OK

6-13-83
Vol. 48 No. 114
Pages 27027-27218

federal register

Monday
June 13, 1983

Selected Subjects

CONTINUED INSIDE

Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by Act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers, free of postage, for $300.00 per year, or $150.00 for six months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

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.

Contents

Federal Register
Vol. 48, No. 114
Monday, June 13, 1983

Separate Parts in This Issue

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
Proposed Rules:
800 (2 documents)..... 27082, 27084

12 CFR
303..... 27027

14 CFR
39 (3 documents)..... 27030, 27031
71 (5 documents)..... 27032–27034
Proposed Rules:
39 (3 documents)..... 27085–27087

16 CFR
Proposed Rules:
13..... 27089

19 CFR
Proposed Rules:
101..... 27092

24 CFR
221..... 27035
234..... 27035
235..... 27035

29 CFR
Proposed Rules:
2670..... 27092
2675..... 27092

30 CFR
Proposed Rules:
917..... 27101
938..... 27102

33 CFR
Proposed Rules:
162..... 27103

38 CFR
3..... 27036

39 CFR
Proposed Rules:
111..... 27103

40 CFR
144..... 27039
146..... 27039
204..... 27039
205..... 27039
211..... 27039
271..... 27040
712..... 27041
720..... 27043
763..... 27041

44 CFR
Proposed Rules:
302..... 27105

46 CFR
221..... 27044
310..... 27044
Proposed Rules:
542..... 27112
543..... 27112
544..... 27112

47 CFR
Ch. I..... 27044
1..... 27182
2..... 27054
22..... 27182
31..... 27072
73 (2 documents)..... 27054, 27182
74..... 27054
81..... 27182
87..... 27182
90..... 27182
94..... 27182
Proposed Rules:
94..... 27113

50 CFR
301..... 27073
611..... 27075
674..... 27080

Rules and Regulations

Federal Register
Vol. 48, No. 114
Monday, June 13, 1983

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 303

Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation's ("FDIC") Board of Directors is delegating authority, if certain criteria are met, to approve (but not deny) routine merger transactions. The delegation is to the Director of the FDIC's Division of Bank Supervision and to the FDIC's regional directors. The delegation will reduce the time and costs of processing applications.

EFFECTIVE DATE: June 13, 1983.

FOR FURTHER INFORMATION CONTACT: Donald F. Pfeiffer, Supervising Examiner, Division of Bank Supervision, Federal Deposit Insurance Corporation, 550—17th Street, NW., Washington, D.C., 202-389-4701.

SUPPLEMENTARY INFORMATION: Under section 18(c)(2), 12 U.S.C. 1828(c)(2), of the Federal Deposit Insurance Act (the "FDI Act," 12 U.S.C. 1811 *et seq.*), a bank insured by the FDIC must apply to the FDIC for permission to merge or consolidate with another insured bank, or acquire the assets of or assume the liability to pay any deposits in any other insured bank, if the surviving bank will be a State-chartered bank that is not a member of the Federal Reserve System (a "State nonmember bank").

The FDIC's Board of Directors ("Board") has already delegated the power to approve—but not deny—such transactions (herein referred to without distinction as "merger transactions") when they amount to mere corporate reorganizations or "phantom-bank mergers." See 12 CFR 303.11(a)(9). Transactions of this kind do not affect the structure of the banking market or the financial condition of the applicant bank. Accordingly the Board has been willing to delegate its power to the Director of the Division of Bank Supervision ("DBS") and, where confirmed in writing by the Director of DBS, to the regional director of the FDIC region where the applicant bank is located.

Now the Board is delegating authority to approve (but not deny) substantive but routine merger transactions. The delegation follows the model used in dealing with corporate reorganizations and "phantom bank" mergers. That is to say, the delegation is to the Director of DBS and, where confirmed in writing by the Director of DBS, to the regional director of the FDIC region where the applicant bank is located.

The delegation is effective only if the delegate determines that the conditions contained in section 18(c)(5) of the FDI Act, 12 U.S.C. 1828(c)(5), are satisfied, and also finds that the application meets the following criteria:

1. All parties to the merger transaction must be insured banks; but no party to the merger transaction may be a savings bank or a mutual savings bank.

2. Upon consummation of the merger transaction, the applicant (or, where the applicant is a foreign bank, its insured branch) may not have more than 15% of the individual, partnership, and corporate deposits held by banks (excluding deposits held by savings banks and mutual savings banks) in the relevant market. Furthermore, the merger transaction may not produce a change in the Herfindahl-Hirshman Index of more than 113 for the market as measured by the individual, partnership and corporate deposits held by banks (excluding deposits held by savings banks and mutual savings banks).[1]

3. Upon consummation of the merger transaction, the applicant (or, where the applicant is a foreign bank, its insured branch) may not have more than $1 billion in assets.

4. If the applicant is a state bank, upon consummation of the merger transaction, its tangible adjusted equity capital must be adequate and in no event less than 5% of adjusted assets. If the applicant is a foreign bank, its insured branch must be in compliance with 12 CFR 346 upon consummation of the merger transaction.

5. Upon consummation of the merger transaction, the applicant (or, where the applicant is a foreign bank, its insured branch) must warrant a composite rating of 2 or better under the Uniform Financial Institutions Rating System, 1 *Fed. Deposit Ins. Corp. Law, Reg., Related Acts* (FDIC) 5079.

6. Upon consummation of the merger transaction, the applicant (or, where the applicant is a foreign bank, its insured branch) must be in substantial compliance with state and federal laws, rules and regulations.

7. Upon consummation of the merger transaction, the applicant (or, where the applicant is a foreign bank, its insured branch) must be in substantial compliance with the Community Reinvestment Act, 12 U.S.C. 2901, *et seq.*, and implementing regulations (12 CFR Part 345).

8. Upon consummation of the merger transaction, there must remain at least three banks (excluding savings banks and mutual savings banks) other than the applicant in the relevant market.

9. The delegate must review the reports on the competitive factors involved in the transaction provided by the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Attorney General. If the Attorney General determines that the transaction may have an adverse effect on competition, the delegation is not effective. If the FDIC does not receive an opinion from the Attorney General within 30 days, the delegate must ask the Washington Office of the FDIC's Legal Division to provide a formal opinion on the transaction's effect on competition. In that event the delegate may not approve the application until the Legal Division determines that the transaction will not affect competition adversely.

Applications fitting these criteria will not adversely affect competition in the market, or the safety-and-soundness of the banks or the banking system, or the convenience and needs of the community within which the merger transaction is to take place.

The FDIC has reviewed the 37 merger transactions that the Board dealt with between January 1, 1982 and May 31,

[1] The Herfindahl-Hirshman Index is calculated by adding the squares of the market shares of all the banks in the market.

1982. Twenty-six mergers involved commerical banks only. Of these, 15 would not have met one or more of the proposed criteria. The remaining 11 (or 42% of those involving commercial banks) could have been delegated to the Director of DBS and/or the regional directors under the proposed rule.

The delegation benefits the FDIC. It eliminates several levels of review, and saves at least ten days (and often two weeks or more) in the approval process. It also conserves the Board's resources by allowing Board members to deal with matters of greater weight and urgency.

In addition, the delegation benefits banks. It shortens the time they must wait for approval of their applications. It also gives the FDIC greater flexibility to accommodate banks' particular circumstances (*e.g.*, their accounting periods) where the 30-day waiting period might cause timing problems.

The FDIC proposed the delegation on October 5, 1982, and asked for public comment on it. 47 FR 43983 (1982). The October 5 proposal was the same as the rule hereby adopted in every way but one: the earlier plan made no mention of the Herfindahl-Hirshman Index.

The FDIC received eight letters of comment on the October 5 proposal; seven were submitted by members of the public. One letter called for relaxing the guidelines, so that the delegations would be effective whenever the resulting bank would have 25% (rather than 15%) of total deposits and up to $2 billion (rather than $1 billion) in assets. A second declared that mergers involving savings banks and mutual savings banks should be eligible for approval by means of delegated authority. Two more asserted that the relevant product-line should include thrifts' activities: that is thrift-held deposits should count as part of the total pool of deposits for purposes of calculating the 15% test; one of the two also said the FDIC should count thrifts as "institutions remaining in the market" upon consummation of the merger. Three letters gave full support to the proposal.

The FDIC has evaluated the points raised by these letters. The FDIC wishes to emphasize that the delegations are only intended to accommodate mergers that are of a purely routine character. Furthermore, the FDIC considers that it is important to keep the standards of approval uniform from case to case and from region to region.

A merger resulting in a firm with more than 15% of the market entails a significant increase in market concentration. Likewise, when the resulting firm has more than $1 billion in assets, any safety-and-soundness problems it might present would be of more than routine significance. For these reasons, the FDIC has decided that the Board should continue to review any such mergers.

Furthermore, the FDIC believes that it is premature to include savings banks and mutual savings banks within the sphere of the delegation. The cluster of services that these institutions provide may differ from that provided by commercial banks; the geographic boundaries of the market in which a savings bank (or mutual savings bank) competes may not be the same as those that would define the market of a similarly-situated commercial bank; and the competitors of savings banks (and of mutual savings banks) may be somewhat different from those of commercial banks. Moreover, the powers of savings banks, of mutual savings banks, and of other thrift institutions are continuing to evolve. The FDIC does not believe that mergers involving these institutions can be characterized as routine.

Similarly the FDIC believes that—for the purpose of deciding whether to delegate authority—thrift institutions should be excluded from the market. To be sure, when the FDIC evaluates a merger, it calculates the resulting bank's market share both in terms of the market represented by commercial banks alone and in terms of the market represented by banks and thrift institutions taken in combination. The competitive influence of thrift institutions on commercial banks can vary greatly from one market to another, however, and the relationship between the second calculation and the actual competitive impact of a merger is not well established. Accordingly the FDIC believes that delegated authority should only be invoked in cases that meet the more stringent test: that is, where mergers meet the standards of delegation when measured within the context of the commercial-bank market alone. The FDIC may review this matter later on, as the powers and the competitive influence of the thrift institutions continue to evolve.

The eighth—and most detailed—comment was that of the Department of Justice ("Department"). The Department endorsed the basic theme of delegation. But the Department said the FDIC should change the guidelines in two major ways.

First, the Department declared, the FDIC should not rely exclusively on a market-share test (*i.e.*, whether the resulting bank has 15% of the deposits). The Department observed that this test does not take into account the way that market power is spread among the firms in the market. The Department suggested using a test based on the Herfindahl-Hirshman Index as a supplement.

The FDIC believes that it has adequately dealt with the problem of marketshare distribution by requiring that at least four banks remain in the market after the merger has been completed, and that a "no competitive effect" letter be received either from the Department or from the FDIC's own Legal Division. Nevertheless, in the spirit of maintaining a common government-wide standard for interpreting the antitrust laws, the FDIC has incorporated Herfindahl-Hirshman criteria into the merger-delegation rules. Specifically, the FDIC provides that delegation will be available only in cases where the change in the Herfindahl-Hirshman Index is less than 113.

The number 113 represents the maximum change in concentration that could result from a merger between two banks whose combined market share is 15% (*i.e.*, two banks of 7.5% each). The FDIC believes that all mergers of this kind can and should be disposed of at the regional level. More complicated questions arise, however, when mergers of three or more banks are involved. In such cases, even when the resulting bank has only 15%, the change in the Herfindahl-Hirshman Index can readily exceed 113, and the alteration in the structure of a market can be more difficult to evaluate. The FDIC believes that cases of this kind should be reserved for the Board to consider, at least during the initial period of the delegation.

