normally allowed.

§ 96.265 Signature required.

(a) If the applicant is an individual, he/she must sign the application.

(b) If the applicant is any other person, the following individual must sign the application:

If the person is	The individual who signs is
(1) A partnership	A partner;
(2) A corporation	An officer, director or employee;
(3) An association	An officer;
(4) A governmental unit	An official.

(c) False statements on the application are punishable by fine or imprisonment, or both.

§ 96.267 Renewing a license.

(a) The licensee of a PRCS repeater station may apply to the FCC to renew the license for another term (see § 96.285) by completing FCC Form 405–A and sending it to the FCC (see § 96.303).

(b) If the renewal application is received by the FCC before the existing license expires, the PRCS repeater station may continue to transmit under the expired license until the FCC acts on the renewal application. (A copy of the renewal application should be kept in the station records (see § 96.299) until the renewed license, or other FCC action, is received.)

(c) A PRCS repeater station must stop transmitting when the license expires, unless a timely renewal application has been filed.

Managing a PRCS Repeater Station

§ 96.281 Licensee responsibilities.

(a) No PRCS repeater station may transmit until the responsible person has obtained a station license.

(b) The *licensee* (the person to which the license is issued) is responsible for the proper operation of the PRCS repeater station at all times.

(c) The licensee must have access to the station equipment and be able to disable it.

§ 96.283 What the license authorizes.

(a) A license authorizes the licensee to manage the PRCS repeater station only as:

(1) The Rules require;

(2) The license specifies; and

(3) Proposed by the applicant in the license application.

(b) If any information on the license changes, the licensee must do the following:

(1) If the licensee's name or mailing address changes, the licensee must notify the FCC in writing (see § 96.299). The notice must show the name and mailing address as they appear on the license, the station call sign, and the new name or new mailing address. A copy of the notice must be kept with the station records (see § 96.299). (FCC Form 405–A may be used for this purpose).

(2) If the licensee's legal entity (see § 96.281) changes (for instance, a partnership becomes a corporation or *vice versa*), the licensee must:

(i) Send the license to the FCC for cancellation; and

(ii) Apply for a new license for the PRCS repeater station in the name of the new legal entity.

§ 96.285 License term.

A license term for PRCS repeater station is usually issued for a 5-year term. (The FCC prints the actual expiration date on the license.)

§ 96.287 Keeping the license.

(a) The licensee must keep the license document until:

(1) The license expires; or

(2) The license is terminated by the FCC; or

(3) The licensee obtains a different license for the PRCS repeater station.

(b) The license must be kept in the station records (see § 96.299).

(c) The license may be photocopied for any lawful purpose.

(d) If the license is lost, the licensee must request a duplicate document from the FCC (see § 96.303).

(e) If the license is no longer wanted, it must be sent to the FCC (see § 96.303) with a written request that it be cancelled.

§ 96.289 License not transferable.

(a) The licensee must not transfer, assign, sell or give the license for PRCS repeater station to any other person except in accordance with the provisions of § 96.291.

(b) If the licensee sells or gives away the PRCS repeater station epuipment, the new owner must obtain a new license before using it (see § 96.281(a)).

§ 96.291 Assignment or transfer of control.

(a) If the licensee is a partnership, and any partner assigns any portion of his/her partnership interest which results in a change in control of the partnership, the licensee must request consent from the FCC to assign the license from the old partnership to the newly created partnership. The new partnership must file a form 574 accompanied by a letter from the assignor (the old partnership) setting forth the assignor's desire to assign the license, stating the call sign and location of the station, and that the assignor will submit the current station authorization for cancellation upon completion of the assignment. Form 1046 may be used instead of this letter.

(b) If the licensee of a PRCS repeater station is a corporation, and there is a change in the control of the corporation, the licensee must request consent for the change of control from the FCC on Form 703 (see § 96.303). The FCC document granting such consent must be kept with the station license in the station records (see § 96.299).

§ 96.293 Changing these Rules.

(a) Any person may ask the FCC to change any Rules in Subpart B by submitting a petition to the FCC (see Part 1 of the FCC Rules).

(b) A person may ask the FCC for an *STA* (special temporary authorization) relating to a PRCS repeater station. (See § 1.925 (a) and (b) of the Rules.)

(c) A licensee or applicant may ask the FCC for a waiver of these Rules as they apply to a particular PRCS repeater station. Requests for waiver shall state the nature of the desired exception and the rule(s) to be waived. Waiver requests must plead with particularity the facts and circumstances warranting such action, and must make a compelling showing that it would be impossible for a licensee or an applicant to comply with the requirements of a rule, or that it would be inequitable to demand strict compliance with a rule. An application for a license for a PRCS repeater station may be dismissed if an accompanying petition for waiver of the rules does not set forth reasons which, if true, would be sufficient to justify a waiver.

(d) The document granting an STA or waiver must be kept as part of the station records (see § 96.299).

§ 96.295 Penalties for violations.

(a) If the FCC finds that a person has willfully or repeatedly violated the Communications Act, FCC Rules, the terms of the license or 18 U.S.C. 1464 (which prohibits the transmission of obscene, indecent or profane language), the entity may have to pay as much as $2,000 for each violation, up to a total of $5,000 (see Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. 503(b)).

(b) If the FCC finds that a licensee has willfully or repeatedly violated the Communications Act, FCC Rules or the terms of the license, it may revoke the PRCS repeater station license. (Other grounds for revoking a station license are listed in Section 312(a) of the Communications Act of 1934, as amended, 47 U.S.C. 312(a).

(c) If the FCC finds that a person has violated any section of the Communications Act, FCC Rules or the terms of the license, the person may be ordered to stop whatever action caused the violation (see Section 312(b) of the Communications Act of 1934, as amended, 47 U.S.C. 312(b)).

(d) Any person willfully and knowingly violating any provision of the Communications Act may be fined up to $10,000, or be imprisoned for one year, or both (see Section 501 of the Communications Act of 1934, as amended, 47 U.S.C. 501).

(e) Any person that willfully and knowingly violating any FCC Rule may be fined up to $500 for each day the violation was committed (see Section 502 of the Communications Act of 1934, as amended, 47 U.S.C. 502).

§ 96.297 Answering a discrepancy notice.

(a) If it appears to the FCC that a person has violated the Communications Act or these Rules, the FCC may send a discrepancy notice.

(b) Within the time period stated in the notice the person must answer with:

(1) A complete written statement about the apparent discrepancy; and

(2) A complete written statement about any action taken to correct the apparent discrepancy to prevent it from happening again.

(c) The person must not shorten the response by references to other communications or notices.

(d) The person must send the answer to the FCC office which sent the notice.

(e) If the discrepancy notice cannot be answered within the time stated, it must be answered at the earliest possible time. The answer must include an explanation for the delay.

(f) If the notice covers a discrepancy related to transmitter technical standards, the station must stop transmitting immediately (except for necessary tests and adjustments). The station must not transmit again until all transmitter technical problems have been corrected. The FCC may require a licensee to conduct specific tests and to report the results of those tests.

(g) A copy of the answer from a licensee must be kept in the PRCS repeater station records (see § 96.299).

§ 96.299 Station records.

(a) The licensee must keep records for the PRCS repeater station for the license term (see § 96.285).

(b) *PRCS station records* include the following documents (where applicable):

(1) The license (see § 96.281);

(2) A list of all current users, each user's address, and each user's automatic identification code;

(3) Copies of letters from the licensee to the FCC concerning name or mailing address changes (see § 96.303);

(4) Copies of answers to discrepancy notices (see § 96.297);

(5) A waiver of these Rules or STA (see § 96.293);

(6) A copy of the FCC permission to put an antenna higher than these Rules allow (see § 96.263); and

(7) A copy of the FCC consent to a licensee corporation's change in its corporate control (see § 96.291).

(c) If an authorized FCC representative requests to inspect the PRCS repeater station records, the licensee must make them available.

§ 96.301 Station inspection.

If an authorized FCC representative requests to inspect any PRCS repeater station, the licensee must make the station available.

§ 96.303 Where to contact the FCC.

(a) Write to: The nearest FCC Field Office:

(1) For application forms (see §§ 96.255, 96.263 and 96.267);

(2) For instruction forms (see § 96.255);

(3) To complain about interference; or

(4) To find out if the FCC has type-accepted a certain transmitter for use in the PRCS.

(b) Write to: Federal Communications Commission, Attention: PRCS, Gettysburg, Pennsylvania 17325.

(1) To ask a question about an application or about these Rules;

(2) To file an application;

(3) To request a duplicate license;

(4) To notify the FCC of a new name or mailing address;

(5) To request consent to an assignment or transfer of control;

(6) To return a license to the FCC for cancellation; or

(7) To file a request for an STA or waiver of these Rules.

(c) Write to: Chief, Field Operations Bureau, Federal Communications Commission, Washington, D.C. 20554. If consultation with the FCC is desired about putting a PRCS repeater station at a location within 4.8 kilometers (3 miles) of an FCC monitoring station.

§ 96.305 Transmitting channels.

Each PRCS repeater station may transmit on the Control Channels and the Repeater Talk Channels (see Subpart C, § 96.421).

§ 96.307 Station control point required.

The control point for each PRCS repeater station must be at the location where the station is, unless the license authorizes the station to be controlled from a remote location.

§ 96.309 Controlling a station from a station location.

(a) A PRCS repeater station may be controlled from a control point at a remote location through a control link (a connection between the remote control point and the remotely controlled station).

(b) The remotely controlled station must not make unauthorized transmissions.

(c) The station must be equipped so that if the control link fails to function, the remotely controlled station will automatically disable its transmitter.

(d) The FCC does not consider a PRCS repeater station as being remotely controlled if the connection is a wireline or mechanical control link, and the PRCS repeater station and its control point are both at the same street address, or within 152 meters (500 feet) of each other.

§ 96.311 Automatic control.

A PRCS repeater station, either locally controlled or remotely controlled, may also be operated by automatic control. Devices must be installed and procedures implemented to insure compliance with the rules. Upon notification by the Commission of improper operation of a station under automatic control, operation under automatic control shall be immediately discontinued until all deficiencies have been corrected.

§ 96.313 Station equipment.

(a) Every PRCS repeater station must use transmitters the FCC has type-accepted for use in the PRCS (see Subpart C, § 96.407). Write to any FCC Field Office to find out if a particular transmitter has been type-accepted for the PRCS.

(b) No transmitter may be used at a PRCS station which:

(1) Is not FCC type-accepted for PRCS;

(2) Has been internally modified to make it different from the FCC type-accepted model (see Subpart C, § 96.411); or

(3) Has been internally adjusted or repaired by anyone, except a person:

(i) FCC-licensed as a First Class, Second Class or General Radiotelephone Operator; or

(ii) Supervised by an FCC-licensed First Class, Second Class or General Radiotelephone Operator.

§ 96.315 Servicing station transmitter.

(a) Each internal repair and each internal adjustment to a transmitter used in a PRCS repeater station must be made by a person:

(1) FCC-licensed as a First Class, Second Class or General Radiotelephone Operator; or

(2) Supervised by an FCC-licensed First Class, Second Class or General Radiotelephone Operator.

(b) Except as provided in paragraph (c) of this section, test signals during internal adjustments to a station transmitter must be made using a nonradiating simulated antenna.

(c) Brief test signals using a radiating antenna may be transmitted to adjust the antenna to the station transmitter or to detect or measure spurious radiation. These test transmissions must not be longer than one minute during any five minute period.

§ 96.317 Modification to station transmitter prohibited.

(a) No internal changes may be made in a transmitter used in a PRCS repeater station to make the transmitter different from the FCC type-accepted model (see Subpart C, § 96.411).

(b) The FCC does not consider the conversion of one FCC type-accepted model to another FCC type-accepted model as an internal conversion, if the conversion is done:

(1) By the original manufacturer of the transmitter; or

(2) In accordance with the original manufacturer's instructions by a person holding an FCC First Class, Second Class or General Radiotelephone Operator License.

§ 96.319 Transmitter power limits.

(a) A PRCS repeater station may not exceed the effective radiated power indicated below:

Antenna height above average terrain	Maximum effective radiated power (watts)
800 feet or more	30
400 to 800 feet	60
Up to 400 feet	100

(b) A PRCS repeater station located north of Line A and east of Line C may have lower power limits imposed upon it, if harmful interference to Canadian stations occurs.

§ 96.321 Telephone interconnection.

PRCS repeater stations may not interconnect to the public telephone system.

§ 96.323 Managing a PRCS repeater station in an emergency.

A PRCS repeater station may retransmit and *emergency message* (concerning the immediate protection of property or the safety of someone's life) to any station in the PRCS.

Subpart C—Technical Regulations

General Provisions

§ 96.401 Purpose of these rules.

These rules provide the technical standards with which transmitters used in the Citizens Band Land Mobile Private Radio Communications Service (PRCS) must comply. They also provide requirements for a manufacturer when applying for type acceptance of a transmitter intended for use in the PRCS.

§ 96.403 Complying with these rules.

All transmitters used in the PRCS must comply with these rules, as applicable. (For operating rules, see Part 96, Subpart A—User Regulations and Part 96, Subpart B—Repeater Station Regulations.)

§ 96.405 Definitions.

The following definitions are applicable to this subpart.

PRCS transmitter. A transmitter intended to be used at a station authorized in the PRCS.

Channel frequency. The reference frequency from which the transmitter carrier frequency may not deviate by more than the specified tolerance.

Harmful interference. Any emission, radiation or induction which endangers the functioning of a radio-navigation service or other safety service or seriously degrades, obstructs or repeatedly interrupts a radio-communication service operating in accord with applicable laws, treaties and rules.

Carrier power. The average radio frequency power expressed in watts measured at the transmitter output terminals during one radio frequency cycle with no modulation.

Crystal controlled transmitter. A transmitter wherein the reference frequency is established by a quartz piezo-electric element.

Public Switched Telephone Network (PSTN). The facilities of any authorized communications common carrier intended to provide telephone service to the public.

Control Channel, LTC, RTC, PLC. See § 96.421(b).

§ 96.407 Type acceptance required.

Every station manufactured or marketed for use in the PRCS shall be authorized by the Commission as set forth in Part 2, Subpart J of the Rules. The transmitter portion of the PRCS station shall be type accepted in accordance with § 2.981 *et seq.* of the Rules. The receiver portion of the PRCS station shall be equipment certified in accordance with § 15.61 *et seq.* of the Rules. Those functions of the receiver portion of the PRCS station which influence transmitter operation will be considered to be part of the transmitter and subject to type acceptance requirements.

§ 96.409 Procedure for type acceptance.

(a) Any manufacturing entity may request type acceptance in the PRCS for its model of transmitter, following the type acceptance procedures set forth in Part 2. Transmitters which are type accepted under this paragraph are included in the FCC Radio Equipment List (available for reference at any FCC Field Office and at the Commission's headquarters in Washington, DC).

(b) Type acceptance for an individual transmitter may not be requested.

(c) Additional rules with respect to type acceptance are set forth in Part 2. (These rules include information with respect to withdrawal of type acceptance, modification of type accepted equipment, and limitations on the findings upon which type acceptance is based.

§ 96.411 Transmitter modification.

Only the manufacturer of the particular type accepted PRCS transmitter may make the permissive modifications permitted under the provisions for type acceptance (see Part 2). The manufacturer must not make certain modifications to the PRCS transmitter without prior written permission from the FCC (see § 2.1001 of the Rules).

Technical Standards

§ 96.421 Transmitter channel frequencies.

(a) The PRCS transmitter channel frequencies are:

Channel No.	Low channel frequency (megahertz)	High channel frequency (megahertz)
1	896.015	937.015
2	896.045	937.045
3	896.075	937.075
4	896.105	937.105
5	896.135	937.135
6	896.165	937.165
7	896.195	937.195
8	896.225	937.225
9	896.255	937.255
10	896.285	937.285
11	896.315	937.315
12	896.345	937.345
13	896.375	937.375
14	896.405	937.405
15	896.435	937.435
16	896.465	937.465
17	896.495	937.495
18	896.525	937.525
19	896.555	937.555
20	896.585	937.585
21	896.615	937.615
22	896.645	937.645
23	896.675	937.675
24	896.705	937.705
25	896.735	937.735
26	896.765	937.765
27	896.795	937.795
28	896.825	937.825
29	896.855	937.855
30	896.885	937.885
31	896.915	937.915
32	896.945	937.945
33	896.975	937.975
34	899.005	938.005
35	899.035	938.035
36	899.065	938.065
37	899.095	938.095
38	899.125	938.125
39	899.155	938.155
40	899.185	938.185
41	899.215	938.215
42	899.245	938.245
43	899.275	938.275
44	899.305	938.305
45	899.335	938.335
46	899.365	938.365
47	899.395	938.395
48	899.425	938.425
49	899.455	938.455
50	899.485	938.485
51	899.515	938.515
52	899.545	938.545
53	899.575	938.575
54	899.605	938.605
55	899.635	938.635
56	899.665	938.665
57	899.695	938.695
58	899.725	938.725
59	899.755	938.755
60	899.785	938.785
61	899.815	938.815
62	899.845	938.845
63	899.875	938.875
64	899.905	938.905
65	899.935	938.935
66	899.965	938.965
67	899.995	938.995
68	900.025	939.025
69	900.055	939.055
70	900.085	939.085
71	900.115	939.115
72	900.145	939.145
73	900.175	939.175
74	900.205	939.205
75	900.235	939.235
76	900.265	939.265
77	900.295	939.295
78	900.325	939.325
79	900.355	939.355
80	900.385	939.385
81	900.415	939.415
82	900.445	939.445
83	900.475	939.475
84	900.505	939.505
85	900.535	939.535
86	900.565	939.565
87	900.595	939.595
88	900.625	939.625
89	900.655	939.655
90	900.685	939.685
91	900.715	939.715
92	900.745	939.745
93	900.775	939.775
94	900.805	939.805
95	900.835	939.835
96	900.865	939.865
97	900.895	939.895

Channel No.	Low channel frequency (megahertz)	High channel frequency (megahertz)
98	900.925	939.925
99	900.955	939.955
100	900.985	939.985
101	901.015	940.015
102	901.045	940.045
103	901.075	940.075
104	901.105	940.105
105	901.135	940.135
106	901.165	940.165
107	901.195	940.195
108	901.225	940.225
109	901.255	940.255
110	901.285	940.285
111	901.315	940.315
112	901.345	940.345
113	901.375	940.375
114	901.405	940.405
115	901.435	940.435
116	901.465	940.465
117	901.495	940.495
118	901.525	940.525
119	901.555	940.555
120	901.585	940.585
121	901.615	940.615
122	901.645	940.645
123	901.675	940.675
124	901.705	940.705
125	901.735	940.735
126	901.765	940.765
127	901.795	940.795
128	901.825	940.825
129	901.855	940.855
130	901.885	940.885
131	901.915	940.915
132	901.945	940.945
133	901.975	940.975

(b) Each of the PRCS transmitter channel frequencies are authorized for particular uses only, as follows:

(1) Channels 1 through 5 are designated "Control Channels" and are authorized only for the transmission of the digitally encoded signals necessary to establish communications with another station.

(2) Channels 6 through 35 are designated "Local Talk Channels" or "LTCs" and are authorized only for transmissions directly from one user station to another user station (radio equipment authorized for use in the PRCS must only be capable of operating in the two-frequency, full-duplex mode on these frequencies).

(3) Channels 36 through 132 are designated "Repeater Talk Channels" or "RTCs" and are authorized only for transmissions from a user station to a repeater station (on the low channel frequency only) or from a repeater station to a user station (on the high channel frequency only) to facilitate user station-to-user station communications.

(4) Channel 133 is designated the "Party-Line Channel" or "PLC" and is authorized only for transmissions from one user station to one or more other user stations. Both the high channel frequency and the low channel frequency of channel 133 may be used, but each communications exchange must take place entirely on one frequency or the other (radio equipment authorized for use in the PRCS must only be capable of operating in the single frequency, simplex mode on these frequencies).

(c) The PRCS transmitter channel frequency tolerance for user stations is 0.0005 percent.

(d) The PRCS transmitter channel frequency tolerance for repeater stations is 0.00015 percent.

§ 96.423 Modulation types

A PRCS transmitter may employ only modulation types F3 (for the purposes of this part, authorization of F3 emissions includes the use of F2, F4 and F5 emissions including the use of any modulating signal, provided that the emission is compliant with §§ 96.427 and 96.429), F9 (for use pursuant to §§ 96.457 and 96.459 only) and F9Y (for use in the transmission of control signals only).

§ 96.425 Channel bandwidth.

The authorized band of frequencies for each channel in the PRCS is 30 kilohertz (15 kHz above and below the authorized transmitter channel frequency).

§ 96.427 Spurious emissions.

(a) The requirements of this section apply to each PRCS transmitter both with and without the connection of all attachments (such as external speaker, microphone, power cord, antenna, etc.) acceptable for use with the transmitter.

(b) On any frequency removed from the center of the carrier frequency by 20 kHz, up to the second harmonic of the carrier, all emissions shall be attenuated by at least 70 dB below the carrier power.

(c) On any frequency twice, or greater than twice, the fundamental frequency, all emissions shall be attenuated by at least 60 dB below the carrier power.

(d) If spurious or harmonic emissions result in harmful interference, the FCC may, in its discretion, require appropriate technical changes in the station equipment to alleviate the interference.

§ 96.429 Modulation requirements.

(a) Each PRCS transmitter must not exceed a peak frequency deviation of 8 kilohertz when employing F3 emissions.

(b) During transmission on any channel other than a Control Channel, each PRCS transmitter must employ circuitry which includes an audio frequency low pass filter where necessary to assure compliance with § 96.427. This filter must be between the modulation limiter and the modulated stage of the transmitter. At any frequency (f) between 3 and 20 kilohertz, the filter must have an attenuation of at least 60 $\log_{10}$ (f/3) decibels greater than the attenuation of 1 kilohertz. Above 20 kilohertz, it must have an attenuation of at least a50 decibels greater than the attenuation at 1 kilohertz.

(c) Each PRCS transmitter must include preemphasis of voice emissions on audio frequencies between 300 and 3000 Hz, with an increase of 6 dB per octave.

(d) Each PRCS transmitter, when employing F9Y emissions, must utilize fast frequency shift keying (also known as minimum shift keying) and direct carrier modulation. The signaling rate must be 10 kilobits per second (± 1 kHz. (These emissions are only permitted on the Control Channels.)

(e) Amplitude modulation of a transmitter is prohibited.

§ 96.431 Maximum transmitter power.

A PRCS transmitter must not exceed 10 watts carrier power.

Type Acceptance requirements

§ 96.441 General requirements.

Each PRCS transmitter for which an application for type acceptance is filed must comply with the technical standards specified in this subpart and with the requirements which follow.

§ 96.443 Accessibility of controls.

No control, switch or other type of adjustment which, when manipulated can result in a violation of the rules, may be accessible from the transmitter operating panel or from the exterior of the transmitter enclosure.

§ 96.445 Power capability.

No PRCS transmitter may incorporate provisions for increasing its power to any level in excess of the pertinent limit specified in § 96.431.

§ 96.447 Crystal control required.

Each PRCS transmitter must be a crystal controlled transmitter.

§ 96.449 Instructions and warnings.

A user's instruction manual must be supplied with each PRCS transmitter marketed, and one copy (a draft or preliminary copy is acceptable provided a final copy is provided when completed) must be forwarded to the FCC with each request for type acceptance. This manual must contain all information necessary for the proper installation and operation of the transmitter including:

(a) Instructions concerning all controls, adjustments and switches which may be operated or adjusted

without resulting in a violation of the rules.

(b) Warnings concerning any adjustment which could result in a violation of the rules.

(c) Warnings concerning the replacement of any transmitter component (crystal, semiconductor, etc.) which could result in a violation of the rules.

(d) Warnings concerning licensing requirements and information concerning license application procedures.

§ 96.451 Frequency capability.

(a) All PRCS transmitters shall be capable of operating on all Control Channels.

(b) All PRCS user station transmitters shall be capable of operating on all LTCs. All PRCS user station transmitters capable of operating on any RTC shall be capable of operating on all RTCs. A PRCS user station transmitter may optionally be capable of operating on the PLC.

(c) A PRCS repeater station transmitter may be capable of operating on any RTC. PRCS repeater station transmitters shall not be capable of operating on any LTC or on the PLC.

§ 96.453 External controls.

Only the following external transmitter controls, connection or devices will normally be permitted in transmitters for which type acceptance is requested for use at a PRCS user station. Approval of additional controls, connections or devices may be given after consideration of the functions to be performed by such additions.

(a) Primary power connection. (Circuitry of devices such as rectifiers, transformers, or inverters which provide the nominal rated transmitter primary supply voltage may be used without voiding the transmitter type acceptance.)

(b) Microphone connectioin. (This includes any connection for the entry of digitally encoded data or interconnection to the PSTN including detection of ringing.)

(c) Radio frequency output power connection.

(d) Audio frequency power amplifier output connector(s) and selector switch(es). (This includes any connection for the demodulation of digitally encoded data or interconnection to the PSTN.)

(e) On/off switch for primary power to transmitter. (This may be combined with receiver controls such as the receiver on/off switch and/or volume control.)

(f) Transmit/receive switch or connection. (Where appropriate, features may be incorporated so that this function may be performed by internal circuitry of the transmitter after being prompted by some other action external to the transmitter such as lifting the microphone off-hook, pressing a button on the keypad (see paragraph (i)) or by a telephone ringing signal.

(g) Frequency request mode selector switch. This switch must only control whether the transmitter, in conjunction with the receiver, will attempt to establish contact with an addressed station on an LTC only, an RTC only, or on an LTC and an RTC; or whether the transmitter will operate on either the high or low PLC. Except for selection of operations on the PLCs, there must be no selector switch which permits the user to select a particular operating frequency. (Selection of a control channel based upon an addressed station's identification code will not be considered user selection.)

(h) Interconnection mode selector switch. This switch determines whether the transmitter will request the addressed station to interconnect to the PSTN or whether the transmitter will automatically address a particular station if a telephone ringing signal is detected at the terminals supplied for connection to the PSTN. (This switch may be combined with the frequency request mode selector switch or keypad.)

(i) Multi-button keypad. This control consists of an array of push-buttons used to enter the address of a station the user desires to communicate with.

(j) Code setting switches. These are the controls available to the user for selecting the station address to be transmitted by the station as its identification. (This function may be performed partially or entirely from the keypad control.)

(k) Meter(s) and selector switches for monitoring transmitter performance.

(l) Pilot lamps or meters to indicate the presence of radio frequency output power or that transmitter control circuits are activated to transmit.

§ 96.455 Transmitter inhibit, default and disconnect capability.

(a) A PRCS user station transmitter shall not be capable of transmitting on:

(1) A Control Channel except in conformance with the protocols and algorithms set forth in § 96.481;

(2) An LTC except when communications have been established on a Control Channel with another station and a mutually agreed upon channel has been selected which is void of other communications;

(3) An RTC except when assigned from a Control Channel to the RTC by a repeater station.

(b) A PRCS user station shall be equipped to relinquish an LTC or RTC it is using and terminate transmissions on that channel if it fails to detect for a continuous period of 10 seconds a supervisory audio tone (see § 96.457) from the station with which contact has been established. The station shall attempt to detect the supervisory audio tone at all times when it is in the receive mode on an LTC or RTC.

(c) A PRCS user station shall be equipped to relinquish an LTC or RTC it is using and terminate transmissions on that channel if it detects a disconnect audio tone (see § 96.459).

(d) A PRCS user station shall be equipped to terminate transmissions, in accordance with § 96.481, on an LTC automatically at the end of any 100 second interval if channel occupancy exceeds 70% for all LTCs. A PRCS repeater station shall be equipped to terminate the communications of a user station, in accordance with § 96.481, on an RTC automatically at the end of any 100 second interval if channel occupancy exceeds 70% for all RTCs.

(e) A PRCS user station shall be equipped to terminate transmissions on the high or low PLC automatically at the end of any 180-second period of continuous transmission.

§ 96.457 Supervisory audio tone.

Each PRCS user station transmitter shall automatically transmit a continuous 2850 Hz tone (±5 Hz) at a modulation level of 0.8 kHz (±0.2 kHz) peak deviation at all times while transmitting on an LTC or an RTC.

§ 96.459 Disconnect audio tone.

(a) Each PRCS tramsitter shall incorporate means to transmit a disconnect audio tone at times prescribed by the rules of this part.

(b) The disconnect audio tone shall consist of a 2850 Hz tone (±5 Hz) and an 1150 Hz tone (5 Hz) alternately keyed at a rate of 150 Hz (±25 Hz) and transmitted for 2 seconds with a peak frequency deviation of 7 kHz (±1 kHz).

§ 96.461 Transmitter identification circuitry.

(a) Each PRCS user station shall incorporate means to generate the following digital identification codes at times prescribed by the rules of this part:

(1) A station address code consisting of eleven binary coded decimal (BCD) digits which may be determined by the user with external controls, followed by;

(2) A transmitter identification code consisting of eight BCD digits programmed by the manufacturer, with the first four digits representing the identity of the manufacturer and the model of the transmitter, and the last four digits being the same as the last four digits of the individual transmitter's serial number.

(b) The circuitry for generating the transmitter identification code shall be protected in such a way as to make it, to the extent possible, inaccessible to the user and in such a way that it will render the transmitter inoperative if the transmitter identification code circuitry is disabled.

§ 96.463 Distinct serial number required.

Each PRCS transmitter shall be assigned a serial number by the manufacturer. For each consecutive group of 10,000 units of a particular model of transmitter assembled by the manufacturer, the last four digits of the serial number shall be a combination of digits distinct from the rest of the serial numbers of the group. The last four digits of the serial number shall also be the same as the transmitter's transmitter identification code (see § 96.461(a)).

§ 96.465 Determination of channel occupancy.

(a) Means shall be provided for a receiver to determine that an LTC (for user stations) or an RTC (for repeater stations) is unoccupied prior to assignment of such channel, in accordance with § 96.481, for transmissions from a PRCS station.

(b) A channel shall be considered occupied when a signal consisting of a carrier modulated by a supervisory audio tone (see § 96.457) is detected at a signal strength greater than −107 dBm at the antenna connection of a PRCS station. A channel shall not be considered unoccupied unless such a signal is not present for a continuous period of 1 second.

§ 96.467 Public switched telephone network interface.

PRCS user station transmitters and receivers designed for connection to the public switched telephone network shall comply with Part 68 of the Commission's Rules.

§ 96.469 Repeater station access.

Every repeater station shall be equipped to prevent unauthorized access by user stations and access not in accordance with the standard protocols and algorithms (see § 96.481).

Standard Protocols and Algorithms

§ 96.481 General requirements.

All PRCS transmitters shall be equipped to operate only in conformance with the standard protocols and algorithms detailed in the following sections. The transmission of, and responses to, digitally encoded control signals shall conform to those necessary to carry out the standard protocols and algorithms.

(Those protocols and algorithms which the Commission may find it necessary to adopt would be placed here)

Separate Statement of Commissioner Mimi Weyforth Dawson re: Reallocation of 900 MHz Reserve Spectrum

These three decisions present the classic dilemma in spectrum allocation: too much demand for too little spectrum.

Our present dilemma with these three decisions also takes place within an even larger dilemma with regard to the future needs of land mobile radio. The Commission anticipated in its findings in Docket No. 18262 that land mobile needs would be met through use of reserve spectrum. Yet, we are seeing this reserve spectrum chipped away and reallocated for other purposes. Meanwhile, in Docket 82-10, the Private Radio Bureau, which is investigating future land mobile needs, has stated that more than the available reserve spectrum will be required to meet land mobile requirements in the next decade. And, of course, strong battle lines are being drawn between the land mobile and broadcast services over any additional sharing by land mobile of the allocated UHF-TV spectrum.

Even from this brief outline, it is apparent that each of these decisions is interrelated and that the Commission should not proceed with the reallocation of land mobile reserve spectrum through insular, piecemeal actions. While each proposal may have merit standing alone, it is the Commission's responsibility to weigh the need for and adequacy of each proposed service. In this regard, I believe that it bodes well for our consideration of these and other spectrum demands that the Commission will consider these competing demands concurrently.

NTIA's Request for 6 MHz

NTIA has requested reallocation of 6 MHz in the 900 MHz band for low capacity fixed systems. This would be shared by government and non-government users. In my opinion we should not rule on this request until NTIA has responded to Congress' stated concern for the government's use and management of the spectrum. The Further NPRM invites comments on this issue. I would expect NTIA to inform us of its position and its efforts in this area.

In particular, I feel that NTIA bears some burden of demonstrating why commercial providers cannot be used to meet the needs which have resulted in NTIA's request to reallocate 6 MHz in the 900 MHz band. We require non-government users, in requests for additional frequencies, to make specific showings of need or to submit loading studies. Therefore, it seems reasonable to expect government users to provide specific showings that their requirements cannot be met through available sources. It may very well be the case that 6 MHz of the 900 MHz spectrum is needed and that it would have minimal impact on non-government users sharing the same spectrum. I am not prejudging whether government is or isn't efficiently using the spectrum, but the Commission needs a more detailed record to establish these facts.

GE's Proposal

The GE proposed "Personal Radio Communications Service" presents an interesting concept. However, I think we must evaluate the service in view of our past experience with Citizens Band Radio; indeed, if the service, through lower costs of units approaches the popularity of CB, the service may be considerably less useful than envisioned by GE. Likewise, the service may be too limited in range to be worthwhile. It must also be evaluated as to whether it is a complement to cellular or whether the service could be provided through existing services.

Air-Ground Telephone Service

The air-ground service cannot be provided through existing services, and my initial analysis is that this may be a valuable service.

However, I would prefer to take a hard look at both of the proposals before us and not rush to limit the technical capability of such a system. While technical parameters are not proposed, limiting the spectrum for this service to 4 MHz essentially rules out a more sophisticated system. In fact, the 4 MHz limitation might preclude hand-off capability and ground-initiated calls which may well be desirable features in such a service. In any event, I believe that we cannot make a reasoned decision on this service until we have the results of the authorized experimental tests.

I believe that this 900 MHz spectrum is such a valuable resource that it should not be left unused when it can be put to work for the public good. However, the Commission cannot hand it out on a first come-first served basis with no consideration of our spectrum management mandate. Therefore, it is imperative that commenting parties not only address the proposal of immediate interest, but that they also respond to any other competing demands for this spectrum.

Simply put, we need to look at this whole piece of spectrum and decide what we want to do with it. After we see the whole package, it may appear that there is a greater need for one service than another or that some different combination than that proposed is better. But, at this time I believe that the Commission needs a comprehensive view of the larger picture to make such a decision.

Concurring Statement of Commissioners Henry M. Rivera and James H. Quello

RE: *Proposals To Allocate the 900 MHz Land Mobile Reserve Spectrum*

We concur in the issuance of these three Notices of Proposed Rulemaking,[1] but not without considerable reservation.

Collectively, the Notices would dispose of 18 of the remaining 21 MHz of land mobile reserve spectrum.[2] The untutored commenter might reasonably infer from this substantial proposed allocation that the Commission has developed a record indicating that these are the wisest uses for this premium reserved spectrum. Unfortunately, that is not true. The Commission is even now attempting to evaluate in Docket 82-10 the adequacy of the land mobile reserve to meet the future needs of land mobile users. The Private Radio Bureau's initial estimate projects shortages of at least 40-50 MHz by the year 2000.[3] While the Commission has not yet endorsed the Bureau's estimate, it seems clear that unless a refined sense of priority is established, we may casually allocate this rapidly dwindling resource without adequate consideration.

Ordinarily, it is difficult to quarrel with the issuance of notices of proposed rulemaking. In this instance, however, it seems imprudent at best, and foolish at worst, to set this Commission and the public on a course requiring devotion of substantial resources to assess a plan whose feasibility is highly suspect, particularly in view of the existence of the Commission's ongoing inquiry and the staff's initial findings in Docket 82-10. It is especially unfortunate that our actions here may create public expectations for new services whose likely authorization is speculative in the extreme, at least in the bands identified. Finally, we have grave misgivings about allocating the land mobile reserve to services whose claim to being land mobile services is extremely weak in two cases (personal radio communication and air-to-ground), and entirely unsupportable in the case of NTIA's proposal.

The Private Radio Bureau's commitment to complete Docket 82-10 before the proceedings initiated by the subject Notices are completed has somewhat allayed our fears that the Commission may allocate this spectrum without full information. It would indeed be regrettable if we were forced to reallocate additional UHF spectrum because we had given away the land mobile reserve to these new services and were then faced with confirmation of the need projected in Docket 82-10's Interim Report.[4]

Turning to the particulars of these NPRMs, the Further Notice proposing government/non-government fixed service allocations at 932-35 MHz and 943-46 MHz proposes a "housekeeping" change of bands to make way for the proposed personal radio communication service. We do not view this proposal as strictly housekeeping. The new allocation is technically questionable because it may interfere with Canada's contemplated personal radio service and it would displace broadcast auxiliary users now operating on a secondary basis in parts of the proposed band. The spectrum proposed is further questionable because it embodies less than the 45 MHz separation ordinarily called for in the fixed service. Finally, it is unclear why this premium spectrum should be devoted to fixed operations, which can exist above 1 GHz, albeit at a higher cost.

As for the Notice proposing an air-to-ground service allocation at 896-898 MHz and 941-943 MHz, we question the wisdom of allocating part of the land mobile reserve to a service which is spectrally inefficient and probably of limited appeal due to its high cost.

Finally, with regard to the new personal radio communication service proposed for 898-902 MHz and 937-941 MHz, we are concerned about whether the PRCS is sufficiently distinct from existing services to warrant additional spectrum. It is not clear why, for example, the personal and business communications needs identified (the service is expressly designed for both purposes, *see* para. 77) cannot be satisfied by existing land mobile services, be they "private" or "common carrier". If there are persuasive reasons why this is so, then the decision boils down to whether there is a strong public desire (as opposed to a strong desire solely on GE's part) for a new, technically distinct, hybrid personal service. We trust that the commenters will amplify the record on these issues.

Even if the PRCS should be authorized, it is still questionable whether it should occupy spectrum in the land mobile reserve. If the service can go far toward satisfying future land mobile requirements, then it would be reasonable to authorize its operation in that reserve. If such a new service cannot be counted on to meet future land mobile needs, than its claim to the land mobile reserve is wholly unwarranted and highly objectionable.

The issues raised by these NPRMs underscore the crying need for this Commission to place greater emphasis on spectrum management. Fair and efficient division of the spectrum between various services is becoming more important daily as the contests for spectrum multiply. How well and how wisely we accommodate competing spectrum demands will profoundly influence how well equipped we are to meet the telecommunications needs of the future. We do not know how the spectrum wars begun by the Notices will be finally resolved. But we are convinced that competing demands for spectrum will become increasingly common, the spectrum management must become a more highly prized activity at the FCC, and that our spectrum policies must be designed to encourage and reward the most up-to-date and efficient technology. If we do not make this activity a top priority, the public will suffer the consequences for years to come.

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[1] *See* Notices of Proposed Rulemaking in Dockets 83-26 and 83-30 and Further Notice of Proposed Rulemaking in Docket 82-243.

[2] An additional 20 MHz of the land mobile reserve is tacitly set aside for the future growth of the cellular radio service.

[3] *See Future Private Land Mobile Telecommunications Requirements*, released August 1982. Even if, as some claim, the assumptions underlying this study are flawed, causing the projections to be off by as much as fifty percent, an unmet need of 20-25 MHz would still exist. Such a projection should indicate that it is ill-advised to consider allowing the reserve to be put to other than its intended use.

[4] We must see to it that the land mobile reserve is not drained away, leaving the UHF band as the only remaining alternative for land mobile operation. One need only recall how wrenching was the FCC's 1970 decision to reallocate UHF Channels 70-83 when the potential of UHF was not even fully recognized. By that 115 MHz reallocation—which was four times the amount of spectrum then allotted to land mobile services—the Commission intended to provide enough spectrum to meet land mobile's growth at least through the remainder of the 20th century. Now, barely a decade later, parties are aggressively moving to wrest additional spectrum from the UHF service.

The Commission would also do well to remember Congress' commitment, in the 1962 All-Channel Receiver Act, to the full development of UHF television and our own commitment to that end. And, finally, we must be mindful of the possibility that reallocation of UHF channels can seriously diminish the potential for new service, competition, diversity, and ownership opportunities. Such consequences would seriously undermine important Commission goals.

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47 CFR Part 2

[Gen. Docket 83-30; RM-3524; RM-3885; FCC 83-17]

Frequency Allocation for a Public Air-Ground Telephone System

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission proposes to allocate the 896-898 MHz and 941-943 MHz bands to the public mobile radio services to establish a public air-ground telephone system. Because of public interest demonstrated for such a system through two petitions for rulemaking submitted by Airfone, Inc. (RM-3524) and Aeronautical Radio, Inc. (RM-3885), the Commission is requesting comment on public need, the amount of allocation and each petitioner's proposed system.

DATE: Comments must be submitted on or before June 10, 1983. Reply comments must be submitted on or before July 11, 1983.

FOR FURTHER INFORMATION CONTACT: Melvin Murray, FCC, Spectrum Utilization Branch, Washington, D.C. 20554, (202) 653-8168; Room 7312.

List of Subjects in 47 CFR Part 2

Frequency allocations, Radio.

Proposed Rulemaking

Adopted: January 20, 1983.
Released: March 4, 1983.

In the matter of: Amendment of the Commission's Rules to Allocate Spectrum for, and to Establish other Rules and Policies Pertaining to the Use of radio in establishing a Public Air-ground telephone System; General Docket Nol 83-30, RM-3524, RM-3885.

By the Commission: Commissioners Quello and Rivera concurring and issuing a joint statement; Commissioner Fogarty absent; Commissioner Jones concurring in the result; Commissioner Dawson issuing a separate statement.

I. Introduction

1. The Commission has received two petitions requesting the allocation of spectrum to establish a public air-ground telephone system. The first, RM-3524, was filed on October 25, 1979, by Airfone, Inc. The second, RM-3885, was filed by Aeronautical Radio, Inc. ("ARINC") on April 3, 1981. Each petitioner has also filed for and has received radio station authorization in the Experimental Radio Services under Part 5 of the FCC Rules to test equipment that each is developing for use in its respective system. Since these proposals differ significantly in the amount of spectrum requested and attendant claims for public service, our attention in this Notice will be directed to giving: (1) a summary of each system's operational characteristics; (2) a summary and discussion of comments received in response to each petition; and (3) a discussion of the spectrum allocation issues and a proposal to allocate the 896–898 MHz and 941–943 MHz bands for this service. We are reserving discussion of specific technical standards and common carrier issues until the petitioners have gathered sufficient data and information in the course of their experimental licenses to define the actual operating parameters of each system. Accordingly in this Notice we are *not* specifically proposing either petitioner's system; but, we are requesting the public to comment on (1) the need for a public air-ground radio telephone system, (2) what desirable operational features should be required if such a service were to be adopted and (3) the proposal to allocate 4 MHz at 896–898 and 941–943 MHz for an air-ground radio telephone system.

II. Airfone's Petition (RM-3524)

A. Operational Aspects

2. Airfone proposes a nationwide air-to-ground telephone system that would permit a passenger aboard a telephone-equipped, commercial airplane to place a call from either of two telephones aboard to any other telephone on the ground within the continental United States. Airfone claims its system is designed to handle 1700 calls per hour in heavily traveled areas and 400 to 900 in light-to-medium traffic areas. As Airfone's proposal is strictly for air-to-ground communications, provision is not being made for passengers to receive calls originating from ground telephones. Airfone claims that although it is technically feasible for a ground telephone to originate a call to a party aboard an aircraft, the interruptions to flight attendants to page a passenger are considered objectionable. Accordingly, for this reason it was decided to limit the service whereby a call could originate only from the aircraft when the seatbelt sign if off.