Second, the Department says the FDIC should establish explicit standards for determining the relevant geographic market. The Department remarks that the FDIC has historically (albeit informally) used the area within a fifteen-mile radius of a bank's office as a proxy for the market served by that office. The Department judges this procedure to be reasonable—provided it is used in combination with at least one other proxy. The Department suggests using either Ranally Metro Areas or the merging banks' counties as secondary proxies.

The FDIC has always been careful to avoid a rigid definition of market areas. Local geographic and economic conditions are paramount in determining the limits of banking markets. The FDIC believes that the Director of DBS and the regional directors can weigh these factors appropriately in any given case. Accordingly, the FDIC declines to adopt any uniform rule for de. ning banking

markets. The FDIC takes this position in the knowledge that the Department has an opportunity to comment on mergers before approval; any such challenge will preclude the use of delegated authority.

The FDIC has evaluated other ways to relax the guidelines for delegation. The FDIC might have delegated power to deny applications as well as approve them. The FDIC might also have delegated the power to approve merger transactions involving banks not insured by the FDIC. The FDIC has determined, however, that matters like these raise issues that are not routine. The FDIC concludes that the Board should continue to review any such cases.

Regulatory Flexibility Analysis

The delegations only affect the internal activities of the FDIC. They do not impose any new costs or burdens on, nor affect the competitive status of, any small entities. Accordingly a cost/benefit analysis of the delegations (including a small-bank impact statement) is not required. The Board has certified that the rule will not, if promulgated, have a significant economic, impact on a substantial number of small entities. See 5 U.S.C. 605.

Paperwork Reduction Act Analysis

The rule does not impose any new record-keeping or reporting requirements on insured banks.

National Environmental Policy Act Statement

The delegations only affect the internal procedures of the FDIC, and do not significantly affect the environment. Accordingly, an environmental impact statement is not required under the National Environmental Policy Act of 1969.

List of Subjects in 12 CFR Part 303

Administrative practice and procedure, Authority delegations, Bank deposit insurance, Banks, banking.

For the reasons set forth in the preamble, Part 303 of title 12, of the Code of Federal Regulations, is amended as set forth below.

PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES OF ACQUISITION OF CONTROL

1. The authority citation for Part 303 reads as follows:

Authority: Secs. 2(5), 2(6), 2(7)(j), 2(8), 2(9 "Seventh" and "Tenth"), 2(18), 2(19), Pub. L. No. 797, 64 Stat. 876, 881, 891, 893 as amended by Pub. L. No. 86-463, 74 Stat. 129; sec. 2, Pub. L. No. 87-827, 76 Stat. 953; Pub. L. No. 88-593, 78 Stat. 940; Pub. L. No. 89-79, 79 Stat. 244, sec. 1, Pub. L. No. 89-356, 80 Stat. 7; sec. 12(c), Pub L. No. 89-485, 80 Stat. 242; sec. 3, Pub. L. 89-597, 80 Stat. 624; title II, secs. 201, 205, Pub. L. No. 89-695, 80 Stat. 1055; sec. 2(b), Pub. L. No. 90-505, 82 Stat. 858; secs. 6(c) (7), (12), (13), Pub. L. No. 95-369, 92 Stat. 616-620; title III, secs. 308, 309 and title VI, sec. 602, Pub. L. No. 95-630, 92 Stat. 3677, 3683 (12 U.S.C. 1815, 1816, 1817(j), 1818, 1819 "Seventh" and "Tenth," 1828, 1829); title I, sec. 108, Pub. L. No. 90-321, 82 Stat. 150 as amended by title IV, sec. 403, Pub. L. No. 93-495, 88 Stat. 1517 and title VI, sec. 606, Pub. L. No. 96-221, 94 Stat. 171 (15 U.S.C. 1607).

2. In § 303.11, paragraph (a)(17) is added to read as follows:

§ 303.11 Delegation of authority to act on certain applications and on notices of acquisition of control.

(a) * * *

(17) Applications for permission to merge or consolidate with any other insured bank or, either directly or indirectly, to acquire the assets of, or assume the liability to pay any deposits made in, any other insured bank or insured branch of a foreign bank. This authority extends only to the approval and not to the denial of such applications.

* * * * *

3. Section 303.12 is amended by adding a new paragraph (e) and redesignating footnote 10 as footnote 9 and footnote 11 as footnote 10 as follows:

§ 303.12 Applications where authority is not delegated.

* * * * *

(e) *Conditions precedent to delegation of authority to approve applications for permission to merge or consolidate with any other insured bank or, either directly or indirectly, to acquire the assets of, or assume the liability to pay any deposits made in, any other insured bank or insured branch of a foreign bank.* (Important: The requirements set forth in this paragraph (e) are procedural in nature only and should not be construed as standards or criteria which will be used in determining whether a specific application will be approved or denied.) Authority to approve applications for permission to merge or consolidate with another insured bank or, either directly or indirectly, to acquire the assets of, or assume the liability to pay any deposits made in, any other insured bank (herein referred to as "merger transactions") is delegated pursuant to § 303.11(a)(17) only where the conditions set forth in section 18(c)(5) of the Federal Deposit Insurance Act are satisfied and where the following criteria are met:

(1) All parties to the merger transaction must be insured banks; but no party to the merger transaction may be a savings bank or a mutual savings bank.

(2) Upon consummation of the merger transaction, the applicant (or, where the applicant is a foreign bank, its insured branch) may not have more than 15% of the individual, partnership, and corporate deposits held by banks (excluding deposits held by savings banks and mutual savings banks) in the relevant market. Furthermore, the merger transaction may not produce a change in the Herfindahl-Hirshman Index of more than 113 for the market as measured by the individual, partnership and corporate deposits held by banks (excluding deposits held by savings banks and mutual savings banks).[11]

(3) Upon consummation of the merger transaction, the applicant (or, where the applicant is a foreign bank, its insured branch) may not have more than $1 billion in assets.

(4) If the applicant is a state bank, upon consummation of the merger transaction, its tangible adjusted[7] equity capital and reserves must be determined to be adequate and in no event less than 5% of adjusted assets. If the applicant is a foreign bank, its insured branch must be in compliance with 12 CFR 346 upon consummation of the merger transaction.

(5) The applicant (or, where the applicant is a foreign bank, its insured branch) must have a composite rating of 2 or better under the Uniform Financial Institutions Rating System (composite Camel), *see* 1 Fed. Deposit Ins. Corp. Law, Reg., Related Acts (FDIC) 5079, upon consummation of the merger transaction.

(6) Upon consummation of the merger transaction, the applicant (or, where the applicant is a foreign bank, its insured branch) must be in substantial compliance with state and federal laws, rules, and regulations.

(7) The requirements of the Community Reinvestment Act must be considered and favorably resolved in regard to the resulting bank.

(8) Upon consummation of the merger transaction, there must remain at least three banks (excluding savings banks and mutual savings banks) other than the applicant in the relevant market.

(9) The delegate shall review any reports on the competitive factors involved in the merger transaction that the Comptroller of the Currency, the

[11] The Herfindahl-Hirshman Index is calculated by adding the squares of the market shares of all the banks in the market.

Board of Governors of the Federal Reserve System, and the Attorney General may provide in response to a request for such reports by the Corporation. If the Attorney General determines that the merger transaction may have an adverse effect on competition, the delegation provided herein shall be ineffective. If the Corporation does not receive an opinion from the Attorney General within 30 days of the date on which the Corporation has requested the opinion, the delegate shall request the Washington Office of the FDIC's Legal Division to provide a formal opinion on the question whether the merger transaction may have an adverse effect on competition. If the delegate has requested the Corporation's Legal Division to provide a formal opinion in accordance with this requirement, the delegate shall not approve the application until the Legal Division has issued an opinion stating that the merger transaction will have no significant adverse effect on competition.

By order of the Board of Directors, May 23, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary

[FR Doc. 83-15710 Filed 6-10-83; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 83-NM-39-AD; Amdt. 39-4661]

Airworthiness Directives: Boeing Models 707/720/727/737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document amends an existing Airworthiness Directive (AD) which requires the installation of a leading edge position aural warning system on Boeing Model 707/720/727/737 series airplanes, on or before March 31, 1983, or upon implementation of a specific cockpit procedure, on or before December 26, 1983, for the 727 and 737 series airplanes. This amendment adds an additional service bulletin which was inadvertently omitted from the list of acceptable service bulletins contained in the final rule.

DATE: Effective June 21, 1983.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Gary D. Lium, Systems & Equipment Branch, ANM-130s, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 767-2500. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: AD 80-22-12, Amendment 39-3951 (45 FR 70230; October 23, 1980), as revised by Amendment 39-4577 (48 FR 8989, March 3, 1983), requires the installation of leading edge device logic which will provide aural warning when the leading edge devices have not been extended prior to takeoff. This AD applies to Boeing Model 707/720/727/737 series airplanes and requires that the modification be completed on or before March 31, 1983, unless a specific cockpit procedure is implemented on the 727 and 737 airplanes, in which case the compliance deadline is extended to December 26, 1983. This AD also listed three service bulletins which may be used to comply with the AD. Subsequent to publication of the AD, the FAA was made aware of an additional service bulletin applicable to the Boeing 727 series airplanes which is acceptable. This action adds this new bulletin to the list contained in the existing AD.

This amendment provides additional information, is clarifying in nature, and imposes no additional burden on any person. Therefore, notice and public procedure hereon are unnecessary, and the amendment may be made effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

PART 39—[AMENDED]

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by correcting Paragraph A(2) of AD 80-22-12, Amendment 39-3951 (45 FR 70230; October 23, 1980) as revised by Amendment 39-4577 (48 FR 8989; March 3, 1983,) to read as follows:

A. (2) (Boeing 727 Series Airplanes) Boeing Service Bulletins No. 727-31-50, Revision 1, dated January 15, 1982, or No. 727-31-52, dated January 15, 1982, or other previous or subsequent FAA approved revisions.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may also be examined at FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective June 21, 1983.

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

Note.—The FAA has determined that this document involves an amendment that is clarifying in nature and does not impose any additional burden on any person. Therefore: (1) It is not major under Executive Order 12291 (46 FR 13193; February 19, 1981) and; (2) it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because its anticipated impact is so minimal, it does not warrant preparation of a regulatory evaluation. I certify that it will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act because it provides additional information, clarifying in nature, and because it involves few, if any, small entities.

Issued in Seattle, Washington on June 1, 1983.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 83-15805 Filed 6-10-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 83-NM-37-AD; Amdt. 39-4663]

Airworthiness Directives: British Aerospace Aircraft Group Model HS-125 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document amends an existing airworthiness directive (AD) applicable to British Aerospace Aircraft Group Model HS-125 series airplanes which requires installation of static electricity suppression filters on the fuselage. Paragraph 2 was determined to be incorrect and, further, it was not necessary since the referenced service bulletin provided the instructions required to comply with the AD.

DATE: Effective June 22, 1983.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington D.C. 20041, or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington: telephone (206) 767-2530. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: AD 83-02-04 (48 FR 4264, January 31, 1983) was issued to require the installation of static electricity suppression filters on the fuselage on BAe Model HS-125 series airplanes. It was discovered that paragraph 2 was in error since it made reference to "auxiliary power units other than the Garrett TFE 731," and these engines are not used as auxiliary power units. The service bulletin provides instructions to operators of aircraft with APUs installed to standards dissimilar than those of the manufacturer. Therefore, Paragraph 2 of AD 82-02-04 is also not necessary and this AD is corrected by deleting Paragraph 2.

Since this Amendment corrects and clarifies an AD and imposes no additional burden on any person, it is found that notice and public procedure hereon are unnecessary and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

PART 39—[AMENDED]

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by amending AD 83-02-04, Amendment 39-4558 (48 FR 4264, January 31, 1983) by deleting paragraph 2 and renumbering paragraphs 3 and 4, as paragraphs 2 and 3, respectively.