3. Also, no provision is being made for "hand off" which is the ability of the system to switch the telephone call automatically to another ground station when the aircraft gets out of range of the ground station through which the call was placed. Under "worst case" conditions, Airfone claims a person would have at least 6 minutes of uninterrupted calling time. If the caller is cut off after 6 minutes of conversation and desires to reestablish his connection, he may do so by re-dialing the number through a new ground station that would then be in range. The amount of time that an aircraft would be in range of a ground station would vary from a maximum of 40 minutes to a minimum of 6 minutes. If an aircraft is located at such a distance from a ground station where it would not be possible to have at least 6 minutes of calling time, then no connection is possible with that ground station.

4. Airfone also has proposed charging flat rate fees irrespective of the distance called. This, it claims, would eliminate the high costs involved in computing charges. These savings could then can be passed on to the public through lower rates. Payment for calls would be made through the use of nationally recognized credit cards or through the use of a token purchased from the flight attendant or at airport counters. Airfone currently is proposing a flat charge of $7.50 for a call up to three minutes and thereafter, one dollar and twenty-five cents for each overtime minute or fraction thereof.

B. Technical Description

5. Airfone requests an allocation of 4 MHz to be split between two bands, 896–898 MHz for the ground-to-air link and 941–943 MHz for the air-to-ground link. Each of the two bands would be divided into ten 200 kMz sub-bands to allow for frequency reuse. Nine of these sub-bands would be used in a matrix covering the continental United States such that frequencies would not be repeated at spacings closer than 500 to 600 miles. The tenth sub-band would be used to double channel capacity in areas where traffic studies indicate that it is advisable. Each ground station would be assigned one of the ten 200 kHz sub-bands which would then be further divided into thirty-one 6 kMz channels.[1] Also, within each 200 kHz band, frequency space would be provided for the transmission of a pilot frequency for the correction of Doppler and general frequency shifts. The pilot frequency transmitted from each ground station is utilized for station identification as well as in the radio equipment for correction of the Doppler shift.

6. The radio equipment on board the aircraft continuously scans the allocated 2 MHz band so that when a call is placed it will find and lock onto the farthest usable ground station ahead of the plane to ensure adequate time for a call connection and completion. Upon establishing communications using the pilot frequency assigned to the ground station, the air-borne equipment scans the individual channels within the 200 kMz assignment to find an available channel. The absence of a channel's tone or carrier frequency indicates that that channel is not in use. Accordingly, the on-board radio equipment selects the idle channel for transmission of the phone call. Removal of the phone from the switch hook causes the pilot tone or carrier for the available channel to be transmitted from the aircraft to the ground. At the ground station, the tone or carrier is received, filtered and amplified so that it may be used for demodulation of the incoming "call" and for modulation of the channel in the reverse direction. This provides for synchronous operation with the exception of correcting for the frequency shift caused by Doppler. Doppler shift is corrected by using the sub-band pilot frequency and automatic frequency control circuits.

C. Public Need

7. Airfone claims that "over a million people spend approximately 1.7 million hours each work day flying in commercial aircraft without benefit of air-to-ground communication to their offices, business associates and/or family. Over 60% of the air travelers are business people who have a need to call their offices for information or approvals. Moreover, due to weather and air traffic delays, there is often a need for a passenger to communicate

[1] Use of a new technology known as ACSB, or amplitude compandored signle sideband, would be employed in Airfone's air-ground radio telephone equipment design. ACSB adds a pilot tone to each single sideband (SSB) signal principally to provide an accurate frequency reference for a phase lock loop in the receiver to lock onto. In addition the pilot is used for automatic adjustment of gain controls as well as to provide positive squelch action. Further, a compandor circuit is added to improve noise rejection on the signal.

with the ground to rearrange schedules, cancel pickups at airports, cancel business meetings, etc."

8. Airfone also conducted a public survey of various frequent and infrequent air travelers to asses their interest in such a telephone system. Support for the system, as evidenced in some 100 different letters attached to Airfone's petition, came principally from business people, various airline officials, and government officials. Airfone further states that a study done by the airlines showed that between 20 and 30% of the air passengers would regularly use a telephone in flight. This study was confirmed by another done by Arthur D. Little, Inc. according to Airfone. As further evidence for need, Airfone points out that the twelve channels assigned to land mobile systems rendering communication service to airbone stations under Section 22.521 of the FCC Rules are utilized by approximately 90% of the aircrat owned by corporations which are among the top 100 business organizations ranked annually by *Fortune* magazine. These channels provide telephone service to persons that travel by private or corporate aircraft.

D. Comments and Replies

9. The following parties filed comments in response to the Airfone petition: Aeronautical Radio Inc. (ARINC), Aircraft Owners and Pilots Association (AOPA), American Telephone and Telegraph (AT&T), Associated Telephone Answering Services System, Inc. (Associated), Mobile Communications Corporation of American (MCCA), Mobile Radio Telephone Service, Inc. (MRTS), Mobilefone Service, Inc., and Southern Message Service, Inc., (Mobilefone/Southern) and WJG Telephone Company, Inc. (WJG Telco). In general, their comments support the consideration of a new allocation to be devoted to air-ground telephone service for use by passengers on commercial

10. Several of the commenters who are licensees of land mobile systems providing communication service to airborne stations in the Domestic Public Land Mobile Radio Service (See Sections 22.521–22.523 of the Commission's Rules) support the concept of an air-to-ground radiotelephone service for commercial airline passengers, but are concerned whether the service would become monopolistic. They suggest that in each market the Commission should allow any qualified entity to apply for authority to proyide the service. They state that even in a service where there is but one carrier to a market, the public can benefit from diversity among the various markets. The commenters also feel the Commission should consider whether multiple carrier markets are feasible. They claim the public would benefit in cost reductions resulting from head-on-head competition if there were more than one carrier per market.

11. The commenting parties all seem to agree that a rule making proceeding should be initiated by the Commission that would address the following issues: public need; spectrum availability; allocation and efficiency; technical feasibility and standards; eligibility requirements and related common carrier issues.

12. A statement of opposition to Airfone's Petition was received from RAM Broadcasting Corporation, RAM Broadcasting of Florida, Inc., RAM Broadcasting of Nevada, Inc., RAM Broadcasting of South Carolina, Inc., and RAM Broadcasting of Texas, Inc. ("RAM"). The commenting parties are licensees of various land mobile systems rendering communication service to airborne stations under the Domestic Public Land Mobile Radio Service. RAM contends the petition is deficient for a number of legal and technical reasons. It claims that Airfone has requested an allocation from frequency bands that have been designated for "land mobile reserve." RAM states these frequencies are not for assignment to air-ground stations. RAM further claims that Airfone's proposal may be spectrally inefficient and inadequate. RAM states, "given current technology, it is feasible to provide ground-to-air communications. Airfone's proposal, which only envisions air-to-ground communications, therefore is an unnecessary, unwarranted, and undesirable limitation upon maximum use of limited spectrum space." The use of single-side band transmissions and the selection of ground stations based on Doppler shifts threaten the provision of adequate voice grade signals, according to RAM.

13. Airfone filed the only reply comment in this proceeding. In its filing, Arfone responded to the various issues raised by commenters. With regard to public demand, Airfone points to the availability of telephones for those of the public who travel. It cites that telephone service is available for private car and pleasure boat owners, commercial boats and ships, as well as certain bus and train passengers. Airfone indicates that it also has reached agreement with twleve commercial airlines to participate in testing the feasibility and quantifying the public interest to such a service during phase two of its developmental license. Again, Airfone cites the affirmative response made by various members of the traveling public to a questionnaire prepared by Airfone to determine if air travelers wanted and needed communications with the ground while in flight. Also, Airfone's petition is mentioned which contained numerous letters of support from frequent air travelers.

14. There was also some discussion in regard to whether technology exists to implement the air-ground telephone system Airfone is proposing. Airfone claims that two major technical developments have taken place in recent years that permit its system's feasibility. It states:

> First the development of economical oscillators which have a stability of one part in ten million per year. With the availability of these economical oscillators, Airfone's proposal to use reduced carrier single-sideband emission is made possible. Using this type of emission makes it possible for Airfone to obtain 310 voice communicating channels in 4 MHz bandwidth. This is 40% more channel capacity in ⅝ the bandwidth than proposed by AT&T in Docket 18262. The second major development was the common availability and usage of highly intelligent, low cost microprocessors. These low cost microprocessors enabled Airfone to put the intelligence and control in the airborne unit itself. This resulted in a more efficient use of the channels, closer spacing of ground stations with less concern for co-channel interference and a greater reuse of frequencies.

15. In response to RAM's statement of opposition claiming that adequate voice grade signals may not be possible with Airfone's system, Airfone replies that its system is essentially line-of-sight transmission and would not be subject to selective fading effects and multi-path reflections that are dominant in ground-mobile systems. In its *opposition* RAM had suggested that ground-to-air, as well as air-to-ground, service should be provided by paging passengers and the use of cordless telephones as a way of dispensing with participation of flight attendants in handling an incoming call, particularly during times the seatbelt sign is on. Airfone replies that it would still require an attendant to carry the telephone to the passenger's seat, unless every passenger was required to have a telephone at this seat which is impractical and economically unjustifiable.

16. A major concern among the issues raised by the commenters is whether Airfone's system would be monopolistic. Commenters suggested that if Airfone fully implemented the nationwide

system they envision, there would be inadequate spectrum left for competitors. In its *Reply*, Airfone contends there would be a sufficient number of frequencies for other carriers to compete with Airfone on a national or regional basis. It includes a series of maps in its filing showing that for each of the ten 200 kHz wide channels at least the same number or more would be available throughout the continental U.S. for license to other common carriers. For example, there is a total of fourteen ground stations spaced throughout the U.S. assigned under Airfone's scheme to Airfone's designated channel 1. Seven ground stations would be reserved for Airfone, while the remaining seven would be available for license to others. For Airfone's designated channel 8, another example, a total of 11 ground stations spaced throughout the U.S. would be available for assignment. In this case, Airfone reserved four stations for itself, leaving 7 others available for assignment to other carriers. These maps, according to Airfone, show that a number of applicants are able to file for competing stations with those of Airfone's. In laying out the maps Airfone states that it made sure that competing ground stations would essentially serve the same market areas covered by Airfone.[2]

III. ARINC's Petition (RM-3885)

A. Operational and Technical Aspects

17. ARINC is a communications company that provides various communication services to the aviation industry. This includes the operation of facilities for air-ground and point-to-point operational control communications throughout the United States. It also claims sponsorship of four industry committees: the Aeronautical Frequency Committee (AFC), the Airlines Electronic Engineering Committee (AEEC), Avionics Maintenance Conference (AMC) and the Airlines Coordinating Committee for Telecommunications Service (ACCTS) which meet regularly and provide forum for the exchange of views, ideas and needs. ARINC claims that from such experience and regular contact with individual airlines it has determined that a public air-ground telephone system should provide a blocking probability of 1% or less during peak busy hours which is equivalent to that of the land line telephone network. To achieve this end, it proposes four separate families of 150 channels each for a total of 600 nationwide. ARINC contends 10 kHz channel spacing using single-sideband modulation is the absolute minimum requirement as a lesser spacing would create significant problems with the dynamic frequency management and Doppler correction subsystems. Consequently, for its system ARINC claims that 6 MHz would be required (i.e. 600 channels x 10 kHz/channel) in each direction for a total of 12 MHz.[3]

18. In ARINC's proposed system, ground facilities would consist of a number of interconnected trunked radio stations controlled by a number of switching computers. These stations would provide continuous radio coverage and automatic zone transfer of calls in progress or "handoff."[4] The airborne facilities would consist of synthesized transceivers which would provide 5 channels on each aircraft initially and be expandable in 5 channel increments as the market dictates.

19. In ARINC's system when a call is initiated from an aircraft the ground computer assigns the aircraft a control channel and a voice channel. Thereafter, non-voice call signals to the aircraft are conducted over the control channel. These signals include billing information, call addressing, frequency assignments for subsequent calls, and "handoff". ARINC's proposed system would also accommodate needs of corporate and general aviation, as well as single-channel requirements of small air carriers. Because continuous coverage cannot be assured below 25,000 feet throughout the nation, at the aircraft operator's option, ARINC's system would also provide a lower grade of service which would not involve the "handoff" capability. ARINC claims the requirement for nationwide coverage would not prevent the establishment of competing nationwide systems.

B. Summary of comments to ARINC's Petition

20. Comments were received from the Association of Maximum Service Telecasters, Inc. ("AMST"), Mobile Communications Corporation of America ("MCCA"), Telocator Network of America ("Telocator") and Motorola, Inc. ("Motorola"). Reply comments were received only from ARINC. AMST supports a rulemaking that would explore the possible authorization of a public-air-ground service in the 900 MHz band, assuming international coordination is achievable. It contends that ARINC's assumptions about future need for such a service cannot be based on present use or demand, as the service does not now exist. It further claims that ARINC's request for a 12 MHz allocation is excessive. AMST charges that public air-ground telephone communications are not a priority service and ARINC's proposal for blocking rates equivalent to the landline network is not justifiable. MCCA supports ARINC's petition. It suggests that rules should be flexible enough to allow for a number of licensees to operate ground stations. It opposes any monopolistic control by a single licensee. Telocator, representing independent, non-wireline radio common carriers engaged in providing mobile telephone, dispatch, and signaling communication services for hire to the public, submitted a generally advisory statement. It emphasized that the Commission should proceed with caution in particular with respect to any decision that would create a monopoly in the provision of the new service. It claims the existing industry structure which supplies radio-telephone service to and from private aircraft would be jeopardized if a future allocation were turned over to a single supplier of the service.

21. Motorola submitted the only statement of opposition to ARINC's Petition. It cites a lack of demonstrable market demand. Also, Motorola questions the allocation of spectrum when approval from Mexico and Canada is speculative. Further, it claims that the Commission designated the spectrum requested by ARINC to be held in reserve to accommodate new land mobile services or unexpected growth in existing services. With respect to ARINC's request for an allocation of 12 MHz, Motorola contends that the petitioner's projected demand is incapable of evaluation on its face without supporting documentation. Its request is based on an extrapolation of the number of calls which might be placed over such a system from the number of business and non-business airline passengers. Motorola claims that a reallocation of this size is normally predicated on facts rather than on a myriad of assumptions.

22. ARINC submitted the only Reply comment. It states none of the commenters supplied any data or information to challenge its market analysis. Moreover, ARINC claims proprietary studies administered by other entities on the need for such a

[2] The action we propose today will not preclude competition in the expansion of the air-ground radio telephone system. This particular issue will be addressed in a later rulemaking when other common carrier matters are to be discussed.

[3] Under ARINC's proposal, the air passenger would be able to either initiate or receive calls. ARINC claims this would be an essential feature for corporate users.

[4] This feature which would provide continuous, uninterrupted coverage throughout the continuous U.S is hereafter referred to as "handoff".

service indicate that its assumption that 15% of air passengers would use in-flight telephones is understated. Further it states the level of usage of the existing 12-channel system is near saturation. The analogy is made that since most of these users are business travelers it is reasonable to expect that business travelers would make similar demands on board air-carrier aircraft where they constitute 55% of the passengers. ARINC contends that the air-carrier industry will participate only in a system with sufficient channels to meet the foreseeable demand. It further believes that air passengers will only use a system with adequate channel capacity equivalent to that of the landline telephone network.

23. With respect to its proposal that any one licensee must provide nationwide service ARINC replies that this requirement is necessary if the service is to be viable. Accordingly, it suggests that any applicant for a ground station should demonstrate that it will interconnect and share technical standards with other ground station applicants such that the whole of all ground stations will provide service to at least 85% of the contiguous 49 states.

24. A criticism was raised by Motorola with respect to the need to coordinate with Canada and Mexico to protect against interference. ARINC recognizes this need and is desirous of extending air-ground telephone service to Mexico and Canada through coordination with communications systems in those countries. It claims that the allocation plan adopted by the 1979 World Administrative Radio Conference (WARC) approved a footnote, 708, which allocates the bands 942–947 MHz and 952–960 MHz to the mobile service on a primary basis in the U.S. subject to the agreement of other countries whose services may be affected. Moreover, it indicates that coordination with our neighboring countries can be achieved similarly to action in CC Docket 79–318 where before international coordination was achieved, the Commission allocated spectrum for cellular communications systems.

III. Regulatory Background

25. The matter of providing frequencies for public air-ground radio telephone usage has been dealt with by the Commission over the past 25 years. Air-ground radio telephone service began in 1975 with two stations using a 50 kHz channel in the 450 MHz mobile band on an experimental basis. The service eventually expanded to ten base stations using six channels by 1960. On February 17, 1960, the Commission amended Part 2 of its frequency allocation rules by adding Footnote NG12 to provide for air-ground public radiotelephone service in the Domestic Public Mobile bands 454.40–455 MHz and 459.40–460 MHz (Sixth Memorandum Report and Order in Docket 11959, FCC 60–162).[5] Because these frequencies were shared with land mobile and interference was likely to result, the Commission established an interim policy for the service by Order issued January 30, 1961 (FCC 61–117). The Order provided for the removal of domestic public land mobile and rural radio services from the frequencies that were being shared. Thereafter, AT&T requested that the rules be amended to permit operation on a nationwide two-way public air-ground service on a regular basis. In response the Commission in a Notice of Proposed Rulemaking issued May 4, 1962, in Docket No. 14615 (FCC 62–457) set forth technical standards for "splitting" the channels which would eventually permit doubling the number of available channels. Because the proposed standards were found to be either too restrictive or beyond the present state of the art, the Commission refused to adopt the proposed rules by Report and Order released June 10, 1963 (FCC 63–512) and terminated Docket No. 14615. However, a 1-year period was provided through September 1964 during which the Commission requested the submission of applications looking toward the development of an acceptable public air-ground radio communications system on the frequencies at that time reserved for the purpose or on bands higher in the spectrum.

26. In 1965 the commission initiated a Notice of Proposed Rulemaking in Docket No. 16073 (FCC 65–559) to again address the issue of establishing a public air-ground radiotelephone service on a regular basis. The Notice stated that "the Commission would be willing to consider constructive recommendations for the development of a new system using single sideband emissions within the existing frequency allocations and having a capacity of at least 60 two-way channels." Specific responsive comments proposing definite rule changes warranted the issuance of a Second Notice of Proposed Rulemaking on May 20, 1966 (FCC 66–438). Subsequently, a Memorandum Opinion and Order (FCC 68–885) and a Third Notice of Proposed Rulemaking (FCC 68–886, 33 FR 12787) were both released on September 4, 1968. In these items, the Commission proposed rules to create 12 channels from the then existing 6 channels by "channel splitting" and at the same time afforded the land mobile and air-ground radiotelephone systems the opportunity to share the frequencies and made provision for the submission of developmental licenses in accordance with the proposed rules. The Report and Order (FCC 69–1391 and 35 Fed. Reg. 424, January 13, 1970) established rules to govern a regular air-ground radiotelephone system over 12 channels in the Domestic Public Radio Service bands 454.40–455 MHz and 459.40–460 MHz. The proposal to share the frequencies with land mobile was rejected as not being feasible. Eligibility was restricted to general communications common carriers which include both wire line and miscellaneous common carriers. In the proceeding, the Commission recognized that the 12-channel system would provide at best only acceptable service due to the limited spectrum being allocated. In fact, AT&T pointed out that additional frequencies would be required to offer adequate service to the whole aviation industry and meet the long range system capacity and frequency spectrum requirements.

27. In Docket 18262 AT&T submitted a proposal in 1971 for a public air-ground telephone service using 11 MHz in the 806–960 MHz region. AT&T's proposal stated that 220 FM channels would be necessary for this service. The Commission rejected the proposal indicating AT&T had made no factual showing to substantiate any appreciable public demand for the service which could not be met through the use of the existing 12 channel system. However, the Commission stated:

> [A]RINC, in its July 1972 comments, noted the Air Traffic Conference of 1963 adopted a resolution which, in effect, prevents the use of public air/ground systems in scheduled service. Therefore, the spectrum which might have been allocated for air/ground service is being incorporated into the several reserve bands mentioned earlier. Should it be warranted, a separate proceeding may be instituted in the future to consider the overall question of public air/ground communications spectrum requirements.[6]

28. Proposals submitted during preparations for the 1979 World Administrative Radio Conference (WARC) stressed the need to expand greatly the spectrum allocated to air-ground service. The Radio Technical Commission for Aeronautics (RTCA), an

[5] For purpose of clarification, this service is *not* considered to be an aeronautical mobile service. Aeronautical mobile stations are intended for the transmission of information relating to air navigation, preparation for and safety of flight.

[6] *See Second Report and Order.* Docket No. 18262, 46 F.C.C. 2nd, p. 752, 757 par. 15 adopted May 1, 1974.

association of aeronautical organizations of the U.S. from both government and industry, issued a report explaining the inadequacy of the present 12-channel system.[7] It provided a forecast of the growth of general aviation and air carrier aircraft through the year 2000. The forecast concluded that airline travel would more than triple and that the airline fleet and the corresponding hours of flying time would approximately double in number. For general aviation, the forecast reported that general aviation's fleet size and the corresponding hours of flying time would nearly triple in number. Accordingly, RTCA in its Report concluded that:

> [A]nticipated future expansion [of public air-ground telephone service] will require additional spectrum space that does not appear obtainable in the 450–460 MHz range due to heavy usage for land mobile operations not compatible with the air-ground operation. Therefore, 2 bands of 6 MHz each in the frequency range 806–960 MHz are being requested to support future worldwide needs of this service.[8]

29. In its Fifth Notice of Inquiry in Docket No. 20271 in preparation for the 1979 World Administrative Radio Conference (79–WARC), the FCC stated:

> [T]he Common Carrier Land Mobile and Aviation Service Working Groups have submitted substantial justification for this public air/ground service . . . [The] existing system which operates in 450–460 MHz is inadequate for anticipated future expansion and is primarily limited by agreement with the scheduled airlines to general and Business Aviation uses. Any air-ground public telephone system which would cater to airlines as well as general and business aviation should have adequate frequencies to support world-wide needs.[9]

30. However, in a subsequent report [10] the UHF Task Force [11] stated that there was a lack of an adequate showing to substantiate recommending an allocation of 12 MHz as was requested by the Aeronautical Service Working Group. [12] Accordingly, this led to the eventual withdrawal of a U.S. proposal to WARC for a public radiotelephone service.

[7] *RTCA, Initial Report on Civil Aviation Frequency Spectrum Requirements 1980–2000* (70–165), May 27, 1976.

[8] Ibid.

[9] *Fifth Notice of Inquiry*, Docket No. 20271, 42 FR 27755, 27761 (1977).

[10] See pages 74 and 75 of "Spectrum Requirements for the Civil Maritime and Aeronautical Services", November 1978. FCC Order No. 1820–8 (30 E25.13)

[11] The UHF Task Force was composed only of FCC staff members.

[12] The Aeronautical Service Working Group was composed of industry representatives who prepared recommendations to the Commission for 79–WARC.

IV. Basis for Proposed Allocation

31. We believe based on the information presented in the two petitions and the "regulatory background" section just discussed there is sufficient basis to initiate a proceeding proposing a further allocation for public air/ground communications. As the amount of spectrum requested by the petitioners differs by a factor of 3 and the amount of available spectrum is limited, we are compelled not only to consider the merits of each petition but also to weigh these requests in light of a number of other proposals for the 900 MHz reserve bands, several of which have been submitted to the FCC in petitions for rulemaking. The amount of spectrum represented in the requests now before the Commission surpasses the total amount of 900 MHz reserve spectrum available for allocation [13]. Accordingly, we are not persuaded that a 12 MHz allocation as requested by ARINC is justifiable. Moreover, we are concerned that, whatever spectrum may be allocated, it is utilized in the most efficient way possible [14]. In comparing the two proposals, Airfone proposes using a technology that would be 67% more efficient than that proposed by ARINC. (i.e., Airfone system would allow 5 channels for every 30 kHz as opposed to 3 channels for every 30 kHz in ARINC's system). Although Airfone's proposed system does not provide for initiation of calls from the ground as does ARINC's, we are not fully convinced that either the airlines or the public places a high priority on such capability. Of course, we solicit comments on the desirability and need for such ground-to-air service by all concerned parties in this proceeding. We reiterate the fact that both Airfone and ARINC have been granted developmental licenses which will not only test the feasibility and suitability of each proponent's system, but also include public usage testing nationwide and evaluation of service. It is anticipated that during the course of these tests many of the questions we have with regard to what the public actually needs and desires will be resolved.

32. In conclusion, we believe there has been an adequate showing of need to support a proposal to allocate spectrum to expand the current airground radiotelephone service that now is provided under our common carrier rules. Having reviewed the attributes of each petitioner's proposed service and the comments of the various parties, we cannot now conclusively state that either system is distinctly preferable, from an operational point of view. However, from a spectrum management viewpoint, we are compelled at this time to weigh each petitioner's allocation request in light of the several other pending allocation requests, previously mentioned, for this same spectrum. Since Airfone's system design indicates that a viable, useful air-ground service can be provided in only 4 MHz of spectrum, we find that the public interest will best be served by limiting the allocation to 4 MHz. Although we not proposing Airfone's system design, we agree with their conclusion that 4 MHz is an adequate amount of spectrum to allocate for the service.

33. Accordingly, in the Appendix we are proposing that 4 MHz be allocated to the Domestic Public Land Mobile Radio Service to expand the public air-ground radio telephone service without, at this time, making any proposal for the operational or technical rules to govern such expanded service. Consequently, we are seeking comments that will give us guidance with respect to what operational features the public desires and what corresponding technical parameters are needed to define the service.

V. Location of Proposed Allocation

34. Both Airfone's request of 4 MHz (896–898 MHz paired with 941–943 MHz) and ARINC's request of 12 MHz (896–902 MHz paired with 941–947 MHz) fall in frequency bands that were considered in the 1979 WARC for assignment of an international air-ground radio telephone system. The allocations made as a result of WARC

[13] Several currently pending allocation proceedings as follows:

1. Notice of Proposed Rulemaking in Gen. Docket 82–243 to allocate 899–902 MHz paired with 938–941 MHz to the government and non-government for fixed service usage.

2. Notice of Inquiry in PR Docket 79–140 is looking toward the creation of an additional personal radio service. In recent comments, General Electric Co. has proposed a system that would require 9 MHz of spectrum.

3. RM–2697 filed by the National Association of Broadcasters (NAB) requested allocation of 942–947 MHz for auxiliary aural broadcast links. Although the Commission has made an alternative proposal to allocate spectrum in the 2 GHz range in its Notice of Proposed Rulemaking in Gen. Docket 82–335, NAB's petition, included in the Notice, accordingly, is still pending.

Other needs that have been expressed concern the possibility of using 900 MHz spectrum to satisfy future aeronatical mobile service requirements.

Also, land mobile and maritime mobile services have expressed need for additional 900 MHz frequencies.

[14] Another feature indicated by Airfone in its petition is that the frequency bands requested could be reused by other land mobile users. Only each ground station's 200 kHz assignment would have to be protected within a 200 mile radius. ARINC did not indicate any sharing possibilities in its petition.

in these bands would permit the United States to implement a public air-ground radio-telephone service. However, problems could arise because the proposed frequencies are within the band 890–942 MHz which is utilized by Department of Defense for radiolocation operations. Within the continental U.S. such operations are limited to 902–928 MHz. However, ship board radiolocation (i.e. radar) in ocean areas operate over the entire 890–942 MHz band. As a consequence, the potential for the likelihood of interference between these radars and the proposed air-ground public correspondence system is of concern.

35. In early 1981, a series of tests was started to determine the feasibility of sharing between the shipboard radar operations and the Airfone air-ground radiotelephone system. Although these tests have not yet concluded, one possibility for avoiding an interference situation may be to reverse the uplink/downlink bands requested by the petitioners. In accordance with this presumption, the experimental license of Airfone was modified in July 1981, to permit development and tests with ground stations at 944–946 MHz. Similarly ARINC was granted an authorization to perform tests with ground stations at 942–947 MHz and mobile (aircraft) stations at 897–902 MHz. Preliminary test results indicate that the interference concerns are not as critical as once thought. Accordingly, we believe the frequency range requested by the petitioners to be the most suitable and appropriate for this service and are accordingly proposing in the Appendix herein that 4 MHz (896–898 MHz for the air-to-ground link paired with 941–943 MHz for the ground-to-air link) be allocated for this new public air-ground radio telephone service. In the unlikely event that any unresolvable problem of interference arises during the course of developmental testings we will reconsider this proposal.

36. We recognize that existing broadcast auxiliary operations in the 942–947 MHz band operating under the provisions of Footnote NG 64 may affect the instant proposal.[15] However, in another proceeding we are proposing that these stations be relocated to another band within 5 years of the adoption of the associated rules.[16] As a consequence, we cannot be certain of the timing or outcome of this action or any subsequent impact on the air-ground service. Nonetheless, in case the proposed relocation of broadcast auxiliary stations is delayed, we believe fixed stations operating from ground to air under the instant proposal could be coordinated with existing fixed broadcast auxiliary stations in the 941–943 MHz band.

VI. International Coordination

37. As a number of commenters pointed out, coordination of this *Notice* with our Canadian and Mexican neighbors is desirable before this service is approved. Accordingly, this *Notice* is being sent to both Canada and Mexico to notify them officially of our intention to use the bands in a manner as herein proposed. Further, we will coordinate this service, when and if adopted, pursuant to Article 35, No. 135 of the ITU Convention, with Canada and Mexico.

VII. Technical Standards

38. As we have indicated both petitioners are currently licensed under the provisions of Subpart F of Part 5 [i.e. Experimental Service (Developmental)] to develop data for the Commission to use in making determinations with respect to issues in this proceeding. Among these issues are the technical standards that need to be promulgated to regulate systems providing air-ground public radiotelephone service in the proposed bands. As the petitioners' systems are still being developed and tested, we are not in a position to propose any standards at this time. Accordingly, we invite comments from the petitioners and others as to what technical parameters need to be regulated and what corresponding limits and standards should be proposed. It is anticipated that this issue of technical standards will be addressed in a Further Notice.

VIII. Common Carrier Issues

39. With regard to the myriad of common carrier related questions that must be addressed in connection with the service that this proposal envisions, we similarly intend to consign these matters to a separate proceeding in this docket. Again, the common carrier issues that need to be addressed cannot be formulated until more information with regard to each petitioner's system has been submitted in connection with their experimental (developmental) licenses. Also, at this point, we have not yet ascertained the needs or interests of the public with regards to what operational aspects it desires. Again, we anticipate that comments filed by the public in response to this instant proposal, as well as the market surveys carried out by each petitioner in the course of its experimental (developmental) program, will aid us in making these necessary determinations.

IX. Conclusion

40. In summary we have set forth brief descriptions of each petitioner's public air-ground radiotelephone system and have summarized corresponding comments filed in response. In response to what we perceive to be persuasive evidence of public demand, we are proposing that 4 MHz be allocated for a nationwide air-ground radiotelephone service.[17] Because experimental (developmental) testing of equipment to be used in the systems proposed by each petitioner is still on-going, we cannot now address issues related to technical or common carrier matters. We do request comments on the proposed allocation with regard to public need and what operational characteristics are desirable for such a public air-ground telephone system.

41. Finally, we would note that with this action three proposals are now before the public for comment-proposals which would consume a total of 18 MHz of the 21 MHz of reserve spectrum between 896 and 947 MHz. These bands have been considered to be reserved for future growth to meet land mobile requirements. It is our intention to consider these proposals in a coordinated manner prior to making final decisions on any of them. Moreover, while we are proposing this action of 896–896 MHz and 941–943 MHz for an air-ground radiotelephone service, we would welcome public comment as to whether this choice is optimum or whether other frequencies with this band, or another band altogether, should be selected for this purpose. In providing comment on this point, attention should be given to all three pending proposals for use of the 896–947 MHz bands.[18]

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[15] NG 64—Broadcast auxiliary stations licensed as of July 10, 1970, to operate in the frequency band 942–947 MHz may continue to go operate pending a decision as to their disposition through a future rulemaking proceeding.

[16] *Notice of Proposed Rule Making* in Gen. Docket No. 82–335, 47 FR 31170, (July 16, 1982).

[17] The proposed frequency boundaries (i.e. 896–898 MHz and 941–943 MHz) may be subject to change in view of the Commission's need to accommodate other allocation requests. In another proceeding, *Notice of Proposed Rule Making* in Gen. Docket No. 82–243, 47 Fed. Reg. 27875 (June 28, 1982), Airfone has indicated a preference for the frequency bands 944–946 MHz and 899–901 MHz.

[18] The other two allocation proposals are:

a. Notice of Proposed Rulemaking in Gen. Docket No. 83–26 adopted January 20, 1983. This item proposes a new private radio service for the bands: 898–902 MHz and 937–941 MHz.

b. Further Notice of Proposed Rulemaking in Gen. Docket No. 82–243 adopted January 20, 1983. This item proposes shared use by government and non-government fixed users for the band: 932–935 MHz and 943–946 MHz.

42. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceedings. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission offical receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, Section 1.1231 of the Commission's Rules.

43. Pursuant to Section 605 of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, we find that the proposed action herein would not have, if adopted, a significant economic impact on a substantial number of small businesses. However, this proposal may result in a small number of existing aural broadcast STL and intercity relay stations, which are currently operating in the 942–943 MHz band under the provision of Footnote NG64 of the Table of Frequency Allocations, being relocated to a different frequency band.[19] A rulemaking addressing the disposition of such stations in the 942–947 MHz band is now pending before the Commission.[20] The allocation herein would provide additional spectrum for domestic public land and mobile stations to provide air-ground public radio telephone service. Since the bands proposed for allocation are presently being held in reserve for land mobile, the allocation, if adopted, would not have any impact on businesses currently using mobile radio.

44. Authority for issuance of this Notice is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended. Pursuant to procedures set out in Section 1.415 of the Rules, interested persons may file comments on or before June 10, 1983 and reply comments on or before July 11, 1983. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

45. In accordance with the provisions of Section 1.419 of the Rules, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by comments are given the same consideration regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission Public Reference room at its headquarters, Room 239, 1919 "M" Street, NW. in Washington, D.C.

46. For further information concerning this document, contact Mel Murray at (202) 653–8168.

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

Federal Communications Commission

William J. Tricarico,

Secretary.

Appendix

Part 2 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 2—[AMENDED]

§ 2.106 [Amended]

1. In § 2.106, the Table of Frequency Allocations is revised for the band 896–946 MHz as follows:

United States		Federal Communications Commission				
Band (MHz)	Allocation	Band (MHz)	Service	Class of station	Frequency (MHz)	Nature of services of stations
5	6	7	8	9	10	11
*	*	*	*	*	*	*
896–898	NG. (US 36), (US 100), (US 116).	896–898	LAND MOBILE	Base. Land Mobile		DOMESTIC PUBLIC. (NG 12).
898–902	NG. (US 36), (US 100), (US 116).	898–902	LAND MOBILE			CITIZENS BAND LAND MOBILE PRIVATE RADIO COMMUNICATIONS SERVICE.
*	*	*	*	*	*	*
932–935	G, NG. (US 36), (US 116), (US 215).	932–935	FIXED	Operational Fixed		
*	*	*	*	*	*	*
937–941	NG. (US 36), (US 116), (US 215).	937–941	LAND MOBILE			CITIZENS BAND LAND MOBILE PRIVATE RADIO COMMUNICATIONS SERVICE.
941–943	NG. (US 36), (US 116).	941–943	LAND MOBILE	Base. Land Mobile		DOMESTIC PUBLIC. (NG 12)

[19] Supra 14.

[20] Supra 15.

United States		Federal Communications Commission				
Band (MHz)	Allocation	Band (MHz)	Service	Class of station	Frequency (MHz)	Nature of services of stations
5	6	7	8	9	10	11
943-946	G, NG. (US 36), (US 116).	943-946	FIXED	Operational Fixed		

2. In the list of footnotes immediately following the table in § 2.106, footnote: US116 and NG 12 are revised to read as follows:

US116—In the bands 890–902 MHz, 928–932 MHz, 935–943 MHz, and 946–947 MHz, no new assignments are to be made to Government radio stations after July 10, 1970 except on a case-by-case basis, to experimental stations and to additional stations of existing networks in Alaska. Government assignments existing prior to July 10, 1970 to stations in Alaska may be continued. All other existing Government assignments shall be on a secondary basis to stations in the non-Government land mobile service and shall be subject to adjustment or removal from the bands 890–902 MHz, 928–932 MHz, 935–943 MHz, and 946–947 MHz at the request of the FCC.

NG 12—Frequencies in the bands 454.40–455 MHz, 459.40–460 MHz, 896–898 MHz for air-to-ground links and 941–943 MHz for ground-to-air links may be assigned to domestic public land and mobile stations to provide air-ground public radio-telephone service.

Separate Statement of Commissioner Mimi Weyforth Dawson re: Reallocation of 900 MHz Reserve Spectrum

These three decisions present the classic dilemma in spectrum allocation: too much demand for too little spectrum.

Our present dilemma with these three decisions also takes place within an even larger dilemma with regard to the future needs of land mobile radio. The Commission anticipated in its findings in Docket No. 18262 that land mobile needs would be met through use of reserve spectrum. Yet, we are seeing this reserve spectrum chipped away and reallocated for other purposes. Meanwhile, in Docket 82–10, the Private Radio Bureau, which is investigating future land mobile needs, has stated that more than the available reserve spectrum will be required to meet land mobile requirements in the next decade. And, of course, strong battle lines are being drawn between the land mobile and broadcast services over any additional sharing by land mobile of the allocated UHF-TV spectrum.

Even from this brief outline, it is apparent that each of these decisions is interrelated and that the Commission should not proceed with the reallocation of land mobile reserve spectrum through insular, piecemeal actions. While each proposal may have merit standing alone, it is the Commission's responsibility to weigh the need for and adequacy of each proposed service. In this regard, I believe that it bodes well for our consideration of these and other spectrum demands that the Commission will consider these competing demands concurrently.

NTIA's Request for 6 MHz

NTIA has requested reallocation of 6 MHz in the 900 MHz band for low capacity fixed systems. This would be shared by government and non-government users. In my opinion we should not rule on this request until NTIA has responded to Congress' stated concern for the government's use and management of the spectrum. The further NPRM invites comments on this issue. I would expect NTIA to inform us of its position and its efforts in this area.

In particular, I feel that NTIA bears some burden of demonstrating why commercial providers cannot be used to meet the needs which have resulted in NTIA's request to reallocate 6 MHz in the 900 MHz band. We require non-government users, in requests for additional frequencies, to make specific showings of need or to submit loading studies. Therefore, it seems reasonable to expect government users to provide specific showings that their requirements cannot be met through available sources. It may very well be the case that 6 MHz of the 900 MHz spectrum is needed and that it would have minimal impact on non-government users sharing the same spectrum. I am not prejudging whether government is or isn't efficiently using the spectrum, but the Commission needs a more detailed record to establish these facts.

GE's Proposal

The GE proposed "Personal Radio Communications Service" presents an interesting concept. However, I think we must evaluate the service in view of our past experience with Citizens Band Radio; indeed, if the service, through lower costs of units approaches the popularity of CB, the service may be considerably less useful than envisioned by GE. Likewise, the service may be too limited in range to be worthwhile. It must also be evaluated as to whether it is a complement to cellular or whether the service could be provided through existing services.

Air-Ground Telephone Service

The air-ground service cannot be provided through existing services, and my initial analysis is that this may be a valuable service.

However, I would prefer to take a hard look at both of the proposals before us and not rush to limit the technical capability of such a system. While technical parameters are not proposed, limiting the spectrum for this service to 4 MHz essentially rules out a more sophisticated system. In fact, the 4 MHz limitation might preclude hand-off capability and ground-initiated calls which may well be desirable features in such a service. In any event, I believe that we cannot make a reasoned decision on this service until we have the results of the authorized experimental tests.

I believe that this 900 MHz spectrum is such a valuable resource that it should not be left unused when it can be put to work for the public good. However, the Commission cannot hand it out on a first come-first served basis with no consideration of our spectrum management mandate. Therefore, it is imperative that commenting parties not only address the proposal of immediate interest, but that they also respond to any other competing demands for this spectrum.

Simply put, we need to look at this whole piece of spectrum and decide what we want to do with it. After we see the whole package, it may appear that there is a greater need for one service than another or that some different combination than that proposed is better. But, at this time I believe that the Commission needs a comprehensive view of the larger picture to make such a decision.

Concurring Statement of Commissioners Henry M. Rivera and James H. Quello

Re: *Proposals to Allocate the 900 MHz Land Mobile Reserve Spectrum*

We concur in the issuance of these three Notices of Proposed Rulemaking,[1] but not without considerable reservation.

Collectively, the Notices would dispose of 18 of the remaining 21 MHz of land mobile reserve spectrum.[2] The untutored commenter might reasonably infer from this substantial proposed allocation that the Commission has developed a record indicating that these are the wisest uses for this premium reserved spectrum. Unfortunately, that is not true. The Commission is even now attempting to evaluate in Docket 82–10 the adequacy of the land mobile reserve to meet the future needs of land mobile users. The Private Radio Bureau's initial estimate projects shortages of at least 40–50 MHz by the year 2000.[3] While

[1] *See* Notices of Proposed Rulemaking in Dockets 83–26 and 83–30 and Further Notice of Proposed Rulemaking in Docket 82–243.

[2] An additional 20 MHz of the land mobile reserve is tacitly set aside for the future growth of the cellular radio service.

[3] *See Future Private Land Mobile Telecommunications Requirements*, released August 1982. Even if, as some claim, the assumptions underlying this study are flawed,

the Commission has not yet endorsed the Bureau's estimate, it seems clear that unless a refined sense of priority is established, we may casually allocate this rapidly dwindling resource without adequate consideraton.

Ordinarily, it is difficult to quarrel with the issuance of notices of proposed rulemaking. In this instance, however, it seems imprudent at best, and foolish at worst, to set this Commission and the public on a course requiring devotion of substantial resources to assess a plan whose feasibility is highly suspect, particularly in view of the existence of the Commission's ongoing inquiry and the staff's initial findings in Docket 82-10. It is especially unfortunate that our actions here may create public expectations for new services whose likely authorization is speculative in the extreme, at least in the bands identified. Finally, we have grave misgivings about allocating the land mobile reserve to services whose claim to being land mobile services is extremely weak in two cases (personal radio communication service and air-to-ground), and entirely unsupportable in the case of NTIA's proposal.

The Private Radio Bureau's commitment to complete Docket 82-10 before the proceedings initiated by the subject Notices are completed has somewhat allayed our fears that the Commission may allocate this spectrum without full information. It would indeed be regrettable if we were forced to reallocate additional UHF spectrum because we had given away the land mobile reserve to these new services and were then faced with confirmation of the need projected in Docket 82-10's Interim Report.[4]

Turning to the particulars of these NPRMs, the Further Notice proposing government/non-government fixed service allocations at 932-35 MHz and 943-46 MHz proposes a "housekeeping" change of bands to make way for the proposed personal radio communication service. We do not view this proposal as strictly housekeeping. The new allocation is technically questionable because it may interfere with Canada's contemplated personal radio service and it would displace broadcast auxiliary users now operating on a secondary basis in parts of the proposed band. The spectrum proposed is further questionable because it embodies less than the 45 MHz separation ordinarily called for in the fixed service. Finally, it is unclear why this premium spectrum should be devoted to fixed operations, which can exist above 1 GHz, albeit at a higher cost.

As for the Notice proposing an air-to-ground service allocation at 896-898 MHz and 941-943 MHz, we question the wisdom of allocating part of the land mobile reserve to a service which is spectrally inefficient and probably of limited appeal due to its high cost.

Finally, with regard to the new personal radio communication service proposed for 898-902 MHz and 937-941 MHz, we are concerned about whether the PRCS is sufficiently distinct from existing services to warrant additional spectrum. It is not clear why, for example, the personal and business communications needs identified (the service is expressly designed for both purposes, *see* para. 77) cannot be satisfied by existing land mobile services, be they "private" or "common carrier". If there are persuasive reasons why this is so, then the decision boils down to whether there is a strong public desire (as opposed to a strong desire solely on GE's part) for a new, technically distinct, hybrid personal service. We trust that the commenters will amplify the record on these issues.