This amendment becomes effective June 22, 1983.

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

Note.—The Federal Aviation Administration has determined that this document involves an amendment that is clarifying in nature and does not impose any additional burden on any person. Therefore, (1) It is not major under Executive Order 12291 (46 FR 13193; February 19, 1981); and (2) it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because its anticipated impact is so minimal, it does not warrant preparation of a regulatory evaluation. I certify that it will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act because it is clarifying in nature, and because it involves few small entities.

Issued in Seattle, Washington on June 2, 1983.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 83-15801 Filed 6-10-83; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 82-NM-113-AD; Amdt. 39-4662]

Airworthiness Directives; Pacific Scientific Company, Kin-Tech Division

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires replacement of the lower cover of certain Pacific Scientific Company rotary buckles used in aircraft flight attendant seat restraint systems. The AD is prompted by two reports of broken cam plates in the rotary buckle which would not release. This failure could result in the entrapment of the occupant during emergency conditions.

DATE: Effective July 18, 1983. Compliance required within the next 180 days after the effective date of this AD (unless already accomplished).

ADDRESSES: The applicable service information may be obtained from: Pacific Scientific Company, Kin-Tech Division, 1346 South State College Boulevard, Anaheim, California 92803.

A copy of this information is contained in the Rules Docket, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, and may also be examined at Western Aircraft Certification Field Office, 15000 Aviation Boulevard, Hawthorne, California.

FOR FURTHER INFORMATION CONTACT: Walt Eierman, Aerospace Engineer, ANM-173W, Federal Aviation Administration, Northwest Mountain Region, Western Aircraft Certification Field Office, 15000 Aviation Boulevard, Hawthorne, California 90260, telephone (213) 536-6837.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring replacement of the lower cover of certain rotary buckles used in aircraft flight attendant seat restraint systems was published in the **Federal Register** on January 24, 1983 (48 FR 2982).

The proposal was prompted by two reported instances where a flight attendant was unable to unlatch a Pacific Scientific rotary buckle restraint system. In each case one of the lobes on the stamped rotary cam plate had broken off. This allowed the cam plate to be over-rotated which permitted the locking pawl to be captured in the locked position. Pacific Scientific buckle assemblies Part Numbers 1107261-01, -05 and -09, manufactured prior to 1982 were of this design. Pacific Scientific has incorporated two (2) rivet stops within the buckle cover on the later design which precludes over-rotation of the cam plate in the event of cam failure. This condition, if uncorrected, could result in an occupant being trapped in the seat.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received. Three comments were received which related to the adequacy of the proposed modification. The first stated that the flexibility of the buckle cover plate could result in jamming of the mechanism. The second stated that a stainless steel cover should be required because of the problem of the aluminum cover denting. The third felt that because cover denting could cause lockup, and that the proposed fix could hide a passive failure, neither an aluminum nor a stainless steel cover would be adequate but an improved cam plate should be required. The FAA does not agree. Based on service experience, we continue to believe the new cover provides an adequate solution. The new cover plate has been made by Pacific Scientific under the same part number in both aluminum and stainless steel. Only stainless steel covers have been made available since the start of 1983. Stainless steel covers are available to operators who have experienced denting of aluminum covers. As provided for in the AD, an alternate modification, such as an improved cam plate, could be approved by the Manager, Western Aircraft Certification Field Office, if it provided an equivalent level of safety.

One commenter stated that one year is more realistic compliance time than the 180 days indicated in the NPRM. Several other commenters, however, indicated they would not have any difficulty with the AD as proposed; therefore, we feel the 180 days compliance time is not unduly burdensome. One commenter stated

they had no reported lock-up problem and felt the AD was not justified.

The costs that are associated with this AD are estimated to be $12 for each of 6000 units in U.S. airline service. The total is estimated at $72,000. For these reasons, the rule is not considered to be a major rule under the criteria of Executive Order 12291. Few small entities within the meaning of the Regulatory Flexibility Act would be affected.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the proposed rule without change.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

PART 39—[AMENDED]

Adoption of the Amendent

Accordingly, pursuant to the authority delegated to me by the Adminstrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Pacific Scientific Company, Kin-Tech Division: Applies to Pacific Scientific flight attendant restraint system rotary buckle assemblies, Part Numbers 1107261–01, –05 and –09, manufactured prior to 1982.

Compliance required within 180 days from the effective date of this AD, unless previously accomplished.

To prevent the entrapment of occupants caused by the inability to release the restraint system assembly, accomplish the following:

a. Inspect flight attendant restraint systems to determine if Pacific Scientific rotary buckle as identified in Figure 1 of Pacific Scientific Service Bulletin 1107261–25–01 is installed.

b. If installed, determine if the old lower cover 1107270–01 or the new cover assembly 1107525–01 is installed. The cover is not identified with a part number; however, with the old cover only the two (2) attachment screw heads will be seen. The new cover assembly also has two (2) rivet upsets on the outside of the cover assembly and, in addition, the lap belt and/or inertia reel nameplate should be identified with the letter "M" after the assemby part number.

c. If the new cover assembly 1107525–01 is installed, no further action is required per this AD.

d. If the old cover 1107270–01 is installed, replace the old cover with the new 1107525–01 cover assembly and stamp or mark a suffix letter "M" next to part number on each lap belt and on inertia reel nameplate.

Note.—Pacific Scientific Service Bulletin 1107261–25–01, Revision 1, dated June 1, 1982, pertains to this subject.

e. Alternate inspections, modificatins or other actions which provide an equivalent level of safety may be used when approved by the Manager, Western Aircraft Certification Field Office, FAA, Northwest Mountain Region. This amendment becomes effective July 18, 1983.

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

Note.—For the reasons discussed earlier in this rulemaking action, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities since it involves few small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Seattle, Washington on June 1, 1983.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 83-15803 Filed 6-10-83; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 83-ASW-20]

Designation of Transition Area: El Reno, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will designate a transition area at El Reno, OK. The intended effect of the amendment is to provide controlled airspace for aircraft executing a new instrument approach procedure to the Mustang Field Airport. This amendment is necessary since a new nondirectional radio beacon (NDB) is being established and an instrument approach procedure will be published to serve Runway 35R. Coincident with this action, the airport is changed from visual flight rules (VFR) to instrument flight rules (IFR).

EFFECTIVE DATE: August 4, 1983.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW–535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 877–2630.

SUPPLEMENTARY INFORMATION:

History

On April 14, 1983, a notice of proposed rulemaking was published in the **Federal Register** (48 FR 16069) stating that the Federal Aviation Administration proposed to designate the El Reno, OK, Transition area. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Federal Aviation Administration. Comments were received without objections. Except for editorial changes, this amendment is that proposed in the notice.

List of Subjects in 14 CFR Part 71

Control zones and/or transition areas.

PART 71—[AMENDED]

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, by the Administrator, Subpart G of Part 71, § 71.181, of the Federal Aviation Regulations (14 CFR Part 71) as republished in Advisory Circular AC 70–3A dated January 3, 1983, is amended, effective 0901 GMT, August 4, 1983, as follows:

El Reno, OK [New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Mustang Field Airport (latitude 35°28'17"N., longitude 98°00'13"W.), and within 3 miles each side of the 169° bearing from the El Reno NDB (latitude 35°28'43"N., longitude 98°00'31"W.), extending from the 6.5-mile radius area to 8.5 miles south of the NDB.

(Sec. 307(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.61(c))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Fort Worth, TX, on May 31, 1983.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 83-15804 Filed 6-10-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 83-ACE-03]

Alteration of Transition Area—Iowa City, Iowa

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the 700-foot transition area at Iowa City, Iowa, to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Iowa City Municipal Airport, Iowa City, Iowa, utilizing a Non-Directional Radio Beacon (NDB) installed on the airport as a navigational aid. The intended effect of this action is to insure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: August 4, 1983.

FOR FURTHER INFORMATION CONTACT: Dwaine Hiland, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-532, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: To enhance airport usage, a new instrument approach procedure to the Iowa City Municipal Airport, Iowa City, Iowa, is being established utilizing an NDB on the airport as a navigational aid. The establishment of this new instrument approach procedure based on this navigational aid entails alteration of a transition area at Iowa City, Iowa, at and above 700 feet above the ground (AGL), within which aircraft are provided air traffic control service. The intended effect of this action is to insure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Discussion of Comments

On pages 15482 and 15483 of the Federal Register dated April 11, 1983, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Iowa City, Iowa. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Sec. 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 GMT, August 4, 1983, by altering the following transition area:

Iowa City, Iowa

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Iowa City Municipal Airport (latitude 41°38'22"N, longitude 91°32'46"W), and within 2 miles each side of the Iowa City VOR 024° radial, extending from the 6-mile radius area to the VOR; within 3 miles each side of the 276° bearing from the Iowa City NDB (latitude 41°37'58"N, longitude 91°32'31"W), extending from the 6-mile radius area to 8.5 miles west of the NDB; within 2.5 miles each side of the 103° bearing from the NDB extending from the 6-mile radius area to 7 miles east of the NDB.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and § 11.69 of the Federal Aviation Regulations (14 CFR 11.69))

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Kansas City, Missouri, on June 3, 1983.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 83-15789 Filed 6-10-83; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 83-ACE-04]

Designation of Transition Area, Mountain Grove, Missouri

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to designate a 700-foot transition area at Mountain Grove, Missouri, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Mountain Grove, Missouri, Memorial Airport, utilizing the Dogwood, Missouri, VORTAC as a navigational aid. This action will change the airport status from VFR to IFR. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: August 4, 1983.

FOR FURTHER INFORMATION CONTACT: Dwaine E. Hiland, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-532, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: To enhance airport usage, a new instrument approach procedure is being developed for the Mountain Grove, Missouri, Memorial Airport, utilizing the Dogwood VORTAC as a navigational aid. The establishment of an instrument approach procedure based on this approach aid entails designation of a transition area at Mountain Grove, Missouri, at or above 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. Transition areas are designed to contain IFR operations in controlled airspace during portions of the terminal operations and while transiting between the terminal and enroute environment. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). This action will change the airport status from VFR to IFR.

Discussion of Comments

On page 15482 of the Federal Register dated April 11, 1983, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Mountain Grove, Missouri. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Sec. 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 GMT August 4, 1983, by designating the following transition area:

Mountain Grove, Missouri

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Mountain Grove Memorial Airport (latitude 37°07'13"N, longitude 92°16'44"W) and within 3 miles each side of the Dogwood, Missouri, VORTAC 071° radial, extending from the 5-mile radius area to 6.5 miles southwest of the airport.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and Sec. 11.69 of the Federal Aviation Regulations (14 CFR 11.69)

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Kansas City, Missouri, on June 3, 1983.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 83-15791 Filed 6-10-83; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 83-ACE-05]

Designation of Transition Area; Waukon, Iowa

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to designate a 700-foot transition area at Waukon, Iowa, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Waukon, Iowa, Municipal Airport, utilizing the Waukon VORTAC as a navigational aid. This action will change the airport status from VFR to IFR. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). Action is also taken herein to change the VORTAC radial from 275 degrees to 271 degrees.

EFFECTIVE DATE: August 4, 1983.

FOR FURTHER INFORMATION CONTACT: Dwaine E. Hiland, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-532, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: To enhance airport usage, a new instrument approach procedure is being developed for the Waukon Iowa, Municipal Airport, utilizing the Waukon VORTAC as a navigational aid. The establishment of an instrument approach procedure based on this approach aid entails designation of a transition area at Waukon, Iowa, at or above 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. Transition areas are designed to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the terminal and enroute environment. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). This action will change the airport status from VFR to IFR. After publication of the NPRM, it was determined that the radial cited for the VORTAC was magnetic (275 degrees) rather than true (271 degrees). Accordingly, action is taken herein to cite the correct radial.