Even if the PRCs should be authorized, it is still questionable whether it should occupy spectrum in the land mobile reserve. If the service can go far toward satisfying future land mobile requirements, then it would be reasonable to authorize its operation in that reserve. If such a new service cannot be counted on to meet future land mobile needs, then its claim to the land mobile reserve is wholly unwarranted and highly objectionable.

The issues raised by these NPRMs underscore the crying need for this Commission to place greater emphasis on spectrum management. Fair and efficient division of the spectrum between various services is becoming more important daily as the contests for spectrum multiply. How well and how wisely we accommodate competing spectrum demands will profoundly influence how well equipped we are to meet the telecommunications needs of the future. We do not know how the spectrum wars begun by the Notices will be finally resolved. But we are convinced that competing demands for spectrum will become increasingly common, the spectrum management must become a more highly prized activity at the FCC, and that our spectrum policies must be designed to encourage and reward the most up-to-date and efficient technology. If we do not make this activity a top priority, the public will suffer the consequences for years to come.

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causing the projections to be off by as much as fifty percent, an unmet need of 20-25 MHz would still exist. Such a projection should indicate that it is ill-advised to consider allowing the reserve to be put to other than its intended use.

[4] We must see to it that the land mobile reserve is not drained away, leaving the UHF band as the only remaining alternative for land mobile operation. One need only recall how wrenching was the FCC's 1970 decision to reallocate UHF Channels 70-83 when the potential of UHF was not even fully recognized. By that 115 MHz reallocation—which was four times the amount of spectrum then allotted to land mobile services—the Commission intended to provide enough spectrum to meet land mobile's growth at least through the remainder of the 20th century. Now, barely a decade later, parties are aggressively moving to wrest additional spectrum from the UHF service.

The Commission would also do well to remember Congress' commitment, in the 1962 All-Channel Receiver Act, to the full development of UHF television and our own commitment to that end. And, finally, we must be mindful of the possibility that reallocation of UHF channels can seriously diminish the potential for new service, competition, diversity, and ownership opportunities. Such consequences would seriously undermine important Commission goals.

47 CFR PART 97

[PR Docket No. 79-140; FCC 83-18]

Creation of an Additional Personal Radio Service

AGENCY: Federal Communication Commission.

ACTION: Termination of inquiry (Report and Order)

SUMMARY: The Commission is adopting a Report and Order terminating an Inquiry into the creation of an additional personal radio service. The Report and Order concludes that there is an unmet communications need for low-costs shortdistance communicaitons between people in private vehicles and other persons.

FOR FURTHER INFORMATION CONTACT: Steve Lett or John J. Borkowski, Private Radio Bureau, Special Services Division, (202) 632-4964.

Report and Order

In the matter of Creation of an Additional Personal Radio Service, PR Docket No. 79-140.

Adopted: January 20, 1983.

Released: March 4, 1983.

By the Commission: Commissioner Fogarty absent.

Introduction

1. On June 25, 1979, the Commission released a Notice of Inquiry[1] in the above-captioned matter for the purpose of seeking public comment on whether the allocation of additional frequencies for the creation of a new personal radio service is necessary, and if so, to determine the communications requirements which would be satisfied. This inquiry was prompted by the PURAC [2] recommendation that the Commission plan for a new Personal Radio Service which would be relatively noise-free and have the capability for direct-dial, automatic trucking, and selective calling. Moreover, the Commission's own studies [3] indicated that a new personal radio service could better satisfy some of the public's personal radio needs.

2. Several hundred comments were filed in response to the Notice of Inquiry. The majority of commenters were individuals filing on their own behalf. These comments are summarized in paragraph 3 through 11 below.

[1] 44 FR 37522, June 27, 1979

[2] Personal Use Radio Advisory Committee, charter filed pursuant to P.L. 92-463 on April 16, 1976, after Commission action establishing the Committee on March 18, 1976. See Public Notice, FCC 76-282 (March 26, 1976).

[3] Final Report, Alternatives for Future Personal Radio Services, May 1978.

Additionally, we received comments from a number of user organizations, equipment manufacturers, trade groups, and governmental entities. A number of those comments are summarized in paragraphs 12 through 30 below.

Summary of Comments to the Notice of Inquiry

3. Over 70% of the individual commenters favored the establishment of a new personal radio service. Personal business had unanimous approval as a use for the service, but there was even division between those interested in social communications, those interested in small business communications, and those opposed to one or the other. The opponents of social communications claimed that the 27 MHz CB service already serves this function, while proponents claimed there is an inadequate number of existing 27 MHz channels. Opponents to business communications felt this need was being met elsewhere in the spectrum and were concerned with domination of the new service by business interests. Other felt that small business definitely needs an inexpensive, convenient radio service. Other comments advocated that commercial business users should be limited to communications exchanges with the general public only. These exchanges could facilitate a motorist's making motel reservations, calling for a tow truck, etc. There are suggestions that social and/or business communication be limited to certain channels. There was also a consensus that business users be limited in the number of units that they could operate (e.g. 5 units maximum). Some commenters questioned whether a new 900 MHz service should be established at all. In what appeared to be an organized campaign, some people complained of the expense, short range, and above all, the medical danger of a 900 MHz allocation. The medical concerns included the biological danger of the radiation and interference with bio-medical devices such as pacemakers.[4]

4. Frequent comments were made concerning the fate of the present 27 MHz CB service. The division was nearly even, with some respondents favoring the eventual abolishment of the service and others concerned about the loss of a valuable resouce in the current CB service. Those favoring abolishment felt that the new service would be adequate for all needs. Those concerned about the loss indicated a suspicion of the Commission's intentions in creating a new service—certain that it was to replace the old one. Several other comments mentioned that the old service should be "cleaned up" prior to any consideration of a new personal radio service.

5. Although there was some criticism about the potential for high cost of 900 MHz radio equipment, the majority of comments on this issue favored a reasonably high cost ($300–$500) for the equipment to deter less-than-serious users. Respondents also were interested in not seeing the market dominated by a few equipment companies. A general concern about manufacturer pressure on the Commission's rule making process was also evidence. Some respondents suggested that the proposal for a new service was based on industry's desire to sell more new radios. However, the national economic benefit was cited more than once as a position aspect of a new service.

6. Many comments favored requiring automatic transmitter identification system (ATIS) for any new personal radio service. Virtually all of these comments mentioned the integrity of (that is, the inability to defeat) the in-radio ATIS device as paramount in importance. Recommendations of stiff fines for tampering with ATIS devices seemed popular. The elimination of anonymity by ATIS (with perhaps the publication of ATIS codes assigned to owners) was considered a peer enforcement tool that would result in better compliance and radio procedure. The ease of recovering a stolen ATIS-equipped radio was considered a selling point of the system to the public. Technical comments made ASCII[5] the most popular ATIS code format and support was given to making ATIS compatible with selective calling systems, telephone interconnect and repeater billing and control, and any possible trunking systems.

7. Selective calling was favored, but as an option only. This feature could include automatic, digitally controlled "contact-and-switch" capability in which the user's radios would establish contact and agree on a clear channel to assign themselves to without the user's manual assistance. Recommendations were made to require an automatic "time-out" device which would warn the user with a tone when a prescribed transmit time limit had been exceeded and subsequently disable the transmitter. Data and radio control (R/C) modes of operation seemed to have general support. Where data transmission was concerned, there was suggestions that such activity be limited in "duty cycle" with a maximum continuous transmission limit (1–5 seconds) and a minimum pause time (5–15 seconds). The limits would be controlled by the data transmitting device and would give other users an opportunity to transmit portions of their messages and give repeaters an opportunity to prioritize users. This would create a time-share environment that would prevent long data transmissions from excluding other users from a channel, while most data messages would be expected to be accommodated by the time permitted in the initial transmissions interval. Automatic data exchange by unattended devices was suggested as a means of utilizing the low load periods (late night and early morning) for non-immediate date messages. Radio control interests recommended that more channels be established at 72 MHz for such use, but also wanted to see R/C models allocated channels contiguous to (but not in) a new personal radio service.

8. Many respondents considered repeaters a must. General comments recommended a competitive atmosphere permitting several or all types of systems, such as cooperatively shared, private (club or individual), RCC (radio common carrier), and multiply licensed systems. Most comments did not favor allowing community repeater operators to make services contingent upon equipment purchases or rentals. It was also considered important to prevent any one organization from monopolizing channels by establishing too many repeaters. Other suggestions were made that only FCC licensed commercial operators be permitted to actually operate repeaters. Two uses of ATIS with repeaters were mentioned: control of repeater access and a system that would prioritize users, giving the most recent users the least priority for the next use ("rotation" of use). A method suggested to prevent run-on conversations was "variable billing." This scheme would incrementally increase the cost-per-minute of time upward as a conversation progressed, thus making a long conversation exponentially more expensive.

9. As noted earlier, there was some support for a plan that would separate

[4] In the Notice of Inquiry a request was made for information on possible adverse biological effects of radiation at 900 MHz (Notice at paragraph 31). The matter of the Commission's responsibility to consider potential health hazards of electromagnetic radiation is being addressed in a separate proceeding, and we defer consideration of this issue and its potential impact on a proposed personal radio service to the results of that proceeding. See Notice of Proposed Rule Making in Gen. Docket 79-144, 47 FR 8214, February 25, 1982.

[5] American Standard Code for Information Interchange—A popular code for computer communications.

business (and possibly social) communications onto specific channels in the new service. Some in favor of such a plan suggested allocating as much as 50% of the channels in this manner. Concerning the channels for general use, virtually all comments favored the Commission's designating the use of several channels for some or all of the following uses:

(A) Public Service/Safety Communications—Up to five channels were requested for this purpose, with one an emergency-only channel, one a motorist/travelers assistance channel (to provide information on food, lodging, highway directions, etc.), one or two for network operations during disasters and public service events (regular or recurring net operations would not be permitted), and one or two for administration and inter-organization coordination between public service communications organizations. Recommendations were made that any such channels be required in all new radios and that relevant private radio users in other services (police, fire, civil preparedness, Coast Guard, and amateur) be automatically authorized to operate on these channels under their existing licenses.

(B) Traffic—This channel would be available for motorists to hold informal discussions with each other regarding traffic conditions. FCC designation of this channel was considered important for proper coordination.

(C) Information—This channel would provide emergency and traffic information transmitted by police, traffic authorities, the National Weather Service, etc. A recommendation was made that an option for radios be priority/tone activation of this channel. Variations on this designation included separate channels for siren /hailing application and the establishment of NOAA National Weather Service broadcasting (similar to the Marine Service). The siren/hailing channel would be for the purpose of emergency vehicles warning motorists of their approach and for police officers to direct traffic under uncommon conditions.

(D) Data Communications—There was an interest in reserving some channels (3–5) only for data transmission, while permitting these transmissions on all channels.

(E) Calling—This channel would be reserved for establishing contact with another user for the purpose of moving to a working channel for the actual message exchange. Another calling channel was suggested for automatic, digitally-controlled "contact-and-switch."

(F) R/C—Channels for the radio control of devices.

10. Point-of-sale licensing had much support. The most popular scheme involved making the equipment dealer responsible for a block of serial numbers and ATIS codes (perhaps one in the same). The radios would then be registered to the owners as they were sold. Analogies were drawn between this system and the registration of automobiles and guns, the latter being a similar financial investment. Owners would then be licensed separately or not at all. Presentation of an owner's license (if adopted) would be required for purchase. Some comments concerning owner licensing recommended use of a test on the Commission's rules as a licensing criterion for the new service. The tests could be administered by the dealer, by FCC licensed commercial operators, or they could be computer-graded as part of the license application. Other comments suggested that owner licensing be by the existing FCC commercial operator permits, where an owner would be required to hold a Restricted Radio-telephone Certificate or other operator license. Automatic authorization of current personal radio service licensees received limited support.

11. Concerning modulation techniques, narrow-band FM and SSB were most frequently suggested. Proponents of SSB selected it because of its narrow bandwidth. Proponents of FM cited the difficulty of achieving the necessary frerquency stability for SSB at 900 MHz. Many considered a pilot tone (or similar technique) mandatory for successful SSB operation. A few comments proposed multi-mode operation in the new service. Power limit recommendations ranged from one watt to one hundred watts. Most fell in the twenty-five range. One comment suggested limiting Effective Radiated Power (ERP) or placing a gain limit on antennas. This was out of concern for the high gain design capability of antennas at 900 MHz. Band size recommendations ranged from 100 to 1,000 channels, with 200 and 400 being regular choices.

Other Comments

12. The Academy of Model Aeronautics (AMA) requested that a new personal radio service at 900 MHz include assignment of 25 unpaired channels for the exclusive use of radio control (R/C) stations. When writing rules for 900 MHz R/C service, the AMA believed the following points should be included:

(A) Any type of modulation should be permitted (within an authorized bandwidth);

(B) 15 channels should be reserved for model aircraft-only use;

(C) Transmission of telemetry from models at reduced power should be permitted; and

(D) Only portable R/C operation with a maximum output power of 1 watt should be permitted.

13. The American Association of State Highway and Transportation Officials (AASHTO) strongly supported the proposal for a new service providing personal, and most importantly, highway communications. They seemed especially interested in the service evolving with the careful direction of the Commission and provided several suggestions on how the evolution would best take place. A key component in their evolutionary plan concerned an "experimental period" where the traffic safety agencies would have an opportunity to propose an integrated system design (including band plan and equipment features) after the establishment of the new service becomes inevitable but before final implementation. This, they claimed, would give them the interval necessary to experiment with available technology and, in cooperation with other proposals, develop the optimal integrated system for the motoring public. Money cannot be appropriated for the required experimentation until it is certain that the new service will become a reality. Since AASHTO would like the new service to have the primary role of serving the motorists' safety and convenience, they proposed channel allocations and equipment features for at least the following two items (in addition to emergency/motorists assistance channels and selective calling proposed elsewhere):

(A) In-vehicle Route Guidance (IVRG)—A system using very low power transceivers in or near the road surface to interact automatically with an in-vehicle transceiver for the purpose of calculating and displaying to the driver the optimum route of travel.

(B) Safety Hazard Advance Warning System (SHAWS)—This system would also use low power transmitters to warn motorists automatically of visually obscured road hazards.

14. The U.S. Department of Transportation (DOT) viewed the proposed Personal Radio Service essentially as reflected in the presentation by AASHTO. AASHTO represents the Federal Highway Administration in this matter, with the

latter being a constituent agency of the DOT.

15. The American Telephone and Telegraph Company (ATT) questioned whether a need exists for a new personal radio service, and also stated that the proposed allocation is not appropriate regardless, until it is determined whether the 900 MHz mobile reserve frequencies will be required for business and/or cellular assignments. They were particularly concerned about the spectrum from 894 MHz to 896 MHz, since this is already paired with portions of 845–851 MHz for future use. Concerning telephone interconnection as a feature of a new personal radio service, they objected to such use on the grounds that this activity can be supported by present and future planned common carrier facilities. They also stated that cellular systems are more spectrally efficient in providing this service and consequently are in keeping with the Commission's policy toward such efficiency as established in Docket 18262.

16. Dynascan Corporation envisioned the following service concepts:

(A) FM Modulation Scheme—due to the infeasibility of an attractive and economical SSB scheme.

(B) No Repeaters—because of lessened level of channel reuse and difficulty of administration of repeater systems.

(C) Two Emergency Channels—one a duplex channel for an emergency repeater system (a single exception to the above) and the other a simplex channel for use where an emergency repeater does not exist. Both emergency channels would be controlled by a selector switch separate from the normal channel selector and marked "Emergency Only";

(D) Manual Telephone Interconnect Only—to limit the expected heavy use of any phone patch capability. This activity would also be limited to certain channels only; and

(E) No Required "Time-Out" Device—due to the expense of an effective system.

Dynascan was also interested in a "cordless telephone" allocation at 900 MHz.

17. General Electric Company, Audio Products Department (GE) supported the establishment of a new personal radio service and made many specific comments on how they envisioned the new service. They recommended that the new service be based, for the most part, on a trunking scheme where calling channels would be set aside exclusively for automatic, digitally-controlled, call-and-switch. A channel "busy" circuit would be employed to prevent anyone from transmitting or receiving on a channel in use. Other features they were interested in seeing were automatic transmitter identification, a transmitter "time-out" device, and automatic telephone interconnection through a person's home base station.

18. GE has since submitted to the Commission "Supplemental Comments and Petition to Expedite Initiation of Rule Making Proceedings."[6] That filing expands in great detail upon the system suggested by GE in its original comments on this proceeding and requests ". . . the Commission to issue a Notice of Proposed Rule Making expeditiously on the basis of the proposals. . . ." However, due to the length of the GE petition and due to the fact that it is the most comprehensive proposal for a new personal radio service submitted to the Commission, it will be considered in a separate proceeding to be initiated today.[7]

19. The E. F. Johnson Company supported a new personal radio service but objected to the 900 MHz frequency choice. Their opposition was based on concerns about the short communications range and large transmission line losses typical of 900 MHz systems. They also felt that the increased cost of 900 MHz equipment, however small, would have a serious detrimental effect on potential user acceptance due to the extreme price-elastic nature of the personal radio market. Consequently, Johnson proposed that 220 MHz once again be considered as a home for the new personal radio service. They also advocated that any new service be basic in scope with novel features and technology left to the future in order to keep equipment costs at a minimum.

20. The American Radio Relay League (ARRL) favored the proposed new personal radio service. However, they would like the Amateur Radio Service to receive a separate and noncontiguous allocation in the 894–947 MHz band. They felt that both these assignments would be in keeping with the Commission's intentions as expressed in Docket 20271. Concerning the new personal radio service, they saw no reason why all modes of modulation should not be considered for the service. They also stated that ATIS should be required.

21. The Citizens Radio Section of the Electronic Industries Association (EIA) contended that need for an additional personal radio service is proven by the vast numbers of licensees and users in the Citizens Band and General Mobile Radio Services.

They also rejected recommendations that the CB service at 27 MHz should not be allowed to expand. They suggested that any group of 15 million users loaded on a similar "sliver" of spectrum would evolve a chaotic environment and point to the active use, even under such loading, as additional proof of a need for expanded service. The Section did object, however, to the Commission's choice for a frequency allocation. They expressed a belief that required technology did not exist for the economical manufacture and marketing of 900 MHz personal radio equipment and returned to a "* * * previous call for the creation of a new FM personal service in part of the 220–225 MHz band." Regardless of the frequencies chosen, they recommended against any excessive embellishments for the new service. They counted amongst these: ATIS (easily defeated), trunking, duplex operation, automatic interconnect, and repeaters (all too complex). They also suggested that repeaters would cause excessive spectrum congestion and that any of these features would price the average consumer out of the market.

22. The Land Mobile Communications Section of the EIA did not object to a new personal radio service *per se*, however, they strongly contended that the 900 MHz land mobile reserve bands are an untenable choice for such an allocation. They suggested that the use (as projected by the Private Land Mobile Advisory Committee to the World Administrative Radio Conference, among other groups) of trunked and cellular systems, along with some conventional private systems, will require all the existing 900 MHz reserve bands and additional other allocations just to meet the needs through the end of this century. They believed that the overall public benefit from the land mobile users (police, fire and EMS were mentioned among others) also far outweighs any as of yet undetermined potential benefit of another personal radio service. No logic was seen in the Commission's suggestion that business users might share in the use of the new service, as this was considered incompatible with personal use.

23. The Consumer Electronic Group of EIA (EIA–CEG) presented data which it claimed shows that a new personal radio service at 900 MHz would adversely affect standard UHF television service above channel 69. As a consequence, they opposed the establishment of the new proposed

[6] RM–4121, June 4, 1982.

[7] See Notice of Proposed Rule Making in General Docket 83–26, FCC 83–19, published in this issue of the **Federal Register**.

service at that frequency due to the likelihood of interference with TV reception. The technical data concerned image response and interference from IF beat and one-half IF beat frequencies. These are cited as occurring at 91.5 MHz, 45.75 MHz, and 22.875 MHz respectively, above the TV frequency of interest. No technical information was offered with regard to the concern about the IF frequency interference; however, the image response problem was further documented.*

24. The Association of Maximum Service Telecasters (MST) supported the creation of a personal radio service at 900 MHz, however, they desired it to replace the 27 MHz service through a phasing out program. ATIS is the only add-on technical feature that MST supported for new service. They believed that additional features would increase cost and consequently slow the migration from the existing 27 MHz band. Additional features, it was also feared, would result in spectral enefficiency (repeaters and interconnect) and discourage the use of business and cellular systems, making these more expensive and less spectrally efficient. MST challenged EIA–CEG's contention that intolerable TV interference would result from allocation of the 900 MHz land mobile reserve bands to personal radio use. They pointed out that these bands will eventually have to be allocated to some land mobile application to relieve congestion and that more severe interference from personal radio use should not be expected. They also cited the current use of 800 MHz and the unrealized potential for interference to currently active UHF channels as an example of non-interfering co-existence.

25. The National Association of Business and Educational Radio, Inc. (NABER) contended that there may be no demand or need for an additional personal radio service. They felt that the Commission in its Notice has proposed "* * * an extremely attractive number of options which may in fact thereafter create the demand to justify the need for additional spectrum." NABER also suggested that the Commission recognizes, by its inquiry into whether business interests should be licensed in the new service, that there is a competing need for allocation of spectrum to business users. Consequently, NABER made the following suggestions: that a new business allocation be made in this available spectrum and that, in the event that a new business allocation is not made, small business users (less than 5 units) be permitted to be licensed in any new personal radio service.

26. The Special Industrial Radio Service Association, Inc. "* * * does not believe that further consideration of the creation of additional Personal Radio Services is warranted at this time." In addition to questioning the propriety of another "low quality" communications service, they noted the steady drop in CB equipment sales in recent years as proof that the public is losing its interest or need for personal communications. As an alternative to the establishment of a new service they recommended leaving allocation plans flexible until a demonstrated need for frequencies is shown at a future date. In the event of the establishment of a new service, they recommended that telephone interconnection not be permitted. They envisioned that any channels made available for such use would be quickly saturated and that such service would pose competition to cellular mobile telephone service.

27. The Central Committee on Telecommunications of the American Petroleum Institute opposed "hobby type" allocations at the expense of public safety, industrial and land transportation services that could make use of available spectrum. They cited declining CB sales as evidence that the public has little need for additional frequency expansion. To the extent that some additional space might be needed, they would not oppose a small allocation at 900 MHz provided that allocations were made to other services as well. If a large allocation were made to a new personal radio service, they felt that industrial users should be permitted in the new service. The Central Committee opposed telephone interconnect capability on the grounds that cellular mobile telephone already supports this need. They favored transmitter "time-out" devices as a self enforcement tool.

28. The Utilities Telecommunications Council saw no demonstrated need for a new personal radio service and submitted that the need proposed in the Notice could adequately be met by the new cellular service. In the event that a further need is shown, they strongly objected to the allocation of mobile reserve bands for personal radio and suggested that the only 900 MHz allocation that would be appropriate would be 902–928 MHz.

29. National Capital REACT, Inc. (NCRI) strongly supported a new personal radio service which excludes both hobby and business communications. They felt that hobby communications would be unnecessary in the new band and that business users are adequately supported by other services. However, they recommended a type of cooperative "co-existence" between a new personal service at 900 MHz and the established business services in the 800 MHz band. This would include the availability of transceivers capable of operation on both bands with a scanning feature designed to permit reception of calls from both services. The system operation proposed by NCRI would permit repeaters, but strongly encourage the simplex mode when adequate for a communications exchange. In equipment features, ATIS was considered a must, while compatible selective calling would be a selling point of the system to the public. An automatic distress signalling system was another proposed feature.

30. REACT International recommended the Commission take the following actions(s):

(A) Reserve adequate spectrum at 900 MHz or another suitable frequency range for a new Personal Radio Service;

(B) Retain the present Citizens Band Radio Service at 27 MHz regardless of other bands becoming available;

(C) Include the designation of at least one channel for emergency and travelers assistance communications;

(D) Avoid introducing technological innovations into a Personal Radio Service before they have been thoroughly proven in other radio services. Therefore caution was requested in launching a new service at 900 MHz until greater experience has been acquired in producing equipment and operating it at that frequency.

Conclusions

31. Certainly, in considering the creation of an additional personal radio service, the threshold issue to be addressed is whether there are significant unmet personal communications needs which could only be satisfied by a new service, rather than by the modification or expansion of existing services, or by services already planned for the immediate future. In this instance, the question becomes, then, whether the current personal radio services (the Citizens Band (CB) Radio Service, the Radio Control (R/C) Radio Service and the General Mobile Radio Service (GMRS)) and/or existing or planned mobile telephone services (including cellular telephone service) are meeting, or are capable of meeting, the personal radio communications need of the American public. Research performed on contract with the

*These frequencies have since been reallocated to land mobile services, with only residual use by television translators on a secondary basis.

Commission,[9] plus information contained in the record of this proceeding, provide a good indication of what sorts of personal communications needs the public considers important. From these sources, it can be concluded that of currently unmet needs, highway communications (that is, communications while driving) are generally considered to be very important with directed communications (that is, communications where the calling party specifically addresses the receiving party) being more important that non-directed communications (that is, communications where the calling party is looking, generally, for someone to talk with).

32. In its supplemental comments to this proceeding, GE presents extensive documentation of unmet public demand for communications services. That documentation is the result of a survey commissioned by GE and conducted by Opinion Research Corporation(a subsidiary of Arthur D. Little, Inc.) of Princeton, New Jersey. While GE's documentation is far too lengthy and involved to be reported here in any detail, there are some facts worth noting in the context of this proceeding. Of the respondents to the GE/ORC survey needing to communicate while in their vehicle, "87% of (the) respondents needing mechanical assistance were able to make the necessary communication * * * (b)ut only 42% who needed to report that they were in a traffic tie-up were successful in making required communications." Out of a group of typical situations that a driver might encounter where communications might be necessary, the respondents indicated that they were unable to make the required contact on somewhat less than half of the occasions. Furthermore, "(t)he survey showed that for those drivers who were able (to make) contact * * * 63.5% of the respondents had to find a public pay telephone to satisfy such requirements."

33. It is evident from the record of this proceeding that unfulfilled communications needs of the public do exist. Thus, the remaining question to be addressed is whether these needs can be met by existing or planned services. Of the three personal radio services, the CB service is, by far, the most popular. And while CB certainly provides a valuable non-directed communications service, its usefulness is limited by many factors: predominantly, lack of adequate spectrum and propagation characteristics that often subject users to an intolerable level of interference. Both the R/C and GMRS services suffer from the same problems of congestion and, in apparent recognition of this fact, virtually none of the commenters in this proceeding identified expansion or modification of any of the current personal radio services as a means of meeting the public's communications requirements. Furthermore, cellular mobile telephone service was not suggested in the comments as a solution to meeting these requirements. In sum, the bulk of the comments identified a further need for personal communications and identified a new radio service as the only adequate vehicle to meet that need.

34. The Commission is persuaded by the record of this proceeding that the question of a new radio service, primarily one that will provide for directed communications from vehicles at a cost the average person can afford, merits further consideration. As a result of these findings, the Commission will, today, initiate a new proceeding looking toward the establishment of an additional radio service to meet the needs identified in this proceeding. We plan to address the remaining unresolved questions involved in the establishment of a new radio service in the new proceeding.

35. Accordingly, it is ordered that this proceeding is terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 83-7294 Filed 3-22-83; 8:45 am]

BILLING CODE 6712-01-M

[9] Final Report, Implementation of User Demand and Satisfaction Model for Personal Radio Services, December 1977, Advanced Research Resources Organization.

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47 CFR Part 2

[General Docket No. 82-243; FCC 83-15]

Allocation of 6 MHz to the Government and Non-Government for Fixed Service Usage

AGENCY: Federal Communications Commission.

ACTION: Further notice of proposed rule making.

SUMMARY: The FCC proposes to allocate the frequency bands 932–935 MHz, paired with 943–946 MHz for fixed services to be shared on a co-equal, co-primary basis between Government and non-Government users. The FCC previously issued a Notice of Proposed Rulemaking in this Docket proposing to allocate the 899–902 MHz and 938–941 MHz bands for this purpose. However, a new personal radio service is now being proposed for the 898–902 MHz and 937–941 MHz bands, and this would preclude fixed service use of these bands. Accordingly, a change in frequency bands for fixed services is being proposed.

DATES: Comments must be received on or before June 10, 1983. Reply comments must be received on or before July 11, 1983.

ADDRESSES: Comments may be mailed to the Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Spectrum Planning Branch, Office of Science and Technology, Federal Communications Commission, Washington, D.C. 20554, (202) 653–8169.

List of Subjects in 47 CFR Part 2

Communications equipment, Radio, Frequency allocations.

Further Notice of Proposed Rule Making

Adopted: January 20, 1983.
Released: March 14, 1983.

In the matter of Amendment of Part 2 of the Commission's Rules to provide for an allocation of 6 MHz to the Government and the non-Government for fixed service usage; Gen. Docket No. 82-243.

By the Commission: Commissioners Quello and Rivera concurring and issuing a joint statement; Commissioner Fogarty absent; Commissioner Jones concurring in the result; Commissioner Dawson issuing a separate statement.

1. On May 10, 1982, the Commission released a *Notice of Proposed Rule Making* (*Notice*) in this proceeding, which proposed to reallocate 6 MHz of spectrum from the remaining 41 MHz of land mobile reserve in the 900 MHz range to a Government and non-Government fixed service.[1] On May 18, 1982, an *Erratum* was released, correcting one of the two proposed frequency bands to be used.[2] As modified, the proposed bands are 899–902 MHz and 938–941 MHz.

2. The proceeding was initiated when the National Telecommunications and Information Administration (NTIA) advised the Commission of a Federal Government requirement for additional spectrum for low capacity fixed systems. The notice concluded that using spectrum outside of the 900 MHz range for these requirements was not feasible, and that a 900 MHz allocation was therefore necessary. The notice also stated that a 900 MHz allocation could be shared between Government and non-Government fixed services. Accordingly, the 932–935 MHz and 938–

[1] 47 FR 23491.
[2] 47 FR 23495.

941 MHz bands were proposed for this type of use. Comments were requested as to what types of fixed services could most suitably share the proposed allocation, with the feasibility of Aural Broadcast Studio-to-Transmitter Link (STL) and Intercity Relay station (ICR) usage specifically mentioned. Comments were also requested as to any other alternatives to the proposed allocation, and as to what procedural and technical rules should be promulgated.

3. The *Erratum* in this proceeding changed the lower band to be used from 932–935 HHz to 899–902 MHz, due to concern about potential interference problems in Canadian border areas if 932–935 MHz were used. Shortly before the notice was adopted, it was learned that a (mobile) General Radio Service in the 933–935.5 MHz band was being considered in Canada, and it was a concern that fixed usage in the 932–935 MHz band in the United States would present compatibility problems. The lower band was therefore moved to 899–902 MHz to ensure compatibility with Canada. However, this change was inadvertently not incorporated into the notice; hence the need for the *Erratum*.

4. A total of nineteen parties filed comments and/or reply comments to the notice. Of these, eight generally favored the reallocation while eleven generally opposed it. The eight who favored it cited a need for additional spectrum for fixed services, while the eleven who opposed it stated that a need for another fixed service band had not been made. Those who opposed the service also maintained that even if there were a need for an additional fixed service band, it should be satisfied elsewhere in the spectrum. Parties also commented on the procedural and technical rules which should be promulgated.

5. Based upon the information available to us at this time, we conclude that should we ultimately accommodate the proposed fixed service there is no better alternative to the 900 MHZ land mobile reserve bands for this purpose. However, owing to the overall needs of national spectrum utilization, we are herein proposing that the new bands to be used for fixed services be changed from 899–902 MHz and 938–941 MHz to 932–935 MHz and 943–946 MHz. This proposed change stems from two other proposals we are making today. In General Docket No. 83–30, we are proposing to reallocate the 896–898 MHz and 941–943 MHz bands for a public air-to-ground telephone service. In General Docket No. 83–26, we are proposing to reallocate the 898–902 MHz and 937–941 MHz bands for a personal radio service. This latter proposal would preclude fixed service use of the 899–902 MHz and 938–941 MHz bands; however, we are proposing the change to accommodate the frequency separation required in the envisioned personal radio service. This information was not available at the time of the notice in this proceeding. We are therefore proposing that the lower band to be used for fixed services be placed where originally proposed in the notice—at 932–935 MHz—and that the upper band be placed just above the upper air-to-ground band—at 943–946 MHz. However, comments are also requested on the impact this proposal will have on the traditional frequency separation of 45 MHz for two-way mobile services.

6. This proposed change in frequency bands to be used for fixed services is not without its difficulties. By changing the lower band to be used to 932–935 MHz, we are risking compatibility problems with Canada, as was made clear in the *Erratum*. However, we now believe that should we ultimately accommodate the fixed service proposal this is an acceptable risk, since it is uncertain whether Canada will implement a general mobile radio service in the 933–935.5 MHz band. Furthermore, even if this service is implemented, it appears possible to avoid major incompatibility problems through careful engineering and coordination with the Canadians.

7. Changing the upper band proposed for fixed services to 943–946 MHz also presents potential problems, since the 942–947 MHz band is currently used by STL and ICR stations on a secondary basis to the primary land mobile radio service. However, we note that in General Docket No. 82–335, we have proposed to move the approximately 500 STL and ICR licensees at 942–947 MHz to the 2130–2150 MHz and 2180–2200 MHz bands over a five year period.[3] Also, as mentioned in the notice, we believe that sharing may be possible between STL and ICR stations and the types of services that will use the new fixed bands.

8. We solicit comments regarding the proposed change in frequency bands for fixed service use, as shown in the Appendix, particularly with respect to any compatibility problems it may pose in Canadian border areas, and its impact on STL and ICR licensees. In this regard, we are especially interested in the feasibility of permitting Government and non-Government operational fixed use of the 943–946 MHz band, while allowing existing STL and ICR licensees to remain. We also solicit comments on the feasibility of applying Part 94 frequency coordination procedures and technical standards to the proposed new fixed bands. Parties who oppose using Part 94 coordination procedures and/or technical standards should provide specific descriptions of procedures and/or standards they would use. These comments will be considered along with those submitted in response to the notice before a final decision is made in this proceeding.

9. We note that with this action three proposals are now before the public for comment—proposals which would consume a total 18 MHz of the 21 MHz of reserve spectrum between 896–947 MHz. These bands have been considered to be reserved to meet land mobile spectrum requirements. It is our intention to consider these proposals in a coordinated manner prior to making final decisions on any of them. Moreover, while we are proposing this action of 932–935 MHz and 943–946 MHz for the new fixed bands, we would welcome public comment as to whether this choice is optimum, or whether other frequencies within this band, or another band altogether, shoud be selected for this purpose. In providing comment on this point, attention should be given to all three pending proposals for use of the 896–947 reserve bands.

10. Finally, we would note that more and more spectrum demands are being made by both Government and non-Government users. It would be helpful in our evaluation if we had additional information regarding the Government's specific needs. We are aware that Congress has expressed its concern for such matters by asking NTIA to study the Government's use and management of radio spectrum. We invite comment on whether we should make a final decision on this item while NTIA makes its study.

11. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments)

[3] *Notice of Proposed Rule Making*, released July 2, 1982, 47 FR 31170. Only about 150 of the 500 licensees use the 943–946 MHz band. The other licensees use either 942–943 MHz or 946–947 MHz. If the upper band to be used for fixed services were changed to 944–947 MHz, approximately 400 licensees would be affected.

between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's Rules.

12. Pursuant to Section 605 of the Regulatory Flexibility Act of 1980, Pub. L. 96-354, we find that the proposed action herein would not have, if adopted, a significant economic impact on a substantial number of small businesses. It does not propose to displace anyone assigned to any of the bands being considered in this proposal.[4] The allocation proposed herein would only provide additional spectrum for low-capacity fixed systems. Moreover, since the bands proposed for allocation are presently being held in reserve for land mobile, the allocation, if adopted, would not have any impact on small businesses currently using mobile radio. However, the extent of impact in the future due to increased demand for spectrum from land mobile users is unknown.

13. Authority for issuance of this Notice is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended. Pursuant to procedures set out in Section 1.415 of the Rules, interested persons may file comments on or before June 10, 1983 and reply comments on or before July 11, 1983. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

14. In accordance with the provisions of § 1.419 of the Rules, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting 1 copy. All comments are given the same consideration regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters, Room 239, 1919 "M" Street, NW. in Washington, D.C.

15. For further information concerning this document, contact Rodney Small at (202) 653-8169.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

[4] As noted in paragraph seven, STL and ICR stations currently use the 942-947 MHz band on a secondary basis. However, we are proposing to shift these stations to higher bands, and there is no reason to believe that the proposals contained herein will force this shift to occur prematurely. In fact, as noted in paragraph eight, existing STL and ICR licensees may be allowed to remain at 943-946 MHz.

Appendix

Part 2 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 2—[AMENDED]

§ 2.106 [Amended]

1. In § 2.106, the Table of Frequency Allocations is revised for the band 896-946 MHz as follows:

United States		Federal Communications Commission				
Band (MHz)	Allocation	Band (MHz)	Service	Class of Station	Frequency (MHz)	Nature of services of stations
5	6	7	8	9	10	11
*	*	*	*	*	*	*
896-898	NG. (US 36), (US 100), (US 116).	896-898	LAND MOBILE	Base. Land Mobile.		DOMESTIC PUBLIC. (NG 12).
898-902	NG. (US 36), (US 100), (US 116).	898-902	LAND MOBILE			CITIZENS BAND LAND MOBILE PRIVATE RADIO COMMUNICATIONS SERVICE.
*	*	*	*	*	*	*
932-935	G, NG. (US 36), (US 116), (US 215).	932-935	FIXED	Operational Fixed.		
*	*	*	*	*	*	*
937-941	NG. (US 36), (US 116), (US 215).	937-941	LAND MOBILE			CITIZENS BAND LAND MOBILE PRIVATE RADIO COMMUNICATIONS SERVICE.
941-943	NG. (US 36), (US 116)	941-943	LAND MOBILE	Base. Land Mobile.		DOMESTIC PUBLIC. (NG 12)
943-946	G, NG. (US 36), (US 116).	943-946	FIXED	Operational Fixed.		

* * * * *

2. In the list of footnotes immediately following the table in § 2.106, footnote: US116 and NG 12 are revised to read as follows:

* * * * *

US116—In the bands 890–902 MHz, 928–932 MHz, and 935–943 MHz, and 946–947 MHz, no new assignments are to be made to Government radio stations after July 10, 1970 except on a case-by-case basis, to experimental stations and to additional stations of existing Networks in Alaska. Government assignments existing prior to July 10, 1970 to stations in Alaska may be continued. All other existing Government assignments shall be on a secondary basis to stations in the non-Government land mobile service and shall be subject to adjustment of removal from the bands 890–902 MHz, 928–932 MHz, 935–943 MHz, and 946–947 MHz at the request of the FCC.

* * * * *

NG 12—Frequencies in the bands 454.40–455 MHz, 459.40–460 MHz, 896–898 MHz for air-to-ground links and 941–943 MHz for ground-to-air links may be assigned to domestic public land and mobile stations to provide air-ground public radio-telephone service.

Concurring Statement of Commissioners Henry M. Rivera and James H. Quello

Re: Proposals to Allocate the 900 MHz Land Mobile Reserve Spectrum

We concur in the issuance of these three Notices of Proposed Rulemaking,[1] but not without considerable reservation.

Collectively, the Notices would dispose of 18 of the remaining 21 MHz of land mobile reserve spectrum.[2] The untutored commenter might reasonably infer from this substantial proposed allocation that the Commission has developed a record indicating that these are the wisest uses for this premium reserved spectrum. Unfortunately, that is not true. The Commission is even now attempting to evaluate in Docket 82–10 the adequacy of the land mobile reserve to meet the future needs of land mobile users. The Private Radio Bureau's initial estimate projects shortages of at least 40–50 MHz by the year 2000.[3] While the Commission has not yet endorsed the Bureau's estimate, it seems clear that unless a refined sense of priority is established, we may casually allocate this rapidly dwindling resource without adequate consideration.

Ordinarily, it is difficult to quarrel with the issuance of notices of proposed rulemaking. In this instance, however, it seems imprudent at best, and foolish at worst, to set this Commission and the public on a course requiring devotion of substantial resources to assess a plan whose feasibility is highly suspect, particularly in view of the existence of the Commission's ongoing inquiry and the staff's initial findings in Docket 82–10. It is especially unfortunate that our actions here may create public expectations for new services whose likely authorization is speculative in the extreme, at least in the bands identified. Finally, we have grave misgivings about allocating the land mobile reserve to services whose claim to being land mobile services is extremely weak in two cases, (personal radio communication service and air-to-ground), and entirely unsupportable in the case of NTIA's proposal.

The Private Radio Bureau's commitment to complete Docket 82–10 before the proceedings initiated by the subject Notices are completed has somewhat allayed our fears that the Commission may allocate this spectrum without full information. It would indeed be regrettable if we were forced to reallocate additional UHF spectrum because we had given away the land mobile reserve to these new services and were then faced with confirmation of the need projected in Docket 82–10's Interim Report.[4]

Turning to the particulars of these NPRMs, the Further Notice proposing government/non-government fixed service allocations at 932–35 MHz and 943–46 MHz proposes a "housekeeping" change of bands to make way for the proposed personal radio communication service. We do not view this proposal as strictly housekeeping. The new allocation is technically questionable because it may interfere with Canada's contemplated personal radio service and it would displace broadcast auxiliary users now operating on a secondary basis in parts of the proposed band. The spectrum proposed is further questionable because it embodies less than the 45 MHz separation ordinarily called for in the fixed service. Finally, it is unclear why this premium spectrum should be devoted to fixed operations, which can exist above 1 GHz, albeit at a higher cost.

As for the Notice proposing an air-to-ground service allocation at 896–898 MHz and 941–943 MHz, we question the wisdom of allocating part of the land mobile reserve to a service which is spectrally inefficient and probably of limited appeal due to its high cost.

Finally, with regard to the new personal radio communication service proposed for 898–902 MHz and 937–941 MHz, we are concerned about whether the PRCS is sufficiently distinct from existing services to warrant additional spectrum. It is not clear why, for example, the personal and business communications needs identified (the service is expressly designed for both purposes, *see* para. 77) cannot be satisfied by land mobile services, be they "private" or "common carrier". If there are persuasive reasons why this is so, then the decision boils down to whether there is a strong public desire (as opposed to a strong desire solely on GE's part) for a new, technically distinct, hybird personal service. We trust that the commenters will amplify the record on these issues.

Even if the PRCs should be authorized, it is still questionable whether it should occupy spectrum in the land mobile reserve. If the service can go far toward satisfying future land mobile requirements, then it would be reasonable to authorize its operation in that reserve. If such a new service cannot be counted on to meet future land mobile needs, then its claim to the land mobile reserve is wholly unwarranted and highly objectionable.

The issues raised by these NPRMs underscore the crying need for this Commission to place greater emphasis on spectrum management. Fair and efficient division of the spectrum between various services is becoming more important daily as the contest for spectrum multiply. How well and how wisely we accomodate competing spectrum demands will profoundly influence how well equipped we are to meet the telecommunications needs of the future. We do not know how the spectrum wars begun by the Notices will be finally resolved. But we are convinced that competing demands for spectrum will become increasingly common, the spectrum management must become a more highly prized activity at the FCC, and that our spectrum policies must be designed to encourage and reward the most up-to-date and efficient technology. If we do make this activity a top priority, the public will suffer the consequences for years to come.

Separate Statement of Commissioner Mimi Weyforth Dawson re: Reallocation of 900 MHz Reserve Spectrum

These three decisions present the classic dilemma in spectrum allocation: too much demand for too little spectrum.

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[1] *See* Notices of Proposed Rulemaking in Dockets 83–26 and 83–30 and Further Notice of Proposed Rulemaking in Docket 82–243.

[2] An additional 20 MHz of the land mobile reserve is tacitly set aside for the future growth of the cellular radio service.

[3] *See Future Private Land Mobile Telecommunications Requirements*, released August 1982. Even if, as some claim, the assumptions underlying this study are flawed, causing the projections to be off by as must as fifty percent, an unmet need of 20–25 MHz would still exist. Such a projection should indicate that it is ill-advised to consider allowing the reserve to be put to other than its intended use.

[4] We must see to it that the land mobile reserve is not drained away, leaving the UHF band as the only remaining alternative for land mobile operation. One need only recall how wrenching was the FCC's 1970 decision to reallocate UHF Channels 70–83 when the potential of UHF was not even fully recognized. By that 115 MHz reallocation—which was four times the amount of spectrum then allotted to land mobile services—the Commission intended to provide enough spectrum to meet land mobile's growth at least through the remainder of the 20th century. Now, barely a decade later, parties are aggressively moving to wrest additional spectrum from the UHF service.

The Commission would also do well to remember Congress' commitment, in the 1962 All-Channel Receiver Act, to the full development of UHF television and our own commitmenmt to that end. And, finally, we must be mindful of the possibility that reallocation of UHF channels can seriously diminish the potential for new service, competition, diversity, and ownership opportunities. Such consequences would seriously undermine important Commission goals.

Our present dilemma with these three decisions also takes place within an even larger dilemma with regard to the future needs of land mobile radio. The Commission anticipated in its findings in Docket No. 18262 that land mobile needs would be met through use of reserve spectrum. Yet, we are seeing this reserve spectrum chipped away and reallocated for other purposes. Meanwhile, in Docket 82-10, the Private Radio Bureau, which is investigating future land mobile needs, has stated that more than the available reserve spectrum will be required to meet land mobile requirements in the next decade. And, of course, strong battle lines are being drawn between the land mobile and broadcast services over any additional sharing by land mobile of the allocated UHF-TV spectrum.

Even from this brief outline, it is apparent that each of these decisions is interrelated and that the Commission should not proceed with the reallocation of land mobile reserve spectrum through insular, piecemeal actions. While each proposal may have merit standing alone, it is the Commission's responsibility to weigh the need for and adequacy of each proposed service. In this regard, I believe that it bodes well for our consideration of these and other spectrum demands that the Commission will consider these competing demands concurrently.

NTIA's Request for 6 MHz

NTIA has requested reallocation of 6 MHz in the 900 MHz band for low capacity fixed systems. This would be shared by government and non-government users. In my opinion we should not rule on this request until NTIA has responded to Congress' stated concern for the government's use and management of the spectrum. The Further NPRM invites comments on this issue. I would expect NTIA to inform us of its position and its efforts in this area.

In particular, I feel that NTIA bears some burden of demonstrating why commercial providers cannot be used to meet the needs which have resulted in NTIA's request to reallocate 6 MHz in the 900 MHz band. We require non-government users, in requests for additional frequencies, to make specific showings of need or to submit loading studies. Therefore, it seems reasonable to expect government users to provide specific showings that their requirements cannot be met through available sources. It may very well be the case that 6 MHz of the 900 MHz spectrum is needed and that it would have minimal impact on non-government users sharing the same spectrum. I am not prejudging whether government is or isn't efficiently using the spectrum, but the Commission needs a more detailed record to establish these facts.

GE's Proposal

The GE proposed "Personal Radio Communications Service" presents an interesting concept. However, I think we must evaluate the service in view of our past experience with Citizens Band Radio; indeed, if the service, through lower costs of units approaches the popularity of CB, the service may be considerably less useful than envisioned by GE. Likewise, the service may be too limited in range to be worthwhile. It must also be evaluated as to whether it is a complement to cellular or whether the service could be provided through existing services.

Air-Ground Telephone Service

The air-ground service cannot be provided through existing services, and my initial analysis is that this may be a valuable service.

However, I would perfer to take a hard look at both of the proposals before us and not rush to limit the technical capability of such a system. While technical parameters are not proposed, limiting the spectrum for this service to 4 MHz essentially rules out a more sophisticated system. In fact, the 4 MHz limitation might preclude hand-off capability and ground-initiated calls which may well be desirable features in such a service. In any event, I believe that we cannot make a reasoned decision on this service until we have the results of the authorized experimental tests.

I believe that this 900 MHz spectrum is such a valuable resource that it should not be left unused when it can be put to work for the public good. However, the Commission cannot hand it out on a first come-first served basis with no consideration of our spectrum management mandate. Therefore, it is imperative that commenting parties not only address the proposal of immediate interest, but that they also respond to any other competing demands for this spectrum.

Simply put, we need to look at this whole piece of spectrum and decide what we want to do with it. After we see the whole package, it may appear that there is a greater need for one service than another or that some different combination than that proposed is better. But, at this time I believe that the Commission needs a comprehensive view of the larger picture to make such a decision.

[FR Doc. 83-7294 Filed 3-22-83; 8:45 am]

BILLING CODE 6712-01-M

federal register

Wednesday
March 23, 1983

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Approval of the Permanent Regulatory Program Submission From the State of Alaska Under the Surface Mining Control and Reclamation Act of 1977

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 902

Approval of the Permanent Regulatory Program Submission From the State of Alaska Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: On July 23, 1982, the State of Alaska submitted to the Department of the Interior its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The purpose of the submission is to demonstrate the State's intent and capability to administer and enforce the provisions of SMCRA and the permanent regulatory program regulations, 30 CFR Chapter VII. This rule grants approval of the Alaska permanent regulatory program.

A new Part 902 is being added to 30 CFR Chapter VII to implement this decision.

EFFECTIVE DATE: This approval is effective May 2, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Abbs, Chief, Division of State Program Assistance, Program Operations and Inspection, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, South Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, Phone: (202) 343-5361.

SUPPLEMENTARY INFORMATION:

Availability of Copies.—Copies of the Alaska program and the administrative record on the Alaska program are available for public inspection and copying during regular business hours at:

Office of Surface Mining, Administrative Record Office, Room 5315, 1100 L Street, N.W., Washington, D.C. 20240

Wyoming Field Office, Office of Surface Mining, 935 Pendell Boulevard, Freeden Building, Mills, WY 82644

Division of Minerals and Energy Management, Department of Natural Resources, State of Alaska, 555 Cordova Street, Room 22, Anchorage, AK 99501, Attention: Patricia Garvin

Department of Natural Resources, Division of Geological and Geophysical Surveys, 230 South Franklin Street, Room 401, Juneau, Alaska 99801, Attention: Judy Seigler

Department of Natural Resources, Division of Energy and Minerals Management, 4420 Airport Way, Fairbanks, Alaska 99701, Attention: Glenn Miller

Background on the Alaska Program Submission

On July 23, 1982, OSM received a proposed regulatory program from the State of Alaska. The program was submitted by the Alaska Department of Natural Resources (DNR), the agency which will be the regulatory authority under the Alaska permanent program. Notice of the receipt of the submission initiating the program review was published in the **Federal Register** on August 3, 1982 (47 FR 33520-33522), and in a newspaper of general circulation within the State. The announcement noted information for public participation in the State program review process. On September 24, 1982, OSM held a public hearing on the Alaska submission in Anchorage, Alaska.

By letter dated December 13, 1982, the DNR submitted amendments to the program submission which contained:

1. Final regulations implementing the Alaska Surface Coal Mining Control and Reclamation Act;
2. A Supplemental Narrative, describing State policy in regard to certain issues raised by OSM and the public;
3. Two State Attorney General's opinions; and
4. Draft regulations showing changes to the State rules submitted in July 1982.

On December 27, 1982, OSM published notice in the **Federal Register** (47 FR 57511), that these amendments to the Alaska permanent program submission were available for public review and comment.

Public disclosure of comments by Federal agencies was made on February 8, 1983 (48 FR 5763). The Administrator of the Environmental Protection Agency has transmitted her written concurrence on the Alaska Program.

The Director recommended to the Secretary that the Alaska program be approved.

This notice consists of the basis and purpose statement for the Secretary's decision to approve Alaska's program. The Alaska program consists of the formal submission of July 23, 1982 (Administrative Record No. AK-1), as amended by letter, dated December 13, 1982, (Administrative Record Nos. AK-19-21) and by letter, dated January 11, 1983 (Administrative Record No. AK-26).

Throughout the remainder of this notice, "Alaska Program" or "Alaska submission" is used to mean the documents cited above.

The Secretary's Findings below are organized to follow the order set forth in Section 503 of SMCRA and 30 CFR 732.15, respectively. These sections specify the findings which the Secretary must make before he may approve a regulatory program.

Secretary's Findings

Section 503(a)

In accordance with Section 503(a) of SMCRA the Secretary finds that Alaska has the capability to carry out the provisions of SMCRA. Findings made in accordance with Section 503(a) of SMCRA are set forth in Findings 1 through 7 below:

Finding 1

The Secretary finds that Alaska has laws which provide for the regulation of surface coal mining and reclamation operations on non-Indian and non-Federal lands in Alaska in accordance with SMCRA. The issues underlying this finding are analyzed in the findings below.

Finding 2

The Secretary finds that Alaska has laws which provide sanctions for violations of State laws, regulations or conditions of permits which meet the minimum requirements of SMCRA. The issues underlying this finding are analyzed in Finding 19 below.

Finding 3

The Secretary finds that the State regulatory authority will have sufficient administrative and technical personnel and sufficient funding to enable the State to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA. Refer to Finding 30 for further discussion.

Finding 4

The Secretary finds that the State has laws which provide for effective implementation, maintenance and enforcement of a permit system meeting the requirements of SMCRA. The issues underlying this finding are analyzed in Finding 14 below.

Finding 5

The Secretary finds that the State has adequate processes for the designation of lands unsuitable for surface coal mining. Significant issues discovered during the review of Alaska regulations corresponding to Federal regulations developed pursuant to Section 522 of SMCRA are discussed under Finding 21, below.

Finding 6

The Secretary finds that the State has an adequate process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with all of the Federal and State permit processes applicable to the proposed operations. Significant issues discovered during the review of Alaska regulations corresponding to the Federal regulations on permitting are discussed under Finding 14, below.

Finding 7

The Secretary finds that the State has rules and regulations which are no less effective than 30 CFR Chapter VII. The issues uncovered in the review of the State's rules and regulations are discussed under various findings and the public comment section, below.

Section 503(b) of SMCRA Findings

As required by Section 503(b)(1)–(3) of SMCRA, and 30 CFR 732.11–732.13, the Secretary has, through OSM, fulfilled the requirements set forth in Findings 8 through 10 below:

Finding 8

The Secretary has solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture and the heads of other Federal agencies concerned with or having special expertise pertinent to the Alaska program.

Finding 9

The Secretary has obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of the Alaska program which relate to air or water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1151–1175), and the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.).*

Finding 10

The Secretary has met the requirement to hold at least one public hearing in the State by having held a public hearing on the submission in Anchorage, Alaska on September 24, 1982.

Finding 11

In accordance with Section 503(b)(4) of SMCRA, the Secretary finds that Alaska has the legal authority and sufficient qualified personnel to enforce the environmental protection standards in accordance with SMCRA.

30 CFR 732.15 Findings

In accordance with 30 CFR 732.15, the Secretary makes Findings 12 through 30 below on the basis of information in the Alaska program submission, public comments and testimony, written presentations at the public hearing and other relevant information within the administrative record.

Finding 12

In accordance with 30 CFR 732.15(a), the Secretary finds that the program provides for the State to carry out the provisions and meet the purposes of SMCRA. State regulations and narrative descriptions are discussed in Findings 13 through 30. The issues underlying this finding are analyzed in the findings discussed throughout this **Federal Register** notice.

Finding 13

In accordance with 30 CFR 732.15(b)(1), the Secretary finds that the Alaska program submission demonstrates that the Alaska DNR can implement, administer and enforce all applicable requirements of Subchapter K of 30 CFR Chapter VII under existing authorities in Alaska laws, regulations and descriptive elements of the program submission. Alaska incorporated provisions of 30 CFR Chapter VII, Subchapter K, in articles 6, 7, and 10 of the State regulations. Alaska's description of its system to administer and enforce the performance standards, found in the narrative in Section 4, Part F entitled, "Administering and Enforcing Performance Standards", is found acceptable. Significant issues discovered during the review of the Alaska program corresponding to Subchapter K of 30 CFR Chapter VII are as follows:

13.1 11 Alaska Administrative Code (AAC) 90.085 addresses the protection of hydrologic balance. Subsection (b)(2) references, "the limits on pollutants in discharges subject to 11 AAC 90.323." The State rule at 11 AAC 90.323 does not include water quality effluent limitations such as those found in the comparable Federal regulation at 30 CFR 816.42(a)(7). In response to OSM concerns, the State has amended 11 AAC 90.323(a) to require that all discharges of water from underground workings to surface water and all surface drainage from the disturbed area must be passed through sedimentation ponds or a treatment facility before leaving the permit area unless the commissioner of DNR finds that impractical conditions, such as permafrost or ice-covered ponds, will be present and that the drainage will meet the applicable State and Federal water quality laws and regulations without treatment. Also, in the Supplemental Narrative the State verifies that 11 AAC 90.009(a) makes it clear that operators must comply with laws and regulations of any Federal, State or local government agency, which includes applicable Federal and State water quality standards. Further, by letter, dated January 11, 1983, Alaska specifically states that it interprets 11 AAC 90.321(c) to require operators to comply with the effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency at 40 CFR Part 434.

In the Supplemental Narrative, Alaska explains that sedimentation ponds and other surface disturbances may cause more environmental damage than protection in permafrost areas. This is because ponds may cause melting of the permafrost, resulting in a disturbance that will create an unstable land mass which might become fluid. Such land mass would be difficult to control, and would hinder revegetation efforts. Similarly, if sedimentation ponds are covered with ice at the time of highest runoff in the spring, there will be no storm water retention and high flows will cause more environmental damage if the structure is overtopped. The commissioner may only waive the sedimentation pond or treatment requirement: (1) Where these conditions are present, *and* (2) where the applicable State and Federal water quality standards will be met. See the SMCRA Section 708 study, Committee on Alaskan Coal Mining and Reclamation *et. al.*, Surface Coal Mining in Alaska (1980) (the Section 708 study), finding 2, page xxi; sections 3.1.2, 3.1.4.5.3, and 5.2.8.2.2; pages 222–6; Appendix A, pages 258–9, 265 and 267.

On these bases, the Secretary finds that 11 AAC 90.085 and 90.323 are no less effective than 30 CFR 816.42(a)(7).

13.2 11 AAC 90.149(d), unlike 30 CFR 785.19(d), provides the commissioner with authority to exempt an applicant from submitting information regarding an alluvial valley floor if the alluvial valley floor has no history of farming or is not subirrigated. In the Supplemental Narrative, Alaska states that flood irrigation is not a practice used in the Alaska agriculture industry. Further, the requisite information would be required except to the extent that the commissioner can make the necessary findings regarding the need for alluvial valley floor protections without the exempted information. On this basis, the Secretary finds 11 AAC 90.149(d) to be no less effective than 30 CFR 785.19(d).

13.3 11 AAC 90.391, regarding excess spoil, allows for flexibility in requirements for underdrains and topsoil removal. This flexibility generally gives the commissioner the discretion to waive the requirements because of unique climatic conditions. Underdrains and topsoil removal could cause melting of permafrost. In addition, in certain areas underdrains may become frozen and rendered useless. Similar discretion is provided in 11 AAC 90.331, regarding sedimentation ponds (See Finding 13.1, above). There is no such discretion in the comparable Federal regulations.

In addition to the discussion of sedimentation pond discretion in Finding 13.1, above, Alaska states, in the Supplemental Narrative, that under the topsoil provisions, the commissioner may waive removal of topsoil only if light traffic does not destroy existing vegetation or cause erosion, or if removal of topsoil threatens environmental harm due to permafrost melting or other environmental conditions. This is because removal of the insulating layer in permafrost areas would increase thawing and erosion. See the same citations to the SMCRA Section 708 study as in Finding 13.1, above.

Under 11 AAC 90.391, the underdrain system and filter are required unless the commissioner finds that the regulatory requirements for stability and minimization of water pollution will be met otherwise. Such a provision is necessary because of the very common occurrence in Alaska of extreme wet weather conditions and periods of extreme cold.

Also, in 11 AAC 90.391(m), the analogue to 30 CFR 816.72(b), sandstone and shale are much less common in Alaska than glacial boulders, generally of igneous or metamorphic rock, which would be superior for the construction of spoil underdrains. Igneous and metamorphic rock are very hard and much more durable than sandstone and shale. Accordingly, the State has specified that design and construction be according to the best geotechnical engineering practice to be determined by the commissioner on a case-by-case basis.

Based on these facts, the Secretary finds 11 AAC 90.391 to be no less effective than 30 CFR 816.71 and 817.71, and 11 AAC 90.331 to be no less effective than 30 CFR 816.46 and 817.46.

13.4 In AAC 90.451(b)(2) Alaska uses the term, "seasonal characteristics of the original vegetation," rather than, "seasonal variety native to the area," as in 30 CFR 816.111(b)(1), in referring to the major season of growth for herbaceous species. In the Supplemental Narrative, Alaska states that it uses the former term because of its greater clarity; That term appears in the legislative history of SMCRA at H. Rep. No. 95–218, 95th Cong., 1st Sess. 106 (1977). These forms are functionally equivalent. On this basis, the Secretary finds 11 AAC 90.451(b)(2) to be no less effective than 30 CFR 816.111(b)(1).

13.5 At 11 AAC 90.457(d)(1), in referring to the period of responsibility under the performance bond requirements for the standards for revegetation success, the State requires the approved success standard to be met during the growing season of the last two years of the responsibility period, *not including the year of establishment*. The State explains in the Supplemental Narrative that the period of responsibility begins after the last year of augmented seeding, fertilizing, irrigation or similar work, and begins again whenever such work is conducted. The subsections of 11 AAC 90.457 require the same five and ten year periods of responsibility as in 30 CFR 816.116, and require that the success standard be met during the growing season of the last year of the responsibility period. The subsections also state that the two year period for meeting the success standard may not include the year of establishment. The meaning of the term, "establishment" varies for each species, and would be determined on a site-specific basis considering particular plants and local conditions. On this basis, the Secretary finds 11 AAC 90.457(d)(1) to be no less effective than 30 CFR 816.116.

13.6 The Alaska program contains no regulations which specifically apply to underground mines, and no general statute or regulation which applies surface mining rules to underground mines. 11 AAC 90.901(a) makes the State's surface mining rules applicable to all "coal exploration and surface coal mining and reclamation operations." The definitions of "surface coal mining and reclamation operations" and "surface coal mining operations" are found at Alaska Statute (AS) 41.45.998 (16) and (17), and include the surface impacts of underground mines. Further, in the side-by-side comparison of Federal Surface Mining Regulatons and proposed Alaska Surface Mining Regulations, in Section 2 of the State's submission, the State gives some general guidance to reviewers of the regulations. In item No. 4 of this guidance, it is stated that several sections of the Federal regulations were combined in the Alaska rules, and that this is generally true throughout for surface and underground application requirements and performance standards. On these bases, the Secretary finds that all the requirements for underground coal mines which are contained in SMCRA and the Federal regulations are applicable in Alaska, and that the Alaska program therefore is consistent in this area with SMCRA and the Federal Regulations.

Finding 14

In accordance with 30 CFR 732.15(b)(2), the Secretary finds that the Alaska program demonstrates that the Alaska DNR can implement, administer, and enforce a permit system consistent with Subchapter G of 30 CFR Chapter VII. The description of the permit system is found in the narrative entitled, "Permitting Systems." The permit system descriptions are acceptable. Alaska incorporated provisions of 30 CFR Chapter VII, Subchapter G, in articles 1–7 of the State regulations. Significant issues discovered during the review of the Alaska program corresponding to Subchapter G of 30 CFR Chapter VII are as follows:

14.1 11 AAC 90.079 states that applicable State and Federal air quality regulations must be complied with while 30 CFR 784.26 specifically references 30 CFR 816.95 (air resources protection) and identifies specific elements of a fugitive dust control plan. In the Supplemental Narrative, Alaska States that, as a matter of drafting philosophy, the State has tried to eliminate counterparts to Federal regulations which merely require adherence to other regulations in the program. Also, the State has avoided specific references to other applicable regulations so that the State would not have to change its surface mining regulations every time other, relevant regulations are revised. Alaska interprets the phrase, "applicable federal and state air quality regulations," to refer both to 11 AAC 90.421, regarding air resources protection, and to other agencies' applicable air quality regulations. On this basis, the Secretary finds 11 AAC 90.079 to be no less effective than 30 CFR 784.26.

14.2 11 AAC 90.045(b)(5) does not require analysis for pyrite and marcasite in the information to be supplied as part of the permit application as is required in 30 CFR 779.14(b)(1)(v) and 783.14(a)(2)(iv). Instead, the State rule requires analysis for total sulfur content. High sulfur coal and acid mine drainage are not common in Alaska. For this reason, the conditions existing within the State do not justify the additional analysis to distinguish the exact forms of sulfur present. Total sulfur analysis

will include the pyrite and marcasite forms of sulfur and indicate whether a potential for acid production exists. If such a potential exists, the State can require additional analysis under 11 AAC 90.045 to ensure that the requirements to protect the hydrologic balance are met. On this basis, the Secretary finds 11 AAC 90.045(b)(5) to be no less effective than 30 CFR 779.14(b)(1)(v) and 783.14(a)(2)(iv).

14.3 11 AAC 90.075(b), regarding blasting plans, does not require a description of unavoidable hazardous conditions as in 30 CFR 780.13(f). In the Supplemental Narrative, the State asserts that such conditions, by their nature, cannot be accurately predicted. Further, 11 AAC 90.375(d) requires that residents within one-half mile of the site be notified in advance of unscheduled blasts. 30 CFR 816.65(b) allows blasting in unavoidable hazardous situations without such advance notice. On this basis, the Secretary finds the Alaska program to be no less effective than 30 CFR 780.13(f).

14.4 11 AAC 90.045(e) allows an applicant to request and the commissioner to waive some of the permit application requirements regarding the geology description upon a written determination that the requirement is unnecessary because other equivalent information is available. 30 CFR 783.14(b) provides a similar waiver, but not for the geology for those surface lands within the proposed permit area which are underlain by the coal seam to be extracted and, in subsection (a)(2), the geology of the coal seam itself. The Secretary does not believe that Alaska's broader waiver provision is unreasonable as these portions of the application may be inappropriate in the State because of climate and remoteness. Therefore, the Secretary finds 11 AAC 90.045(e) to be no less effective than 30 CFR 783.14(b).

14.5 11 AAC 90.073(b)(2) does not specifically require dates for beginning and completing interim steps of the compliance plan for each existing structure proposed to be modified or reconstructed as in 30 CFR 784.12(b)(2). The State requires a specific schedule, however, in these instances, and such a schedule would include interim steps. The Secretary, therefore, finds 11 AAC 90.073(b)(2) to be no less effective than 30 CFR 784.12(b)(2).

14.6 11 AAC 90.089(a)(2) does not specifically require a map as part of the reclamation plan as in 30 CFR 784.16(a)(1)(ii). The State uses the more general term "plan" to include a map. The plan in this State rule will be certified by a professional engineer. Therefore, the Secretary finds 11 AAC 90.089(a)(2) to be no less effective than 30 CFR 784.16(a)(1)(ii).

Finding 15

In accordance with 30 CFR 732.15(b)(3), the Secretary finds that the Alaska Program demonstrates that the Alaska DNR can regulate coal exploration consistent with 30 CFR Parts 776 and 815. Alaska has incorporated the provisions of 30 CFR Parts 776 and 815 into Article 7 of the State regulations. The narrative description of the State systems is found in Section 4, Part A and Section 5, Part A. Significant issues underlying this finding are as follows:

15.1 30 CFR 815.15 (c)(4), (d) and (i) require that certain actions be taken "promptly" after completion of coal exploration activities: Existing roads are to be reclaimed; excavations, artificial flat areas or embankments created during exploration are to be returned to the approximate original contour (AOC); and, with certain exceptions, facilities and equipment are to be removed. 11 AAC 90.167(f)(3) requires restoration of the road, trail, runway or marine facility after exploration and other reclamation activities are completed. 11 AAC 90.167(g) states that roads, trails, runways, and marine facilities constructed or significantly altered must comply with 11 AAC 90.491, which contains the standards for the construction and maintenance of roads, transportation and support facilities and utility installations. 11 AAC 90.167(h) requires that excavations, artificial flat areas, or embankments created during exploration be returned to AOC when no longer needed. 90.167(m) requires, with certain exceptions, that all facilities and equipment be removed when no longer needed.

In the Supplemental Narrative, Alaska explains that in drafting its regulations, it believed that the word "promptly" added nothing substantively to the Federal requirements. Each of the State counterparts requires compliance with the appropriate performance standard at the appropriate time in exploration activity. That is the intention of phrases like "when no longer needed" and "after exploration and reclamation activities are completed." The commissioner will need to approve the timetable and methods for reclamation which are submitted under 11 AAC 90.163(2). It should also be noted that compliance with the approved schedule and reclamation methods would be required for complete release of the performance bond which may be required under 11 AAC 90.167(b). On this basis, the Secretary, finds 11 AAC 90.167 to be no less effective than 30 CFR 815.15.

15.2 11 AAC 90.167(k) does not state that the best technology currently available be used to prevent contribution of additional suspended solids to stream flow as in 30 CFR 815.15(g)(2). 11 AAC 90.167(k) does provide, however, that except for small and temporary diversions of overland flow of water around new roads, runways, marine facilities, drill pads and support facilities, no ephemeral, intermittent or perennial stream may be diverted. The rule further provides that overland flow must be directed in a manner that prevents erosion and complies with all other applicable State laws and regulations. The Secretary, therefore, finds 11 AAC 90.167(k) to be no less effective than 30 CFR 815.15(g).

15.3 11 AAC 90.167(a), unlike 30 CFR 776.15(a), provides that certain coal exploration bonding and performance standards may be waived if a written finding is made that these requirements will be superseded by subsequent, permitted operations. In the Supplemental Narrative, Alaska asserts that the State provision is intended to address the situation where an approved coal exploration operation is to be converted into a surface mining operation through approval of a permit application. It may not be practical in the remoteness of Alaska and its unique circumstances to require reclamation of a road or other surface facility when the operator is seeking approval for the use of such a facility under the surface mining permit, and the facility meets the requirements of the performance standards. The commissioner has discretion to waive requirements of the performance standards in the case of a superseding surface mining permit. The State asserts that the commissioner would not waive performance standard requirements where his or her action would threaten environmental harm. The commissioner will make a timely decision on whether to approve the superseding permit application.

Further, in its final rule the following sentence has been added to 11 AAC 90.167(a): "The commissioner will, in his or her discretion, impose additional performance standards to minimize environmental damage if the particular type of exploration activity requires them". In a State Attorney General's opinion, dated December 13, 1982, the State concludes the commissioner may lawfully impose such additional performance standards. It should also be noted that the State regulation is more stringent than the Federal regulation in allowing the commissioner to require a

performance bond for exploration activities. On these bases, the Secretary finds the Alaska program to be no less effective than 30 CFR 776.15(a).

Finding 16

In accordance with 30 CFR 732.15(b)(4), the Secretary finds that the Alaska program demonstrates that the Alaska DNR can regulate the extraction of coal incident to government-financed construction consistent with 30 CFR Part 707. State regulations and law consistent with 30 CFR Part 707 are found in Article 14 of the State regulations and AS 41.45.910(3).

Finding 17

In accordance with 30 CFR 732.15(b)(5), the Secretary finds that the Alaska program demonstrates that the Alaska DNR can enter, inspect and monitor all coal exploration and surface coal mining and reclamation operations consistent with Section 517 of SMCRA and Subchapter L of 30 CFR Chapter VII. Provisions of 30 CFR Chapter VII, Subchapter L are incorporated in Article 11 of the State regulations. The description of the State's inspection system is found in Section 4, Part D, of the narrative, entitled, "Inspection and Monitoring." Significant issues discovered during the review of the Alaska program corresponding to Subchapter L of 30 CFR Chapter VII are as follows:

17.1 AS 41.45.230(b) uses the word "may" instead of "shall" in describing permittee recordkeeping requirements as in SMCRA Section 517(b). The State has asserted in the Supplemental Narrative that no specific recordkeeping requirement in the Federal regulations has been eliminated in the Alaska program, and OSM has not been able to discover any such omission. On this basis, the Secretary finds the Alaska program to be consistent with SMCRA Section 517(b).

17.2 11 AAC 90.601(a) allows aerial inspections as partial inspections, but does not include statements that: (1) potential violations must be investigated on-site within 3 days, and (2) such on-site investigations do not constitute separate inspections as in 30 CFR 840.11. The State has assured OSM that potential violations will be investigated on-site as conditions warrant. In the Supplemental Narrative, Alaska states that the primary reasons for aerial inspections are the remoteness of many potential coal mining sites from established transportation facilities and the possibility of severe weather which may preclude on-site inspections, particularly during the winter months. Certain partial inspections can be completed without on-site visits, and certain types of violations can and will be cited solely from aerial inspections. Further, on-site follow-up investigations of potential violations observed during aerial inspections will not constitute separate inspections for purposes of fulfilling the requisite number of inspections. On these bases, the Secretary finds the Alaska program to be no less effective than 30 CFR 840.11.

17.3 11 AAC 90.607 omits confidentiality of the identity of a citizen who supplies information relating to a possible violation. In the Supplemental Narrative, the State asserts that its rule requires the State to take action even if the citizen complaint is unsigned. The State also agreed to advise citizens filing complaints that their identities will become a matter of public record if they sign the complaints. On this basis, the Secretary concludes that 11 AAC 90.607 is no less effective than 30 CFR 842.12 (b) and (e).

Finding 18

In accordance with 30 CFR 732.15(b)(6), the Secretary finds that the Alaska program demonstrates that DNR can implement, administer and enforce a system of performance bonds and liability insurance consistent with the requirements of Subchapter J or 30 CFR Chapter VII. Provisions of 30 CFR Chapter VII, Subchapter J are incorporated in Article 9 of the State regulations. The description of the proposed system for bonding and insurance is located in Section 4, Part C of the narrative entitled, "Bonding and Insurance."

Finding 19

In accordance with 30 CFR 732.15(b)(7), the Secretary finds that the Alaska program demonstrates that the State has sufficient provisions for civil and criminal sanctions for violations of the law, regulations, and conditions of permits and exploration approvals consistent with Section 518 of SMCRA. Regulatory provisions related to Section 518 SMCRA are found in Article II of the State regulations. The State's system for implementing these sanctions is described in Section 4, Parts E–G of the narrative entitled, "Administrative, Civil and Criminal Sanctions," "Administering and Enforcing Performance Standards," and "Assessment and Collection of Civil Penalties." Significant issues discovered during the review of the systems and regulations pursuant to SMCRA Section 518 are as follows:

19.1 11 AAC 90.629(b) omits the statement in 30 CFR 845.18(b)(1) that failure to hold an assessment conference within 60 days shall not be grounds for dismissal of an assessment unless actual prejudice is proved. The State argues in the Supplemental Narrative that this provision grows out of OSM's experience in handling hundreds of penalty assessments through a system which has an organization consisting of field offices and centralized assessment personnel. In Alaska there is currently only one operating mine, and no more than two employees would be involved in penalty assessments. Accordingly, the State will easily be able to hold an assessment conference within the 60 day period. On this basis, the Secretary finds 11 AAC 90.629(b) to be the same or similar to 30 CFR 845.18(b)(1).

19.2 11 AAC 90.631 does not contain the statement that the fact of a violation may not be recontested at a subsequent hearing on the proposed civil penalty assessment as in 30 CFR 845.19(a). Under the Alaska program, there will be no opportunity for separate hearings on the fact of the violation and the amount of the penalty proposed to be assessed. Both issues will be determined in one administrative hearing (See Supplemental Narrative, major concern 13). On this basis, the Secretary finds the Alaska program to be the same or similar to 30 CFR 845.19(a).

Finding 20

In accordance with 30 CFR 732.15(b)(8), the Secretary finds that the Alaska program demonstrates that the State can issue, modify, terminate and enforce notices of violation, cessation orders and show cause orders in accordance with Section 521 and Subchapter L of 30 CFR Chapter VII. Provisions of 30 CFR Chapter VII, Subchapter L are incorporated in Article 11 of the State regulations. The description of the State's system for issuing enforcement notices is contained in Section 4, Part F entitled, "Administering and enforcing performance standards." One issue raised during the review of the Alaska program is analyzed as follows:

20.1 11 AAC 90.623 omits the statement that inability to comply cannot be considered in pattern of violations cases as in 30 CFR 843.18(b). The State rule also omits the phrase "unless caused by lack of diligence," as in 30 CFR 843.18(c). In the Supplemental Narrative, the State contends that it need not include the above statement from 30 CFR 843.18(b) because Rule 90.617 specifically lists the factors to be considered in determining whether a pattern of violations exists and, since inability to comply is not mentioned, it will not be so considered. Regarding the

omission of the phrase, "unless caused by lack of diligence," the State interprets inability to comply to mean that the violator is physically unable to comply with the required abatement and that a lack of diligence could not result in such an inability. On these bases, the Secretary finds the Alaska program to be no less effective than 30 CFR 843.18.

Finding 21

In accordance with 30 CFR 732.15(b)(9), the Secretary finds that the Alaska program demonstrates that the State can designate areas as unsuitable for surface coal mining consistent with 30 CFR Chapter VII, Subchapter F. Alaska incorporated provisions of Subchapter F in Article 12 of the State regulations. The State's description of the proposed system for designating lands unsuitable is located in Section 4, Part L, of the narrative entitled, "Designating Lands Unsuitable," and is found acceptable. The State has sufficient legislative and regulatory authority to accomplish this requirement. Significant issues raised during the review of the Alaska program are analyzed as follows:

21.1 11 AAC 90.709 does not require that the hearing on a petition to designate lands unsuitable for surface coal mining operations be legislative and fact-finding in nature without cross-examination of witnesses as in 30 CFR 764.17(a). In the Supplemental Narrative Alaska states its belief in the importance of State flexibility to structure the conduct of a particular petition hearing to best ascertain the true facts. In the situation of conflicting expert opinions, cross-examination may be the only way for the State to decide a technical reclamation issue. Further, hearing officers will be instructed to continue present department practice which is to prevent any kind of harassment of private citizens by cross-examination. Finally, in the State Attorney General's opinion, dated December 13, 1982 (Administrative Record No. AK–20), the State concludes that the Alaska Administrative Procedures Act does not require cross-examination of witnesses in a hearing on a petition to designate an area unsuitable for surface coal mining.

In the preamble to the Federal regulations at 44 FR 15004 (March 13, 1979), OSM discusses cross-examination of witnesses at such hearings and concludes that this technique may be used to intimidate certain witnesses. The discussion clearly implies that OSM's concern in this instance was the harassment of private citizens. Regarding State flexibility, the preamble states, "OSM recognizes, however, that within the framework of an informal hearing, States may apply their own applicable procedures. * * *" On these bases, the Secretary finds 11 AAC 90.709 to be no less effective than 30 CFR 764.17(a).

21.2 11 AAC 90.703 allows intervention up to 14 days prior to a hearing on a petition to designate lands unsuitable for surface coal mining operations, while 30 CFR 764.15(c) allows such intervention up to 3 days before the hearing. In the Supplemental Narrative, the State explains that its program provides for more time prior to the intervention deadline to ensure that all parties to the petition have sufficient time to respond to allegations of intervenors in preparation for the hearing. An intervenor will have a minimum of 25 days and a maximum of 295 days from the date of public notice to the intervention deadline. The object of the Federal provision is to maximize public participation, and the Secretary believes the Alaska rule accomplishes this objective. Therefore, the Secretary finds that 11 AAC 90.703 is no less effective than 30 CFR 764.15(c).

Finding 22

In accordance with 30 CFR 732.15(b)(10), the Secretary finds that the Alaska program demonstrates that the State provides for adequate public participation in the development, revision, and enforcement of State regulations and that the State program is consistent with the public participation requirements of SMCRA and 30 CFR Chapter VII. Provisions for public participation in the development and revision of regulations are discussed in Section 4, Part D, of the narrative entitled, "Public Participation in Program Development." Significant issues raised during the review of the Alaska program are analyzed as follows:

22.1 SMCRA Section 525(e) states:

> Whenever an order is issued under this section, or as a result of any administrative proceeding under this Act, at the request of any person, a sum equal to the aggregate amount of all costs and expenses (including attorney fees) as determined by the Secretary to have been reasonably incurred by such person for or in connection with his participation in such proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review or the Secretary, resulting from administrative proceedings, deems proper.

While AS 41.45.240(i) gives the commissioner the discretion to assess any party for costs and attorney fees in the circumstances enumerated in SMCRA Section 525(e), it is not clear from the face of the State statute that the assessment of costs and attorney fees, regarding the judicial review of agency actions, is authorized. In a State Attorney General's opinion, dated December 10, 1982, however, the State asserts that under Appellate Rule 508 of the Alaska Rules of Court, the Alaska appellate courts have broad discretion to render assessments for costs and expenses. Appeals of final administrative decisions are to the Superior Court. The appellate rules are applicable to administrative appeals to the Superior Court. On this basis, the Secretary finds the Alaska law and court rules to be consistent with SMCRA Section 525(e).

22.2 SMCRA Section 520(d) permits a court in a citizen suit to award costs of litigation, including attorney and expert witness fees, to any party whenever appropriate. The comparable State provisions are AS 41.45.950 and 09.60.010, and Civil Rules 79, 82 and 54(d) of the Alaska Rules of Court. It is not clear, however, on the face of these statutes and rules whether Alaska courts have the authority to make such awards: (1) Absent the recovery of a money judgment, or (2) to nonprevailing parties. In a State Attorney General's opinion, dated December 10, 1982, the State asserts that its courts have such authority based on the courts' broad discretion in characterizing a party as "prevailing" for purposes of making such awards. The Attorney General's Opinion further states that Civil Rules 82 and 54(d) provide for the award of attorney and expert witness fees absent the recovery of a money judgment. On these bases, the Secretary finds Alaska law and court rules to be consistent with SMCRA Section 520(d).

Finding 23

In accordance with 30 CFR 732.15(b)(11), the Secretary finds that the Alaska program demonstrates that the State can monitor, review and enforce the prohibition against indirect or direct financial interests in coal mining operations by the employees of the State regulatory authority consistent with the requirements of Subchapter A of 30 CFR Chapter VII. Alaska incorporated provisions of Subchapter A in Article 13 of the State regulations. The State's description of the proposed system for monitoring, reviewing and enforcing the prohibition against indirect or direct financial interests in coal mining operations by the employees of the State regulatory authority is located in Section 4, Part M of the narrative entitled, "Conflicts of Interest". Alaska has the legislative authority under AS 41.45.030

and 41.45.050 to restrict financial interests. A significant issue raised during the review of the Alaska program is analyzed as follows:

23.1 11 AAC 90.755(b)(2) prohibits the solicitation or acceptance of any gift, gratuity, favor, entertainment, loan or other thing of monetary value from a coal company except for meals, transportation, lodging or similar expenses when these expenses facilitate performance of duties or functions. These exceptions to the general prohibition are broader than those at 30 CFR 705.18(b) which involve family or personal relationships and items of nominal value. On page 3 of the side-by-side comparison of Federal and State regulations in the submission, the State explains that 11 AAC 90.755(b)(2) allows for on-site meals, transportation, lodging, etc. because of the remoteness of many sites from established transportation facilities and public services. Based on this explanation, the Secretary finds 11 AAC 90.755(b)(2) no less effective than 30 CFR 705.18(b).

Finding 24

In accordance with 30 CFR 732.15(b)(12), the Secretary finds that Alaska has sufficient legislative authority under AS 41.45.940 to require the training, examination, and certification of persons engaged in or responsible for blasting. The State program need contain only sufficient legal provisions to allow promulgation of rules in accordance with Section 719 of SMCRA until such time as the Federal rules on blaster certification are promulgated.

Finding 25

In accordance with 30 CFR 732.15(b)(13), the Secretary finds that the Alaska program demonstrates that the State can provide for a Small Operators Assistance Program (SOAP) consistent with the requirements of 30 CFR Part 795. The State has adequate legislative authority to implement the SOAP. The proposed system is described in Section 4, Part 9 of the narrative entitled, "Small Operator Assistance." Regulations implementing 30 CFR Part 795 are contained in Article 8 of the State regulations, which are found to be no less effective than the Federal requirements.

Finding 26

In accordance with 30 CFR 732.15(b)(14), the Secretary finds that the Alaska program demonstrates that the State provides for administrative review of State program actions in accordance with Section 525 of SMCRA and Subchapter L of 30 CFR Chapter VII. The State's description of the proposed system for administrative review is located in Section 4, Part P, of the narrative entitled, "Administrative and Judicial Review." Alaska regulations related to administrative review are found in articles 11 and 14 of the State regulations.

Finding 27

In accordance with 30 CFR 732.15(b)(15), the Secretary finds that the Alaska program provides for judicial review of State program actions in accordance with State law, as provided in Section 526(e) of SMCRA, except that judical review of State enforcement actions is in accordance with Section 526 of SMCRA. The State's description of the proposed system for judicial review is located in Section 4, Part P, of the narrative entitled, "Administrative and Judicial review.

Finding 28

In accordance with 30 CFR 732.15(b)(16), the Secretary finds that the Alaska program demonstrates that the State can coordinate with and provide documents and other information to the Office of Surface Mining under the provisions of 30 CFR Chapter VII. There is nothing in the Alaska legislation which prohibits dissemination of information to OSM. This authority is provided through State law and regulations.

Finding 29

In accordance with 30 CFR 732.15(c), the Secretary finds that there are no other laws or regulations in addition to those discussed in the preceding findings which would preclude implementation of SMCRA and 30 CFR Chapter VII.

Finding 30

In accordance with 30 CFR 732.15(d), the Secretary finds that the Alaska DNR and other agencies having a role in the program have sufficient legal, technial and administrative personnel and funds to implement, administer and enforce the provisions of the program, the requirements of 30 CFR 732.15(b) and other applicable State and Federal laws.

Disposition of Agency and Public Comments

Comments have been received and considered on Alaska's program submission of July 23, 1982, and on additional materials provided by Alaska in connection with a reopened public comment period. The majority of the public comments were submitted by a collection of the following organizations as a group: Environmental Policy Institute (EPI), National Audubon Society, Service Club, and Trustees for Alaska. Several other commenters made specific comments very similar to certain comments made by this group. In addressing these comments, the Secretary identifies the commenter as "EPI *et al.*" Comments from groups or agencies are identified by name, but names of individuals have not been used. Comments are organized into the following groups: General, Experimental Practices, Permitting, Inspection and Enforcement, Bonding, Designation of Lands as Unsuitable for Surface Mining, Conflict of Interest, Coal Exploration, Performance Stanards, Public Participation, and SOAP.

General

1. EPI *et al.* object to the State's reference to SMCRA Section 708, which recognizes special conditions in Alaska surface mining, as justifying many of the differences from the Federal law and regulations. Until Congress changes the law, the commenters assert that OSM must apply it as written.

The Secretary agrees and notes that no differences have been approved solely on the basis of SMCRA Section 708. Instead, such differences are evaluated on two bases: (1) Whether the statutory differences are consistent with SMCRA, and (2) whether the regulatory differences are no less effective than the Federal regulations.

2. EPI *et al.* comment that in its proposed rules Alaska has relied on proposed OSM rules in a number of instances, and OSM lacks legal authority to approve State rules based on Federal regulations not yet adopted. No portion of the Alaska program was evaluated based on any proposed revision to the present Federal regulations.

3. EPI *et al.* state that there are many gaps in understanding and mitigating the effects of coal mining, and that such gaps should be considered in the review of the program. The Secretary appreciates the suggestion, and has attempted to tailor his approval of this program to fill such gaps.