Discussion of Comments

On pages 15481 and 15482 of the **Federal Register** dated April 11, 1983, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend Section 71.181 of Part 71, of the Federal Aviation Regulations so as to designate a transition area at Waukon, Iowa. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Sec. 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 GMT August 4, 1983, by designating the following transition area:

Waukon, Iowa

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Waukon Municipal Airport (Latitude 43°16'50"N, Longitude 91°28'11"W); and within 3 miles each side of the Waukon VORTAC 271° radial extending from the 5-mile radius area to 8.5 miles west of the Waukon Municipal Airport excluding that portion that overlaps the Decorah, Iowa, transition area.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and § 11.69 of the Federal Aviation Regulations (14 CFR 11.69)

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Kansas City, Missouri, on June 3, 1983.

John E. Shaw,

Director, Central Region.

[FR Doc. 83-15970 Filed 6-10-83; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 83-ASW-15]

Alteration of Transition Area and Control Zone: San Angelo, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will alter the transition area and control zone at San Angelo, TX. The intended effect of the amendment is to provide adequate controlled airspace for aircraft executing standard instrument approach

procedures (SIAP's) to Mathis Field. This amendment is necessary since a review of the designated controlled airspace revealed the airspace is improperly described and the extensions southwest of the airport are not required.

EFFECTIVE DATE: August 4, 1983.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 877-2630.

SUPPLEMENTARY INFORMATION:

History

On April 14, 1983, a notice of proposed rulemaking was published in the Federal Register (48 FR 16067) stating that the Federal Aviation Administration proposed to alter the San Angelo, TX, transition area and control zone. Interested persons were invited to practicipate in this rulemaking proceeding by submitting written comments on the proposal to the Federal Aviation Administration. Comments were received without objections. Except for editorial changes, this amendment is that proposed in the notice.

List of Subjects in 14 CFR Part 71

Control zones, Transition areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, by the Administrator, Subpart G of Part 71, § 71.181 and Subpart F of Part 71, § 71.171, of the Federal Aviation Regulations (14 CFR Part 71) as republished in Advisory Circular AC 70-3A dated January 3, 1983, are amended, effective 0901 G.m.t., August 4, 1983, as follows:

Subpart F 71.171

San Angelo, TX [Revised]

Within a 5.5-mile radius of Mathis Field (latitude 31°21'30" N., longitude 100°29'45" W.), and within 2 miles each side of the San Angelo VORTAC 065° radial extending from the 5.5-mile radius area to 8 miles northeast of the VORTAC; and within 2 miles each side of the San Angelo instrument landing system (ILS) localizer northeast course extending from the 5.5 mile radius area to 8 miles northeast of the San Angelo VORTAC 314°radial.

Subpart G 71.181:

San Angelo, TX [Revised]

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Mathis Field (latitude 31°21'30" N., longitude 100°29'45" W.), and within 2 miles each side ofthe San Angelo VORTAC 065° radial extending from the 8-mile radius area to 10.5 miles northeast of the VORTAC; and within 2 miles each side of the San Angelo ILS localizer northeast course extending from the 8-mile radius area to 10.5 miles northeast of the San Angelo VORTAC 314° radial.

(Sec. 307(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.61(c))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Fort Worth, TX, on May 31, 1983.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 83-15881 Filed 6-10-83; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 221, 234, and 235

[Docket No. R-83-1087]

Low Cost and Moderate Income Mortgage Insurance; Condominium Ownership Mortgage Insurance; Mortgage Insurance and Assistance Payments for Home Ownership and Project Rehabilitation

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

ACTION: Final rule.

SUMMARY: HUD is removing the regulatory provisions which established the Existing Multifamily Housing Demonstration to develop and test new and improved mechanisms for the purchase and/or refinancing of existing multifamily housing projects. These provisions are being removed because (1) the pilot test for cooperative projects under the Demonstration was deemed by HUD to be unsuccessful and (2) there is a lack of Section 235 funds available for the condominium phase of the Demonstration.

EFFECTIVE DATE: July 25, 1983.

FOR FURTHER INFORMATION CONTACT: Robert W. Wilden, Office of Housing, Multifamily Housing Development, Elderly, Cooperative, Congregate and Health Facilities Division, Room 6146, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 426-8730. This is not a toll free number.

SUPPLEMENTARY INFORMATION: The Office of Housing and the Office of Policy Development and Research announced a joint Demonstration for the conversion of existing multifamily projects into cooperatives with an interim rule published in the Federal Register on May 14, 1980 (45 FR 31896).

The purpose of the Demonstration was to develop and test new and improved mechanisms for the purchase and/or refinancing of existing multifamily housing projects. The May 14, 1980 interim rule set up a procedure for the insurance under section 221(d)(3) (pursuant to Section 223(f)) of project mortgages for the conversion of existing multifamily projects into cooperatives.

There was one comment received on the interim rule. The comment indicated approval of the intent of the Demonstration, but suggested that the 223(f) program be expanded to be used also in conjunction with the 221(d)(4) rental program, as well as the 234(d) condominium program (using Section 235 assistance). In light of the decision to remove the provisions associated with the Demonstration, it is unnecessary to deal with the commenter's suggestion.

The Department, as part of the overall Demonstration, published another interim rule in the Federal Register on September 11, 1980 (45 FR 60390). This rule provided for insurance of condominium mortgages under Sections 221 and 234 (pursuant to Section 223(f)), as well as for Section 235 assistance. There were no public comments received regarding this rule.

On September 15, 1980, the Department published in the Federal Register (45 FR 61262), a Solicitation to Submit Pilot Project Applications and Preliminary Guidelines for Implementation of the Existing Multifamily Housing Demonstration. This Solicitation stated that the pilot cooperative test would be limited to seven projects, out of a total of thirty projects, located in six metropolitan areas, for the full scale Demonstration. The Solicitation established the application procedures, the eligibility criteria, selection factors and processing procedures for the Demonstration.

Special emphasis was to be placed on innovative aspects of the cooperative conversion, such as financing mechanisms and tenant benefits in the areas of displacement, housing expenses, conservation measures and resident equity limitations.

The Department received nine applications for participation in the pilot test. Six of these applications placed an emphasis on GNMA Tandem financing in order to make the proposals economically feasible. In view of the substantially greater cost to the public, as a whole, whenever GNMA Tandem financing is used to develop a project, the Department believed these pilot applications did not successfully demonstrate any new, innovative or improved mechanisms that would be available for the purchase or refinancing of existing multifamily housing projects. Of the remaining three applicants, which were given additional time to revise their applications to correct deficiencies with supplementary information, one applicant withdrew its application and a second applicant submitted a supplementary application which was rejected because the application did not correct the deficiencies noted in the original application, or in some instances created new problems. While the third application was found to be marginally feasible, the Department decided not to go forward with the Demonstration because of the lack of other acceptable applications. Since the Department deemed the cooperative test project to be unsuccessful, no Solicitation Notice was ever published for the condominium pilot project. In addition, the lack of Section 235 funds was also a consideration in the Department's decision to remove the regulatory provisions relating to the condominium phase of the Demonstration.

Therefore, based upon the negative experience from the pilot test for cooperative projects under the Demonstration, the Department is removing the provisions, adopted by the May 14, 1980 interim rule, for insurance under Section 221(d)(3) (pursuant to Section 223(f)) of project mortgages for the conversion of existing multifamily projects into cooperatives. The Department is also removing similar provisions, adopted by the September 11, 1980 interim rule, for the conversion of existing multifamily projects into condominiums.

Since the Department has solicited public comments on each of the two interim rules, and has considered the one comment received, it is unnecessary to solicit further public comment at this time. Accordingly, the Department is proceeding by final rule to remove the regulatory provisions which established the Existing Multifamily Housing Demonstration.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 which implement Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10278, 451 Seventh Street, S.W., Washington, D.C. 20410.

This rule does not constitute a "major rule" as the 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.

Pursuant to the provisions of 5 U.S.C 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. Since the rule affects only a few potential projects, it could have possible impact imapact on only a few small entities.

This rule is listed at 47 FR 48432 as item H–13–82 in the Department's Semiannual Agenda of regulation published on October 28, pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.137, Mortgage Insurance—Rental and Cooperative Housing for Low and Moderate Income Families, Market Interest Rate, 221(d)(3) Market Rate; 14.155, Mortgage insurance for the Purchase or Refinancing of Existing Multifamily Housing Projects (223 (f)); 14.112, Mortgage Insurance—Construction or Substantial Rehabilitation of Condominium Projects (234(d); 14.105, Interest Reduction—Homes for Lower Income Families (235(i)).

List of Subjects

24 CFR Part 221

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

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 program; housing and community development.

Accordingly, 24 CFR Parts 221, 234 and 235 are amended as follows:

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

§§ 221.560b, 221.560c [Removed]

1. Part 221 is amended by removing 24 CFR 221.560b and 221.560c.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

§§ 234.69a, 234.538 [Removed]

2. Part 234 is amended by removing 24 CFR 234.69a and 234.538.

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOMEOWNERSHIP AND PROJECT REHABILITATION

§ 235.15d [Removed]

3. Part 235 is amended by removing 24 CFR 235.15d.

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

Dated: June 6, 1983.

W. Calvert Brand,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 83-15728 Filed 6-10-83; 8:45 am]
BILLING CODE 4210-27-M

VETERANS ADMINISTRATION

38 CFR Part 3

Increase in Pension Rates and Income Limitations

AGENCY: Veterans Administration.

ACTION: Final regulation changes.

SUMMARY: The Veterans Administration has amended its regulations setting forth the annual rates of improved pension and parents' dependency and indemnity

compensation (DIC), the annual income limitations applicable to receipt of section 306 pension, old-law pension and parents' DIC, and the annual amount of a spouse's income that is excludable from a veteran's annual income under the section 306 pension program. The need for this action results from the forthcoming social security cost-of-living increase. The effect of this action is to increase the rates and income limitations by the same percentage that social security benefits will be increased. A regulatory amendment has also been made to delay the effective date for rounding down of periodic improved pension rates pursuant to recently enacted legislation.

DATE: These regulation changes are effective December 1, 1983, the effective date of the social security cost-of-living increase.

FOR FURTHER INFORMATION CONTACT: Robert M. White (202-389-3005).

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 3112 the Veterans Administration is rquired to increase the rates of improved pension and parents' dependency and indemnity compensation (DIC), the income limitations applicable to section 306 pension, old-law pension and parents' DIC and the amount of a spouse's income that is excludable from the amount of a veteran's annual income under the section 306 pension program whenever there is a social security cost-of-living increase. The benefits are to be increased by the same percentage as social security benefits and at the same time.

The Social Security Administration reports that there will be a cost-of-living increase of 3.5 percent in social security benefits effective December 1, 1983. Accordingly, we are amending 38 CFR 3.23 through 3.28 and 3.262(b)(2) to implement corresponding Veterans Administration benefit increases.

The Omnibus Budget Reconciliation Act of 1982 provided for the rounding down of monthly or other periodic pension rates effective June 1, 1983. However, the Social Security Amendments of 1983, Pub. L. 98-21, amended that effective date for purposes of improved pension to coincide with the first social security cost-of-living adjustment which becomes effective after May 31, 1983. The effective date of that adjustment has now been established as December 1, 1983. We have, therefore, amended 38 CFR 3.29(b) to provide that the rounding down of monthly or other periodic improved pension rates will be effective with respect to amounts of improved pension payable for periods beginning on or after December 1, 1983.