4. EPI *et al.* comment that the statements in the side-by-side comparison in the submission do not suffice to meet the State's burden of proving that its alternative approaches to the Federal regulations will be as effective in meeting the Federal standards. Where such statements do not suffice, the Secretary has required the State to cure the problems either by regulatory change or supplemental material.

5. EPI *et al.* object to the language in AS 41.45.010(b)(3), which gives as a purpose of the State Act "to assure that surface coal mining operations are conducted in a manner that will prevent unreasonable degradation of land and water resources." EPI *et al.* state that this language represents a significant weakening of the State Act and is inconsistent with SMCRA Section 102(d). SMCRA Section 503(a)(1) requires an approvable State program to have a law which is in accordance with the requirements of SMCRA. As SMCRA Section 102(d) is not a requirement of the Act, a State law need not contain a purpose clause, let alone one which is in accordance with SMCRA Section 102(d). Such a clause does not establish any substantive standards to which the State must adhere or with which operators must comply. The Secretary, therefore, finds that it is within the State's discretion as to whether its law should contain a purpose clause and what the content of such clause should be.

6. EPI *et al.* object to the State's having omitted certain definitions from its State program submission as follows:

a. Anthracite; Fund; Federal land; Federal lands program; historically used for cropland; moist bulk density; Federal program; significant forest cover; no significant recreational, timber, economic or other values incompatible with surface coal mining operations; half-shrub; and surface coal mining which exists on the date of enactment. These definitions, the State explains, are not included in its program because they are used only in sections of the Federal regulations which are not applicable in Alaska.

b. "Regulatory program" and "State program." The State uses the term "Alaska State Program" at 11 AAC 90.911(10) which is no less effective than the Federal definitions.

c. State Regulatory Authority. This term's meaning is self-evident.

d. Precipitation event. The State uses the term, "runoff event" at 11 AAC 90.911(87) which term is no less effective than the Federal definition.

e. Indian Land and Indian Tribes. At the meeting on September 9, 1982, between OSM and State personnel, the State explained that the only Indian reservation, Annette Island, and other land held in trust for Indian tribes, contains no coal.

f. Application; complete application; principal shareholder; violation notice; and noxious plants. The State program, while not separately providing these definitions, does use the substance of their meanings in the appropriate regulations.

g. Coal processing waste. The State uses the term, "hazardous coal processing waste"' at 11 AAC 90.911(45) which is no less effective than the definition of "coal processing waste" at 30 CFR 701.5.

The Secretary accepts the State's explanations for omitting the above definitions in the Federal regulations, and finds the State's rules to be no less effective than the Federal regulations without these definitions.

7. EPI *et al.* object to differences between the State and Federal regulations regarding the following definitions:

a. "Combustible material"—The State definitions uses an "easily ignited" criterion, while the Federal definition uses "capable of burning."

b. "Groundwater"—State definition is "one or more zones of saturation located at various depths below the ground surface and either confined by impermeable earth material or overlaying an impermeable layer of earth material." The Federal definition at 30 CFR 701.5 is "subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated."

c. "Intermittent stream"—Alaska definition combines separate criteria used in the Federal definition, making application of the term narrower.

The Secretary finds that there are no substantive differences between these State and Federal definitions, and that the State definitions are no less effective than their Federal counterparts.

8. EPI *et al.* comment that the State's definition of "employee" at 11 AAC 90.911(32) does not encompass an advisory board or commission members as in the Federal definition at 30 CFR 705.5. At the September 9, 1982, meeting between OSM and State personnel, the State explained that it has no advisory board or commission on surface mining (Administrative Record No. AK–15). Therefore, the Secretary finds the State definition of "employee" to be no less effective than the Federal definition.

9. EPI *et al.* object to the program applicability exception at proposed 11 AAC 90.901(a)(2) for removal of coal in one operation in excess of 250 tons by a group of individuals if the operation is not for profit, the disturbed area is five acres or less, and the landowner and commissioner approve the operation. This section of the Alaska rules has been eliminated in the State's final rules.

10. EPI *et al.* point out that the Federal rules at 30 CFR 865 on protection of employees are not contained in the Alaska State program. Under 30 CFR 731.14, which contains the requirements for a State program submission, the Federal rules at 30 CFR 865 are not included. Therefore, the State need not include them in its program.

11. The National Audubon Society, Alaska Center for the Environment and Trustees for Alaska (National Audubon Society *et al.*) ask whether the definition of "public park" at 90.911(78) includes State refuges, Parks, Critical Habitat areas, Sanctuaries and Forests, and urge that these areas be included in the definition. These areas are not included in the Federal definition at 30 CFR 761.5. The Secretary, therefore, finds 11 AAC 90.911(77) to be no less effective than 30 CFR 761.5. It is the State's prerogative to add such areas to the definition, but it is not a requirement for program approval.

12. The U.S. Fish and Wildlife Service commented that the term "commissioner" is not defined in the proposed State regulations. In its final rules, at 11 AAC 90.911(22) the term is defined.

13. The U.S. Fish and Wildlife Service suggests that 11 AAC 90.911 include a definition of "alluvial valley floors." This term is defined at AS 41.45.998(1).

14. The U.S. Fish and Wildlife Service questions why fish and wildlife resources are not included in the definition of "renewable resource land" at 11 AAC 90.911(85). Since the Federal definition at 30 CFR 701.5 does not include fish and wildlife resources, the Secretary cannot require the State to do so.

Experimental Practices

1. EPI *et al.* note that AS 41.45.920(3) provides for an experimental practices departure if, "the experimental practices do not reduce the protection afforded public health and safety below that provided by law *or* regulation." (Emphasis added.) This section should read, "law *and* regulation," to assure that variances from the State Act are not permitted which would violate SMCRA Section 711. The Federal statute only mentions "promulgated standards" for such departures. The Secretary believes that there is no practical difference between the State and Federal language. Further, as stated above, Alaska's regulatory drafting philosophy strongly discourages the repetition of statutory language in regulations. On this basis, the Secretary finds AS 41.45.920(3) to be consistent with SMCRA Section 711(iii).

2. EPI *et al.* state that AS 41.45.920 authorizes departures from the environmental performance standards *established under* AS 41.45.214. This terminology is acceptable to the commenters only if its intended meaning is "promulgated under." The Secretary

disagrees. The State may adopt performance standards which are different than the Federal standards by means of statute or regulation. Such State standards would be acceptable if they are approved by the Secretary and found no less effective than the comparable Federal regulations.

3. EPI *et al.* complain that proposed 11 AAC 90.153(d)(1) provided for presumptive approval of an experimental practice by the Secretary if the Secretary fails to respond to a request by the State within 90 days. In its final rules, Alaska has removed this provision.

4. EPI *et al.* assert that 11 AAC 90.153(e)(2) does not require each application for an experimental practice to set forth the 30 CFR Subchapter K standards to be implemented if the experimental practice fails, as 30 CFR 785.13(f) requires. AS 41.45.920 provides the same obligations for experimental practices as those in SMCRA Section 711 (i) and (iii). Further, Alaska states in the Supplemental Narrative that 11 AAC 90.153(e)(3) requires mitigative measures to be taken in such cases, and these measures would specify the performance standards to be met. Approval by the commissioner of the DNR of the experimental practice, the monitoring program required of the operator, and notification of any failure to the commissioner ensure that the performance standards will be met if the experimental practice fails. On this basis, the Secretary finds 11 AAC 90.153 to be no less effective than 30 CFR 785.13)(f).

5. EPI *et al.* state that the Alaska rules do not contain the requirements of 30 CFR 785.13(h), regarding permit conditions for experimental practices. The requirements of 30 CFR 785.13(h)(1)–(3) are covered in AS 41.45.920 and 11 AAC 90.153. 30 CFR 785.13(h)(4) requires that certain permit conditions be specified for an experimental practice. AS 41.45.920 requires explicit approval by both the Secretary and the commissioner of DNR as in 30 CFR 785.13(h)(4)(i). 11 AAC 90.153(e)(3), as discussed in comment No. 4, above, imposes enforceable alternative environmental protection requirements as in 30 CFR 785.13(h)(4)(ii). Finally, 11 AAC 90.153(e) requires monitoring, recording and reporting as in 30 CFR 785.13(h)(4)(iii). Therefore, the Secretary finds the Alaska program to be no less effective than 30 CFR 785.13(h).

6. EPI *et al.* object to 11 AAC 90.129 which, they claim, allows a written revision of an experimental practice to be subsumed within the procedural requirements for "minor revisions" of permits, in violation of 30 CFR 785.13(i). Further, any such revision of an experimental practice can only be viewed as a "major revision" to a permit.

As the State explains in the Supplemental Narrative, with regard to permit revisions incorporating revisions to experimental practices, 11 AAC 90.153(g) provides that such revisions will be processed in accordance with both the State program procedures for permit revisions, 11 AAC 90.129, and those for experimental practices. Any significant effect on the environment, as that concept is defined in 11 AAC 90.129, would be processed as a major revision in accordance with 11 AAC 90.129(a)(4) and would also have to comply with the requirements for experimental practices. Alaska envisions that the only minor revisions to experimental practices would be items like: (1) changes in equipment, or (2) changes in the area to be affected by the experimental practice within the permit area that would not have any effect on the environment. Given this explanation, the Secretary finds 11 AAC 90.153(g) and 90.129 to be no less effective than 30 CFR 785.13(i).

Permitting

1. EPI *et al.* complain that the language in AS 41.45.190(c) providing that, "A permittee may not apply under this section for an extension of the permit area, except by incidental boundary revision" is unclear, and could be misconstrued to allow broader extensions than that intended by SMCRA Section 511(a)(3). In the Supplemental Narrative the State indicates that no such change or interpretation was intended, and that there is no substantive difference between the State and Federal provisions. On this basis, the Secretary finds AS 41.45.190(c) to be consistent with SMCRA Section 511(a)(3).

2. EPI *et al.* state that in AS 41.45.130 the notice of permit applications or revisions in Alaska is to be based on AS 38.05.345 (b) and (c) except as provided by rules adopted under that chapter of the State's law, and that the provision may be contrary to the notice and hearing requirements of SMCRA Section 513(a). The applicable Alaska notice provisions are contained in 11 AAC 90.113 and 90.907, and are consistent with SMCRA Section 513(a).

3. EPI *et al.* object to 11 AAC 90.129 which provides a distinction between "major" and "minor" permit revisions. The commenters claim that this rule creates an illegal exemption for certain revisions from the requirements of both SMCRA Section 510(b)(1) and 30 CFR 771.21 (b)(3). In the telephone conversation of October 27, 1982 (Administrative Record No. AK–16), the State explained that 11 AAC 90.129 is its way of implementing the directive of SMCRA Section 511(a)(2) and 30 CFR 788.12 to develop guidelines for handling permit revisions. The Secretary agrees with the State, and views the procedures in 11 AAC 90.129 as the State's choice of administrative tools. Therefore, the Secretary finds 11 AAC 90.129 to be consistent with SMCRA Section 511(a)(2) and no less effective than 30 CFR 788.12.

4. EPI *et al.* point out that proposed 11 AAC 90.041 did not include the permit application requirement regarding the provision of information on cultural and historic resources eligible for listing on the National Register of Historic Places. 11 AAC 90.041 as a final rule contains this requirement.

5. EPI *et al.* object to 11 AAC 90.043 which, unlike 30 CFR 779.13, gives the commissioner the authority to determine that certain information is not necessary to determine the impact a proposed operation will have on environmental and other resources within the permit and general areas. In the Supplemental Narrative, under major concern no. 28, the State explains that this provision allows the commissioner to approve a permit without certain information when the commissioner determines from other data provided in the application that the information is not necessary for making an impact determination. The Secretary finds the State's explanation acceptable, and further finds 11 AAC 90.043 to be no less effective than 30 CFR 779.13.

6. EPI *et al.* object to proposed 11 AAC 90.064 which did not include map requirements showing resources eligible for listing in the National Register of Historic Places. In its final rules at 11 AAC 90.063(9), the State has added such a provision.

7. EPI *et al.* object to proposed 11 AAC 90.063(4) which did not provide for map information on the location of all buildings on and within 1,000 feet of the proposed permit area as in 30 CFR 779.24 and 783.24. In its final rules, the State has added this provision to 11 AAC 90.063(4).

8. EPI *et al.* recommend that in 11 AAC 90.063(9) the boundaries of critical habitats and wildlife sanctuaries be added as general map requirements to avoid any misinterpretation in application of the term "public park." As the Federal regulations contained no such requirement, the Secretary cannot require the State to add such a provision.

9. EPI *et al.* suggest adding the identification of National Parks,

National Forests, National Wildlife Refuges and National Recreation Areas to 11 AAC 90.063(1) as these information requirements are reflected in SMCRA Section 522(e). These information requirements can be found at AS 41.45.260(d)(1).

10. EPI *et al.* comment that 11 AAC 90.089 does not cross-reference the applicable design requirements contained elsewhere in the State rules as does the Federal rule at 30 CFR 780.25. As these are requirements contained elsewhere in the State program, the State need not repeat them in order to insure that operators comply with such requirements.

11. EPI *et al.* comment that 11 AAC 90.097 does not include certain provisions of 30 CFR 780.37 and 784.24, regarding transportation facilities, in subsections (b)–(e) of the Federal regulations. These subsections of the Federal regulations refer to requirements contained in other Federal regulations. As the State has rules containing these requirements, it need not repeat such requirements in 11 AAC 90.097.

12. EPI *et al.* object to 11 AAC 90.149 which, unlike 30 CFR 785.19, provides an exception whereby the commissioner may determine that certain alluvial valley floor information is unnecessary on the basis that a particular valley floor to be affected has no history of farming, is not sub-irrigated, or has no deficiency of water. For the reasons set forth above in Finding 13.2, the Secretary finds 11 AAC 90.149(a) to be no less effective than 30 CFR 785.19(d).

13. EPI *et al.* point out that 11 AAC 90.149(g) does not include a description of the term "significance to farming" as in 30 CFR 785.19(e)(2). As the Federal regulation has been suspended, the State need not include it.

14. EPI *et al.* suggest that 11 AAC 90.057 be revised to specify that permit applications include a map of habitat types, site locations of dens, nesting areas, and other areas for species propagation and reproduction. As the Federal regulations contain no comparable application specifications, the Secretary may not require the State to include them in its program.

15. National Audubon Society *et al.* suggest that the language in 11 AAC 90.055(b), regarding the mapping of vegetation and habitat important for fish and wildlife species, be included in the permit and proposed reference areas as well as in adjacent areas. As the Federal regulations contain no such language, the Secretary is unable to require the State to do so.

16. National Audubon Society *et al.* suggest the addition of the following language to proposed 11 AAC 90.057: "At a minimum, the study must indentify by map any endangered or threatened species and their critical habitats, and *fish and wildlife of commerical, recreational and/or* subsistence importance." In its final rule, Alaska has adopted similar language; i.e., "fish and game of economic, recreational or subsistence importance."

17. National Audubon Society *et al.* comment that 11 AAC 90.079 states that applicable State and Federal air quality requirements be complied with. 30 CFR 784.26 specifically refers to 30 CFR 816.95, and identifies specific elements of fugitive dust control plan. The Alaska regulation does not provide such guidance. For the reasons set forth above in Finding 14.1, the Secretary finds 11 AAC 90.079 to be no less effective than 30 CFR 784.26.

18. National Audubon Society *et al.* urge that the word "prevent" be placed before the word "minimize" in proposed 11 AAC 90.081 and other related sections in the State regulations, regarding the fish and wildlife protection plan, as the prevention of adverse impacts is preferable to minimization. In its final rules, Alaska has made these changes.

19. National Audubon Society *et al.* claim that the State has omitted from its criteria for permit approval the requirement that the operator not control operations which have demonstrated a pattern of willful violations. This requirement can be found in the State program at AS 41.45.180(f).

20. EPI *et al.* object to 11 AAC 90.121(a)(2) which would allow waivers for mining within 300 feet of an occupied dwelling if such waivers were executed before August 3, 1977. Such waivers would be applicable to subsequent owners if such owners had actual or constructive knowledge of the waiver. While the commenters are correct in stating that the Federal rules contain no such provision, the Secretary finds that it is not inconsistent with any provision of SMCRA or the Federal regulations and is hereby approved.

21. The U.S. Fish and Wildlife Service suggests changing 11 AAC 90.043(b) to read: "Information on *surface and ground water* hydrology, water quality and quantity . . . (emphasis added). Since 11 AAC 90.043(b) is the same as 30 CFR 779.13(a), the Secretary is unable to require the State to change its regulation. It is the State's prerogative to add such language, but it is not a requirement of program approval.

22. The U.S. Fish and Wildlife Service suggests that 11 AAC 90.081(3) be changed to read: "Habitats of high value for fish and wildlife." Since 11 AAC 90.081(3) is the same as 30 CFR 780.16(b)(3), the Secretary is unable to require the State to make this change. It is the State's prerogative to make this change, but it is not a requirement of program approval.

Inspection and Enforcement

1. EPI *et al.* complain that AS 41.45.230(b)(2) provides that the commissioner "may" specify monitoring and recordkeeping requirements of the permittee whereas SMCRA Section 517(b)(2) uses the term "shall." As explained in Finding 17.1, the Secretary finds the Alaska program to be consistent with SMCRA Section 517(b).

2. EPI *et al.* state that AS 41.45.230(b) provides that copies of information related to inspection and monitoring will be available, "at the district office of the department closest to the location of the surface coal mining and reclamation operation." SMCRA Section 517(f) provides that the information be available at "central and sufficient locations in the county, multicounty, and State area of mining". The Secretary fails to understand how the State provision is more restrictive, or makes access to the information by the public more limited. DNR's district office closest to the location of the operation is the most logical place to keep such information, and where a citizen would logically go to obtain it. Therefore, the Secretary finds AS 41.45.230(b) consistent with SMCRA Section 517(f).

3.a. EPI *et al.* object to AS 41.45.250(b) which provides that a bond for prepayment of civil penalties may be an alternative to payment in escrow unlike SMCRA Section 518(c) which is silent on the option of a bond. The Secretary finds the State procedure, which has been approved in other State programs, to be the same or similar to the Federal requirement. The prepayment provision was designed so that alleged violators would have a stake in the expeditious review of their cases. There can be no doubt that the requirement to post a bond also accomplishes this purpose. Therefore, the Secretary finds AS 41.45.250(b) consistent with SMCRA Section 518(a).

b. EPI *et al.* also comment that AS 41.45.250 omits the statement in SMCRA Section 518(c) that failure to forward the bond or amount of the proposed penalty results in a waiver of all rights to contest the amount of the penalty. 11 AAC 90.631(b) makes a hearing request effective *only* upon submission by the operator of the amount of the proposed penalty or a bond in that amount. Therefore, the Secretary finds 11 AAC

90.631(b) to be the same or similar to SMCRA Section 518(c).

4. EPI *et al.* comment that AS 41.45.240(h) provides for informal conferences rather than public hearings on violations. The Secretary believes the commenter confuses the State's informal conferences with its formal public hearing procedures. The informal conferences in AS 41.45.240(h) are comparable to the informal public hearings provided for at 30 CFR 843.15. The Secretary finds the Alaska informal conferences in AS 41.45.240(h) to be the same or similar to those under the Federal law and regulations.

5. EPI *et al.* state that AS 41.45.240(j)(3), (4) and (5), regarding instituting enforcement procedures, apply only to the commissioner and not his authorized representatives as in SMCRA Section 521 (a) (2) and (3) and (c). In Section 4, page 12, of the submission at 731.14(g)(8) under the narrative section entitled, "Administering and Enforcing Performance Standards," in the subsections on cessation orders and notices of violation, the State explains that inspectors will issue cessation orders and notices of violation. Also, AS 41.45.998(4) defines the "commissioner" as the commissioner of natural resources or his authorized representatives or agents, and 11 AAC 90.911(22) defines "commissioner" as the commissioner of the Department of Natural Resources or his or her designee. On these bases, the Secretary finds the Alaska program the same or similar to SMCRA Section 521 (a) (2) and (3) and (c).

6. EPI *et al.* claim that AS 41.45.240(b) does not require the immediate issuance of a cessation order upon the failure to abate a violation within the time allotted as in SMCRA Section 521(a)(3). 11 AAC 90.613(d) contains this requirement and is no less stringent than SMCRA Section 521(a)(3).

7. EPI *et al.* point out that 11 AAC 90.601 does not contain provisions comparable to 30 CFR 840.11 that any potential violation observed during an aerial inspection shall be investigated onsite within three days, and that such onsite investigation shall not constitute a separate inspection. For the reasons stated above in Finding 17.2, the Secretary finds the Alaska program to be no less effective than 30 CFR 840.11.

8. EPI *et al.* complain that 11 AAC 90.613, regarding cessation orders, does not provide as in 30 CFR 843.11(b)(2), that all steps deemed necessary must be taken in the most expeditious manner physically possible. AS 41.45.240(b) contains this provision and is the same or similar to 30 CFR 843.11(b)(2).

9. EPI *et al.* object to 11 AAC 90.617(d) which gives the commissioner the discretion to decline to issue a show cause order or vacate an outstanding order if, based on exceptional factors, it would be demonstrably unjust to issue or fail to vacate the show cause order. While the Federal rules contain no such discretion regarding show cause orders, the Director has this discretion regarding waiver of the use of the point formula to determine civil penalties pursuant to 30 CFR 845.16. The decision whether a pattern of violations exists under 30 CFR 843.13 is largely that of the Director of OSM and involves a good deal of discretion. Further, the commissioner's discretion under 11 AAC 90.617(d) is very narrowly drawn as in 30 CFR 845.16. On these bases, the Secretary finds that 11 AAC 90.617(d) is no less stringent than 30 CFR 843.13.

10. EPI *et al.* point out that in 11 AAC 90.623 the State fails to include the provision that inability to comply may not be considered in determining whether a pattern of violations exists. Further, the State deletes the phrase, "unless caused by lack of diligence." For the reasons set forth above in Finding 20.1, the Secretary finds the Alaska program to be no less stringent than 30 CFR 843.18.

11. EPI *et al.* point out that proposed 11 AAC 90.625 did not contain the requirement at 30 CFR 845.15(b)(2) that appropriate enforcement action be taken if the permittee has not abated the violation within a 30 day period. The State, in final rule 11 AAC 90.625(e), has added language including this requirement which is no less stringent than 30 CFR 845.15(b)(2).

12. EPI *et al.* comment that 11 AAC 90.629(b) does not include the provision at 30 CFR 845.18(b)(1) that a failure to hold the assessment conference within 60 days shall not be grounds for dismissal of an assessment unless actual prejudice is proved. For the reasons set forth in Finding 19.1, the Secretary finds 11 AAC 90.629(b) to be the same or similar to 30 CFR 845.18(b)(1).

13. EPI *et al.* comment that proposed 11 AAC 90.629(e) did not provide the appropriate time frame and action to be taken if full payment of the amount specified in the settlement agreement of a civil penalty action is not received by the commissioner within 30 days after the signing of the agreement as in 30 CFR 845.18(d)(2). In its final rule, the State has corrected 11 AAC 90.629(e) so that it is now the same or similar to 30 CFR 845.18(d)(2).

14. EPI *et al.* point out that the Alaska rules do not contain a provision comparable to 30 CFR 845.18(e) that an assessment conference may be terminated by the conference officer when it is determined that the issue cannot be resolved or that the person assessed is not diligently working toward resolution of the issues. Since the authority contained in 30 CFR 845.18(e) is discretionary with the conference officer and all such conferences must terminate in some manner, the Secretary believes that it is not necessary for the State to have a provision comparable to 30 CFR 845.18(e). The power to terminate such conferences is implicit in the power to hold them, and the manner of such termination should be in the discretion of the State. With respect to this issue therefore, the Alaska program is the same or similar to 30 CFR 845.18(e).

15. EPI *et al.* object to Alaska's failure to include a provision comparable to 30 CFR 845.19(a) that the fact of a violation may not be recontested if it has been decided in a review proceeding under 30 CFR 843.16. For the reasons set forth above in Finding 19.2, the Secretary finds the Alaska program to be the same or similar to 30 CFR 845.19(a).

Bonding

1. EPI *et al.* comment that AS 41.45.170 provides that the permittee give notice in the manner set forth in AS 38.08.345 (b) and (e) except as provided by regulations adopted under Chapter 41.45, and that the State statute does not provide advertisement specifications as in SMCRA Section 519(a). The advertisement specifications are set out at 11 AAC 90.211 (b) and (c), and have been adopted under AS 41.45. The Secretary finds these advertisement specifications to be consistent with those at SMCRA Section 519(a).

2. EPI *et al.* state that, unlike SMCRA Section 509(b), 11 AAC 90.203(a) specifies that the liability period for individual bonds may be limited if bonds are posted and approved to guarantee only specific phases or increments of reclamation. In its final rule, the State has eliminated the word "period" in the second sentence to remedy any confusion. Further, the general rule at AS 41.45.160(b) is consistent with SMCRA Section 509(b). For these reasons, the Secretary finds the Alaska program consistent with SMCRA Section 509(b).

3. National Audubon Society *et al.* urge that 11 AAC 90.203, regarding the period of bond liability, should include not only responsibility for vegetational reclamation but also for reclamation of aquatic habitats. The Federal rules provide for protection of such habitats in the performance standards, but not in the regulations on period of bond

liability. For this reason, the Secretary is unable to require the State to add such a provision.

Designation of Lands as Unsuitable for Surface Mining

1. EPI *et al.* claim that AS 41.45.260(c)(1) provides only for designation of lands as unsuitable for mining on technological, and not economic unfeasibility unlike SMCRA Section 522(a)(2). In the Supplemental Narrative, Alaska states that its law is more stringent than SMCRA because it could designate areas as unsuitable on economic grounds alone, whereas the Federal provisions require *both* economic and technological infeasibility as a prerequisite to an unsuitability finding. The Secretary agrees with the State, and finds that AS 41.45.260(c)(1) is consistent with SMCRA Section 522(a)(2).

2. EPI *et al.* object to AS 41.45.260(b) which provides for hearings to be held within three to seven months of the receipt of a petition to designate lands as unsuitable for mining whereas SMCRA Section 522(c) provides for such hearing to be held within ten months of receipt of the petition. The commenters also object to the State statutory provision which allows an extension of the time within which a hearing must be held to include a field season. The Secretary finds the commenters' objections confusing as they simultaneously argue that the time by which the hearing must be held is both too short and too long. The Secretary is convinced that the State requires flexibility in this area because of different climate and weather conditions, and finds AS 41.45.260(b) consistent with SMCRA Section 522(c).

3. EPI *et al.* comment that the State definition of "valid existing rights" at 11 AAC 90.123 contradicts and goes beyond the Federal language at 30 CFR 761.5(a)(2). In the Supplemental Narrative, the State explains that the State rule parallels the Federal language, and goes on to define "coal needed for an ongoing operation." A strict, three-part test, including a showing that the coal is part of the operator's mining plan, must be met to demonstrate that the coal is needed for an ongoing operation. The Secretary accepts the State's explanation, and finds 11 AAC 90.123 to be no less effective than 30 CFR 761.5(a)(2).

4. EPI *et al.* comment that the State definition of "occupied dwelling" at 11 AAC 90.911(64), unlike 30 CFR 761.5, excludes buildings used on a temporary basis for human habitation. In the Supplemental Narrative, the State explains that its definition does not exclude buildings used temporarily such as a hunting lodge. Such buildings must be used on a regular, albeit periodic, basis for human habitation. Given this explanation, the Secretary finds the State definition of "occupied dwelling" to be no less effective than the Federal definition.

5. EPI *et al.* comment that the definition of "substantial legal and financial commitment" at 11 AAC 90.715(b) is different than the Federal definition at 30 CFR 762.5, and would allow an application for a permit to suffice for a substantial legal and financial commitment. In the Supplemental Narrative, the State explains that such commitments will be based on a finding that significant investments have been made on the basis of a long term coal contract. The State definition discusses some of the factors which may be used to determine whether such commitments have been made, but the requirement for a long term coal contract remains intact. The Secretary sees nothing in the State definition which would allow mere application for a permit to suffice for such commitments. The Secretary, therefore, finds the State definition to be no less effective than the Federal definition.

6. EPI *et al.* state that the criteria for designation of lands unsuitable for mining should be included in the State regulations. The Secretary disagrees because the criteria are listed in AS 41.45.260. Further, the form required by the State to file a petition to designate lands unsuitable for mining has been included as part of the State's submission and is part of the program. If the State substantively amends any provision of its form, it would have to submit such a change as a program amendment.

7. EPI *et al.* object to 11 AAC 90.709 which does not require that the hearing on a petition to designate lands unsuitable for mining be legislative and fact-finding in nature with no cross-examination of witnesses as in 30 CFR 764.17. For the reasons set forth above in Finding 21.1, the Secretary finds 11 AAC 90.709 to be no less effective than 30 CFR 764.17.

8. EPI *et al.* comment that 11 AAC 90.701 states that petitions to designate lands unsuitable for mining must be filed on a form provided by the commissioner and must include all information requested on the form, but, unlike 30 CFR 764.13, the regulation specifies none of this information. The forms, however, have been included as part of the State's submission and are part of the State progam. As these forms request all the necessary information, the Secretary finds the Alaska program to be no less effective than 30 CFR 764.13.

9. EPI *et al.* object to 11 AAC 90.703(e) which provides for suspension of the consideration of a petition to designate lands unsuitable for mining: (1) Where there is no real and foreseeable potential for operations to occur; and (2) on State land if the land is unleased, not available for leasing, and is not the subject of an application for a coal prospecting permit. EPI *et al.* state that this provision is in conflict with SMCRA Section 522(c), which requires a written decision on a petition within one year, and with 30 CFR 764.15. The Secretary believes that the State provision is entirely reasonable, and is precisely the kind of instance where flexibility is needed. The commenters would have the State perform tasks with no practical results so that Alaska would be meeting an overly strict reading of the Federal law and regulations. The Secretary disagrees with the comment, and finds 11 AAC 90.703(e) to be consistent with SMCRA Section 522(c) and no less effective than 30 CFR 764.15.

10.a. EPI *et al.* point out that 11 AAC 90.705(d) provides for intervention in proceedings on a petition to designate lands unsuitable for mining until 14 days before the public hearing, while 30 CFR 764.15(c) allows such intervention up to 3 days before the hearing. For the reasons set forth above in Finding 21.2, the Secretary finds 11 AAC 90.705(d) to be no less effective than 30 CFR 764.15(c).

b. EPI *et al.* state that 11 AAC 90.709(c) and 90.711(b) provide that notice of hearings on petitions to designate lands unsuitable for mining be sent by certified mail to petitioners, intervenors, and persons with an ownership or other property interest in the petition area, and by regular mail to all other required parties. 30 CFR 764.17(b)(2) requires that such notice be given to all parties by certified mail. 11 AAC 90.709(c) provides such notice by regular mail only to: (1) Federal, state and municipal agencies and native corporations and villages, and (2) persons who have expressed to the commissioner an interest in the petition area. 11 AAC 90.711(b) allows the commissioner to send a copy of his/her decision by regular mail to persons who have requested a copy other than the petitioner, all intervenors and OSM. Since the primary parties in these proceedings are to be sent the required documents by certified mail and other parties are not being omitted, but will receive the documents by regular mail, the Secretary believes the difference

between the State and Federal regulations is insignificant. Therefore, the Secretary finds 11 AAC 90.709(c) and 90.711(b) to be no less effective than 30 CFR 764.17.

11. EPI *et al.* state that 11 AAC 90.707(e) does not specify that the State will provide information to the public on petition procedures necessary to have an area designated as unsuitable for mining or to have designations terminated, or how the inventory and data base system can be used. 11 AAC 90.701(a) refers to the required petition form, but EPI *et al.* complain that the State should be required to specify in its regulations that such information will be provided as in 30 CFR 764.23. The Secretary disagrees. The State forms have been submitted as part of the State program and the Secretary's approval extends to all parts of the State program. If the State substantively amends any provision of its forms, it would have to submit them to OSM as a program amendment. As the forms contain all the necessary information, the Secretary finds the Alaska program to be no less effective than 30 CFR 764.23.

12. The U.S. Fish and Wildlife Service suggests that buffer strips 100 feet on each side of anadromous fish streams be included as "areas where mining may be limited" in 11 AAC 90.121. As there is no such inclusion in the comparable Federal regulation at 30 CFR 761.11, the Secretary cannot require the State to have such a provision in its regulations. It is the State's prerogative to make this inclusion, but it is not a requirement of program approval.

Conflict of Interest

1. EPI *et al.* state that 11 AAC 90.755 does not contain the components of the Federal provision at 30 CFR 706.18 on penalties for accepting gifts and gratuities under the article on conflict of interest. The Secretary finds no evidence that any components of the Federal regulation are missing in the State rule and, therefore, finds that 11 AAC 90.755 is no less effective than 30 CFR 706.18.

2. EPI *et al.* object to the exception from the gifts and gratuities limitation at 11 AAC 90.755 for "meals, transportation, lodging or similar expenses when these expenses facilitate performance of the affected person's duties or function. . . ." The commenters suggest replacing the word "facilitate" with "are necessary." The Secretary sees no substantive difference between the language in the State rule and that suggested by the commenters. The Secretary finds 11 AAC 90.755 to be no less effective than 30 CFR 705.18 (See Finding 23.1).

3. EPI *et al.* comment that 11 AAC 90.753 does not contain a provision that the reviewer of a State employee's conflict of interest form will certify that the form was reviewed, that prohibited interests have been resolved, and that no other prohibited interests have been identified from the statement. As the statement is required to be made on an OSM form containing such a certification by the reviewer, the Secretary finds that the State need not repeat the requirement in its regulations.

Coal Exploration

1. EPI *et al.* object to 11 AAC 90.161 and 90.163 which make a distinction between coal exploration that will and will not substantially disturb the natural land surface for purposes of submitting information to the regulatory authority. The commenters state that there is no such distinction in 30 CFR 776.11 and 776.12; rather, the distinction in the Federal rules is based on the intent to remove less than 250 tons of coal in the area to be explored. However, 11 AAC 90.167 establishes the performance standards for coal exploration that substantially disturbs the natural land surface, and adds a bonding requirement not found in the Federal rules. 30 CFR 776.11 establishes that the performance standards found at 30 CFR 815 apply to exploration that substantially disturbs the natural land surface. 11 AAC 90.901(a)(1) applies the performance standards to exploration resulting in the removal of more than 250 tons of coal. The Secretary, therefore, finds 11 AAC 90.901(a), 90.161 and 90.163 to be no less effective than 30 CFR 776.11 and 776.12.

2. EPI *et al.* claim that 11 AAC 90.165 and 90.167 are not as effective as 30 CFR 776.13(b)(2) regarding endangered or threatened species. 30 CFR 776.13(b)(2) allows the regulatory authority to approve a coal exploration application if the application "will not jeopardize" the continued existence of endangered or threatened species. The Alaska rule requires "protection" of endangered or threatened species. In the October 27, 1982, telephone conversation (Administrative Record No. AK–16), the State explained that the Alsaka rule is more stringent than the Federal regulation because "protection" in concept and practice is a more inclusive term than "not jeopardizing." The Secretary agrees, and finds 11 AAC 90.165 and 90.167 to be no less effective than 30 CFR 776.13(b)(2).

3. EPI *et al.* suggest that 11 AAC 90.165(e) be revised to read, "if the applicant demonstrates and the commissioner determines," to clarify the burden of proof as reflected in 30 CFR Part 776.13(b). The Secretary believes that the applicant's requirements for receiving approval of an application for coal exploration are clearly set forth in Article 7 of the Alaska surface mining regulations, and that the commenters' suggested revision is unnecessary. The Secretary, therefore, finds Article 7 and 11 AAC 90.165(e) of the State's surface mining rules to be no less effective than 30 CFR 776.13(b).

4. EPI *et al.* claim that 11 AAC 90.165 does not provide, as a basis for permit approval, that exploration will not adversely affect cultural resources as in 30 CFR 776.13(b)(3). This requirement is covered at 11 AAC 90.167(d) in language, which the Secretary finds to be no less effective than that of 30 CFR 776.13(b)(3).

5. EPI *et al.* state that proposed 11 AAC 90.165(b) did not specify, as in 30 CFR 776.12(b)(3), that any person with an interest which is or may be adversely affected has the right to file written comments on the coal exploration application within reasonable time limits. In its final rule at 11 AAC 90.165(b) the State has added language allowing such written comments in accordance with 11 AAC 90.907(f). The Secretary finds 11 AAC 90.165(b) to be no less effective than 30 CFR 776.12(b)(3).

6. EPI *et al.* comment that proposed 11 AAC 90.165(f) did not require that a hearing of record be held within 30 days of a request on an application for coal exploration as does 30 CFR 787.11(b). In its final rule, the State has added language to 11 AAC 90.165(f) to insure that such a hearing will be held within 30 days of a request on an application.

7. EPI *et al.* object to 11 AAC 90.167(a) which, unlike 30 CFR 776.15(a), provides that certain coal exploration bonding and performance standards may be waived if a written finding is made that these requirements will be superseded by subsequent, permitted operations. For the reasons set forth above in Finding 15.3, the Secretary finds the Alaska program to be no less effective than 30 CFR 776.15(a).

8. EPI *et al.* claim that 11 AAC 90.167 omits the provisions of 30 CFR 815.15 (a) and (b) which: (1) Prohibit the disturbance of habitats of unique value for fish, wildlife and other related environmental values and areas during coal exploration, and (2) provide that important environmental characteristics of the exploration area will be measured during operations to minimize damage and provide information for permit applications. In the September 9, 1982, meeting between Alaska and OSM personnel (Administrative Record No.

AK–15) the State pointed to 11 AAC 90.167(c) which requires the protection of threatened or endangered species and their habitats. The Secretary finds that 11 AAC 90.167(c) is no less effective than 30 CFR 815.15 (a) and (b).

9. EPI *et al.* claim that 11 AAC 90.167 (f), (g), (h) and (m) do not specifythat required actions regarding restoration and removal of travel networks, and removal of excavations and other facilities and equipment will occur "promptly" after exploration is completed. For the reasons set forth above in Finding 15.1, the Secretary finds 11 AAC 90.167 to be no less effective than 30 CFR 815.15.

10. EPI *et al.* state that 11 AAC 90.167(k) does not include the requirement in 30 CFR 815.15(g)(2) that the best technology currently available be used to prevent contribution of additional suspended solids to stream flow. For the reasons set forth in Finding 15.2, above, the Secretary finds 11 AAC 90.167(k) to be no less effective than 30 CFR 815.15(g).

11. EPI *et al.* comment that 11 AAC 90.167 does not include a requirement for a permit for the commercial sale of coal extracted during coal exploration as in 30 CFR 815.17. 11 AAC 90.001(b) includes this requirement of commercial sale for testing purposes.

12. National Audubon Society *et al.* urge that 11 AAC 90.161, regarding coal exploration, be implemented with the full cooperation, coordination and knowledge of all State and Federal resource agencies. As the Federal regulations contain no such requirement, the Secretary is unable to require the State to do so.

13. National Audubon Society *et al.* suggest that where the Commissioner exercises his/her discretion in waiving a requirement under 11 AAC 90.167, regarding coal exploration bonding and performance standards, that he/she do so in consultation with the relevant, State or Federal resource agencies. For the reasons set forth in the Secretary's response to public comment No. 7, above, the Secretary finds this provision of the Commissioner's discretion to be acceptable, and further finds this provision of the Alaska program to be no less effective than 30 CFR 776.15(a).

Performance Standards

1. EPI *et al.* state that 11 AAC 90.085, in specifying contents of plans for protecting the hydrologic balance, makes reference to "the limits on pollutants in discharges subject to 11 AAC 90.323." These limits, the commenters claim, do not adequately provide water quality effluent limitations as in 30 CFR 816.42(a)(7); they assert that the State rules must include these provisions. For the reasons set forth above in Finding 13.1, however, the Secretary finds 11 AAC 90.085 and 90.323 to be no less effective than 30 CFR 816.42(a)(7).

2. EPI *et al.* complain that the language in 11 AAC 90.321(a) that, "operations must be planned and conducted to prevent long-term adverse changes in the hydrologic balance," provides less protection against adverse impacts than 30 CFR 816.41(a) which covers protection for both short- and long-term impacts. The Secretary disagrees with the commenters' reading of 30 CFR 816.41(a). The preamble to the Federal regulations at 44 FR 15142 (March 13, 1979), in reference to 30 CFR 816.41–816.57, states that, "the purpose of these requirements is to ensure that both long-term and short-term adverse changes in the hydrologic balance * * * will be prevented * * *." 30 CFR 816.41(a) clearly addresses long-term impacts, and 30 CFR 816.42–816.57 enumerate specific standards of hydrologic balance, thus addressing short-term impacts. The comparable State regulations are at 11 AAC 90.323–90.353. The Secretary, therefore, finds 11 AAC 90.321(a) to be no less effective than 30 CFR 816.41(a).

3. EPI *et al.* comment that 11 AAC 90.375(f) establishes no maximum period before blasting for distribution of the schedule, unlike 30 CFR 816.64(a) which establishes a 20 day maximum. 11 AAC 90.375(g)(3) requires that the schedule contain specific information as to the dates and times when blasting shall be conducted. This approach, the Secretary finds, is no less effective than 30 CFR 816.64(a).

4. EPI *et al.* comment that proposed 11 AAC 90.379(d) allowed flyrock to be cast beyond the permit boundary to not more than half the distance to the nearest occupied structure, unlike 30 CFR 816.65(g) which limits flyrock travel to the line of property owned or leased by the permittee. In its final rule, the State has added language to conform the State rule to the Federal limitation. The Secretary finds 11 AAC 90.379(d) to be no less effective than 30 CFR 816.65(g).

5. EPI *et al.* suggest that the State add regulatory language giving the Commissioner the discretion to reduce maximum peak particle velocity on the basis of potential harm to fish and wildlife. In its final rules at 11 AAC 90.379(e), the State has added such language.

6. EPI *et al.* object to the flexibility in the requirements for underdrains and topsoil at 11 AAC 90.391(i), claiming the State provision is in conflict with 30 CFR 816.71 and 816.72. For the reasons set forth above in Finding 13.3, the Secretary finds 11 AAC 90.391 to be no less effective than 30 CFR 816.71 and 817.71.

7. EPI *et al.* object to 11 AAC 90.451 (a)(2) and (b) which, unlike 30 CFR 816.111, permit the use of introduced species. The Secretary believes that Alaska, because of its unique climatic conditions, needs the flexibility to allow introduced species, but feels that such introduction should only be permitted based on appropriate field trials. In its final rule at 11 AAC 90.451(a)(2), the State has accepted the Secretary's suggestion and, on this basis, the Secretary finds 11 AAC 90.451 (a)(2) and (b) to be no less effective than 30 CFR 816.111 and 817.111.

8. EPI *et al.* also object to 11 AAC 90.451(c) which gives the Commissioner the power to grant exceptions from the requirements of subsections (b) (2) and (3) of 90.451 if the reestablished plant species are necessary to achieve quick, temporary and stabilizing cover, and measures to establish permanent vegetation are included in the approved permit and reclamation plan. The Secretary believes that the State regulation provides Alaska with needed flexibility in this area because of unique climatic conditions. Further, the State rule is well defined and limited in its applicability. For these reasons, the Secretary finds 11 AAC 90.451(c) to be no less effective than 30 CFR 816.111.

9. EPI *et al.* state that 11 AAC 90.451(d) is not comparable to 30 CFR 816.111(b)(1), and does not constitute adequate regulation of cropland vegetation. SMCRA Section 515(b)(20) provides, "that when the regulatory authority issues a written finding approving a long-term, intensive, agricultural postmining land use as part of the mining and reclamation plan, the authority may grant exception to the provisions of paragraph (19) [of the Act]." SMCRA Section 515(b)(19) requires establishment of a diverse, effective and permanent vegetative cover of the same seasonal variety native to the area of land to be affected. In some cases, the Secretary believes permanent vegetation would not necessarily be desirable when the postmining vegetative use is to be cropland because such land may be used to produce annual rather than the more permanent biennial or perennial species. 11 AAC 90.451(d) implements the exception granted in SMCRA Section 515(b)(20) and, on this basis, the Secretary finds the State provision to be consistent with SMCRA Section 515(b)(20) and no less effective than 30 CFR 816.111(b)(1).

10. EPI *et al.* state that, regarding standards of success, the Alaska rules fall short of SMCRA Section 515(b)(20) which requires a period of responsibility for successful vegetation for 5 years except in areas where the average, annual precipitation is 26 inches or less, where the operator's responsibility is for 10 years. 11 AAC 90.451(d) and 90.203 provide exceptions from this requirement. The Secretary finds that the exceptions in 11 AAC 90.451(d) and 90.203 are not exceptions from the requirements of SMCRA Section 515(b)(20). These requirements can be found at 11 AAC 90.457(d) and are consistent with those in SMCRA Section 515(b)(20).

11. EPI *et al.* state that proposed 11 AAC 90.471(a) did not include language requiring the operator to effectively support and maintain all surface access openings to underground operations as in 30 CFR 817.131(a). In its final rule, the State has added such language. The Secretary, therefore, finds 11 AAC 90.471(a) to be no less effective than 30 CFR 817.131(a).

12. EPI *et al.* comment that an additional requirement must be added to 11 AAC 90.443(a)(2) regarding minimum showings necessary for retention of highwalls. Retained portions of the highwall must not interrupt drainageways above the highwall and thus allow channelized flow over highwalls onto reclaimed areas below. On page 27 of the side-by-side comparison of Federal and State regulations, the State explains that most of the land in potential coal mining areas is remote, and is presently being used primarily as wildlife habitat or for its scenic vistas. This land should be returned to a condition which will support the pre-mining use and be consistent with the use and topography of the surrounding areas. The requirement to cover the highwall and return to an area of gentle slopes could defeat this purpose in the case of remote lands in areas with natural cliffs and outcrops by changing and destroying the natural environment for wildlife species and by creating unnatural topography. 11 AAC 90.443(a)(2) would allow the land to be restored to its most natural condition where artificial cliffs and outcrops could be created from highwalls as long as such restoration would closely resemble the original contour without creating pollution potential and would be consistent with land use plans. This approach would comply with the likely postmining land use of wildlife habitat or scenic enjoyment. The State also refers the reader to the SMCRA Section 708 study on Alaska surface mining at findings 2 and 4, page xxv, Section 3.2.4.2, Appendix A, page 255. The Secretary is persuaded by the State's explanation and, based on the limited exception to the highwall requirement contained therein, finds 11 AAC 90.443(a)(2) to be no less effective than 30 CFR 816.102 and 817.102.

13. National Audubon Society *et al.* suggest that 11 AAC 90.353, regarding stream buffer zones, be modified to be consistent with existing Alaska Department of Minerals and Energy Management oil and gas lease sale setback requirements. As there are no such requirements in the Federal regulations, the Secretary is unable to require the State to make such modifications.

14. National Audubon Society *et al.* urge that hazardous coal processing wastes be disposed of in accordance with the requirements of the new hazardous waste regulations being proposed by the Alaska Department of Environmental Conservation. As there are no such requirements in the Federal regulations, the Secretary is unable to require the State to adapt its program to such hazardous waste regulations.

15. One commenter suggested that monitoring wells be required to indicate the soil conditions for the breakdown of toxic waste produced by surface mining at 11 AAC 90.445. As the Federal regulations contain no such requirement for monitoring wells, the Secretary is unable to insist that the State include such a requirement.

Public Participation

1. EPI *et al.* object to the fact that 11 AAC 90.607 does not contain a provision as in 30 CFR 842.12 for confidentiality upon the request of citizens supplying information related to possible violations. For the reasons stated above in Finding 17.3, the Secretary finds the Alaska program to be no less effective than 30 CFR 842.12.

2. EPI *et al.* state that proposed 11 AAC 90.909 did not include the language of 43 CFR 4.1295 that an award of costs and expenses may include all costs and expenses, including attorneys' and expert witness fees in administrative proceedings. In its final rule at 11 AAC 90.909(b), the State has included such language.

3. EPI *et al.* comment that the State has not included provisions in its regulations comparable to 43 CFR 4.1130 *et seq.* which specify the methods by which parties in administrative proceedings may obtain discovery. In the Supplemental Narrative, the State clarifies its discovery procedures, stating that discovery will be conducted as specified under the Alaska Administrative Procedures Act (APA), AS 44.62. This statute contains provisions for subpoena of persons and materials, taking depositions, use of affidavits, hearing procedures and rules of evidence (AS 44.62.430–.480). In addition, the State APA hearings are supplemented by the civil rules of procedure which provide a range of discovery comparable to the Federal rules. On this basis, the Secretary finds the Alaska program to be no less effective than 43 CFR 4.1130 *et seq.*

4. EPI *et al.* comment that the Alaska program does not seem to allow for the assessment of costs and expenses against a party regarding the judicial review of agency actions. For the reasons set forth above in Finding 22.1, the Secretary finds Alaska law and court rules to be consistent with SMCRA Section 525(e).

5. EPI *et al.* comment that AS 41.45.950 is not clear as to whether awards of expert witness or attorneys' fees are allowed if no monetary judgment is recovered in a citizen's suit as in SMCRA Section 520(d). For the reasons set forth above in Finding 22.2, the Secretary finds Alaska law and court rules to be consistent with SMCRA Section 520(d).

SOAP

EPI *et al.* state that the narrative portion of the Alaska program regarding small operator assistance (SOAP) at 731.14(g)(16) does not explain important programmatic details such as program administration, contracting, or internal coordination. In the Supplemental Narrative the State explains that the Alaska program contains all the required statutory and regulatory authority for the SOAP program. At present, there are no small operators in Alaska. In order to determine the scope of this program, the State has recently contracted for a study of the potential for SOAP in Alaska. The State expects to have the study completed before receiving primacy, and to have all prerequisites in place before any requests for small operator assistance are received. The Secretary finds this narrative explanation acceptable.

The Secretary's Decision

As indicated above, under "Secretary's Findings", there are no deficiencies in the Alaska program. In all respects, the Alaska program meets the criteria for approval.

Accordingly, the Secretary is approving the Alaska program. This approval is effective on May 2, 1983. Beginning on that date, the Alaska

Department of Natural Resources shall be deemed the regulatory authority in Alaska and all Alaska surface coal mining and reclamation operations on non-federal and non-Indian lands and all coal exploration on non-federal and non-Indian lands in Alaska shall be subject to the permanent regulatory program.

On non-federal and non-Indian lands in Alaska, the permanent regulatory program consists of the State program approved by the Secretary. Following this approval, in accordance with Section 523(c) of SMCRA, Alaska may elect to enter into a cooperative agreement with the Secretary to provide for State regulation of surface coal mining and reclamation operations on federal lands within the State.

The Secretary's approval of the Alaska program relates at this time only to the permanent regulatory program under Title V of SMCRA. The approval does not constitute approval of any provisions related to implementation of Title IV under SMCRA, the abandoned mine lands reclamation program. In accordance with 30 CFR Part 884, Alaska may submit a state reclamation plan now that its permanent program has been approved. At the time of such a submission, all provisions relating to abandoned mined lands reclamation will be reviewed by officials of the Department of the Interior.

Additional Findings

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not impose any new requirements; rather, it ensures that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act.* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 902

Coal mining, Intergovernmental relations, Surface mining and Underground mining.

Therefore, 30 CFR Chapter VII is amended by adding a new Part 902 as set forth herein.

Dated: March 15, 1983.

James G. Watt,

Secretary of the Interior.

PART 902—ALASKA

Sec.
902.1 Scope.
902.10 State Regulatory Approval.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977, (30 U.S.C. 1201 *et seq.*)

§ 902.1 Scope.

This Part contains all rules applicable only within Alaska that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

§ 902.10 State Regulatory Program Approval.

The Alaska State program, as submitted on July 23, 1982, as amended and clarified on December 13, 1982, and January 11, 1983, is approved, effective on May 2, 1983. Beginning on that date, the Alaska Department of Natural Resources shall be deemed the regulatory authority in Alaska for all surface coal mining and reclamation operations and all exploration operations on non-Federal and non-Indian lands. Only surface coal mining and reclamation operations on non-Federal and non-Indian lands shall be subject to the provisions of the Alaska permanent regulatory program. Copies of the approved program are available at the following addresses:

Office of Surface Mining, Administrative Record Office, Room 5315, 1100 L Street, NW, Washington, DC 20240

Wyoming Field Office, Office of Surface Mining, 935 Pendell Boulevard, Freeden Building, Mills, Wyoming 82644

Division of Minerals and Energy Management, Department of Natural Resources, State of Alaska, 555 Cordora Street, Room 22, Anchorage, Alaska 99501

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federal register

Wednesday,
March 23, 1983

Part IV

Department of Health and Human Services

Office of Human Development Services

Child Welfare Services Training Grants Program; Announcement of Availability

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

Administration for Children, Youth and Families; Child Welfare Services Training Grants Program;

Program Announcement 13648-831

AGENCY: Administration for Children, Youth and Families, Office of Human Development Services, HHS.

SUBJECT: Announcement of Availability of Grant Funds for the Child Welfare Services Training Grants Program.

SUMMARY: The Administration for Children, Youth and Families (ACYF) announces that applications are being accepted for *Child Welfare Services Training Grants* authorized under Section 426 of the Social Security Act (part B of title IV, 42 U.S.C. 626).

DATES: Closing date for receipt of applications is May 23, 1983.

Scope of Announcement

This Program Announcement covers *all* Child Welfare Services Training Grants to be awarded in Fiscal Year 1983. This Announcement differs from those issued in previous years in order to focus results more directly on helping States in implementing Pub. L. 96-272, and to offer States as many potential resources as possible to carry out these mandates. Other significant differences in the Fiscal Year 1983 Grant Program include the following:

- Applications received under this Announcement will be reviewed by the Administration for Children, Youth and Families Central Office in Washington, D.C. Once funding decisions are made, grants will be awarded and administered by the Administration for Children, Youth and Families Regional Offices.
- Announcements for Child Welfare Teaching Grants and Child Welfare Traineeship Grants have been consolidated into one Program Announcement for Child Welfare Training Grants. Four *priority areas* have been established under this grant program.
- One of the four priority areas is a continuation of the Child Welfare Traineeship Grants; however, a very strong preference is expressed to award traineeships to person currently employed in the field of child welfare, while not eliminating the possibility for persons who are not so employed.
- Eligibility for all grant applications, including those applying for traineeship grants, has been broadened to include any accredited institution of higher learning which demonstrates that it has the organizational, professional, and educational capacity to provide eduaction and training in child welfare.
- Competition for all grants will be national, by priority area, with no allocations specified for particular priority areas or regions. (However, the Commissioner may take geographic distribution into account in deciding on awards.)
- Screening criteria have been established. All applications that do not meet these criteria will be considered non-conforming, and will not be accepted for review.

Program Purpose

In concert with the purposes identified for the HDS Discretionary Grants Program, the purpose of the Child Welfare Training Grants is to support training projects in the field of child welfare that improve education and training for the delivery and management of social service programs focused specifically on children and families. Funds are intended to support projects designed to:

(1) Provide national leadership in: (a) The development of effective methods of addressing social service needs; and (b) the development of State and local capacity to deliver social services appropriately targeted at local problems;

(2) Foster the efficient and effective use of available resources through improved social service management; and

(3) Improve the efficiency and effectiveness of social services through better program administration and responsiveness to local needs.

The purpose of this grant program is to develop, expand and improve education and training programs and resources for child welfare service providers, and to upgrade the skills and qualifications of child welfare workers through participation, full time or part time, in education or training programs focused specifically on child welfare services. Support may be provided to any accredited institution of higher learning which documents it has the organizational, professional and educational capacity to provide or improve child welfare education and training for degree or non-degree students. Applicant institutions are required to collaborate with State or local child welfare agencies in developing and implementing the proposed training projects.

Program Goals and Objectives

The goal of this program is to provide education and training opportunities at the State or multi-State level, and to support special projects in the field of child welfare which will enable persons working or who will work in the field of child welfare services to more effectively achieve the following outcomes for children and families:

- To provide support to families in order to prevent separation of children from their families; or
- Where separation is necessary, to develop a plan in conjunction with the parents and to provide support services to the family to enable children to be returned to their families within a limited time period; or
- Where these efforts fail or are inappropriate, to arrange for the children to become adopted, with or without adoption subsidy, or arrange for other permanent living arrangements including guardianship and permanent foster family care.

Priority Areas for Funding

Applications for projects should specify how the projected project will address one of the following priority areas:

I. Child Welfare Services Training

The objective for this priority area is:

- To develop and conduct practice-oriented training in one or more States for child welfare workers, supervisors, and other practitioners which address critical child welfare issues and problems such as those identified in findings and analyses of Child Welfare Services State Plans, State Plans for Foster Care and Adoption Assistance, Child Welfare Services Program Reviews, Section 427 compliance Reviews, and other related joint-planning processes instrumental for identifying training requirements necessary for implementation of Pub. L. 96-272.

II. Leadership Training in Child Welfare

The objective for this priority area is:

- To develop and conduct leadership training symposia and seminars on critical child welfare issues for persons involved in the administration and management of State public child welfare services programs, State legislators, attorneys general, juvenile and family court judges, volunteer or voluntary support groups, and other persons or groups involved in the provision of services to children and families. These symposia or seminars should provide training in critical areas

of need related specifically to the administration and management of child welfare systems such as those determined by findings and analyses of Child Welfare Services State Plans, State Plans for Foster Care and Adoption Assistance, Child Welfare Services Program Reviews, Section 427 Compliance Reviews and other related joint-planning processes instrumental for identifying training requirements necessary for implementation of Pub. L. 96-272.

III. State Training Assistance Projects

The objective for this priority area is:

- To provide consultation, assistance, resources and additional expertise in specific areas related to child welfare to one or more State or local child welfare agencies to improve their capacity to provide on-going practice-relevant child welfare services training, or to develop and implement related staff development activities.

IV. Child Welfare Traineeship Projects

The primary objective of this priority area is to provide financial support, special courses and practicums to enable workers currently employed by public and voluntary child welfare agencies to upgrade their practice skills, and to acquire specialized information and expertise related to the delivery of services for children and families, through participation in structured education or training programs related specifically to child welfare.

Although very strong preference is for trainees who are currently employed in the field of child welfare, consideration will also be given to projects which provide education and training for students and other practitioners concentrating in child welfare services, but who may not be currently employed in child welfare.

Issues of Special Interest to HDS: within the four priority areas, HDS is particularly interested in focusing resources on the following issues:

a. *Child welfare training in specialized areas of services* needed to implement Pub. L. 96-272.

b. *Training on child welfare and the law,* for addressing critical issues arising from the interface between child welfare and the judicial system, and to provide workers with appropriate interdisciplinary knowledge and skills (e.g. procedural safeguards; rights of children, birth parents and foster parents; termination of parental rights; dispositional hearings; legal aspects of adoption, etc.).

c. *Training on adoption of special needs children,* for training supervisors and workers in methods and techniques for expanded adoption of special needs children using nationally recognized child welfare curricula.

d. *Child welfare management training,* for improved leadership, administration and management of child welfare service systems at the State and local levels (e.g. effective supervision, utilizing supervisors as trainers; training of trainers; methods and techniques for accessing training effectiveness; program/client evaluation training; management and the use of information systems; use of program date and indicators for systems analysis; improvement of program management for child welfare services, etc.).

e. *Training in services to minority children and families,* for preparing child welfare staff to work with children and families from minority racial and ethnic backgrounds, and to promote the delivery of culturally/sensitive services to minority children in the child welfare system through the use of exemplary resource materials and nationally recognized training curricula.

Screening Criteria

The following screening criteria have been established. Applications which do not meet these criteria are non-conforming and will not be accepted for review.

- Each application must clearly identify and address a *single* priority area for which the application is to compete. If applicants want to compete for more than one priority area, separate applications must be submitted for each one.
- A one page abstract summarizing the purpose, objectives and activities of the proposed project must be submitted. This abstract will assist in identifying the priority area, and will be used to provide descriptive information on grants approved for funding
- Part IV Narratives for grant applications must not exceed 26 double-spaced typewritten pages (or 13 pages single spaced). Appendices, including supporting documents, capability statements, budget information, etc., are not to exceed 20 additional pages.
- Each application must include a letter of support from the State Commissioner of Social Services, State Commissioner of Human Resources or his or her designee that its content specifically addresses the child welfare service needs of the State, and that the State will work cooperatively as specified in the proposal to achieve the intended outcomes of the proposed project.
- Applications must not focus primarily on curriculum development or the development of new materials, where there is clear documentation that current materials already exist. Minor adaptations of existing materials will be premitted where the applicant documents that it does not exceed 20% of its level of effort. (See listing of current curricula included in grant application materials.)

Eligible Applicants

Child Welfare Services Training Grants are awarded to public and private nonprofit colleges and universities accredited by an appropriate accrediting authority (e.g. National or regional associations of colleges and secondary schools; National Council for Accreditation of Teacher Education; American Assembly of Collegiate Schools of Business; Council on Social Work Education; Council on Education for Public Health; Association for American Law Schools, et al.).

Applicant institutions are required to demonstrate their organizational, professional and educational capacity to provide education and training in child welfare.

For those institutions applying for Traineeship grants (Priority Area 4), very strong preference will be given to those offering traineeships to persons currently employed in child welfare.

Available Funds

Of funds expected to be available in Fiscal Year 1983, the Administration for Children, Youth and Families expects to award approximately $3,500,000 for new Child Welfare Services Training Grants. The budget period is the equivalent of one year's duration, although grant funds may be spent within a project period of 12-17 months to allow for grant start-up activities.

Grants for Priority Areas I, II, or III are expected to be awarded at funding levels ranging from $75,000 to $150,000. Grants for Priority Area IV will average approximately $25,000 per applicant institution. If an applicant desires to present justification to exceed these funding levels it will be considered on its merit, without penalty.

Indirect Cost Limitation

An indirect cost of 8% of the direct costs (or the institution's actual indirect cost if less than 8%) is allowable under this grant program.

Grantee Share of the Project

There is no cost sharing or matching requirement for grants under this announcement.

A-95 Notification Process

This program does not require A-95 notification and review process.

Application Process

Availability of Forms

Application for a grant under the child Welfare Services Training Grant Program must be submitted on standard forms provided for this purpose. Application forms and instructions may be obtained either by writing to or telephoning: Child Welfare Training Grant Program: Application Request, Assistance Branch, Children's Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, D.C. 20013. Telephone: (202) 755-7730 or 755-7731.

Application Submission

One signed original and two copies of the grant application, including all attachments, must be submitted to: Grants Management Branch, Office of Human Development Services, Department of Health and Human Services, 300 Independence Avenue, SW. Washington, D.C. 20201. Attention: Mary White.

In order to facilitate processing of a grant application, please submit one signed original and five copies. The application must be signed by an individual authorized to act for the applicant institution and to assume for the institution the obligations imposed by the terms and conditions of the grant award.

Application Consideration

The Commissioner, Administration for Children, Youth and Families determines the final action to be taken with respect to each grant application for this program. Applications which are complete and conform to the requirements of this program announcement are subjected to a competitive review and evaluation by qualified persons independent of the Administration for Children, Youth and Families. In addition to the results of the review, in his final decision, the Commissioner will also take into special consideration: (1) Geographic distribution of competing application; (2) comments from central office and regional office staff; and (3) in the case of traineeships, applicants who are offering traineeships to persons already employed in the field of child welfare.

If the Commissioner has reached a decision to disapprove a competing grant application, the unsuccessful applicant is notified in writing. Successful applicants are notified through the issuance of a Notice of Financial Assistance Awarded which sets forth the amount of funds granted, the terms and conditions of the grant, the budget period for which support is given, and the total period for which project support is contemplated.

Closing Date for Receipt of Applications

The closing date for receipt of applications under this Program Announcement is May 23, 1983. An application will be considered received on time if:

- The application was sent by registered or certified mail no later than (May 23, 1983) as evidenced by the U.S. Postal Service postmark; unless it arrives too late to be considered by the independent review panel.
- The application is received on or before close of business (COB) (May 23, 1983) in the Department of Health and Human Services Central Office mailroom. In establishing the date of receipt, consideration will be given to the time date stamps of such mailrooms or other documentary evidence or receipt maintained by the Department of Health and Human Services.

Criteria for Review and Evaluation of Applications

Priority Areas I, II and III

Grant applications for projects submitted under Priority Areas I, II and III will be evaluated against the following criteria:

(1) That the project objectives are identical with or are capable of addressing one of the specific program priority areas (Numbers I, II or III) as listed in this announcement; that the applicant identifies the specific child welfare issues which the project plans to address; and that the applicant describes how the project will improve and expand the child welfare resources and training capability of the affiliated State child welfare agency. (15 points)

(2) That the applicant provides documentation on the nature and extent of consultations held in planning this project with State or local administrators of public social service agencies, including, where appropriate, voluntary agencies or organizations. Participation of the public and voluntary agencies (and/or attorneys general, state legislators, judges etc., as appropriate and feasible) regarding the proposed project clearly takes into account the child welfare training needs of the State, as indicated in appropriate joint planning documents and other processes for identifying training requirements necessary for implementation of Pub. L. 96-272. The proposal documents that the State public agency will provide specific and substantive on-going support to and involvement with the project through to its conclusion. (20 points)

(3) That the application includes a work plan designed to achieve the results required by the program objectives, which includes the following:

(a) The proposed methodology for conducting the training project (including the plan for insuring continued involvement and support of the affiliated State or local public agency);

(b) Timetables for accomplishing program goals, objectives, and sub-objectives as identified and further defined by the applicant in the proposal; and target indicators for identifying and measuring proposed outcomes for program objectives;

(c) A management plan which describes how the project will be implemented;

(d) The proposed process and procedures that will be used to coordinate training and training asistance projects with the activities of the Regional Resource Centers for Children and Youth. (A list of these Centers is provided in the Grant Application Kit.) (20 points)

(4) That the applicant describes the State's or local public and voluntary agencies' plans to implement successful training projects or successful results of the State training assistance projects into an on-going training program within the State or local agency. Agency plans should include projected information about the qualifications of staff who will conduct the training or training assistance activities, the courses to be offered, and the types of trainees or staff who will be eligible or required to participate. (15 points)

(5) That the applicant demonstrates it has the organizational, professional and educational capacity to address the critical child welfare training issues facing States, with particular emphasis on the program goals of this announcement, including but not limited to such critical areas as prevention, in-home services, foster care services, case review, adoption and post-placement services, needs and minority children, services for minority children and families, legal issues in child welfare practice, management issues in child welfare service systems, etc.

(6) That the project personnel are or will be well qualified to provide child welfare training or training assistance and the applicant has or will have adequate resources to conduct the project. (10 points)

(7) That the estimated cost to the government and to the project is reasonable considering the anticipated results, and that the applicant has included funds to send at least one key person to a Statewide or regional meeting on child welfare training issues, and to two national meetings of all funded Training Grant projects in Washington, D.C. (5 points)

Priority Area IV

Grant applications for projects submitted under Priority Area IV will be evaluated against the following criteria:

(1) That the project objectives are identical with or are capable of achieving the program objectives in this announcement and the specific objectives for Priority Area IV. (5 points)

(2) That the proposed workplan is designed to achieve the results required by the program and priority area objectives, as identified in this program announcement and as further defined and elaborated by the applicant. (20 points)

(3) Assurance that all additional requirements for eligibility of students and for student stipends, will be met. (5 points)

(4) That the application includes a plan designed to recruit minority candidates into the traineeship program, especially those who have limited financial resources. This plan must specify activities and timetables by which the school will seek out, identify, and when implemented, *focus* traineeship selection on minority candidates. (15 points)

(5) That the applicant documents that for non-degree students it will provide a program of study which is specifically designed to develop or update practice oriented skills required for effective delivery of services to children and families in subject areas related specifically to the program goals and objectives identified in this announcement; and that for all degree students it will provide a field placement program or other appropriate practicum experience in which they will have an opportunity to integrate academic and field placement experiences into a more comprehensive understanding of the field of child welfare which will include the following:

(a) A description of the type of schedule the field placement will follow and the number of hours a week, month, semester, etc., it entails;

(b) Documentation that the trainee will work under the direction of professionally trained supervisory staff;

(c) Descriptive information about how the trainee will work in a field placement directly related to the provision of child wefare services;

(d) A description of the policies and procedures the applicant will follow in the supervision of the student's field placement, including: (1) whether there is a supervisor or director of field placement and that person's role and responsibility; (2) who provides direct supervision; (3) the criteria for the selection of field placements in child welfare; (4) the nature and quality of the supervisory contact required; and (5) the relationship between the field placement and the classroom instruction. (20 points)

(6) That the application include the following documentation:

(a) In the case of students who are currently employed in the field of child welfare, the applicant documents that it has obtained a letter of intent or commitment from a public or voluntary social service agency to release employees for the pursuit of traiffing in child welfare. The letter of intent or commitment must specify the name(s) of employee(s) to be released and enrolled, and must state that the agency will continue to employ the trainee during the time of the traineeship or will make a resonable effort to rehire the employee, upon completion of the training, in a position providing services, training, conducting research or administering programs in child welfare.

(b) In the case of students not currently employed in the field of child welfare or not on release time from such employment, documentation that the applicant has obtained a letter of intent or commitment from an appropriate agency or organization providing child welfare services which provides reasonable assurance, subject to availability of funds, that the agency will hire recipients of traineeship grants to work in child welfare setting upon completion of the proposed training program. (20 points)

(7) That project personnel are or will be well qualified to provide direction and supervision to trainees specializing in child welfare, and the applicant organization has or will have adequate facilities and resources to conduct the project. (10 points)

(8) That the estimated cost to the government of the project is reasonable considering the anticipated results, and all costs are for student financial support. (5 points)

Additional Requirements for Eligibility of Students

(1) Trainees must express a commitment to a career in child welfare and an intent to begin or return to employment in a State or local agency or organization that provides child and family services.

(2) Trainee must be citizens of the United States or foreign nationals lawfully admitted to the United States for permanent residency.

(3) Trainee must be duly enrolled for full or part time study at the grantee institution, either for credit or non-credit. Degree oriented trainees must be duly enrolled in either the senior year of a program leading to a baccalaureate degree, or a program leading to a Masters degree.

(4) Trainees are not currently receiving educational allowances from any other Federal, State or local public or voluntary agency when that allowance is conditioned on a conflicting employment obligation incurred by the trainee, except for federally assisted student loans or educational benefits payable under the Veterans Education and Training Amendment Act of 1977 as limited by Section 213 of said Act.

(5) Trainees may not be employees of the Federal government.

Additional Requirements for Student Stipends

Non-degree traineeship programs may award traineeship grants to pay for the cost of tuition, educational fees and books.

Degree-oriented traineeship programs may award traineeship grants to pay for stipends and dependency allowances (see chart below), in addition to the cost of tuition and educational fees. Traineeship grants may only be used to provide student financial support *and not for any other direct or indirect costs for the applicant.*

Stipends and Allowances for Degree Students

At the undergraduate level, the total per student cost shall not exceed $1,000 for an academic year which may include stipends, tuition, fees or other costs. At the graduate level, costs which may be covered include tuition, fees, stipends, dependency allowances and travel expenses. Traineeship grants may be awarded for partial support of students at the discretion of the institution.

Dependency allowances for the dependents of graduate level students will be $600 per support year for each eligible dependent. Dependents are as defined in the Internal Revenue Code.

Dependency allowances are not available to baccalaureate level trainees.

Domestic travel allowances for students from their residence to the training institution will not be provided except, in those cases of extreme need or hardship for individual students where a one-way travel allowance may be granted at the rate of up to 20 cents per mile. A travel allowance for reimbursement for travel to field institution may be paid when it is the policy of the institution to pay such costs.

The chart below should be used in calculating graduate level stipends and allowances for full-time students.

Stipends and Allowances

STUDENTS WITH LITTLE OR NO RELATED PROFESSIONAL EXPERIENCES—MASTER'S LEVEL

Year of training	Annual rate	Monthly rate
First post-baccalaureate year	$2,400	$200
Years between first and terminal year	2,600	217
Terminal year [1]	2,800	233

[1] Applicable only to programs extending beyond 2 years. The second year of Master's Degree Program is at the $2,600 rate.

STUDENTS WITH RELATED PROFESSIONAL EXPERIENCE—MASTER'S LEVEL [1]

Previous related professional experience, master's level	Year of training					
	1		2		3	
	Annual	Month	Annual	Month	Annual	Month
6 to 11 months	$3,000	$250	$3,300	$275	$3,600	$300
12 to 23 months	3,300	275	3,600	300	3,900	325
24 to 35 months	3,600	300	3,900	325	4,200	350
36 to 47 months	4,200	350	4,200	350	4,200	350
48 or more months	4,200	350	4,200	350	4,200	350

[1] A trainee, who is awarded a "Master's Level Experience Student" Stipend, must have had professional experience in a field relevant to the professional training to be undertaken. A complete and detailed record of the trainee's employment must be maintained by the grantee institution so that the stipend level can be properly justified.

Applications received after the deadline or sent to any address other than the central office in Washington, D.C. will not be accepted and will be returned to the applicant.

(Catalog of Federal Domestic Assistance Program Number 13.648, Training Grants in the Field of Child Welfare.

Dated: March 11, 1983.

Warren Master,

Acting Commissioner, Administration for Children, Youth and Families.

Approved: March 17, 1983.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

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federal register

Wednesday
March 23, 1983

Part V

Department of Education

Improvement of the Student Aid Delivery and Information Systems; Public Hearings and Request for Public Comment

DEPARTMENT OF EDUCATION

Improvement of the Student Aid Delivery and Information Systems; Public Hearings and Request for Public Comment

AGENCY: Education Department.

ACTION: Notice of public hearings and request for public comment on the improvement of the Student Aid Delivery and Information Systems.

SUMMARY: The Department of Education will be holding public hearings and the Secretary is requesting written comments from the public regarding the improvement of the Title IV student financial aid delivery and information systems.

DATES: Comments must be submitted on or before April 22, 1983. Public hearings are scheduled for March 31, April 6, 11, and 13, 1983.

ADDRESSES: Written comments should be addressed to: Patrick Sherrill, Credit Management Project, U.S. Department of Education, 400 Maryland Avenue, S.W., FOB–6, Room 3034, Washington, D.C. 20202.

Public hearings will be held in the following cities on the dates shown:

Chicago—March 31, 1983; Roosevelt University, 430 South Michigan Avenue, Sullivan Room, Room 220, Chicago, Illinois

San Francisco—April 6, 1983; Federal Building, 450 Golden Gate Avenue, Room 2007, San Francisco, California

Dallas—April 11, 1983; University of Texas, Dallas, Student Union, Room 2304, Richardson, Texas

Atlanta—April 13, 1983; U.S. Department of Education, 101 Marietta Towers, Room 2221, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick Sherrill—202/472–6032.

SUPPLEMENTARY INFORMATION: The Secretary is requesting public comment on the Department's effort to impove the systems used to deliver Title IV student financial assistance under the Guaranteed Student Loan, PLUS, Pell Grant, College Work-Study, National Direct Student Loan, Supplemental Educational Opportunity Grant, and State Student Incentive Grant programs.

Need for Improvement

The U.S. Department of Education is under the Administration's mandate to improve its information management, financial management, funds disbursement, and debt management systems. Under OMB Bulletin 83–11, which requires that Executive Branch agencies upgrade their credit management and debt collection practices, the Department is responsible for implementing effective credit management procedures. The General Accounting Office has identified weaknesses in the current process that indicates that the current delivery system is highly error prone. There also have been a number of recommendations for changes in the current system from members of the financial aid community. Finally, the existing systems are at least a decade old in a field where advancements in technology suggest the possibility for remarkable improvements in program operation. To meet the responsibility of its stewardship of Federal funds, the criticism of the current systems, the community's desire for improvements, and the opportunity to take advantage of advanced procedures and technology, the Department of Education has undertaken this major evaluation effort.

Objectives of the Evaluation

The objectives of the systems improvement effort include the establishment of:

- An effective management information system,
- An auditable financial management system,
- An efficient funds disbursement system,
- An effective debt management system,
- Reduced administrative costs to all parties, and
- Effective communication between all participants.

The new systems should improve the delivery systems for all users, particularly the students, and the institutions, lenders, and State agencies.

The Secretary has formed a Credit Management Task Force whose goals are to review the current delivery systems, evaluate suggested modifications in and alternatives to the current system, and recommend an action plan to the Secretary. The Credit Management Task Force is made up of representatives from the Department of Education Offices of Planning, Budget, and Evaluation, Postsecondary Education, and Management.

How the Information Will Be Used

The Credit Management Task Force will measure proposed alternative systems against an objective evaluation standard to estimate the effects of the proposed system on the system users. The results will be presented to the departmental Credit Management Board, chaired by the Comptroller, who will present its recommendations to the Secretary.

Comments Should Address Delivery Systems

This project is addressing all the systems used to deliver student aid. These systems can be defined as the administrative procedures and mechanisms that provide Federal funds and services to students through mediating agencies such as States, lenders, institutions and private agencies. These systems guide the submission of applications, determination of eligibility, calculation of awards, disbursement of funds; and reconciliation of accounts. Policy questions which effect the current purposes, scope, distribution, or levels of funding of the Title IV programs are excluded from the evaluation effort. Your comments about these other issues should be forwarded to the Department of Education's Office of Student Financial Assistance.

Procedures for Public Comment

The Secretary encourages interested parties to send their written comments to the Department's Credit Management Project at the Washington address provided in this notice, or to appear at one of the public hearings. The Secretary encourages that those attending the hearings provide a written copy of their comments and be prepared to answer specific questions on their proposals. Written comments should be submitted no later than April 23, 1983 to the contact person named in this notice.

Format for Comments

The Secretary requests that the respondents identify their role in the delivery of student aid and the perspective from which they view the system—either as a representative of a State agency, school (private or public, two-year, four-year, etc.), lender, parent, student, or private citizen. In proposing an alternative system, respondents should address the main elements of a delivery system for each program. These elements include:

- Application submission,
- Eligibility determination,
- Benefit calculation,
- Funds disbursement,
- Account reconciliation.

The hearings are designed to elicit your perspective on how the current student financial aid delivery and information systems prevent and/or support the achievement of your administrative needs. Be specific regarding the data requirements, timing, coordination between parties, procedures, technology, and delegation of responsibility which should be in an

improved or redesigned system in order for that system to meet your needs.

(Catalog of Federal Domestic Assistance: 84.038 National Direct Student Loan Program; 84.033 College Work-study Program; 84.007 Supplemental Educational Opportunity Grant Program; 84.062 Pell Grant Program; 84.032 Guaranteed Student Loan and PLUS Programs; 84.069 State Student Incentive Grant Program)

Dated: March 18, 1983.

Charles L. Heatherly,

Deputy Under Secretary for Management.

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Part VI

Department of Health and Human Services

Office of Community Services

Notice of Availability of Funds and Requests for Applications Under Community Services Discretionary Authority

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Community Services

[Program Announcement No. OCS–83–1]

Availability of Funds and Requests for Applications Under Community Services Discretinary Authority

AGENCY: Office of Community Services, HHS.

ACTION: Announcement of availability of funds and requests for applications under the Community Services Discretionary Authority.

SUMMARY: The Office of Community Services (OCS) announces that competing applications will be accepted for new grants and cooperative agreements pursuant to the Secretrary's discretionary authority under Title VI, Section 681 of Pub. L. 97–35 the Community Services Block Grant Act. This program announcement consists of four parts. Part I covers general information, discusses the overall purposes of the OCS Discretionary Program, lists the funding authority and briefly describes the FY 1983 competitive review process. Part II describes the program priority areas in which grants or cooperative agreements will be awarded. Part III describes the application process, who is eligible apply, what funds are expected to be available and the review and selection criteria. Part IV gives specific guidance on how to prepare and submit an application under each separate published program priority area.

DATES: The closing date for receipt of applications is June 1, 1983. Applicants may meet this deadline either by delivering or mailing the application on or before June 1st in accordance with the detailed instructions in Part IV below. Late applications will be returned to the senders without consideration in the competiton.

FOR FURTHER INFORMATION CONTACT: OCS/Office of State and Project Assistance/Division of Discretionary Programs, 1200 19th Street, N.W., Room 432, Washington, D.C. 20506, (202) 254–7079.

Part I—Overall Guidance

A. Scope of This Program Announcement

Section 681 of the Commuinity Services Block (CSBG) Act authorizes the Secretary of Health and Human Services to make funds availiable to support ongoing activities of national or regional significance to alleviate the causes of poverty in distressed communities.

Applicants must fully demonstrate that the project they are proposing represents an ongoing program activity of the applicant as defined below. Applicants must show that the proposed activity is clearly related to the purposes of the CSBG Act, i.e., to alleviate the causes of poverty in distressed communities.

For purposes of this announcement, the term "ongoing activity" means an activity that is actually in progress, that will continue to move towards meeting specific goals and objectives with OCS support, and that has a meaningful and measurable impact on the area and population to be served. The term "national or regional significance" means activities that directly address the causes of poverty in a way that can be replicated in another part of the region or country. Projects under this announcement must result in direct benefits targeted towards low-income people as defined in the most recent Annual Revision of Poverty Income Guidelines, most recently published in the **Federal Register** February 1983, pp. 7010–7011.

OCS will grant funds for only one year. Accordingly, each applicant must clearly demonstrate their ability to carry out their work plan with FY 1983 funds without substantial start-up costs and to achieve measurable results within the one year of funding. Applicants should demonstrate their ability to continue operating as viable organizations and meeting their program objectives after the cessation of OCS funding.

An applicant can be engaged in a *qualified* "ongoing activity" without having been a recipient of funds from OCS or the former CSA. Organizations previously funded by CSA or OCS may apply but such an application would constitute an application for new funding, rather than an application for continuation funding. This is a particularly relevant reminder for successful applicants under the FY 1982 discretionary program. All applications will be considered in competition with all other acceptable applications within each program priority area.

The Fiscal Year 1983 program is a continuation of the basic overall policy established by the Fiscal Year 1982 OCS Discretionary Program. The overall OCS policy direction is to promote self-sufficiency in terms of jobs, income and ownership opportunities for low-income individuals; to provide a better standard of living for rural low-income individuals in terms of housing, and water and sewer facilities; and to implement new and innovative strategies for addressing the special needs of migrant and seasonal farmworkers. The OCS believes that these policy objectives can be best met at the local level through local organizations that can coordinate linkages with other private and public sector initiatives and enhance private sector involvement.

B. FY 1983 Process

The FY 1983 Discretionary Process provides for a single application process. All timely applications will be initially screened by OCS staff to determine their completeness and conformance with the requirements of this announcement, using the screening factors listed below in Part III. Those applications which pass this screening will be given further consideration by referral to reviewers for scoring and explicative comment based on the criteria detailed in Part III and the specific requirements contained under each published program priority area. Following the final review by the Director, OCS and his staff, it is anticipated that awards under this announcement will be made in September, 1983.

Part II—Program Priority Areas

Priority Area 1: Urban and Rural Community Economic Development

The overall purpose of this priority area is to encourage the development of special programs by which the residents of urban and rural low-income areas may through self-help and mobilization of the community-at-large, with appropriate Federal assistance, improve the quality of their economic and social environment in such a way as to contribute to the elimination of poverty and the establishment of permanent economic and social benefits.

Narrative Description

The Office of Community Services will provide funds to a limited number of for profit and non-profit corporations for business and community development activities at the local level. Funds for these activities will be used primarily for investment capital and will require the submission of business or community development proposals that meet the test of feasibility.

The purpose of this priority area is not only provision of resources to eligible applicants, but also the broader objectives of arresting tendencies toward dependency, chronic unemployment, and community deterioration in urban and rural areas. To this end, the program seeks to attract additional priviate capital into

distressed communities, including Enterprise Zones, build and expand the ability of local institutions to better serve the economic needs of local residents, and provide new employment and ownership opportunities for low-income people through business, physical or commercial development.

OCS is interested in providing funding support for a limited number of demonstration projects that are unique and innovative such as those which provide training and employment in high technology. These projects must further Administration goals of private-public partnerships, and new Federal initiatives such as urban and rural enterprise zones. OCS is particularly interested in receiving applications that stress public-private partnerships that are directed toward the development of economic self-sufficiency through a focus on economic expansion. Applications must show significant impact on creating new permanent private sector jobs, and maintaining existing jobs, targeted towards the unemployed and underemployed.

A distressed community enterprise zone is defined as a geographic urban neighborhood or rural community of high unemployment and pervasive poverty. Applicants located in a state or federally-designated enterprise zone, in which a legislative entity has enacted a program of tax and regulatory relief to encourage business development, are encouraged to submit applications. These applications must be linked with and complement ongoing enterprise zone initiatives, and may be for either a business venture or a demonstration of innovative ways of involving the poverty community in the implementation of the enterprise zone concept.

Applicants are expected to clearly describe how they plan to leverage their own resources and requested OCS funds with those of private sources and of other government agencies.

Technical Work Plan Requirements

Each application submitted under this program priority area must include a valid and complete business plan as part of its program narrative as required in Part IV of the SF 424.

The Business Plan is one of the major components in the required project narrative that will be evaluated by OCS in terms of feasibility and community benefits. Therefore, your business plan must be well prepared and address all the major elements of a business plan as detailed in the application kits.

It should contain a full and accurate description of the proposed use of the requested financial assistance, whether it is for a business facility, physical or commercial development project. The program narrative must show how increased employment, income, and ownership opportunities will be provided by the proposed project. The applicant must also clearly document an ability to strengthen linkages with, or leverage from, other private and public resources. Wherever applicable, assurances of participation of the private sector in the proposed project must be fully documented.

The Business Plan must demonstrate to OCS that there is reasonable assurance that the amount of the requested OCS funds, together with other funds available, is adequate for the completion of the project or achievement of the purposes for which an allocation of OCS funds is to be made.

Detailed guidelines for completing a business plan are included in the application kits.

Use of these guidelines should result in a complete and professional business plan which makes an orderly presentation of the facts necessary to be judged responsive to the program announcement. Commonsense should be used in applying the guidelines to develop a business plan for each venture.

Because the guidelines were written to cover a variety of possibilities, rigid adherence to them is not possible nor even desirable for all ventures. For example, a plan for a service business would not require a discussion of manufacturing nor product design.

The guidelines include the following twelve sections: Summary Business Plan; The Venture and its Industry; Products and Services; Market Research and Evaluation; Marketing Plan; Design and Developement Plans; Manufacturing and Operations Plan; Management Team; Overall Schedule; Critical Risks and Assumption; Community Benefits; and the Financial Plan.

Applicants which do not include a business plan as part of this application will be found non-responsive. The Business Plan requirement will be reviewed under Criterion 1.

The OCS will accept applications that include administrative costs. These funds will be extremely limited, and no awards for administrative costs only will be made. No more than 10% of the OCS discretionary funds requested may be used for administrative purposes. More favorable consideration may be given to applications where administrative costs are less than 10% of total project funds from all sources.

Any applicant applying under this priority area must document that it has been previously involved in substantial economic development activities and has a record of successful project implementation which justifies a high degree of confidence in the success of the proposed project.

Each applicant must document that it has a firmly established and quantifiable record of performance that shows the following capabilities:

—To plan and implement major activities such as: (1) Business development, (2) commercial development, (3) physical development, or (4) financial services;
—To leverage and mobilize dollars from such services as: (1) the private sector (corporations, banks, etc.), (2) foundations, (3) the public sector, (4) State and local governments, and/or (5) individuals;
—To establish and maintain relationships within the community (with public officials, financial institutions, corporations, other community organizations and residents);
—To maintain an asset base and organizational structure which is sound in terms of: (1) Net worth, (2) stability, and (3) capability;
—To develop and maintain a stable and diversified overall program in terms of business, physical and community development activities that have provided needed permanent jobs, services and other benefits to community residents, and impacted on community-wide economic problems and needs;
—To recruit and maintain both a qualified and demonstrably competent staff and a functioning Board of Directors that is capable of setting appropriate policy, making necessary program decisions, and providing adequate programmatic oversight;
—To have in place sound administrative and fiscal systems and controls, and;
—To establish and maintain partnerships with the private sector in such forms as financial support, volunteerism, or executives on loan.