Pursuant to 38 CFR 1.12 the Veterans Administration finds that prior publication of these changes for public notice and comment is not required and is unnecessary. The Veterans Administration has no discretion in this matter. The law requires that we increase these benefits by the percentage amount determined by the Social Security Administration and that the improved pension rounding provisions be effective at the same time the social security increase is effective. Consequently, a proposed notice will not be published. For this reason, these changes are also not subject to the Regulatory Flexibility Act, 5 U.S.C. 601-612, since they do not come within the term "rule" as defined in that Act.

In accordance with Executive Order 12291, Federal Regulation, we have determined that these regulation changes are nonmajor for the following reasons:

(1) They will not have an effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have 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.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans, Veterans Administration.

(Catalog of Federal Domestic Assistance Program numbers are 64.104, 64.105, and 64.110)

Approved: May 11, 1983.

By direction of the Administrator.

Everett Alvarez, Jr.

Deputy Administrator.

PART 3—[AMENDED]

In § 3.23, paragraphs (a) and (c) are revised to read as follows:

§ 3.23 Improved pension rates.

(a) *Maximum annual rates of improved pension.*— (1) *Veterans permanently and totally disabled (38 U.S.C. 521).*

(i) Veteran with no dependents, $5,515.

(ii) Veteran with one dependent, $7,225.

(iii) For each additional dependent, $935.

(2) *Veterans in need of aid and attendance.*

(i) Veteran with no dependents, $8,823.

(ii) Veteran with one dependent, $10,533.

(iii) For each additional dependent, $935.

(3) *Veterans who are housebound.*

(i) Veteran with no dependents, $6,741.

(ii) Veteran with one dependent, $8,451.

(iii) For each additional dependent, $935.

(4) *Two veterans married to one another; combined rates.*

(i) Neither veteran in need of aid and attendance or housebound, $7,225.

(ii) Either veteran in need of aid and attendance, $10,533.

(iii) Both veterans in need of aid and attendance, $13,839.

(iv) Either veteran housebound, $8,451.

(v) Both veterans housebound; $9,678.

(vi) One veteran housebound and one veteran in need of aid and attendance, $11,758.

(vii) For each dependent child, $935.

(5) *Surviving spouse alone and with a child or children of the deceased veteran in custody of the surviving spouse (38 U.S.C. 541).*

(i) Surviving spouse alone, $3,695.

(ii) Surviving spouse and one child in his or her custody, $4,841.

(iii) For each additional child in his or her custody, $935.

(6) *Surviving spouses in need of aid and attendance.*

(i) Surviving spouse alone, $5,912.

(ii) Surviving spouse with one child in his or her custody, $7,056.

(iii) For each additional child in his or her custody, $935.

(7) *Surviving spouses who are housebound.*

(i) Surviving spouse alone, $4,518.

(ii) Surviving spouse and one child in his or her custody, $5,661.

(iii) For each additional child in his or her custody, $935.

(See § 3.24 for entitlement criteria and rate applicable to a child of a deceased veteran not in custody of a surviving spouse who has basic eligibility to receive improved pension. The term "basic eligibility to receive improved pension" is defined in § 3.24.)

* * * * *

(c) *Mexico border period and World War I veterans.* The applicable maximum annual rate payable to a Mexican border period or World War I veteran under this section shall be increased by $1,245. (38 U.S.C. 521(g)).

* * * * *

2. In § 3.24, paragraphs (b) and (c) are revised to read as follows:

§ 3.24 Improved pension rates; surviving children.

* * * * *

(b) *Child with no personal custodian or in the custody of an institution.* In cases in which there is no personal custodian, i.e., there is no person who has the legal right to exercise parental control and responsibility for the child's welfare (see § 3.57(d)), or the child is in the custody of an institution, pension shall be paid to the child at the annual rate of $935 reduced by the amount of the child's countable annual income.

(c) *Child in the custody of person legally responsible for support*—(1) *Single child.* Pension shall be paid to a child in the custody of a person legally responsible for the child's support at an annual rate equal to the difference between the rate for a surviving spouse and one child under § 3.23(a)(5)(ii), and the sum of the annual income of such child and the annual income of such person. The amount payable, however, may not exceed the amount by which $935 exceeds the child's countable annual income.

(2) *More than one child.* Pension shall be paid to children in custody of a person legally responsible for the children's support at an annual rate equal to the difference between the rate for a surviving spouse and an equivalent number of children (but not including any child who has countable annual income equal to or greater than $935) and the sum of the countable annual income of the person legally responsible for support and the combined countable annual income of the children (but not including the income of any child whose countable annual income is equal to or greater than $935). The combined amount payable, however, may not exceed the amount by which $935 times the number of eligible children exceeds the sum of the children's countable annual income. (38 U.S.C. 542).

3. In § 3.25, paragraphs (a), (c), (d) and (e) are revised to read as follows:

§ 3.25 Parent's dependency and indemnity compensation rates.

Dependency and indemnity compensation (DIC) shall be paid monthly to parents of a deceased veteran in the following amounts. (38 U.S.C. 415)

(a) *One parent.* Except as provided in paragraph (b) of this section, if there is only one parent the monthly rate of DIC paid to such parent shall be $257 reduced on the basis of the parent's annual income according to the following formula:

FOR EACH $1 OF ANNUAL INCOME

The $257 monthly rate shall be reduced by	Which is more than	But not more than
$0.00		$800
.08	$800	6,273

No DIC is payable under this paragraph if annual income exceeds $6,273.

* * * * *

(c) *Two parents not living together.* The rates in this paragraph apply to: (1) Two parents who are not living together, or (2) an unremarried parent when both parents are living and the other parent has remarried. The monthly rate of DIC paid to each such parent shall be $183, reduced on the basis of each parent's annual income, according to the following formula:

FOR EACH $1 OF ANNUAL INCOME OF EACH PARENT

The $183 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	$0	$800
.05	800	1,000
.06	1,000	1,100
.07	1,100	1,200
.08	1,200	6,273

No DIC is payable under this paragraph if annual income exceeds $6,273.

(d) *Two parents living together or remarried parents living with spouses.* (1) The rates in this paragraph apply to: (i) Each parent living with another parent; and (ii) each remarried parent, when both parents are alive. The monthly rate of DIC paid to such parents will be $172, reduced on the basis of the combined annual income of the two parents living together or the remarried parent or parents and spouse or spouses, as computed under the following formula:

FOR EACH $1 OF COMBINED ANNUAL INCOME

The $172 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	0	$1,000
.03	$1,000	1,900
.04	1,900	2,400
.05	2,400	2,900
.06	2,900	3,400
.07	3,400	4,000
.08	4,000	8,435

No DIC is payable under this paragraph if combined annual income exceeds $8,435.

(2) The rates in this paragraph are also applicable in the case of one surviving parent who has remarried, computed on the basis of the combined income of the parent and spouse, if this would be a greater benefit than that specified in paragraph (a) of this section for one parent.

(e) *Aid and attendance.* The monthly rate of DIC payable to a parent under this section shall be increased by $135 if such parent is: (1) A patient in a nursing home, or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

* * * * *

4. Section 3.26 is revised to read as follows:

§ 3.26 Section 306 and old-law pension annual income limitations.

(a) *Section 306 pension income limitations.* (1) Veteran or surviving spouse with no dependents, $6,273.

(2) Veteran with no dependents in need of aid and attendance (38 U.S.C. 521(d), as in effect on December 31, 1978), $6,773.

(3) Veteran or surviving spouse with one or more dependents, $8,435.

(4) Veteran with one or more dependents in need of aid and attendance (38 U.S.C. 521(d), as in effect on December 31, 1978), $8,935.

(5) Child (no entitled veteran or surviving spouse), $5,126.

(b) *Old-law pension income limitations.* (1) Veteran or surviving spouse without dependents or an entitled child, $5,490.

(2) Veteran or surviving spouse with one or more dependents, $7,919.

5. In § 3.29, paragraph (b) is revised as follows:

§ 3.29 Rounding.

* * * * *

(b) *Monthly or other periodic pension rates.* After determining the monthly or other periodic rate of improved pension under §§ 3.273 and 3.30 or the rate payable under section 306(a) of Pub. L. 95–588 (92 Stat. 2508), the resulting rate, if not a multiple of one dollar, will be rounded down to the nearest whole dollar amount. The provisions of this paragraph apply with respect to amounts of pension payable for periods beginning on or after June 1, 1983, under the provisions of section 306(a) of Pub. L. 95–588 and with respect to amount of improved pension payable for periods

beginning on or after December 1, 1983 under the provisions of 38 U.S.C. 521, 541, or 542. (38 U.S.C. 3023)

6. In § 3.262, paragraph (b)(2) is revised to read as follows:

§ 3.262 Evaluation of income.

* * * * *

(b) *Income of spouse.* Income of the spouse will be determined under the rules applicable to income of the claimant. * * *

(2) *Veterans.* The separate income of the spouse of a disabled veteran who is entitled to pension under laws in effect on June 30, 1960, will not be considered. Where pension is payable under section 306(a) of Pub. L. 95-588, to a veteran who is living with a spouse there will be included as income of the veteran all income of the spouse in excess of whichever is the greater, $1,998 ($1,930 after May 31, 1982 and before December 1, 1983) or the total earned income of the spouse, which is reasonably available to or for the veteran, unless hardship to the veteran would result. The presumption that inclusion of such income is available to the veteran and would not work a hardship on him or her may be rebutted by evidence of unavailability or of expenses beyond the usual family requirements. (38 U.S.C. 521(f); sec. 306(a)(2)(B) of Pub. L. 95-588; 92 Stat. 2497).

* * * * *

[FR Doc. 83-15617 Filed 6-10-83; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 144 and 146

[OW-FRL 2377-7]

State Underground Injection Control Programs: Permitting Procedures, Technical Criteria and Standards; Availability of Guidance Documents

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: EPA promulgated final amendments to its Underground Injection Control (UIC) Program regulations on February 3, 1982 (47 FR 4992; 40 CFR Part 122 (Permitting Procedures recently recodified in 40 CFR Part 144, 48 FR 1416) and Part 146 (Technical Criteria and Standards)). The UIC regulations are promulgated pursuant to Section 1421 of the Safe Drinking Water Act. As a result of these amendments, EPA has received several questions regarding the proper interpretation of certain provisions of the UIC regulations.

This document announces the availability of two guidance documents that provide interpretation of the UIC regulations: Ground-Water Program Guidance No. 28, Appropriate Classification and Regulatory Treatment of Experimental Technologies; and Ground-Water Program Guidance No. 29, Consolidation of Permitting Procedures for Multiple Wells.

ADDRESSES: These guidances are available from EPA Headquarters and the Regional Offices. To obtain a copy contact:

Headquarters—Thomas E. Belk, Chief, Ground-Water Protection Branch, WH 550, 401 M Street SW, Washington, DC 20460.

Region I—Jerome Healey, Chief, Water Supply Branch, JFK Federal Building, Boston, MA 02203.

Region II—Walter Andrews, Chief, Water Supply Branch, Federal Building, 26 Federal Plaza, New York City, NY 10007.

Region III—Robert Blanco, Chief, Water Supply Branch, Curtis Building, 6th and Walnut Streets, Philadelphia, PA 19106.

Region IV—Donald J. Guinyard, Chief, Water Supply Branch, 345 Courtland Street, Atlanta, GA 30365.

Region V—Dr. Edith Tebo, Chief, Water Supply Branch, 230 South Dearborn Street, Chicago, IL 60604.

Region VI—Adelle Mitchell, Chief, Water Supply Branch, 1201 Elm Street, Dallas, TX 75270.