The applicant is required to leverage private or public funds with each OCS dollar awarded. This match may be one private sector dollar or two public sector dollars to each dollar of OCS discretionary funds awarded. Matching funds must be definite, or contingent only on receipt of the OCS grant. Speculative match, or match based on independent contingencies (such as receipt or another grant) will not be counted towards the matching requirement. Funds expected to be raised as a result of the grant, whether

from program income or otherwise (e.g., from formation of a MESBIC) will not be counted. It is to be noted that for *existing* businesses or projects, projected income based on realistic extrapolation of past performance will be acceptable. The OCS will also not consider applicants that are geared toward the establishment of or investment in existing revolving loan funds, Small Business Investment Companies or Minority Enterprise Small Business Investment Companies.

Program Priority Area 2.0—Assistance For Rural Housing and Community Facilities Development

The purpose of this program area is to target funds in a limited number of low-income rural communities to address two major needs in rural areas—Housing and Water and Waste Treatment.

Area 2.1—Rural Housing Repairs and Rehabilitation

To assist low-income residents in rural communities to rehabilitate or repair existing substandard housing units; or acquire ownership of adequate housing and/or to otherwise assist families to obtain standard housing or to support the development of innovative ways to meet the housing needs of the rural poor, such as the conversion of non-residential buildings to residential use.

'Rural' includes all territory of a state that is not within the outer boundary of any city having a population of 25,000 or more and its immediate adjacent urban area with a population density of more than 100 persons per square mile according to the latest decennial census.

We will consider applications from such entities as rural housing development corporations, cooperatives and other public and private organizations with proven accomplishments in the area of rural housing.

Proposals should fully describe how the proposed use of funds will result in tangible improvements in the housing conditions of the rural poor, including one or more of the following:

- Interior or exterior structural repairs including weatherization and alternative energy systems or well-being of the rural poor;
- Provision of job opportunities to local unskilled residents while assuring quality work;
- Provision of technical assistance and professional services related to housing and community planning by community-based design and planning organizations. Such programs shall be conducted with maximum use of the voluntary services of professional and community personnel;
- Development of innovative housing strategies to help low-income rural residents acquire housing.

The OCS will accept applicatons that include administative costs. These funds will be extremely limited, and no awards for just administrative costs will be made. No more than 10% of the OCS discretionary funds requested may be used for administrative purposes. More favorable consideration may be given to applications where administrative costs are less than 10% of total project funds from all sources.

The applicant is required to leverage private or public funds with each OCS dollar awarded. This match may be one private sector dollar or two public sector dollars to each dollar of OCS discretionary fund awarded. Matching funds must be definite, or contingent only on receipt of the OCS grant. Speculative match, or match based on independent contingencies (such as receipt of another grant) will not be counted toward the matching requirement. Funds expected to be raised as a result of the grant, whether from program income or otherwise (e.g., from the formation of a MESBIC) will not be counted. It is to be noted that for *existing* businesses or projects, projected income based on the realistic extrapolation of past performance will be acceptable. The OCS will also not consider applicants that are gared toward the establishment of, or investment in existing revolving loan funds, Small Business Investment Companies or Minority Enterprise Small Business Investment Companies.

Specific Application Requirements

Each applicant must include in Part IV, Program Narrative, of the SF 424 application a full discussion and description of the applicant's project including the following sections:

- *Analysis of Needs/Priorities.* The nature and extent of the problem addressed with adequate description and documentation which identifies specific housing needs of the rural poor in the area targeted and a rationale for the strategies and priorities for which OCS support is requested.
- *Job Creation.* The number of new permanent direct jobs to be created, and the number of permanent jobs maintained by the proposed project including the number of unskilled workers resident in the target area to be trained and placed.
- *Basic Housing Data for Targeted Area.* Applicant should include information on status of housing in the targeted area, including but not limited to vacancy rates, housing deficiencies, characteristics of any housing units to be repaired, new construction inventory, values, rents and mortgage rates.

Area 2.2: Rural Communities Facilities Development (Water and Waste Water Treatment Systems Development)

The purpose of this area of consideration is to help low-income rural communities to develop the capability and expertise to establish and maintain affordable, adequate and appropriate water and waste water treatment facilities.

We will consider applications from Regional Technical Resource Centers and public or private organizations with proven technical expertise and accomplishments in water and waste water treatment programs.

In the Program Narrative as required by Section IV of the SF 424, applicants should fully describe how the proposed use of funds will result in tangible improvements in the quality of water and waste water treatment systems for the rural poor including one or more of the following:

—To assist rural communities in the operation and management of water and waste water facilities;
—To develop local expertise and capability in water and waste water development and engineering services;
—To improve the adequacy and dissemination of information to rural communities in engineering services; and
—To improve the State and local water and waste water service delivery system to serve rural communities more adequately.

Funds are not available under this area for the construction or hook-up of water and waste water treatment systems, nor for operating subsidies for such systems. However, applicants should coordinate projects with the Farmers Home Administration (FmHA) and other Federal and State agencies to ensure that funds for hardware for local community projects are available.

The OCS will accept applications that include administrative costs. These funds will be extremely limited, and no awards for just administrative cost will be made. No more than 10% of the OCS discretionary funds requested may be used for administrative purposes. More favorable consideration may be given to applications where administrative costs are less than 10% of the total project funds from all sources.

The applicant is required to leverage private or public funds with each OCS

dollar awarded. This match may be one private sector dollar or two public sector dollars to each dollar of OCS discretionary funds awarded. Matching funds must be definite, or contingent only on receipt of the OSC grant. Speculative match, or match based on independent contingencies (such as receipt of another grant) will not be counted towards the matching requirement. Funds expected to be raised as a result of the grant, whether from program income or otherwise (e.g., from the formation of a MESBIC) will not be counted.

It is to be noted that for *existing* businesses or projects, projected income based on the realistic extrapolation of past performance will be acceptable. The OCS will also not consider applicants that are geared toward the establishment of or investment in existing revolving loan funds, Small Business Investment Companies or Minority Enterprise Small Business Investment Companies.

Program Priority Area 3.0: Assistance to Migrants and Seasonal Farmworkers

The purpose of this area is to fund a limited number of projects which focus exclusively on the problems and special needs of migrant and seasonal farmworkers and which will contribute toward improving their quality of life and advancing them toward self-sufficiency. The term "migrant farmworkers" means an individual who works in agricultural employment of a seasonal or other temporary nature, and who is required to be absent overnight from his permanent place of residence. The term "seasonal farmworkers" means an individual who works in agricultural employment of a seasonal or other temporary nature and is *not* required to be absent overnight from his permanent place of residence.

Special consideration will be given to projects that emhasize the involvement of the private sector in addressing the unique problems of low-income farmworkers, with priority afforded to migrants, since local commuting farmworkers have greater access to other social services and poverty programs. Two farmworkers' needs that applicants are particularly encouraged to address are the need for permanent longer term employment, and for support in the areas of nutrition and housing. In respect to the employment problem, OCS encourages the submission of proposals that aim (1) to directly assist low-income farmworkers in improving their job skills so as to qualify them for longer term and permanent full-time employment in agriculture and (2) to assist low-income farmworkers who wish to leave agricultural employment and find jobs in other lines of work. In respect to farmworker needs in the area of nutrition and housing, OCS will entertain proposals that directly assist in such areas as crisis relief nutritional activities and the development of self-help systems of food production, and for activities in the areas of home repair, rehabilitation and home ownership.

Under the Community Services Block Grant Act, States may use block grant funds to provide services and assistance to migrant and seasonal farmworkers. Applications submitted under this discretionary grant priority area must not duplicate services or grants provided by the States through block grant funds in the specific State to be served by the applicant.

The OCS has recognized the special needs of Migrant and Seasonal Farmworkers and is adopting Congressional guidance on this area. Therefore, organizations with a primary focus on serving migrants and seasonal farmworkers are encouraged to apply only under this program priority area.

The OCS will accept applications that include administrative costs. These funds will be extremely limited, and no awards for just administrative costs will be made. No more than 10% of the OCS discretionary funds requested may be used for administrative purposes. More favorable consideration may be given to application where administrative costs are less than 10% of total project funds from all sources.

The applicant is required to leverage private or public funds with each OCS dollar award. This match may be one private sector dollar or one public sector dollar to each dollar of OCS discretionary funds awarded. Matching funds must be definite, or contingent only on receipt of the OCS grant. Speculative match, or match based on independent contingencies (such as receipt of another grant) will not be counted towards the matching requirement. Funds expected to be raised as a result of the grant, whether from program income or otherwise (e.g., from the formation of MESBIC) will not be counted. It is to be noted that for *existing* businesses or projects, projected income based on the realistic extrapolation of past performance will be acceptable. The OCS will also not consider applicants that are geared towards the establishment of, or investment in existing revolving loan funds, Small Business Investment Companies or Minority Enterprise Small Business Investment Companies.

Part III—Application Process

A. Eligible Applicants

Any incorporated organization, either public or private, either for-profit or non-profit, may submit an application under this announcement.

B. Available Funds

The Office of Community Services expects to award approximately $25,000,000 in the fourth quarter of FY 1983 for new grants and cooperative agreements.

The funding available for each program priority area is summarized below:

FUNDING SUMMARY

Program priority area	Availability of fiscal year 1983 funds
1.0 Urban and Rural Community Economic Development	$18,840,000
2.0 Rural Housing and Community Facilities Development	3,840,000
3.0 Assistance for Migrants and Seasonal Farmworkers	2,880,000

OCS expects to make approximately 75 new awards pursuant to this announcement. These awards are expected to range from $50,000 to $1,000,000 in the project year, with a typical award expected to be $300,000. Actual grants may vary widely and eligible applicants requesting smaller or larger awards should also apply.

Projects will be funded under this authority for a period not to exceed twelve months, and each project will have a termination date. However, at the discretion of the Director, shorter or longer project periods may be established. The demonstrated capacity of a grantee to secure other sources of funds—before, during, and after the termination date of the project OCS grant period—will be an important evaluation criterion for all the program priority areas. If a project is intended to continue beyond the OCS grant termination date, the applicant must demonstrate that it is able to continue with other sources of funding.

C. Grantee share of the Project

The OCS will accept applications that include administrative costs. These funds will be extremely limited, and no awards for just administrative costs will be made. No more than 10% of the OCS discretionary funds requested may be used for administrative purposes. More favorable consideration may be given to applications where administrative costs are less then 10% of total project funds for all sources.

The applicant is required to leverage private or public funds with each OCS dollar award. This match may be one private sector dollar or two public sector dollars to each dollar of OCS discretionary funds awarded in priority Areas 1.0, 2.1 and 2.2; for projects submitted under Program Priority Area 3.0, Assistance to Migrants and Seasonal Farmworkers, a match of one private and/or public sector dollar to each dollar of OCS discretionary funds awarded is required. Matching funds must be definite, or contingent only on receipt of the OCS grant. Speculative match, or match based on independent contingencies (such as receipt of another grant) will not be counted towards the matching requirement. Funds expected to be raised as a result of the grant, whether from program income or otherwise (e.g., from the formation of a MESBIC) will not be counted. It is to be noted that for *existing* businesses or projects, projected income based on the realistic extrapolation of past performance will be acceptable. The OCS will also not consider applicants that are geared towards the establishment of, or investment in existing revolving loan funds, Small Business Investment Companies or Minority Enterprise Small Business Investment Companies.

D. Application Process

Organizations wishing to compete for an award under this announcement must submit an application by June 1, 1983. Applications received in response to this announcement will be reviewed by OCS staff and outside reviewers.

1. *Availability of Forms.* Applications for awards under the OCS Discretionary Program must be submitted on standard forms provided for that purpose. Application kits containing copies of these forms as well as detailed technical instructions for preparing the application can be obtained by writing to: Office of State and Project Assistance, Division of Discretionary Programs, Office of Community Services, 1200 19th Street, N.W., Room 432–A, Washington, D.C. 20506, Attn: OCS–83–1–DP.

2. *Application Submission.*—One signed and a minimum of two copies of the application must be submitted to: Grants Management Office, Office of Community Services, 1200 19th Street, NW., Room 543, Washington, D.C. 20506, Attn: OCS–83–1–DP.

Applications will have to be duplicated and therefore must be submitted on 8½ x 11 inch paper, easily separated into single sheets, which should be numbered and not include colored, oversized or folded material.

3. *Executive Order 12372.*—Upon the Department's issuance of final rules for implementation of Executive Order 12372, "Intergovernmental Review of Federal Programs" (July 14, 1982), anticipated on or about April 30, 1983, applications submitted under this program announcement will be subject to review by the official intergovernmental review system developed by each State. The Director, Office of Community Services will accommodate the views of intergovernmental entities in accord with the procedures set forth in the Department's implementation rules for the executive order. To insure complete and timely consideration such views must be received, in writing, by the Director within the prescribed time period for receipt of comments stated in the Department's implementation rules for the executive order.

4. *Application Consideration.*—Complete applications that conform to the requirements of this Program Announcement will be reviewed competitively and evaluated by Federal officials and qualified persons outside of the Federal government. Each complete application will be referred to non-OCS reviewers for a numerical score, based solely on responsiveness to program priority area and criteria published in this notice, and for explicative comments. The results of these reviews will assist the Director and OCS program staff in considering competing applications. Evaluation scores will weigh heavily in funding decisions but will not be the only criteria considered.

Applications will generally be considered in order of the mean reviewer scores, but highly ranked applications are not guaranteed funding.

The Director may consider any other factors such as: Comments of reviewers and State and Local officials; staff evaluation and input concerning specific projects; geographical distribution of funding; the previous program performance of applicants, especially those that had previous HHS or CSA grants; audit reports and investigative reports on applicants and applicants' progress in resolving any final audit disallowances owing to OCS or CSA.

OCS reserves the option of discussing applications with other Federal or non-Federal funding sources to determine the applicant's track record relating to the above factors.

The official award document is the Notice of Financial Assistance Awarded, which sets forth in writing to the recipient the amount of funds awarded, the purpose of the award, other terms and conditions of the award, the effective date of the award, the budget period for which support is given, the total project period for which support is contemplated, and the total recipient participation.

Applicants are reminded that grantees are prohibited from using Federal grant funds to engage in any activity designed to influence legislation or appropriations pending before Congress.

E. Criteria for OCS Screening and Review of All Applications

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this announcement. Complete, conforming applications will then be reviewed and evaluated competitively.

1. *Screen Requirements:* In order for an application to be in conformance it must meet all of the following requirements:

(a) *Number of copies:* An original signed application and *two* copies must be submitted;

(b) *Executive Summary:* A narrative summary of the application not to exceed five pages must be included in each application, immediately after Part III of the SF 424. This summary must directly address the program specifics within this announcement and the evaluation criteria contained below. (Applicants are cautioned that OCS will not accept a 5 page executive summary as the complete application or as a substitute for a properly detailed Part IV, Program Narrative, of the SF 424).

(c) *Standard Form 424:* The application must include an SF 424, completed according to instructions. Items 23a, 23b and 23c of Part I of this form must be signed by an official of the applicant organization having authority to legally obligate the applicant.

(d) *OCS' Priorities:* The project contained in the application must specifically address a single program priority area as stated in the announcement. An application which neither identifies one priority area or which shows multiple program priority areas will be deemed non-conforming.

(e) *Multiple Submittals:* A project can only be proposed once under this announcement. Multiple submittals of the same—or essentially the same—project as applications under different program priority areas will be judged non-conforming.

(f) *OCS target populations:* The application must clearly target the specific outcomes and benefits of the project to low income people as defined in the Annual Revision of Poverty Guidelines, most recently published in the **Federal Register**, February, 1983.

(g) *Match Requirements:* A match of one contributed private sector or two public sector dollars to each OCS discretionary dollar sought must be documented for all program priority areas, except Migrants and Seasonal Farmworker Programs. The match requirement for Migrant and Seasonal Farmworkers is one private or public sector dollar to each OCS dollar.

(h) *Support from Other Federal Agencies or Private Institutions:* Each applicant must provide a list of all financial assistance (loans, loan guarantees, grants, and cooperative agreements) from any Federal agency and all grant or program related investment assistance received within the last three years. The list must include the project or program title, the purpose of the assistance, the name of the agency or institution, the office within the agency or institution that administered the assistance and the name and telephone number of the responsible official or program officer. The list should be certified by the applicant as accurate and complete. Where no assistance has been received, the applicant must specifically so certify.

Special Note: If OCS should discover that the applicant has omitted or distorted any information submitted as part of their application, it will be grounds for not further reviewing the application or for the recovery of any grant award already made.

Applications must meet all of the above requirements to be considered.

2. Criteria for Review and Evaluation of Applications:

Applications which are judged to be in complete compliance with the announcement will be reviewed on a competitive basis. The OCS will use qualified individuals other than OCS employees to conduct a formal objective review of the applications.

Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explicative statements on the formal rating form describing major strengths and major weaknesses under each applicable criterion published in this notice. An overall rating will include the reviewers judgment of each application. The reviewers will be instructed to rate each application: "not recommended for funding"; "recommended for funding with conditions"; or "unconditionally recommended for funding", consistent with the points given under the evaluation criteria.

The indepth evaluation and review process will use the following criteria coupled with the specific requirements contained under each program priority area.

Criterion I: Project Implementation and Technical approach plan and Program Evaluation (Maximum: 25 points)

1A. *Project Implementation Component (sub-rating 15 points).* The application must contain a detailed and specified work plan that is both sound and feasible to accomplish the identified goals and objectives over the proposed project period.

1B. *Technical Approach Component (Sub-rating 5 points).* The application must contain a well defined and carefully designed technical approach which identifies problems and defines issues, that if well executed as projected will enable the applicant to fully attain the objectives of the project.

1C. *Evaluation Component (Sub-rating 5 points).* All proposals should include a self-evaluation component. The evaluation, data collection and analysis procedures should be specifically oriented to assess the degree to which the stated goals and objectives are achieved. Qualitative and quantitative measures should be used to the maximum extent possible.

Criterion II: Significant and Beneficial Impact (Maximum 25 points)

Projects funded under this announcement must produce permanent and measurable results that directly impact on the causes of poverty. The OCS strategy is to target limited funds into low-income communities which in combination with other private and public resources, will increase the economic and social self-sufficiency of residents. Project objectives must be identified with or capable of achieving the specific program priority area objectives defined in this program announcement.

The following are some examples of specific impact measures for the various program priority areas:

Area 1.0: *Urban and Rural Community Economic Development:* The number of new permanent direct jobs to be created and/or maintained; increase in taxes paid; new technical skills development and associated career opportunities for community residents; and development of the community's economic and physical assets; the amount of private dollars to be leveraged or mobilized; the degree of involvement by private sector individuals, corporations, and foundations in the implementation of the project.

Area 2.1: *Rural Housing Repair and Rehabilitation:* The number of sub-standard housing units to be repaired and/or rehabilitated; the number of low-income residents who will be helped to purchase or acquire adequate housing; the number of low-income people to be employed in such projects; total private and public (non-OCS) dollars mobilized; and justifications for selecting target communities that are based on the housing needs of local residents and which show the types and amounts of assistance that have been provided in the community in previous years.

Area 2.2: *Rural Community Facilities:* The number of rural communities provided with technical and advisory services; the number of rural poor individuals directly served by applicant-supported improved water and waste water systems; the decrease in the number of inadequate water systems related to applicant activity; the number of newly-established and applicant-supported treatment systems (all of the above may be expressed in terms of equivalent connections); the increase in local capacity in engineering and other areas of expertise; the amount of private and public dollars to be leveraged and/or mobilized.

Area 3.0: *Assistance to Migrants and Seasonal Farmworkers:* The number of farmworkers who have improved their agricultural skills and thus improved their agricultural employment situation; the number of farmworkers who have gained longer-term or permanent private-sector employment in areas outside agriculture; the number of farmworkers who have received help in the areas of nutrition and housing; the number of housing units repaired or rehabilitated; the degree and kind of such help; non-OCS dollars mobilized and the degree of private sector involvement utilized in developing and carrying out projects funded under this announcement.

Criterion III: Organizational Capability and Capacity (Maximum: 15 points)

A. *Staffing* (Sub-rating: 3 points). The application must fully describe the experience and skills of the staff to show that they are well qualified to successfully implement the project.

B. *Staff Responsibilities* (Sub-rating: 3 points). The assigned responsibilities of staff must be appropriate to the tasks identified for the project. Sufficient time of senior staff must be budgeted to assure timely implementation and cost-effective management of the project.

C. *Specific Program Priority Area Expertise* (Sub-rating: 3 points). Each applicant must document competence in the specific program priority area under which an application is submitted. Where the applicant has a history of two or more years of prior achievement

in that area, the documentation must address the success and effectiveness of projects undertaken, their cost effectiveness, delivery of services to low-income populations, and the permanent benefits provided. Applicants with a history of less than two years of prior achievement in the program area should identify themselves. Documentation provided by these applicants must address related achievements and completeness of each cooperating or sponsoring organization, the commitment of these organizations to the applicant organization and the projects, and the relevant experiences and achievement of key applicant personnel including board members, executive staff and project management staff.

D. *Management History* (Sub-rating: 3 points). The applicant must fully document a history of sound and effective management practices, timely and adequate financial and program progress reporting, and audit compliance. Applicants with less than 2 years of such corporate management history should so identify themselves. These applicants should submit any available documentation of their management practices and progress reporting and must submit a certification by a Certified Public Accountant of the sufficiency of the applicant's financial management system to adequately protect any Federal funds awarded under the application submitted.

E. *Applicant Resources* (Sub-rating: 3 points). The applicant must show that it has adequate facilities, resources and experience to carry out successfully the work plan (tasks and activities) specified in the project application.

Criterion IV: Public—Private Partnerships (Maximum: 25 points)

OCS is interested in receiving applications that demonstrate a capacity to leverage and mobilize other sources of projected-related funds and assistance, specifically from the private sector. This demonstrated ability will remain an important evaluation criterion. The application should clearly show these relationships with appropriate written documentation. In addition, OCS requires each applicant to address how other sources of funding will be used and mobilized to continue the project after the termination date of the OCS award.

The Office of Community Services will give special consideration to applicants which offer significant and substantial linkages and leverage from other private and public sources that are documented and in place. Applicants in their project description must also demonstrate the increased use of private sector involvement and resources in addressing the needs of the low-income target population.

Projects which exceed required match and which also have a high potential for success will receive greater consideration.

Each applicant must also provide a detailed description of the amount, type (cash, in-kind contributions, training and technical assistance, etc.), the sources (Federal, State, local, corporate and private) of funding or other significant support the applicant has received or is receiving within the past three years from any source.

Criterion V: Budget Appropriateness and Reasonableness (Maximum: 10 points)

Each applicant should carefully review the requirements of the specific program priority area and the budget submitted must coincide with these requirements.

The proposed request for funds must be commensurate with the level of effort necessary to accomplish the goals and objectives of the project. The estimated cost to the government of the project must also be reasonable in relation to the value of the anticipated results.

The contribution of any other private and/or public sector agencies or organizations must be assured in writing which is included with the application when it is submitted.

Part IV—Instructions for Completing Applications, Closing Date and Delivery of Applications

A. The closing date for receipt of applications submitted under this program announcement is June 1, 1983. Applications may be mailed or hand delivered to: Grants Management Officer, HHS/Office of Community Services, 1200 19th Street, N.W., Room 543, Washington, D.C. 20506, Attn: OCS-DP-1-83.

Applications must be received at the above address by the closing date. Hand delivered applications will be accepted during the normal working hours of 8:45 a.m. to 5:30 p.m., Monday through Friday. An application will be considered to be received on time under either one of the following two circumstances:

1. The application was sent by registered or certified mail no later than the closing date, as evidenced by a U.S. Postal Service date postmark, unless it arrives too late to be considered by the independent reviewers. Applicants should be aware that not all post offices provide a dated postmark. Applicants are advised to check with their post office to determine this.

2. The application is received on or before the closing date by the Department of Health and Human Services in Washington, D.C., at the address indicated above. In establishing the date of receipt of hand delivered applications, reliance will be placed on documentary evidence of receipt maintained by HHS.

Application Package: Each application should include:

1. A signed original and a minimum of two additional copies of the application. The orginial of the application must bear the original signatures of the certifying representative of the applicant organization. In order to facilitate processing, do not include extraneous materials such as agency promotional brochures, slides, tapes, film clips, etc. It is not feasible to use such items in the review process, and they will be discarded if included.

2. One acknowledgement card. The applicant must include a self-addressed, stamped postcard if acknowledgement of receipt is desired. All applications will be assigned an identification number. This number and the program priority area must be referred to in all subsequent communication with OCS concerning the application. OCS will notify applicants of this number by returning the self-addressed, stamped acknowledgement postcard. If you do not receive the acknowledgement within three weeks after the deadline date, please notify OCS by telephone (202) 653-9241.

Special Note: After an identification number is assigned and the applicant has been notified of the number, applications are filed serially by the number to aid in quick retrieval. It is not possible for OCS staff to provide a timely response to inquiries about a specific application unless this number and the program priority area are given.

C. Contents of Applications: Each copy of the application must contain in the order listed, each of the following (more detailed instructions are provided in the OCS Application Kit):

1. Standard Form 424, Parts 1, Sections I, II and IV completed according to instructions;

2. Project Approval Information, Part II, items 1 through 10, with attachments;

3. Budget Information, Part III, Section A, B, C, D, E, and F, with attachments; and

4. Executive Summary, no more than ten pages long, doubled spaced and typewritten on one side only (or five pages single-spaced).

5. Project narrative, Part IV of the SF-424 typewritten on 8½ x 11 plain white

bond paper. The narrative should fully describe the project you are proposing in response to this announcement. Your narrative should be fully responsive to the specific requirements contained under each program priority area and address the review criteria.

Applications once submitted are considered final and complete.

Applicants are cautioned to carefully read the specific requirements contained under each program priority area and detailed in the application kit.

Harvey R. Vieth,

Director, Office of Community Services.

[FR Doc. 83-7537 Filed 3-22-83; 8:45 am]

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Wednesday
March 23, 1982

Part VII

Department of the Interior

Bureau of Indian Affairs

Minimum Academic Standards for the Basic Education of Indian Children and National Criteria for Dormitory Situations

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 36

Minimum Academic Standards for the Basic Education of Indian Children and National Criteria for Dormitory Situations

March 10, 1983.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs is publishing a proposed rule which establishes minimum academic standards for the basic education of Indian children and national criteria for dormitory situations. The minimum academic standards shall apply to all schools operated by the Bureau of Indian Affairs and to those Indian-controlled contract schools which adopt these standards. The national criteria for dormitory situations shall apply to all Bureau-operated and all Indian-controlled contract schools having dormitory situations. The standards are required as a result of the Education Amendments of 1978.

DATE: Comments must be received and/or postmarked on or before May 9, 1983.

ADDRESS: Written comments should be directed to the Director, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, 18th and "C" Streets, NW., Washington, D.C. 20240. If preferred, comments may be delivered to Room 4646, Main Interior Building, 18th and "C" Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: George D. Scott, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, 18th and "C" Street, NW., Washington, D.C. 20240, telephone number (202) 343-6675.

SUPPLEMENTARY INFORMATION: This proposed rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Historically, the Bureau of Indian Affairs had not established written Bureau-wide standards for the basic education of Indian children attending Bureau-operated schools. As a result, local Bureau schools vacillated to varying degrees in their efforts to meet the only other established educational standards, which were those established by the respective states. Likewise, formal criteria for dormitory living situations had not been established for Indian children residing in off-reservation, on-reservation, or peripheral dormitories. The absence of formally established criteria for dormitory living situations led in some cases to inadequate out-of-school supervision, minimal educational achievement, and a wide disparity in the type of facilities which housed students.

The Congress of the United States mandated, through Title XI of the Education Amendments of 1978, Pub. L. 95-561, that the Secretary of the Interior establish minimum academic standards for the education of Indian children and national criteria for dormitory situations. In response to this mandate, the Bureau of Indian Affairs in 1979 contracted with two Indian organizations. One contract led to the development of a set of alternative standards for Indian-controlled contract schools, and the other provided current information on the costs associated with Indian students in dormitory situations. In addition, the Bureau of Indian Affairs formed a task force to develop the proposed rule because of the potential impact of these standards and criteria on the education of American Indian/Alaskan Native children. The task force was composed of twenty-three members (17 were Indian, 6 non-Indian; 11 members were Bureau employees, 12 were not; and 4 were contract school representatives). Field hearings were held at fifteen different sites. The resulting proposed draft rule developed by the task force was carefully reviewed and evaluated. Included in the review process were Federal, State and private agencies, most notably the National Institute for Education, the National Center for Educational Statistics, and the New York State Education Department.

The proposed rule reflects State and national accrediting association formats and follows the standard terminology as used by the National Center for Education Statistics. The proposed rule is divided into several subparts: Subpart A contains general provisions applicable to both the academic standards and the dormitory criteria. Subparts B-G consist of the minimum academic standards for the basic education of Indian children. These subparts provide for delineation of the types of school systems, the programs of studies, the requirements for grade completion and graduation, the requirements applicable to instructional support functions, the evaluation of the impact of the established educational standards, and the requirements for compliance with the standards by all schools within the Bureau of Indian Affairs education system. Subparts H contains the national dormitory criteria and provides for a home living guidance program, residential staff-student ratios, space and privacy requirements and compliance requirements.

It should be noted that the Bureau of Indian Affairs redesignated numerous Parts of Chapter I of Title 25 of the Code of Federal Regulations on March 30, 1982 (47 FR 13326). Where references are made to other parts under this proposed rule, references to both the new number and the former number are made. This will enable the public to locate subject matter more easily. However, in the final rule, all references will be made accoding to the redesignation table for Chapter I, 25 CFR—Indians.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed rule to the location identified in the Addresses section of this preamble.

The Department of the Interior has determined that this rule does not consitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969.

The Department of the Interior has determined that this document is not a major rule under the criteria established by Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the criteria established by the Regulatory Flexibility Act. This rulemaking will apply to and affect only Bureau-operated schools and some Indian-controlled contract schools, which are funded from Congressional appropriations; no other group(s) will be affected.

The information collection requirements which may be contained in this proposal rule will be submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget.

The primary authors of this document are Dr. Kenneth G. Ross and George D. Scott, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, 18th and "C" Streets, N.W., Washington, D.C. 20240.

List of Subjects in 25 CFR Part 36

Indian education, Schools, Students, and Educational facilities.

It is proposed to add a new Part 36 to Subchapter E, Chapter I of title 25 of the Code of Federal Regulations to read as follows:

PART 36—MINIMUM ACADEMIC STANDARDS FOR THE BASIC EDUCATION OF INDIAN CHILDREN AND NATIONAL CRITERIA FOR DORMITORY SITUATIONS

Subpart A—General Provisions

Sec.

36.1 Purpose, scope, and information collection requirements.
36.2 Applicability.
36.3 Definitions.
36.4 Revision of regulations.

Subpart B—Educational Management

36.10 Standard I—Philosophy and objectives.
36.11 Standard II—Administrative and organizational requirements
36.12 Standard III—Program planning and implementation.
36.13 Standard IV—Curriculum development.

Subpart C—Minimum Program of Instruction

36.20 Standard V—Minimum academic programs/school calendar
36.21 Standard VI—Kindergarten instructional program.
36.22 Standard VII—Elementary instructional program.
36.23 Standard VIII—Junior high/middle school instructional program.
36.24 Standard IX—Secondary instructional program.

Subpart D—Student Instructional Evaluation

36.30 Standard X—Grading requirements.
36.31 Standard XI—Student promotion requirements.
36.32 Standard XII—Graduation requirements for a high school diploma.

Subpart E—Instructional Support

36.40 Standard XIII—Library/media program.
36.41 Standard XIV—Textbooks.
36.42 Standard XV—Counseling services.
36.43 Standard XVI—Student activities.

Subpart F—Evaluation of Educational Standards

36.50 Standard XVII—School program evaluation and needs assessment.
36.51 Standard XVIII—Office of Indian Education Programs and Agency monitoring and evaluation responsibilities.

Subpart G—Compliance and Waivers

36.60 Compliance for minimum academic standards.
36.61 Waivers and revisions.

Subpart H—National Dormitory Criteria

36.70 Scope of subpart.
36.71 General provisions.
36.72 Elementary level dormitories.
36.73 Secondary level dormitories.
36.74 Homeliving (dormitory operations).
36.75 Space and privacy.
36.76 Compliance for the National Criteria for Dormitory Situations.

Authority: 25 U.S.C. Sections 2001, 2002, 2003.

Subpart A—General Provisions

§ 36.1 Purpose, scope, and information collection requirements.

(a) The purpose of this rule is to establish minimum academic standards for the basic education of Indian children for Bureau-operated schools and for those Indian-controlled contract schools which adopt these standards and to establish national criteria for dormitory situations for schools operated by the bureau of Indian Affairs and for Indian-controlled contract schools operating dormitories.

(b) These academic standards and dormitor criteria will take effect immediately upon the date of publication. The Bureau of Indian affairs intends to review and evaluate the applicability of the academic standards and dormitory criteria under this part after two years and make appropriate revisions.

(c) Information collection [Reserved].

§ 36.2 Applicability.

(a) The minimum academic standards for the basic education of Indian children established under this part, Subparts B through G, are mandatory for all Bureau of Indian Affairs operated schools unless a tribal governing body or the local school board, if so designated by the tribal governing body, requests a local waiver or revision as provided for under § 36.61 of this part.

(b) The minimum academic standards for the education of Indian children established under Subparts B through G are not applicable to Indian-controlled contract schools unless the Indian-controlled contract school board formally adopts them in whole or in part. The Bureau will not refuse to enter into a contract on the basis of failure to meet these standards but will through contracting procedures, assist the school in reaching compliance, if so requested by the Indian-controlled contract school board.

(c) The national criteria for dormitory situations established under Subpart H will serve as a minimum requirement and shall be mandatory for all Bureau-operated and Indian-controlled contract schools.

(d) Standards and criteria contained under this part will serve as minimum requirements for the regular school educational program except where a higher standard is required by (e) below.

(e) State minimum standards for education shall also be applicable for Bureau schools in the State in which they are located.

§ 36.3 Definitions.

For purposes of this part, the following definitions apply:

(a) "Accreditation" means a school has received an official decision by the State(s) department(s) of education, or another recognized agency having official authority, that, in its judgment, the school has met the established standards of quality.

(b) "Average daily membership (ADM)" means the aggregate days membership of a given school reporting period divided by the number of days school is in session during this period. Only days on which the students are under the guidance and direction of teachers should be considered as days in session. The reporting period is generally a given regular school term.

(c) "Agency" means the current organization unit of the Bureau which provides direct services to the governing body or bodies and members of one or more specified Indian tribes. The term includes Bureau Area offices only with respect to off-reservation day and residential schools and peripheral dormitories administered directly by such offices.

(d) "Agency school board" as defined in Section 1139(1), Pub. L. 95-561, means a body, the members of which are appointed by the school boards of the schools located within such agency. The number of such members shall be determined by the Director in consultation with the affected tribes. In agencies serving a single school, the school board of that school shall function as the agency school board.

(e) "Agency Superintendent for Education" means the Bureau official in charge of education functions at an Agency and to whom the school supervisor(s) and other educators under the Agency's jurisdiction report.

(f) "Area education program administrator" means the Bureau official in charge of Bureau education programs and functions in a Bureau Area Office and responsible for off-reservation day and residential schools, and, in some cases, peripheral dormitories.

(g) "Assistant Secretary" means the Assistant Secretary for Indian Affairs of the Department of the Interior.

(h) "Basic academic skills" means the abilities acquired by observation, study, or experience in mental and/or physical performance required for the mastery of school work.

(i) "Basic education" means those components of education emphasizing literacy in language arts, mathematics, natural and physical sciencies, history, and related social sciencies.

(j) "Bureau" means the Bureau of Indian Affairs of the Department of the Interior.

(k) "Certification" means the general process by which the State or Agency authorized by the State adjudges and stipulates that an individual meets the established standards which are prerequisite to employment for a teacher or administrator in education.

(l) "Competency" means having the requisite abilities, skills, or level of mastery in a given course of study.

(m) "Content area" means the usual school subjects of instruction, such as: language arts, mathematics, science, social studies, fine arts, practical arts, health, and physicial education.

(n) "Course of study" means a written guide prepared by administrators, supervisors, consultants, and teachers of a school system or school as an aid to teaching a given course or an aspect of subject matter content to a given type of pupil.

(o) "Days" means calendar days.

(p) "Director" means the Director of the Office of Indian Education Programs in the Bureau.

(q) "Dormitory" means a facility which provides students boarding and lodging on a temporary residential basis for the purpose of attending a Bureau-operated or Indian-controlled contract or public school.

(r) "Dormitory manager" means a staff member who manages the day-to-day, 24 hour operation of one or more dormitories.

(s) "Educational media specialist" means an individual who specializes in activities concerned with the use of all teaching and learning resources, including hardware and content printed and non-printed sensory materials used for teaching and learning purposes.

(t) "Exceptional child program" means a program for students who are eligible to receive education and related services as defined by 25 CFR 39.11(i) (formerly § 31h.11(i)).

(u) "Feeder school" means a school whose existing students are absorbed by a school offering instruction on the next higher grade level.

(v) "Formative evaluation" means appraising a program, particularly during a period of program development, in order to improve its functioning by comparing the performance of students in a program to the objectives of the program.

(w) "Grade" means the portion of a school program which represents the work of one regular school year; identified by a designation such as kindergarten, grade 1, or grade 10.

(x) "Grade level" is a designation applied to that portion of the curriculum which represents the work of one regular school year.

(y) "Indian-controlled contract school" means a school (other than a public school) which is operated by a tribal organization and is funded under a contract with the Bureau.

(z) "Indian student" means a student who is a member of an Indian tribe.

(aa) "Indian tribe" or "tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(bb) "Intense residential guidance" means the program for resident students who need special residential services due to one or more of the problems as stated in 25 CFR 39.11(h) (formerly § 31h.11(h)).

(cc) "Kindergarten" means a group of students or a class that is organized to provide educational experiences for children for the year immediately preceding the first grade.

(dd) "Librarian" means a certificated school employee whose principal responsibilities include selection, acquisition, preparation, cataloging, and circulation of books and other printed materials; planning the use of the library by teachers and students; and instructing students in the use of library books and materials, whether the library is maintained separately or as a part of an instructional materials center.

(ee) "Local School Board" when used with respect to a Bureau-operated school means a body chosen in accordance with the laws of the tribe to be served or, in the absence of such laws, elected by the parents of the Indian children attending a Bureau-operated school. In schools serving a substantial number of students from different tribes, the members shall be appointed by the governing bodies of the tribes affected and the number of such members shall be determined by the Director in consultation with the affected tribes.

(ff) "Medically-trained person" means a licensed medical physician, physician's assistant, nurse practitioner, and/or registered nurse.

(gg) "Paraprofessional" means a staff member who works with and assists a professional staff member but who does not have full professional status; e.g., teacher's aide.

(hh) "Parent" means a natural parent or guardian or a person legally acting as a parent.

(ii) "Peripheral dormitory" is a facility which provides students boarding and lodging during the school year for the purpose of attending a public school.

(jj) "Regular program students" means all students except those determined to be eligible for services as defined under Exceptional Child Program, 25 CFR 39.11(i) (formerly § 31h.11(i)).

(kk) "Residential school" means an educational institution in which students are boarded and lodged as well as taught.

(ll) "Residential Services under Exceptional Child Program" means a program providing specialized residential care as determined by 25 CFR 39.11(i) (formerly § 31h.11(i)).

(mm) "School" means an educational institution, including elementary, junior high or middle, and high schools serving students in grades K–12. The term, unless otherwise specified, is meant to encompass Bureau-operated schools, residential schools, Indian-controlled contract schools and cooperative schools which are subject to compliance with the rules and regulations of this part.

(nn) "School Board" means an Area, Agency or a local school board.

(oo) "School day", "instructional day", or "teaching day" is a day on which the school is open and students are under the guidance and direction of teachers in instructional activities where the minimum number of instructional hours are met. Days on which the teaching facility is closed because of emergencies, holidays, inclement weather, or teacher training and where the minimum number of instructional hours is not met shall not be counted as school days.

(pp) "School Supervisor" means the official in charge of a school and/or peripheral dormitory who reports to an Agency School Superintendent and/or an Area Education Program Administrator.

(qq) "Secretary" means the Secretary of the Interior.

(rr) "Self contained class" means a class having the same teacher or team of teachers for all or most of the daily school session.

(ss) "Standard" means the established criterion and/or specified requirement which must be met and maintained.

(tt) "Summative evaluation" means a systematic attempt to determine whether a fully developed program is meeting its objectives more successfully than an alternative program.

(uu) "Unit/Unit of Instruction" means a major subdivision of instruction generally composed of several topics including content and learning

experiences developed around a central focus such as a limited scope of subject matter, a central problem, one or more related concepts, one or more related skills, or a combination of these. One unit equals one full year of instruction in a subdivision thereof. "Unit" and "credit" shall be used interchangeably.

§ 36.4 Revision of regulations.

In making any revisions to regulations in this part, the Secretary shall take the following actions:

(a) Consult with Indian tribes about the need for revision and consider their views in preparing the revision.

(b) Distribute the proposed revisions to all tribes and publish the proposed revisions in the **Federal Register** as proposed rulemaking to provide notice to, and solicit comments from, all tribes and other interested parties.

(c) After consideration of all comments received, publish the regulations in the **Federal Register** in final form not less than thirty (30) days before the date they are made effective.

Subpart B—Educational Management

§ 36.10 Standard I—Philosophy and objectives.

(a) Each school shall develop a written philosophy of education that addresses the accumulation of knowledge, development of skills, interests, appreciations, ideals, and attitudes within the school's total educational program. The educational philosophy shall include but not be limited to: conservation of tribal culture and natural resources, values of democracy, devotion to equality, individual freedom, political liberty, democratic processes, and the mastery of knowledge. The statement of philosophy shall incorporate a specific listing of measurable educational objectives for each content area that is included in the educational program. The content areas shall include but not be limited to: mathematics, science, social studies, language arts, fine arts, practical arts, and physical, environmental and health education. The objectives shall reflect the adoption of a required minimum course of study which is established for the State in which the school is located. The statement of philosophy and objectives shall be developed with the involvement of students, parents, lay citizens, school staff, and tribe(s), wherever practical, and shall be formally adopted by the local school board. The philosophy and objectives for each content area shall be reviewed annually and revised as necessary. A copy of the philosophy and objectives shall be submitted to the Agency Superintendent for Education and/or Area Education Program Administrator.

(b) Provisions shall be made to interpret to staff, students, and school patrons the minimum academic standards for the basic education of Indian children required under this part. This provision shall be made in the form of a manual, handbook, brochure, or other written document which will be made available and explained to all who are interested. The topics shall include but not be limited to the following:

(1) Statement of basic philosophy and objectives;

(2) Description of how policies are developed and administered;

(3) A brief explanation of curricular offerings;

(4) Basic practices related to:

(i) A comprehensive and effective plan for evaluating student achievement.

(ii) Grading system and graduation requirements.

(iii) Attendance, absences, excuses, etc.

(iv) Pupil personnel services.

(v) Class programming, including maximum and minimum student loads.

(vi) Special programs—gifted, physically and mentally handicapped, remedial, speech and hearing defects, bilingual education, etc.

(vii) Available student activities.

(viii) Fiscal practices in the use and accounting of student body funds (reference 25 CFR 32.7; formerly § 31.7).

§ 36.11 Standard II—Administrative and organizational requirements.

(a) *Application of standards by school organizational levels.* For the purpose of this section, the standards, as indicated herein, shall apply according to the following school organizational levels:

(1) Kindergarten is a one-year program immediately before grade one.

(2) Elementary school is grades one through six, except when grade six is included in the junior high or middle school level.

(3) Junior high or middle school is grades seven and eight, but may include grade six when it is not included in the elementary school level and/or grade nine when it is not included in the high school level.

(4) High school is grades nine through twelve, except when grade nine is included in the junior high or middle school organizational unit.

(b) *Staffing.* Each school shall, at a minimum, meet the following requirements:

(1) The overall school ratio of regular program students to regular program teachers in self-contained classrooms shall not exceed the following except under the conditions set forth in paragraphs (b)(4)(i) and (ii) of this section. Average daily membership (ADM) shall be used in meeting the follow ratios.

Level	Ratio
Kindergarten	20:1
1st grade-3rd grade	22:1
4th grade-high school	25:1

(2) Multi-grade classrooms that cross grade-level boundaries (e.g., k–1, 3–4, etc.) shall use the maximum of the lower grade. In grades K–8 grades shall be consolidated to meet the teacher ratios listed above.

(3) The daily teaching load per teacher in departmentalized classes shall not exceed 150 students (ADM) except in activity type classes such as music and physical education.

(4) Schools exceeding these specific staffing ratios for over thirty (30) days during one school year shall submit the justification for a request for a waiver to the Director which may be approved for a period not to exceed one school year and only for the following reasons:

(i) Additional classroom space is not available for establishing another class; or

(ii) The school, Agency, Area and Office of Indian Education Programs Applicant Supply File has been exhausted and the required teacher position cannot be filled. However, efforts to fill the vacancy shall be continued.

(5) Each school shall provide, in the absence of a regular teacher, a certified substitute teacher who meets the State substitute teacher qualifications. In the event that such a substitute is not available, coverage will be provided by a school employee designated by the school supervisor. A class cannot have as a teacher an employee without teaching credential for more than thirty (30) school days during any one school year.

(6) Specific staffing requirements may be waived, for a period not to exceed one year, by the Director, for positions other than that of teacher, for reasons such as those set forth in paragraphs (b)(4)(i) and (ii) of this section, providing the services to be obtained from the waived position are assigned to other school staff.

(c) *Written school enrollment and attendance policies.* Each school shall have written school enrollment and attendance policies in compliance with and/or consistent with 25 CFR Part 31, Federal Schools for Indians; the statutes

of the State; and tribal education ordinances.

(d) *Geographic Attendance Boundaries.* Each Agency Superintendent of Education shall establish and implement non-overlapping geographic attendance boundaries within that agency for each school within the administrative jurisdiction of that agency. The establishment of such geographic boundaries shall require coordination with contiguous agencies within the area and consultation with the agency or other relevant school board and/or tribe and shall be reviewed each year to appropriately adjust for geographic changes in enrollment, changes in school capacities and improvement of day school opportunities for students. The Director shall establish and implement geographic attendance boundaries for each off-reservation boarding school under his/her administrative jurisdiction.

The establishment of geographic boundaries shall require coordination with other Area Education Program Administrators similarly affected by the requirement of this part, the affected tribes, and the Director.

§ 36.12 Standard III—Program planning and implementation.

The curriculum of each school shall be based on an assessment of educational needs. As assessment shall include at least the following:

(a) A statement of educational needs which identifies the difference between the current status of students and the desired levels of attainment of those students.

(b) Clearly stated student educational goals and objectives. A student educational goal is defined as a statement of the knowledge, skills, attitudes, or concepts students are expected to exhibit upon completion of a program level. Student educational objectives are defined as statements of more specific knowledge, skills, attitudes, or concepts students must exhibit in order to achieve the goal. The objectives shall ensure cumulative and sequential educational experiences.

(c) A strategy including provisions for collecting data about student educational goals and/or objectives in the following three areas:

(1) Perceptions of the community, educators, and the student with regard to the relevance and importance of the goals.

(2) Means to determine the extent to which educational objectives have been achieved.

(3) Relevant demographic data about the student.

(d) Logical and defensible procedures established for determining the priority of the educational needs identified, such as:

(1) Identifying current job needs with the local community, and

(2) Assisting in determining the relevancy of courses being offered by the school in meeting such needs, etc.

§ 36.13 Standard IV—Curriculum development.

(a) Each school shall implement an organized program of curriculum development involving certified staff members.

(b) Curriculum development program activites shall be based on an analysis of school programs and shall be related to needs assessment and evaluation.

(c) Each school should involve staff and the tribal community in planning programs, objectives, and activities which meet staff and student needs.

Subpart C—Minimum Program of Instruction

§ 36.20 Standard V—Minimum academic programs/school calendar.

(a) Each school shall meet the applicable minimum programs of instruction provided in this subpart and, where applicable, the graduation requirements under § 36.32. The school which has difficulty in meeting these minimum academic program requirements may seek alternative ways of meeting some portions of the minimum program. For example, courses may be taught in alternating years. Should a school wish to adopt alternative measures, the school shall submit a request for approval to the Agency Superintendent for Education and/or Area Education Program Administrator for the adoption of alternative measures with a written justification as to how this action will meet the applicable minimum program of instruction.

(b) All schools shall provide an educational program of studies which is conducted for not less than 180 instructional days per school year. Regular program students shall be in instructional activities, exclusive of lunch (which must be at least thirty (30) minutes a day), in accordance with the following minimums.

Kindergarten—2.5 instructional hours/day, equalling 450 instructional hours/year

Grades 1–3—4.5 instructional hours/day, equalling 810 instructional hours/year

Grades 4–6—5.0 instructional hours/day, equalling 900 instructional hours/year

Grades 7–12—5.5 instructional hours/day, equalling 990 instructional hours/year

(c) If an emergency arises from an uncontrollable circumstance during the school day which results in the dismissal of students by the school administration, the day may be counted as a school day providing the instructional hours are met or on a future date made up.

(d) Certain specific courses, in a given content area, are required within each State's minimum educational standards, and these courses will be adhered to unless a State waiver is granted.

§ 36.21 Standard VI—Kindergarten instructional program.

(a) The curriculum for kindergarten shall provide children with experiences which emphasize language development and performance of the requirements in paragraph (b) of this section. Such programs shall assist children in developing positive feelings toward themselves and others.

(b) A kindergarten program shall include but not be limited to:

(1) Language (observing, listening, speaking).

(2) Exploration of the environment (number, space and time relationships, natural science).

(3) Psychomotor and socialization development.

(4) Development of imaginative and creative tendencies.

(5) Health education inclusive of the requirements contained in 62 BIAM 5.4A.

§ 36.22 Standard VII—Elementary instructional program.

Elementary instructional programs, grades 1–6, shall include:

(a) *Language Arts.* The receptive and expressive dimensions of the English language shall be utilized (observing, listening, speaking, reading, writing). The language arts program shall include literature, drama, spelling, and the grammatical functions of the English language. The language the child brings to school shall be a prime consideration in establishing developmental needs. Where a student does not speak English, that child's native language will serve as a medium of instruction until such time as the student becomes capable of being instructed in English.

(b) *Mathematics.* Number relationships and mathematical concepts shall be developed progressively to include but not be limited to: addition, subtraction, multiplication, division, factoring, sets, integers, units and nature of

measurements, percent, informal algebra, and geometry in the computational and applicational phases. The program shall maintain a balance among concepts, fundamental operations, and applications.

(c) *Social studies.* The conceptual framework shall include a comparison and analysis of the immediate environment with the world community, an interdisciplinary approach for anthropology, history, economics, sociology, political science, geography, and an integration of Indian history, culture, and language at all levels.

(d) *Sciences.* The conceptual framework shall include an interdisciplinary approach to the life, earth, and physical sciences, incorporating the conservation of national and tribal resources, and utilize an investigative process in problem solving.

(e) *Fine arts.* The conceptual framework shall include a program of instruction and planned activities in art, music, drama, and dance or rhythmic activities, and the integration of tribal fine arts to encourage exploration and creativity.

(f) *Physical education.* The conceptual framework shall include a program of instruction and a variety of structured and constructed activities to develop psychomotor skills. The basic physical education program shall include participation by all students regardless of ability or sex. Development of physical and motor skills shall take precedence over team sports and intramural competitive activities.

(g) School shall integrate the following content areas into the above-required curriculum:

(1) Career awareness.

(2) Environmental and safety education.

(3) Health education. The conceptual framework of health education shall include a program of instruction in student physical, social, and mental development in relation to nutrition, human growth, family health, health maintenance and consumer, environmental and community health, and the requirements contained in 62 BIAM 5.4A.

(4) Metric education.

§ 36.23 Standard VIII—Junior high/middle school instructional program.

(a) The instructional program shall reflect the school's philosophy, the needs of the students, and the nature of the community. It shall be part of a progressive development, wherever possible, which begins in the elementary program which precedes it and continues to the secondary program which follows.

(b) The curriculum shall include the following required content areas at each grade level:

(1) *Language arts.* One unit shall be required of each student every year.

(2) *Social studies.* All programs shall emphasize the value of cultural diversity and recognize the intrinsic worth of each culture. Studies applicable to the State and tribes shall be integrated into appropriate study areas at all grade levels and shall be recognized specificially in studying United States history. One unit shall be required of each student every year.

(3) *Mathematics.* One unit shall be required of each student every year.

(4) *Science.* One unit shall be required of each student every year.

(5) *The Arts.* These are normally exploratory in nature and include fine arts, applied arts, practical arts, and performing arts. One unit shall be required of each student in the junior high/middle school instructional program.

(6) *Physical education.* One unit shall be required of each student in the junior high/middle school instruction program.

(7) *Other exploratory and elective areas.*

(c) The following content areas shall be intergrated into the curriculum:

(1) Career exploration and orientation.

(2) Environmental and safety education.

(3) Metric education.

(4) Consumer economics (including personal finances).

(5) Health education. The program shall include concepts appropriate to the student's physical, social, and mental development and which are necessary for decision-making in nutrition, human growth, family health, health maintenance, consumer health, environmental and community health, and shall meet the requirements contained in 62 BIAM 5.4A.

(d) The education program shall offer multi-culture and multi-ethnic dimensions designed to enable students to function effectively in a pluralistic society.

(e) Languages other than English are encouraged to be offered as a content area beginning at junior high/middle school level.

(f) Student enrollment in any laboratory or vocational exploration class shall be consistent with applicable health and safety standards.

§ 36.24 Standard IX—Secondary instructional program.

(a) The secondary instructional program shall reflect the nature of the community, the school's philosophy, student needs, and an awareness of the changing world.

(b) The secondary instructional curriculum shall include the following content areas:

(1) Language arts (communication skills).

(2) Sciences.

(3) Mathematics.

(4) Social studies.

(5) Fine arts.

(6) Physical education.

(7) Languages other than English.

(8) Driver education (see guidelines available from the applicable State Department of Education).

(9) Vocational education—Curriculum shall be designed to introduce and familiarize students with various occupations in technology, industry, and business, as well as required special skills and the training requisites. Programs shall be directed toward assisting students in making career choices and developing consumer skills and may include the following:

(i) Vocational exploration.

(ii) Vocational skill devleopment.

(iii) School/on-the-job cooperative education programs.

(c) The following shall be integrated into the curriculum:

(1) Consumer economics (including personal finances).

(2) Metric education.

(3) Safety education.

(4) Health education. The program shall include concepts which are appropriate to the student's physical, social, and mental development and which are necessary for decision-making in nutrition, human growth, family health, health maintenance, consumer health, environmenal health, and community health, and shall meet the requirements contained in 62 BIAM 5.4A.

(d) The high school program shall provide program coordination with feeder schools, career direction, and preparation for the student entering independent living through employment, post-secondary education, and/or marriage.

(e) The educational program shall include multi-culture and multi-ethnic dimensions designed to enable students to function effectively in a pluralistic society.

(f) Yearly class schedules shall take into account the graduation requirements of each student.

(g) Student enrollment in any laboratory or vocational class shall be consistent with applicable health and safety standards.

(h) All intraschool programs (library, instructional labs, physical education, music, etc.) which are directly related to or affect student instruction shall provide services from the beginning of the school year through the final class period at the close of the school year.

Subpart D—Student Instructional Evaluation

§ 36.30 Standard X—Grading requirements.

(a) Each school shall implement a uniform and explicit competency grading system which assesses a student's mastery of the prescribed objectives of the courses of study undertaken. This shall serve as the primary measure of academic attainment for reporting student grades on report cards.

(b) The information derived from student instructional evaluations shall be shared with the student and with the parents and shall be used to give teachers and students direction for subsequent learning activities.

(c) Parent/teacher and parent/teacher/student conferences focused on the student's instructional progress and development shall be held, where feasible and practical, to provide an additional means of communication between home and school. Residential schools may meet this standard by documenting the communication of student grades on report cards to parents.

(d) Each school shall issue a report card to parents on a regular basis, not less than four (4) times yearly. The report card shall be a written academic evaluation specifying each student's degree of attainment of the major prescribed objectives within the courses of study undertaken according to a standard school grading system. In addition, the report shall include, but not be limited to, the following sections:

(1) Recommendations and probable promotion status;

(2) Parents' signature request and return of report; and

(3) School/parent conference request for use at the option of either party.

(e) A summary of each year's final report card shall become part of the student's permanent school record.

§ 36.31 Standard XI—Student promotion requirements.

(a) Each school shall establish and implement a competency promotion policy and requirements for all students including the number of times a student may be retained. Such promotion requirements shall be submitted to and approved by the local school board and Agency Superintendent for Education and/or Area Education Program Administrator. Each student shall be required by the school to demonstrate mastery and/or achievement of the given requirements in order to be promoted. The requirements shall include, but not be limited to, the following:

(1) Each grade level or equivalent must have uniform and explicit criteria for student promotion based primarily upon a measurable mastery of the instructional objective for each grade level.

(2) Each teacher shall develop and utilize a criterion-referenced test that evaluates student skills development toward predetermined instructional objectives to be mastered by students at each grade level. The evaluation results shall form the basis for the promotion of each student.

(3) The local school supervisor, upon the teacher's written recommendations attesting to the student's mastery of the instructional objectives, shall approve the student's promotion to the next higher grade level, provided the requirement of § 36.31(a)(4) is adhered to.

(4) A student who has failed to directly participate, or through approved alternative instructional methods participate, in a minimum of 160 instructional days per academic year or 80 instructional days per semester shall not be promoted. Alternative instructional methods must be submitted in writing and receive prior approval by the local school board and Agency Superintendent for Education and/or Area Education Program Administrator.

§ 36.32 Standard XII—Graduation requirements for a high school diploma.

Graduation requirements contained under this section shall be applied beginning with the graduating class of the 1986–87 school year.

(a) Satisfactory completion of a minimum number of units shall be the measure for the issuance of a high school diploma.

(b) To graduate, a student shall earn twenty (20) units in a four-year high school; fifteen units shall be required as follows:

(1) Language arts—four (4) units.

(2) Mathematics—three (3) units.

(3) Social studies—three (3) units.

(i) One (1) unit in United States history;

(ii) One-half (½) unit in civics/government;

(iii) One-half (½) unit in tribal history/government;

(iv) One-half (½) unit in Indian studies; and

(v) One-half (½) unit in any other social studies;

(4) Science—two (2) units.

(i) One (1) unit in chemistry, physics, biology, zoology, or anatomy; and

(ii) One (1) unit in the general science area.

(5) Physical education—one (1) unit. An exemption may be requested from the Agency Superintendent for Education and/or Area Education Program Administrator based on special student handicapping conditions. This exemption request shall require a certificate signed by a licensed medical doctor, osteopath, or chiropractor. In such a case, health courses may be substituted to satisfy this required unit.

(6) Practical arts—one (1) unit. Credit in any vocational course may also be used to satisfy this required unit.

(7) Fine arts—one (1) unit. Music, art, dance, drama, theatre, and other fine arts courses may be used to satisfy this required unit.

These are minimal requirements; local schools may establish academic or vocational requirements beyond those prescribed by these standards.

(c) A school with an average enrollment of fewer than 75 students may offer subjects in alternate years. If schools use this pattern, alternating pairs of subjects shall be listed and approved by the Agency School Superintendent and/or Area Education Program Administrator.

(d) Credits earned through approved correspondence or extension study may be accepted if such credits are from schools approved or accredited by the State in which they are located or by a college or university which is regionally accredited for such purposes.

(e) A school may substitute courses required for graduation on an individual student basis upon receipt of approval from the Agency Superintendent for Education and/or Area Education Program Administrator.

(f) A special education student not meeting these graduation requirements shall receive a "certificate of achievement" upon completion of a planned individual course of study.

(g) Students who successfully complete the requirements of the High School Proficiency Examination in the State in which the school is located shall receive an endorsement so stating on their diplomas.

Subpart E—Instructional Support

§ 36.40 Standard XIII—Library/media program.

(a) Each school shall provide a library/media program which shall, as a

minimum, meet the applicable State and/or regional standards, but shall not be limited to these, and shall include the following:

(1) A written set of instructional and service objectives shall be established, integrated, and consistent with the school's educational goals and philosophy. The librarian or educational media specialist, with students and staff, shall set objectives based on assessed academic and residential needs. The program and services will be evaluated yearly by the principal and the librarian or educational media specialist to determine the degree to which all objectives have been met.

(2) A written policy for the selection of materials and equipment shall be developed by the librarian or education media specialist in collaboration with the school staff and approved by the school board. The collection of materials shall include as a minimum the following:

(i) A collection of books suitable for the range of student abilities and interests being served in the following ADM ratios: Elementary K–6, 15 books per student, Middle 7–8, 12 books per student, Secondary 9–12, 10 books per student.

(ii) Eight (8) to twelve (12) percent of the basic collection must be composed of reference books, currently relevant and in a state of good physical condition, for practical use. Single copies of the principal textbooks used to complement instruction shall be in the collection, but textbooks cannot be counted toward this standard.

(iii) A periodical collection, suitable for the range of student abilities and interests being serve, consisting of one (1) periodical for every ten (10) students, shall be maintained. Schools of over 200 will have a base collection of 20 periodicals.

(iv) A professional collection for the school staff shall be developed and maintained by the librarian or educational media specialist in cooperation with a faculty committee.

(v) A variety of audio-visual materials, suitable for the range of instruction being provided, of at least 750 items or five (5) items for each student, whichever is larger, and inclusive of materials located in the classrooms. This category includes some of each of the following: tactile objects, globes, models, maps, films, filmstrips, microforms, slides, audio and video tapes, recordings, transparencies, graphics, and the equipment to use all of these. Multiple items within a specific set of materials will be counted as separate items.

(3) There shall be a library media center serviced by a librarian. Schools with fewer than 200 students are encouraged, wherever feasible, to cooperate in sharing librarian resources. Schools within an Agency and/or Area may cooperatively share the costs and services of a librarian who shall facilitate sharing of the combined available resources among the cooperating schools in accordance with the following ratios:

School Enrollment (ADM)	
Up to 100	½ time librarian provided the school has a full-time library aide.
101 to 200	½ time librarian or ¾ time librarian provided the school has a full-time library aide.
201 to 400	1 full-time librarian or ½ time librarian provided the school has a full-time library aide.
401 plus	1 full-time librarian and a full-time library aide.

(4) Prior to the purchase of new materials, all schools must conduct an inventory of available books and materials.

(b) Each school shall equitably distribute instructional materials to all classrooms. Each school shall annually inventory all accountable property and equipment prior to the primary requisitioning date for such materials. Copies of the inventory shall be kept on file by the school staff.

§ 36.41 Standard XIV—Textbooks.

(a) Each school shall establish a textbook review committee composed of teachers and, where feasible, parents and students.

(b) The textbook committee shall establish a procedure and criteria for the review annually of textbooks and other materials used to complement instruction. The criteria shall include, but not be limited to, the following:

(1) The textbook content shall meet the course objectives which are within the adopted school curriculum.

(2) The textbook content shall provide congruency between the materials and the program for which they are to be used.

(3) The textbook content shall present cultures accurately and avoid stereotypes.

(4) The textbooks shall be current or published within five (5) years, in good physical condition and varied in reading levels.

§ 36.42 Standard XV—Counseling services.

Each school shall offer student counseling services concerned with physical, social, emotional, intellectual, and vocational growth, as determined, in part, for each individual and the school as a whole through a school-wide testing program.

(a) School-wide testing requirements. Each Agency shall institute and supervise a uniform testing program for its schools in order to provide for the objective assessment of student academic performance. Required formal tests will be administered annually to all regular program students in grades one through twelve. These formal tests and their subject content will include, but not be limited to, the following:

(1) Minimum competency tests of basic skills or criterion-referenced tests based upon a majority of the principal instructional objectives in the content areas of reading, language arts, and mathematics;

(2) A pre-test and post-test from nationally normed and standardized achievement tests which can be nationally correlated in the content areas of reading, language arts, and mathematics to be administered in October and April of each school year.

(3) Each school shall report, as directed, the results of all formal tests under paragraphs (a) (1) and (2) of this section to its Agency and/or Area.

(4) Each Agency and/or Area shall report, as directed, results of all formal tests under paragraphs (a) (1) and (2) to the Office of Indian Education Programs.

(b) Each counseling program shall provide the following:

(1) Each school having a minimum school MD of 200 students shall make provisions for the full-time professional services of a counselor and each school enrolling fewer than 200 students shall make provisions for a parttime professional counselor.

(2) The counselors in a bi-cultural or multi-cultural setting shall be familiar with the unique tribal, social, and economic characteristics of students.

(3) The counseling program shall contain the following:

(i) a written referral procedure.

(ii) counseling techniques and documentation procedures to provide for the career, academic, social, and personal needs of the students which are based on the cultural beliefs and values of the students being served.

(iii) provide perventative and crisis counseling on both individual and group bases.

(iv) maintain confidentiality and security of counseling records for each student.

(v) Design and implement orientation programs to facilitate the pupil's transition from elementary to junior high/middle school and from junior high/middle school to high school.

(vi) Each junior high or middle school and high school student shall receive academic counseling a minimum of twice yearly during which time the counselor shall assist the student in developing a written academic and career plan based on ability, aptitude, and interests. Additionally, counselors will assist high school students in selecting courses which satisfy the school's and the State's graduation requirements and the student's academic and career plan. Further, seniors will be given aid in completing registration and/or financial assistance applications for either vocational or academic post-secondary institutions.

(vii) Each high school counseling program will be required to have on file for each student a planned academic program of studies which is available from the regular course offerings of the school to meet the student's career objectives and which will show that the student has received counseling.

§ 36.43 Standard XVI—Student activities.

All schools shall provide and maintain a well-balanced student activities program based on assessment of both student and program needs. These programs shall help develop leadership abilities and provide opportunities for student participation but not be limited to activities that include special interest clubs, physical activities, student government, and cultural affairs. The activity program shall be an intergral part of the overall educational program.

(a) All student activities shall require school board approval and have qualified sponsors designated by the school.

(b) A plan of operation will be submitted by each activity at the beginning of each school year. The plan will include the purpose, structure, coordination, and planned types of fund-raising activities.

(c) Schools may participate in interscholastic sports and activities on an informal or formal basis. On an informal basis, the Bureau-operated schools will coordinate with other schools in setting up a schedule of sports and games. Schools that participate in State-recognized leagues will abide by those State rules regulating interschool competition.

(d) Until comparable competitive opportunities are provided all students regardless of sex, no student shall be barred from participation in interscholastic competition in noncontact sports, except on the basis of individual merit.

(e) Residential schools shall plan and provide a formal intramural program for its resident students. The program shall include a variety of scholastic and sport activities.

(f) Students shall be only involved in activities which are directly related to the educational program.

(g) All student activities involved in fundraising are required to establish a school/student activity bank account following school/student banking procedure outlined under 25 CFR 31.7 and 62 BIAM 8. All student activity accounts shall be audited annually.

(h) The school shall provide for the safety and welfare of students participating in school-sponsored activities.

(i) Each sponsor of a student activity will be given orientation and training covering the responsibilities of a sponsor by the school supervisor.

Subpart F—Evaluation of Educational Standards

§36.50 Standard XVII—School program evaluation and needs assessment.

Each school shall complete a formal, formative evaluation at least once every four (4) years beginning no later than the second complete school year following the publication date of this part. The primary purpose of this evaluation will be to determine the effects of the school program and to improve the operations and services of the school programs.

(a) Each school's evaluation design or model will provide objective and quantitive analysis of each area to be evaluated. The analysis shall include product and process evaluation methods. The areas to be reviewed will include, but not be limited to, the following:

(1) School philosophy and objectives.

(2) Administrative and organizational requirements.

(3) Program planning and implementation.

(4) Curriculum development and instruction.

(5) Primary education.

(6) Program of studies for elementary, junior high/middle, and high schools.

(7) Grading requirements.

(8) Promotion requirements.

(9) High school graduation requirements.

(10) Library media.

(11) Textbooks and other instructional materials.

(12) Counseling services.

(13) Medical and health services.

(14) Student activities.

(15) Transportation services.

(16) Staff performance.

(17) Facilities (school plant).

(18) Parent and community concerns.

(19) School procedures and policies.

(20) School board operations.

(b) The Director, within six (6) months from the publication date of this part, shall distribute to each school, Agency and/or Area a nationally standardized needs assessment and evaluation instrument which is to be completed and returned to the Director within sixty (60) days of receipt.

§36.51 Standard XVIII—Office of Indian Education Programs and Agency monitoring and evaluation responsibilities.

(a) The Office of Indian Education Programs shall monitor and evaluate the conformance of each Agency and/or Area and its schools with the requirements of this part. In addition, it shall annually conduct on-site monitoring at one-third of the Agencies and Areas, thereby monitoring on-site each Agency and/or Area at least once every three (3) years. Within forty-five (45) days of the on-site visit, the Director shall issue to each Agency and/or Area a written report summarizing the monitoring findings and ordering, as necessary, required actions to correct noted deficiencies.

(b) Each Agency and/or Area in conjunction with the Agency and/or Area School Board shall monitor and evaluate the conformance of its schools with the requirements of this part through an annual on-site evaluation involving one-third of the schools annually, thereby monitoring on site each school at least once every three (3) years. Within thirty (30) days of the on site visit, the Agency Superintendent for Education and/or Area Education Program Administrator, shall issue to the local school board a written report summarizing the findings and ordering, as necessary, required actions to correct noted deficiencies.

(c) Schools, Agencies, and Areas shall keep such records and sumit to the responsible official, or designee, accurate reports at such times, and in such form and containing such information as determined by that official to be necessary to ascertain conformance with the requirement of this part.

(d) Schools, Agencies, and Areas shall permit access by the responsible official, or any duly authorized designees, for examination purposes, to any records and other sources of information which are related or pertinent to the requirements of this part.

(e) The Office of Indian Education Programs, each Agency and Area shall annually conduct a summative evaluation to assess the degree to which each Bureau educational policy and administrative procedure assists and/or

hinders schools in complying with the requirements of this part. This will include, but not be limited to, the following actions:

(1) Evaluate current policies and practices not related to this part and the effects thereof on the amount of time and resources required of a school which otherwise would be available for these standards;

(2) Modify any policies and practices which interfere with or compromise a school's capability to achieve and maintain these standards;

(3) Invite non-Federal agencies to evaluate the effects current policies and procedures have had on complying with the requirements of this part; and

(4) Submit annually to the Director a copy of the summative evaluation.

Subpart G—Compliance and Waivers

§ 36.60 Compliance for minimum academic standards.

Implementation of these standards shall begin immediately on the effective date of publication.

(a) A school is in compliance when it has met and satisfied all the requirements of these standards.

(b) Earch school supervisor shall, within forty-five (45) days after the start of each school year, submit a compliance report to the local school board, the Agency Superintendent for Education and/or the Area Education Program Administrator which attests to whether a school is in compliance.

(c) In those instances where a school does not meet the requirements of these standards, the school supervisor shall inform the parents or legal guardians by letter no later than forty-five (45) days after the start of each school year.

(d) The compliance report shall contain the following:

(1) A written statement attesting to the fact that the school has or has not met all of the requirements.

(2) A specific listing of the requirements which have not been met.

(3) A detailed plan of action outlining the steps which will be taken during the year to bring the school(s) into compliance.

(4) A copy of the notice which must be provided to parents informing them of the school's noncompliance status.

(5) A statement signed by the local school board attesting to the fact that they have been appraised of the school's compliance status and concur with the action plan to reach compliance.

(e) The Agency Superintendent for Education and/or the Area Education Program Administrator shall review each school's compliance report and shall provide the Director with a summative report by November 15 of each year which includes:

(1) A listing of those schools not in compliance.

(2) A brief statement as to why each school is not in compliance and how they propose to reach compliance.

(3) A plan of action outlining what actions the Agency and/or the Area education offices will take to assist the school(s) to reach compliance.

(f) In the event a school is not in compliance for two consecutive years due to conditions which can be corrected locally, appropriate personnel actions will be initiated at all applicable levels of school administration and may be acceptable grounds for dismissal.

(g) The Secretary shall include, within the annual report to Congress, a detailed analysis of the reasons for the non-compliance status of each school and the administrative and programmatic actions which will be taken to achieve compliance by all schools.

§ 36.61 Waivers and revisions.

(a) The tribal governing body, or the local school board if so designated by the tribal governing body, shall have the local authority to waive, in part or in whole, the standard(s) established in this part, where a standard(s) is deemed by such body to be inappropriate and shall also have the authority to revise such standard(s) to take into account the specific needs of the tribe's children. A waiver or revised standard(s) shall be approved in writing by the Assistant Secretary. The written notice of approval shall be sent to the affected tribe(s) and local school board. The Assistant Secretary may reject a request for a waiver and/or the revised standard for good cause. Such rejection shall be final and unreviewable. Requests for a waiver and revised standards shall be submitted to the Assistant Secretary in writing and will adhere to the following procedure:

(1) All requests for waivers and revisions must be submitted at least seventy-five (75) days prior to the beginning of the school year.

(2) The standard to be waived must be specified, and the extent to which it is to be deviated from shall be described.

(3) A justification shall be included with a revised standard which explains why the alternative standard is considered necessary.

(4) Measurable objectives of the alternative standard(s), the method of achieving the alternative standard(s), and the estimated cost of implementation must be stated.

(5) Until such waivers are authorized by the assistant Secretary, the standard(s) in this part will be in effect. the Assistant Secretary shall respond to each waiver within fourty-five (45) days of receipt.

(b) The Assistant Secretary shall assist the school board of an Indian-controlled contract school in the implementation of the standards established under this part if the school board requests that these standards, in part or in whole, be implemented. At the request of an Indian-controlled contract school board, the Assistant Secretary shall provide alternative or modified standards to those established in this part to take into account the needs of the Indian children and the Indian-controlled contract school.

Subpart H—National Dormitory Criteria

§ 36.70 Scope of subpart.

This subpart contains the criteria and mandatory requirements for all dormitories.

§ 36.71 General provisions.

(a) The Homeliving Specialist is the administrative head of the dormitory who shall have sufficient autonomy and authority to ensure the successful functioning of all phases of the dormitory program, and, in dormitories attached to a school, shall report to the school supervisor.

(b) Each dormitory program which does not have an academic counseling program under § 36.42 of this part shall provide a guidance program following the same standards.

(c) Students who qualify for residential services under the Exceptional Child Program must have in their individualized education plan objectives that are to be met in the homeliving program. Documentation to support completion of these objectives is required.

(d) Dormitories with intense residential guidance programs shall have updated written descriptions of the programs with stated purposes, objectives, activities, staffing, and evaluation system. Each student diagnosed as being in need of intense guidance services shall have a file which contains the following:

(1) Documentation of eligibility according to the definition contained under 25 CFR 39.11(h) (formerly § 31h.11(h)).

(2) Documentation of a diagnosis of the student's needs;

(3) A placement decision signed by a minimum of three (3) staff members;

(4) An individualized treatment plan which includes:

(i) Referral date and referral sources;

(ii) Diagnosis identifying specific needs;

(iii) Specific goals and objectives to be met;

(iv) Record of specific services including beginning and ending dates;

(v) Designation of responsible staff person(s); and

(vi) A means by which the student's progress and the effectiveness of the individualized treatment plan can be periodically reviewed and re-evaluated.

(e) Each dormitory program which does not have an academic program under Subpart C shall provide career counseling information on educational and occupational opportunities and help students assess their aptitudes and interests. This shall be done on a continuing basis beginning at the kindergarten level.

(f) time for counseling shall be made available in student as well as counselor schedules.

(g) Provisions shall be made to interpret to staff, students, and dormitory patrons the administrative policies and practices of the dormitory. This provision shall be made in the form of a manual, handbook, brochure or other written document which will be made available and explained to all who are interested. The topics shall include, but not be limited, to the following:

(1) Statement of basic philosophy and objectives;

(2) Description of how policies are developed and administered;

(3) Basic practices related to:

(i) A comprehensive and effective plan for evaluating student achievement.

(ii) Grading system and graduation requirements.

(iii) Attendance, absences, excuses, etc.

(iv) Pupil personnel services.

(v) Special programs—gifted, physically and mentally handicapped, remedial, speech and hearing defects, bilingual education, etc.

(vi) Available student activities.

(vii) Fiscal practices in the use and accounting of student body funds. (Reference 25 CFR, §32.7; formerly § 31.7)

(viii) Listing of curricular offerings.

(ix) A brief overview of dormitory rules and regulations.

(4) A student rights and responsibilities handbook, a statement of educational philosophy and objectives which interprets the administrative policies and practices of the dormitory to students, parents, and staff, shall be submitted to the Agency Superintendent for Education and/or Area Education Program Administrators.

(h) Programs will be designed and orientation programs implemented to facilitate the pupils' transition from elementary to middle school and from middle to high school, where appropriate.

(i) All dormitories shall provide and maintain a well-balanced student activities program based on assessment of both student and program needs. Programs shall provide opportunities for student participation in but not be limited to, activities that include special interest clubs, physical activities, student government, and cultural affairs. In addition, the following provisions shall be adhered to:

(1) Dormitories shall plan and provide for a formal intramural program which includes a variety of scholastic and sport activities.

(2) A plan of operation shall be submitted by each activity at the beginning of each school year. The plan shall include the purpose, structure, and coordination of all activities.

(3) All dormitories conducting fund-raising activities are required to establish a school/student activity bank account following school/student banking procedure outlined under 25 CFR 31.7 and 62 BIAM 8. All accounts shall be audited annually.

(4) All student activities shall require school board approval and qualified sponsors designed by the school.

(j) Parent/teacher and parent/teacher/student conferences on the student's instructional progress and development shall be held, where feasible and practical, to provide an additional means of communication between home and dormitory. Peripheral dormitories may meet this standard through documenting student grades on report cards and communicating them to parents.

§ 36.72 Elementary level dormitories.

(a) Each dormitory program shall provide the services of a qualified counselor who holds a valid counselor certificate and has training and experience in dealing with elementary students.

(b) Counselors shall not be assigned school supervisory duties. A school supervisor shall not serve in the capacity of counselor while holding the position of school supervisor.

(c) The dormitory program shall have the following ratios (ADM) for counselors:

Less than 74 students	½ time counselor.
75 to 150 students	1 full-time counselor.
151 to 225 students	1 full-time and ½ time counselors.
226 to 300 students	2 full-time counselors.

For dormitories which exceed 300 students (ADM), additional counselor time shall be provided according to the above ratio. Dormitories within an Agency are encouraged to try a variety of approaches to guidance service. In this arrangement, the counselor's time may be shared between dormitories. As long as one half-time, professionally-trained counselor is provided, the dormitory program may use supportive personnel and teachers to meet the ratio.

(d) Dormitory counselors shall be available daily between the hours of 2:00 p.m. and 10:00 p.m.

§ 36.73 Secondary level dormitories.

(a) Each dormitory program shall provide the services of a qualified counselor who holds a valid counselor certificate and has training and experience dealing with secondary students.

(b) Counselors shall not be assigned school supervisory duties. A school supervisor shall not serve in the capacity of a counselor while holding a position as a school supervisor.

(c) The dormitory program shall have the following ratios (ADM) for counselors:

Less than 100 students	½ time counselor.
100 to 199 students	1 full-time counselor.
200 to 300 students	1 full-time and ½ time counselor.

For dormitories which exceed 300 students (ADM), counselor time will be provided according to the above ratio. As long as one half-time, professionally trained counselor is provided, the dormitory program may use supportive personnel and teachers to meet the ratio.

(d) Counselors shall be available daily between the hours of 3:00 p.m. and 11:00 p.m. Counseling services will be made available on a 24-hour basis as needed.

§ 36.74 Homeliving (dormitory operations).

Staff shall be provided so that at least one adult is on duty at all times when students are in the dormitory. Each dormitory program shall include, but not be limited to, the following:

(a) Every dormitory facility shall be under the direct supervision of a dormitory manager. A building composed of separate wings or several floors shall be counted as one facility.

(b) Each dormitory operation will provide the following minimum on-duty paraprofessional staff to student ratio (ADM):

	Ration
Grades 1–6:	
Weekdays:	
Mornings	1:30
During school hours	1:40
Evenings	1:30
Nights	1:40
Weekends:	
Mornings	1:30
Evenings	1:30
Nights	1:40
Grades 7–12:	
Weekdays:	
Mornings	1:50
During school hours	1:80
Evenings	1:50
Nights	1:80
Weekends:	
Mornings	1:50
Evenings	1:50
Nights	1:80

Dormitory operations for grades one through eight are encouraged to provide additional staff aides during the time children in the primary grades are dressing and preparing for breakfast and school. Staff ratios on weekends shall be reduced at boarding schools to adjust for those students who go home.

(c) Group instruction and discussion sessions shall be conducted on various topics on a weekly basis. Topics to be presented shall be determined by a committee comprised of students, staff, administrators, and parents. These topics shall include discussions of problems or needs that exist at the location and/or community.

(d) Each dormitory facility shall be cleaned and checked for safety on a daily basis. Student assistance may be utilized; however, the overall responsibility for cleanliness and sanitation of the facilities shall rest on the facility personnel. Bed and bath linen shall be changed a minimum of once per week. Necessary toiletry items shall be made available to those students who are economically unable to provide them.

(e) Dormitory operations shall have clothes washers and dryers. Equipment shall be utilized only for student clothing unless a laundry contract is not in force. In grades one through six, residential paraprofessionals shall be responsible for the upkeep of clothing. Students in grades seven through twelve shall be responsible for the upkeep of clothing. Students in grade seven through twelve shall be responsible for the upkeep of their own clothing. Students in grades nine through twelve shall be allowed to wash and dry their clothing after training is given in using the machines.

(f) A system of student accountability shall be established at each residential facility. Minimum requirements of the system shall include an attendance procedure at least four (4) times per normal waking day for grades one through eight and two (2) times for grades nine through twelve. However, students in grades seven through twelve may be allowed to have a self check-in system provided that an employee reviews the roaster within an hour of each designated check-in time. During sleeping hours, students in grades one through eight shall be checked on an hourly basis, students in grades nine through twelve shall be checked on every two (2) hours. At the start of each school day, residential facilities supervisors shall report to the school office which students will not be in attendance. An intra-school pass system shall be developed and implemented.

(g) Students who wish to sign out/in of the dormitory facility shall do so only when prior approval is granted by the partent or guardian designate. However, such a policy must be approved by the local school board. Under such a policy, students who are of legal age may be allowed to sign themselves out/in. The homeliving specialist shall have the right to set curfew limits on any self sign out/in system.

(h) Dormitory operations shall have a designated room that is to be utilized as an isolation room. The room shall be utilized in the event that a student contracts a communicable disease and must be kept separate from the rest of the students. Such students shall be checked on an hourly basis.

(i) Each dormitory operation shall develop a written procedure for handling emergency situations. Such a procedure shall include names and telephone numbers of the responsible parties to contact in case of emergencies. Situations that shall be considered emergencies include life-threatening medical/health problems, power failure, walkaways, etc.

(j) A tutoring program shall be developed and implemented to assist those students having academic difficulties. Each dormitory operation shall provide a time and place where tutoring, homework, reading, and/or studying can be done for at lest one (1) hour daily.

(k) The homeliving specialist shall be responsible for reporting any hazardous or defective items in the dormitory to the local facility manager.

(l) Leisure-time activities shall be provided to dormitory students. A maximum of three (3) hours per day may be designated as unstructured leisure time. Structured leisure time may include such activities as recreational activities, clubs, arts/crafts, reading of newspaper and periodicals. Television viewing shall not be considered as structured leisure time unless a scheduled program provides educational benefit. On weekends and holidays, unstructured leisure time may be extended to ten (10) hours a day.

(m) Lines of communication shall be established with other local social service agencies to assist in the resolution of problems that may extend beyond the confines of the dormitory. These agencies may be State, tribal, or Federal.

(n) Dormitory personnel will receive training in emergency first-aid procedures.

§ 36.75 Space and privacy.

The configuration of sleeping space and other living areas will vary according to the grade levels of the occupants; however, sleeping rooms shall provide sufficient space and privacy for the resident students. The following space and privacy requirements shall be required for domitories.

(a) For grades K–8 level dormitory facilities, a space footage varying from 50 to 65 square feet per student shall be allowed for sleeping rooms, exclusive of furniture (wardrobe, desks, beds, etc.).

A dormitory shall be considered at capacity when the addition of one more student would put the school out of compliance with the space standard; and additional students shall not be admitted for residential purposes.

(b) Dormitories serving grades nine through twelve shall require sleeping room space of no less than 70 square feet per student.

A dormitory shall be considered at capacity when the addition of one more student would put the school out of compliance with the space standard; and additional students shall not be admitted for residential purposes.

(c) When new dormitories are constructed or existing dormitories are remodeled sleeping rooms shall be constructed not to exceed a maximum of four (4) students per room for grades K–12.

(d) Peripheral dormitories shall have a library media program serviced by a librarian on a part-time or time-sharing basis. The collection shall consist of:

(i) Three (3) books per student (ADM) with at least one (1) book per student being reference material;

(ii) One (1) periodical collection based on assessed needs;

(iii) A professional collection based on assessed needs; and

(iv) Audio-visual materials, suitable for leisure and planned recreational activities. Structured educational television viewing shall be included.

§ 36.76 Compliance for the national criteria for dormitory situations.

Implementation of the National Criteria for Dormitory Situations shall begin immediately on the effective date of this part.

(a) A dormitory is in compliance when it has met and satisfied all the requirements under this part.

(b) Homeliving supervisor shall report to their supervisor(s) within forty-five (45) days after the start of each school year with a compliance report to the local school board, the Agency Superintendent for Education and/or Area Education Program Administrator which attests to whether a dormitory is or is not in compliance.

(c) In those instances where a dormitory does not meet the requirements of this part, the school supervisor or dormitory homeliving supervisor shall inform the parents or legal guardians by letter no later than forty-five (45) days after the start of each school year.

(d) The compliance report shall contain the following:

(1) A written statement attesting to the fact that the dormitory has or has not met all of the requirements.

(2) A specific listing of the requirements which have not been met.

(3) A detailed plan of action outlining the steps which shall be taken during the year to bring the dormitory into compliance.

(4) A copy of the notice which must be given to parents informing them of the school's noncompliance status.

(5) A statement signed by the local board attesting to the fact that they have been appraised of the school's compliance status and concur with the action plan to reach compliance.

(e) The Agency Superintendent for Education and/or the Area Education Program Administrator shall review each dormitory compliance report and shall provide the Director with a summary report by November 15 each year which shall include:

(1) A list of dormitories indicating those not in compliance.

(2) A brief statement as to why each school is not in compliance and how it is proposed to reach compliance.

(3) A plan of action outlining what actions the Agency and/or the area education offices will take to assist the dormitories to reach compliance.

(f) In the event a dormitory is not in compliance for consecutive years due to conditions which can be corrected locally, appropriate personnel actions will be initiated at all appropriate levels of school administration; and noncompliance may be grounds for dismissal.

Kenneth Smith,

Assistant Secretary, Indian Affairs.

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