Region VII—Tom Gillard, Chief, Water Supply Branch, 324 E. 11th Street, Kansas City, MO 64106.

Region VIII—Roger Frenette, Chief, Water Supply Branch, 1860 Lincoln Street, Denver, CO 80295.

Region IX—Bill Thurston, Chief, Water Supply Branch, 215 Fremont Street, San Francisco, CA 94105.

Region X—William A. Mullen, Chief, Water Supply Branch, 1200 Sixth Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Thomas E. Belk, Chief, Water Supply Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460; (202) 382-5530.

Dated: May 31, 1983.

Rebecca W. Hanmer,

Acting Assitant Administrator for Water.

[FR Doc. 83-15344 Filed 6-10-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 204, 205, and 211

[A-FRL 2376-4]

Noise Emission Standards for Portable Air Compressors, Medium and Heavy Trucks, Motorcycles and Motorcycle Replacement Exhaust Systems, Truck Mounted Solid Waste Compactors, and Noise Labeling Requirements for Hearing Protectors; Final Rule; Revocation of Product Verification Testing, Reporting and Recordkeeping Requirements; Correction and Technical Amendments.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction and technical amendments.

SUMMARY: This document corrects a final regulation published December 28, 1982 (47 FR 57709) which implemented a revocation of product verification testing, reporting and recordkeeping requirements for noise emission standards for portable air compressors, medium and heavy trucks, motorcycles and motorcycle replacement systems, truck mounted solid waste compactors, and noise labeling requirements for hearing protectors. The action is necessary to correct minor inconsistencies.

EFFECTIVE DATE: June 13, 1983.

FOR FURTHER INFORMATION CONTACT: Louise Giersch, Office of Air, Noise and Radiation (ANR-445), Environmental Protection Agency, Washington, D.C. 20460; (202) 382-2935.

Corrections

PART 205—TRANSPORTATION EQUIPMENT NOISE EMISSION CONTROLS

Subpart B—Medium and Heavy Trucks

§ 205.57-2 [Corrected]

1. In § 205.57-2 *Test Vehicle Sample Selection,* paragraph (a), corrected line 15, column 1 on page 57715 is as follows: "number of vehicles as specified in paragraph (c) of."

§ 205.57-3 [Corrected]

2.a. In § 205.57-3 *Test Vehicle Preparation,* paragraph (a), corrected line 16, column 2 on page 57715 after the word "Administrator." add as follows: "For purposes of this section, prescribed manufacturing and inspection procedures include quality control testing and assembly procedures normally performed by the manufacturer on like products during early production so long as the resulting testing is not biased by the procedure."

b. In § 205.57–3, paragraph (a) on page 57715 is corrected in the last sentence by lower casing the word "The" and by adding the following phrase to the beginning of that sentence: "In the case of imported products * * *.".

§ 205.55–2 [Amended]

3. In § 205.55–2, paragraph (a)(3) is revised to read as follows:

* * * * *

(9) * * *

(3) At any time following receipt of notice under this section with respect to a configuration, the Administrator may require that the manufacturer ship test vehicles to the EPA test facility in order for the Administrator to perform the tests required for production verification.

§ 205.58–1 [Corrected]

4. In § 205.58–1 *Noise Emission Warranty*, corrected line 18 through 34, column 3 on page 57715 is as follows:

Noise Emissions Warranty

(Name of vehicle manufacturer) warrants to the first person who purchases this vehicle for purposes other than resale and to each subsequent purchaser that this vehicle as manufactured by (names of vehicle manufacturer), was designed, built and equipped to conform at the time it left (name of vehicle manufacturer)'s control with all applicable U.S. EPA Noise Control Regulations.

This warranty covers this vehicle as designed, built and equipped by (Name of vehicle manufacturer), and is not limited to any particular part, component or system of the vehicle manufactured by (name of vehicle manufacturer). Defects in design, assembly or in any part, component or system of the vehicle as manufactured by (name of vehicle manufacturer), which, at the time it left (name of vehicle manufacturer)'s control, caused noise emissions to exceed Federal standards, are covered by this warranty for the life of the vehicle.

§ 205.58–2 [Corrected]

5. Section 205.58–2 *Tampering*, paragraph (c), corrected line 17, column 1 on page 57716 is as follows: "which a proscribed act has been".

PART 205—TRANSPORTATION EQUIPMENT NOISE EMISSION CONTROLS

Subpart D—Motorcycles

§ 205.162–1 [Corrected]

1. Section 205.162–1 Warranty, corrected line 42, column 3 on page 57721 is as follows: "28. Section 205.162–1 (b), (c), and (d) are removed."

§ 205.168–1 [Corrected]

2. Section 205.168–1 General Requirements, paragraph (c), corrected line 24, column 2 on page 57722 is as follows: "(1) not withstanding paragraph (a)(1)".

3. Section 205.168–11 Order to cease distribution paragraph (a) is revised to read as follows:

"§ 205.168–11 Order to cease distribution.

"(a) If a category of exhaust systems is found not to comply with this subpart because it has not been verified or labeled as required by § 205.169, the Administrator may issue an order to the manufacturer to cease distribution in commerce exhaust systems of that category. This order will not be issued if the manufacturer has made a good faith attempt to properly production verify the category and can establish such good faith."

* * * * *

Dated: May 27, 1983.

Charles L. Elkins,

Acting Assistant Administrator for Air, Noise and Radiation.

[FR Doc. 83-15149 Filed 6-10-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 271

[SW-4-FRL 2381-4]

Hazardous Waste Management Program; North Carolina; Request for Extension of Application Deadline for Interim Authorization Phase II, Component C

AGENCY: Environmental Protection Agency.

ACTION: Notice of extension of application submission and interim authorization period.

SUMMARY: On April 11, 1983, the State of North Carolina requested a ninety (90) day extension beyond the July 26, 1983, deadline for application for Phase II, Component C, interim authorization (authority to permit land disposal facilities) under the Resource Conservation and Recovery Act of 1976, as amended. EPA is granting this extension. One effect of this action is to allow North Carolina to submit its application after July 26, 1983. It also avoids termination on July 26 of the interim authorization which EPA granted previously to the State for the Phase I and Phase II, Components A and B, portions of the hazardous waste program.

EFFECTIVE DATE: May 4, 1983.

FOR FURTHER INFORMATION CONTACT: James H. Scarbrough, Chief, Residuals Management Branch, Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30365, Telephone (404) 881–3016.

SUPPLEMENTARY INFORMATION:

Background

40 CFR 271.122(c)(4) (formerly § 123.122(c)(4); 47 FR 32377, July 26, 1982) requires that States which have received any but not all Phases/Components of interim authorization amend their original submissions by July 26, 1983, to include all Components of Phase II. 40 CFR 271.137(a) (formerly § 123.137(a); 47 FR 32378, July 26, 1982) further provides that on July 26, 1983, interim authorizations terminate except where the State has submitted by that date an application for all Phases/Components of interim authorization.

Where the authorization (approval) of the State program terminates, EPA is to administer and enforce the Federal program in those States. However, the Regional Administrator may, for good cause, extend the July 26, 1983, deadline for submission of the interim authorization application and the deadline for the termination of the approval of the State program.

Note.—40 CFR Part 123, including the July 26, 1982 amendments (47 FR 32373), was recodified on April 1, 1983 as 40 CFR Part 271 (48 FR 14248).

North Carolina received Phase I interim authorization on December 18, 1980. Phase II, Components A and B, interim authorization was granted on March 26, 1982. However, North Carolina's ability to apply for Phase II, Component C, interim authorization before July 26, 1983, was delayed when the North Carolina General Assembly did not enact the necessary legislation enabling the State Commission for Health Services to adopt revised land disposal rules prior to July 26, 1983. Anticipating enactment of the necessary legislation in late May 1983, North Carolina has committed to the following schedule for applying for authorization:

July 1983—Hold three public meetings and a public hearing on proposed revised land disposal regulations.

August 1983—Request the Commission for Health Services to adopt the regulations to become effective October 1, 1983.

August 1983—Submit a draft application for Component C to EPA if regulations are adopted.

September 1983—Submit final application for Component C.

November 1983—Submit draft application for Final Authorization.

Decision

On May 4, 1983, in consideration of the State Commission's efforts to obtain the necessary legislation and North Carolina's past performance in managing and implementing a

hazardous waste management program in a timely fashion, I found there was good cause to grant the State's request for a ninety (90) day extension beyond the deadline for applying for Phase II, Component C. Therefore, North Carolina must officially submit a complete application for this component to EPA on or before October 26, 1983. If the State fails to submit a complete application by October 26, 1983, approval of the State program will terminate automatically and administration of the hazardous waste management program will revert to EPA.

List of Subjects in 40 CFR Part 271

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

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

Dated: May 26, 1983.

John A. Little,

Deputy Regional Administrator.

[FR Doc. 83-15736 Filed 6-10-83; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Parts 712 and 763

[OPTS-80013; TSH-FRL 2381-2]

Chemical Information and Asbestos Rules; Release of Aggregate Statistics

AGENCY: Environmental Protection Agency (EPA).

ACTION: Rule-related notice.

SUMMARY: EPA will publicly release aggregate statistics from information reported for two recent Toxic Substances Control Act (TSCA) section 8(a) rules, the Preliminary Assessment Information rule and the Asbestos Reporting Requirements rule. This notice describes the aggregation method that will be used and the protections from disclosure that will be afforded to individual confidential submissions. It also provides companies the opportunity to request that certain aggregate information not be released if publication would cause significant economic harm to the company. These aggregation procedures will also apply to the amendment to the Preliminary Assessment Information rule adding the chemicals from the Sixth through Ninth ITC Reports and to future iterations of the Preliminary Assessment Information rule, unless the Agency states otherwise.

DATES: Requests that aggregate information not be released must be received by EPA by July 13, 1983. Aggregate information may be released beginning July 28, 1983.

ADDRESS: See paragraph III. "Objections to Publication of Aggregates" in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, TSCA 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:

I. Background

In two recent rules published under the authority of section 8(a) of SCA, the Preliminary Assessment Information rule, which was published in the **Federal Register** of June 22, 1982 (47 FR 26992) (40 CFR 712), and the Asbestos Reporting Requirements rule, which was published in the **Federal Register** of July 30, 1982 (47 FR 33198) (40 CFR 763), the Environmental Protection Agency (EPA) stated that production, use, release, and worker exposure information submitted for each substance or asbestos product category or subcategory will be released in aggregate form when such release does not reveal confidential business information. To facilitate the release of aggregate statistics, the rules stated that no numerical data from individual reports will initially be released, even if they are not claimed as confidential, unless such release can be shown not to jeopardize the aggregate data set. This notice announces that EPA intends to release aggregate data from these rules after July 28, 1983. It also described the protections that will be afforded to individual confidential submissions to ensure that a company's proprietary interests are not infringed when aggregate statistics are released. The aggregate release procedures described in this notice will also be followed for amendments to the Preliminary Assessment Information rule, unless the Agency states otherwise.

Data collected under the Preliminary Assessment Information rule and its amendments are used for assessing risks associated with chemicals and in making decisions for testing chemicals. Information submitted under the Asbestos Reporting Requirements rule will be used for quantifying risks associated with different asbestos-containing products and for conducting analyses necessary to support TSCA section 6 regulatory investigations. The Agency believes that it is the intent of TSCA that the public be afforded the opportunity to participate in regulatory activities under the Act whenever means are available. Therefore, the Agency believes that it is strongly in the public interest that this aggregate data be released to support participation by interested parties in TSCA regulatory programs and to increase public understanding of the nature of and rationale for Agency actions.

II. Aggregation Methodology

EPA understands that the publication of aggregate statistics may provide data that could facilitate making estimates about the individual values that comprise the aggregates. Therefore, the Agency has taken steps to limit the ability of any party, even the companies contributing information to the aggregate, to estimate too closely the values that make up any aggregate. In other words, the Agency will normally consider releasing aggregate data only if such release does not pose a risk of causing significant competitive injury to the companies involved.

While no clear lines define what is a risk of significant competitive injury in this context, the Agency believes that the standards for aggregate release it has developed for these two data bases sufficiently minimize the risk of harm to affected companies. Specific details about the disclosure control techniques employed cannot be disclosed because to do so would significantly diminish their effectiveness. However, the levels of protection afforded are consistent with those applied by other agencies that publish statistical compilations, although the techniques used or standards applied are not necessarily identical to those employed by any individual agency. In addition, the standards conform to those recommended in "Statistical Policy Working Paper 2. Report on Statistical Disclosure and Disclosure-Avoidance Techniques" (1978), published by the Office of Federal Statistical Policy and Standards of the Department of Commerce.

The publication of aggregate statistics from these two section 8(a) data bases will be controlled by a set of release criteria which require that certain minimum levels of protection be provided to the individual pieces of confidential business information that comprise the set of data, or data cell, being aggregated. The release criteria protect against disclosure of the size of the market shares held by the

companies that comprise the data cell. The criteria also require a minimum level of protection for each of the cell's confidential members. Special protections are afforded when the set of data being aggregated contains a small number of confidential members.

The Agency will follow accepted statistical practice and not make public the values chosen for the dominance rules and other statistical requirements that make up the release criteria for these section 8(a) data sets. Were these values published, parties with exact or approximate knowledge about the magnitude of one or more of the confidential members of the cell might be able to approximate the other members more specifically than the Agency deems appropriate.

In addition, the Agency will provide several other procedural protections for individual confidential claims. As stated in the two rules, all information submitted to EPA will initially be treated as confidential, whether claimed as such by the submitter or not. Therefore, the Agency will release pieces of nonconfidential information only if such release will not affect the corresponding aggregate. In addition, the Agency will use its discretion in selecting formats for releasing potentially sensitive aggregates. Aggregate totals will normally be released in the form of randomly-generated ranges within which the actual aggregate total falls. Under some circumstances it may be necessary to compress categories of information together, modify the size of a range, or, in limited instances, suppress a category of data, if any of these actions are necessary to protect a company's confidential business information. The Agency also will not release information about the number of members of a data cell unless that number is large enough to limit the ability of competitors to break down the aggregate.

III. Objections to Publication of Aggregates

Companies have in the past asserted to EPA that in certain very unique circumstances the publication of aggregates, despite the extensive precautions taken by the Agency, might allow competitors to make precise enough estimates of a submitter's data to cause it competitive injury. For that reason, EPA will in most cases allow companies to request that certain categories of information submitted under these two section 8(a) rules be exempted from aggregate release if they can prove to EPA's satisfaction that such release would cause them significant economic harm. However, prior to the publication of this notice EPA found it necessary in a very limited number of instances to release aggregates of Preliminary Assessment Information rule data. The Agency may also find it necessary to release some aggregates prior to the effective date of this notice or before the end of the exemption request period provided in future iterations of the Preliminary Assessment Information rule. In every instance of such a release special precautions will be taken to ensure to the extent possible that the publication of aggregate statistics does not cause any company significant economic harm. Even if an exemption is granted, the Agency retains the right to release aggregate statistics or individual pieces of confidential data under the authority of section 14(a)(4) of TSCA, if such release is essential to a proceeding under the Act. In addition, the Agency may investigate alternatives to suppressing a category of information that would still diminish the possible harm identified by the company requesting an exemption. These alternatives might include collapsing categories of information together or modifying the size of an aggregate range.

General guidelines describing the kinds of claims which the Agency believes do not warrant an exemption, as well as procedures for requesting an exemption, are outlined below. To be eligible for an exemption a company must provide the Agency with clear evidence that the release of aggregate data for a category of information would be likely to lead to the development of estimates sufficiently precise to cause the company significant economic harm. It is not enough to show only that an aggregate could be used to refine competitors' estimates based on existing data sources or that the aggregate would provide a variety of information that previously has not been publicly available for a given industry. Rather, the company must show that a section 8(a) aggregate provides unique, otherwise unavailable information which could be used to generate very close estimates of the company's submissions. Further, the requester must show that under these circumstances, the release of such data could cause the company significant competitive injury.

The Agency recognizes that other important sources of similar information are available in the business world and that such information can be derived or generated through collusion, market surveys and estimates of the sales and operations of rival firms, or other sources of publicly available information. The Agency cannot be expected to know about all sources of information that might be used in attempting to break down a section 8(a) aggregate. However, EPA has attempted to take into account the impact of accessible extraneous sources of data on the release of aggregated section 8(a) information. A company that requests an exemption should, in providing the information required in the next paragraph, identify any extraneous sources of similar data that it believes could be used to break down an aggregate data category to which the company contributed information. The company should also explain how the release of an aggregate for a category of section 8(a) information would improve a rival's ability to estimate the exemption requester's portion of the aggregate.

Exemption requests will be accepted only if the requirements listed below are fulfilled. A company requesting an exemption must provide the following information for each category of data (categories are defined below) for which a request is made:

1. List the category of information for which it requests an exemption.

2. Describe what circumstances unique to that category create a substantial likelihood that a very close estimate of the company's section 8(a) submission could be derived by using a published aggregate.

3. Explain why such an estimate cannot be derived from other sources of similar data.

4. Describe how such estimates are likely to result in significant competitive injury to the company. This should include an explanation of why such effects should be viewed as significant and a description of the causal relationship between disclosure of aggregate data and the harmful effects.

Exemption requests can be made only on a category of information basis. A submitter for the Preliminary Assessment Information rule must identify the substance and the category of information to which each request applies. Categories that can be exempted are: (a) total production volume (items 1 and 2 of section IV of the reporting form); (b) quantity lost during manufacture (item 3); (c) production and process categories (boxes 1 and 3 of items 4, 5, 6, and 7); (d) occupational exposure (boxes 4 and 5 of items 4, 5, 6, and 7); (e) industrial and consumer products produced (items 8 and 9); and (f) customer's process categories (item 11).

Submitters for the Asbestos Reporting Requirements rule may request exemptions for the following categories:

(a) Primary processor—quantity of asbestos consumed (a separate exemption must be requested for each product subcategory, item C of the reporting form, box 3); (b) primary processor—product shipments (separate exemption for each product subcategory, item C, boxes 4 and 5); (c) secondary processor—total production (separate exemption for each end product, item D, box 2); secondary processor—consumption of asbestos mixtures (separate exemption for each product, item D, box 5); (e) total imports (separate exemption for each asbestos mixture, item E, box 3); (f) employees exposed (item G); (g) worker exposure summaries (separate exemption for each end product, item H, box 4); (h) waste and disposal (separate exemption for each end product, item J, box 3); and (i) pollution control (item K, box 6).

The categories listed above are the largest units for which an exemption can be requested. Requests can be made for smaller units of information (for example, quantity lost to the environment instead of total quantity lost during manufacture for a Preliminary Assessment Information rule substance).

EPA has taken extensive precautions to protect from disaggregation the data it will release. Given these safeguards and the public interest in releasing these aggregated data, circumstances giving rise to a risk of significant economic detriment should occur infrequently and exemptions will be granted only under limited conditions. Therefore, the information required above should be as specific as possible so that the Agency can fairly weigh the merits of requests received.

Exemption request will be treated as confidential if so requested. Each page containing confidential material should be marked "Confidential" at the top. Materials which are not so marked may be released to the public. Requests should be addressed to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, D.C. 20460.

Exemption requests for the June 22, 1982 list of chemicals on the Preliminary Assessment Information rule (40 CFR 712.30(d)) and from producers, importers, or primary processors that reported during the first round of the Asbestos Reporting Requirements rule must be postmarked no later than July 13, 1983. Exemption requests from secondary processors reporting during the second round of the Asbestos Reporting Rule must be postmarked by July 18, 1983. Requests postmarked after these dates will not be accepted.

If EPA denies an exemption request on substantive grounds, the requester will be contacted and allowed 30 days to respond to the Agency's decision before aggregate data for that substance will be released. If EPA determines that a request is unacceptable or incomplete for one of the reasons cited above, the requester will be contacted and allowed either 10 working days or the remainder of the exemption request period, whichever is longer, to supplement or correct its request.

IV. Applicability of Aggregation Procedures

EPA will follow the procedures for release of aggregate data and requesting exemptions from release of aggregate statistics described in this notice for information submitted under future iterations of the Preliminary Assessment Information rule (40 CFR Part 712), unless the Agency states otherwise. As necessary, the Agency will add chemicals to this rule. Companies subject to future reporting under the rule must do so within 60 days of the effective date of each addition. Requests for exemptions from release of aggregate data for any substances added to the rule must be received by EPA by the end of the 60-day reporting period. These data aggregation procedures apply to the amendment to the Preliminary Assessment Information reporting requirements for chemicals listed on the Sixth through Ninth ITC Reports published in the **Federal Register** of May 19, 1983 (48 FR 22694). Requests for exemptions from release of aggregate statistics for these substances must be received by EPA by the end of the 60-day reporting period for that rule.

EPA intends to in the future review and modify, if necessary, these procedures for aggregating section 8(a) data and for requesting exemptions from aggregate release.

List of Subjects

40 CFR Part 712

Chemicals, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 763

Asbestos, Confidential business information, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements, Schools.

(Sec. 8, Pub. L. 94-469, 90 Stat. 2027 (15 U.S.C. 2607))

Dated: May 26, 1983.

Don R. Clay,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 83-15737 Filed 6-10-83; 8:45]

BILLING CODE 6560-50-M

---

40 CFR Part 720

[OPTS-50002H BH-FRL 2381-1]

Premanufacture Notification Requirements and Review Procedures; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Rule related notice; notice of open meeting.

SUMMARY: EPA will hold a meeting to explain in detail the premanufacture notification requirements published in the **Federal Register** of May 13, 1983.

DATE: The meeting will take place on Thursday, June 23, 1983, at 8:30 a.m. and adjourn by 4:00 p.m.

ADDRESS: The meeting will be held at: The Disabled American Veterans' Auditorium, 807 Maine Ave. SW., Washington, D.C. 20024.

FOR FURTHER INFORMATION CONTACT: Kathy Taylor, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, Toll Free: (800-424-9065), In Washington, D.C.: 554-1404, Outside the U.S.A.: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: The Toxic Substances Control Act requires that any person who intends to manufacture or import a new chemical substance for commercial use notify EPA at least 90 days in advance. The premanufacture notification requirements which were published in the **Federal Register** on May 13, 1983 (48 FR 21722), require that any person who submits such notice use EPA Form No. 7710-25 beginning July 12, 1983. This meeting provides a forum for EPA officials, trade associations, environmental groups, chemical manufacturers, and other interested parties to ask questions and discuss the procedures of EPA's PMN final rule.

Dated: June 6, 1983.

Marcia Williams,

Acting Director, Office of Toxic Substances.

[FR Doc. 83-15739 Filed 6-10-83; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 221

Documentation, Transfer or Charter of Vessels; Correction of Error in Final Rulemaking Notice

AGENCY: Maritime Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: On August 30, 1982 (47 FR 38131) the Maritime Administration published a notice of final rulemaking that revises 46 CFR 221.11 to consolidate nine existing MARAD forms into single form (MA 899, OMB approval No. 2115–0058). An error appears in the Declaration of Citizenship, through the omission of the word "not." This error completely changes the intended meaning that a corporation is not a U.S. citizen if there is an existing contract or understanding providing that the majority of the voting power may be exercised directly or indirectly on behalf of any person who is *not* a citizen of the United States.

EFFECTIVE DATE: June 13, 1983.

FOR FURTHER INFORMATION CONTACT: Mrs. Jesse Fernanders, Chief, Division of Ship Disposals and Foreign Transfers, Maritime Administration, Washington, D.C. 20590, Tel. (202) 426–5821.

List of Subjects in 46 CFR Part 221

Banks, banking, Citizenship and naturalization, Charter, Foreign Transfer, Maritime carriers, Reporting requirements, Uniform system of accounts.

§ 221.11 [Corrected]

Accordingly, in 46 CFR 221.11, the Note to paragraph B(1) (iii) of the Declaration of Citizenship—Citizenship Criteria, is corrected to read as follows:

(iii) there is no contract or understanding through which it is arranged that the majority of the voting power of said corporation may be exercised, directly or indirectly, on behalf of a person who is not a citizen of the United States.

(Secs. 9, 40, 41 and 43 Shipping Act 1916 as amended (46 U.S.C. 808, 835, 838, 839, and 941a); Pub. L. 97–31 (August 6, 1981); 49 CFR 1.66 (46 FR 47458, September 28, 1981))

Dated: June 8, 1983.

By Order of the Maritime Administrator.

Georgia P. Stamas,

Secretary.

[FR Doc. 83–15799 Filed 6–10–83; 8:45 am]

BILLING CODE 4910–81–M

46 CFR Part 310

Admission and Training of Midshipmen at the United States Merchant Marine Academy—Pay Increase; Correction

AGENCY: Maritime Administration, Transportation.

ACTION: Final rule; correction.

SUMMARY: This document corrects a section number in Subpart C of 46 CFR Part 310 referencing the rate of pay received by midshipmen of the U.S. Merchant Marine Academy while assigned to merchant vessels for sea year training. This section was incorrectly numbered 310.58(c) when it should have been numbered 310.60(c).

FOR FURTHER INFORMATION CONTACT: Mr. Edwin M. Hackett, Acting Academies Program Officer, Office of Maritime Labor and Training, Department of Transportation, Washington, D.C. 20590; (202) 426–5759.

SUPPLEMENTARY INFORMATION:

PART 310—[AMENDED]

Accordingly, Part 310 Title 46 of the Code of Federal Regulations is amended by revising the incorrectly numbered section on training on subsidized vessels which appeared in the **Federal Register** on April 18, 1983 (48 FR 16488) to read as follows:

§ 310.60 Training on subsidized vessels.

* * * * *

(c) Pay—* * *

By Order of the Maritime Administrator.

Dated: June 6, 1983.

Georgia P. Stamas,

Secretary.

[FR Doc. 83–15608 Filed 6–10–83; 8:45 am]

BILLING CODE 4910–81–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[FCC 83–180]

Establishment of Interstate Toll Settlements and Jurisdictional Separations Requiring the Use of Seven Calendar Day Studies by the Florida Public Service Commission

AGENCY: Federal Communications Commission.

ACTION: Declaratory ruling.

SUMMARY: The order considers an emergency petition for declaratory ruling filed by the Southern Bell Telephone and Telegraph Company (Southern Bell). The petition requests a declaratory ruling that the Florida Public Service Commission (Florida PSC) exceeded its authority in ordering Southern Bell to make payments to General Telephone Company of Florida (GTE of Florida) for interstate toll revenue divisions based on seven-day studies of holding time minutes of use carried out by GTE of Florida. The order grants the petition, finding that it is appropriate for the Commission to exercise its authority to render a declaratory ruling in this case to dispel uncertainty regarding the scope of Commission authority and limitations on State authority in the separations and settlements areas. The order finds that the Commission has authority to preempt State laws that are in conflict with the uniform, nationwide regulatory scheme established by Federal statutes and by the rules of the Commission in the separations and settlements areas. The Commission concludes that actions of the type taken in the Florida PSC order are in conflict with the Federal statutory scheme and with the authority of the Commission. The scope of the preemption order is expressly limited to the specific type of actions taken by the Florida PSC.

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

FOR FURTHER INFORMATION CONTACT: John Cimko, Jr. (202) 632–9342.

Memorandum Opinion and Order

In the matter of establishment of interstate toll settlements and jurisdictional separations requiring the use of seven calendar day studies by the Florida Public Service Commission; FCC 83–180.

Adopted: April 17, 1983.

Released: May 10, 1983.

By the Commission. Commissioner Jones absent.

1. The Commission has before it an Emergency Petition for Declaratory Ruling filed on December 3, 1982, by the Southern Bell Telephone and Telegraph Company (Southern Bell). The Petition requests the Commission to: (1) Declare that the Florida Public Service Commission (Florida PSC) exceeded its lawful authority by ordering Southern Bell to make certain retroactive and prospective interstate toll settlement payments to General Telephone Company of Florida (GTE of Florida) based upon seven calendar day studies of holding time minutes of use carried out by GTE of Florida; and (2) issued an order preempting the action taken by the Florida PSC. For the reasons set forth in this Opinion and Order, we are granting the Petition. [1]

[1] We do not intend here to reach the merits of the question whether seven-day studies are the most

I. BACKGROUND

2. In January 1969, Southern Bell and GTE of Florida entered into a settlements agreement for the division of interstate toll revenues between the two companies. Southern Bell acts as a clearinghouse for a number of Florida telephone companies, collecting toll revenues and distributing shares of these revenues to the companies that are parties to the settlements agreements. The share of interstate toll revenues to which each company is entitled is calculated in accordance with the Standard Procedures for Separating Telephone Property Costs, Revenues, Expenses, Taxes, and Reserves *(Separations Manual)* published by the National Association of Regulatory Utility Commissioners and incorporated by reference in Part 67 of the Rules of the Commission, 47 CFR 67.1.

3. Section 11.2 of the *Separations Manual* requires generally that separations will be made on the basis of "actual use" measured "in studies of traffic handled * * * during a representative period * * *." The agreement between Southern Bell and GTE of Florida provided that a five-day period would constitute the "representative period" for purposes of calculating interstate toll revenue divisions between the two companies. In January 1970, Southern Bell and GTE of Florida entered into an agreement for the division of intrastate toll revenues between the two companies. Under this agreement also, a five-day measurement period was to be used for calculating the intrastate toll revenue divisions.

4. The two companies continued to adhere to the five-day measurement period provision in the intrastate and interstate agreements until December 14, 1981, the date on which GTE of Florida filed a petition with the Florida PSC requesting the Florida PSC to require Southern Bell to accept seven-day studies conducted by GTE of Florida for both intrastate and interstate toll revenue divisions between the two companies.

5. The Florida PSC ruled favorably on the petition filed by GTE of Florida. *In re Petition for Resolution of Toll Settlements Dispute Between General Telephone of Florida and Southern Bell Telephone & Telegraph Co.*, Docket No. 810474–TP, Order No. 10953 (July 1, 1982) (hereinafter cited as *Florida PSC Order*). The *Florida PSC Order* required Southern Bell to accept the seven-day studies on a prospective basis and also required Southern Bell to make certain retroactive payments to GTE of Florida.[2] The Florida PSC subsequently denied a petition for reconsideration and a petition for stay filed by Southern Bell. Docket No. 810474–TP, Order No. 11110 (Aug. 26, 1982).

6. Southern Bell then filed a petition for review in the Supreme Court of Florida and an action in Federal court seeking to overturn the Florida PSC action. The Federal action subsequently was dismissed without prejudice upon motion by Southern Bell. *Southern Bell Telephone & Telegraph Co. v. Florida Public Service Commission*, Case No. TCA 82–1143 (N.D. Fla. Dec. 16, 1982). The Florida PSC filed a motion in the Supreme Court of Florida requesting the court to remand the case to the Florida PSC for reconsideration. The Supreme Court of Florida granted the remand request and, on April 11, 1983, the Florida PSC reconsidered its earlier action and reversed its decision regarding application of the seven-day study requirement to interstate toll revenue divisions. The Florida PSC concluded that its previous action exceeded its authority under Florida statutes. It did not reach the issue of whether such action is preempted by Federal law. Docket No. 810474–TP, Order No. 11824 (April 11, 1983). As a result of this action, payments by Southern Bell under the interstate agreement no longer are at issue in the Florida proceeding.

7. In response to our Public Notice issued December 7, 1982 (FCC Mimeo No. 1212), comments or reply comments were filed by Southern Bell, GTE of Florida, American Telephone and Telegraph Company, the Florida PSC, Citizens of the State of Florida, the Reservation Telephone Cooperative, and the District of Columbia Public Service Commission. The Reservation Telephone comments were filed on behalf of Reservation Telephone and nine other Independent telephone companies located in North Dakota and South Dakota. GTE of Florida also filed additional comments, together with a motion requesting the Commission to accept additional comments. A summary of the comments is contained in the Appendix.

II. DISCUSSION

A. *Issuance of Declaratory Ruling*

8. Before we address the substantive issues raised in this proceeding, we first address procedural issues raised by several commentors. GTE of Florida, the Florida PSC, and Citizens of the State of Florida all suggested in their comments that we should deny the Petition filed by Southern Bell because the Florida PSC was reconsidering its *Order* and such reconsideration made it unnecessary for us to render a declaratory ruling.[3] We do not find this argument persuasive. The Commission is specifically authorized to render declaratory rulings to "remove uncertainty * * *." 5 U.S.C. 554(e) (codified as section 1.2 of the Rules of the Commission, 47 CFR 1.2); *see Telerent Leasing Corp.*, 45 FCC 2d 204, 213, *aff'd sub nom. North Carolina Utilities Commission v. FCC*, 537 F.2d 787 (4th Cir.), *cert. denied*, 429 U.S. 1027 (1976) (hereinafter cited as *Telerent*).

9. We find that recent and potential State actions have tended to create uncertainty regarding the scope of State authority to impose requirements that affect both the separations process and processes for making interstate toll settlements, and that it is not premature to address these issues at this time.[4] That the Florida PSC has reconsidered its initial *Order* does not alter this conclusion. In the *Preemption Order* in CC Docket No. 79–105, we stated:

> [T]he purpose of declaratory rulings is to give guidance to affected persons in areas where uncertainty or confusion exists. A case or controversy in the judicial sense is not required * * *. In this case, it appears necessary to issue such a ruling to clarify for the state commissions and the carriers the effect of our depreciation prescriptions. The fact that reconsideration proceedings are under way in Ohio does not mitigate against such a course in light of the divergencies from

---

appropriate actual use measurements for separations and interstate settlements. Our only concern here is to define the parameters of Federal and State authority in these areas. We also emphasize that this Order does not affect State authority regarding intrastate toll settlements.

[2] The amount of these payments was calculated by determining the amount of distributions that Southern Bell would have made to GTE of Florida under toll revenue divisions if the seven-day studies had been accepted by Southern Bell beginning on January 1, 1981. As of October 1, 1982, the amount of retroactive payments required under the interstate agreement was approximately $29,625,000 and the amount under the intrastate agreement was approximately $2,745,000, for a total of approximately $32,570,000. Initial Brief of Southern Bell Telephone & Telegraph Co. filed in Supreme Court of Florida, Case No. 62,599, at 9 (undated) (incorporated as Attachment D of the Emergency Petition for Declaratory Ruling).

[3] These comments were filed with this Commission before the Florida PSC took action upon reconsideration. See para. 6, *supra*.

[4] Kansas, Illinois, and Ohio have recently adopted seven-day studies as the appropriate actual use measurement for allocating costs between the interstate and intrastate jurisdictions. Illinois Bell Telephone Co., No. 81–0478 (Illinois Commerce Commission, May 28, 1982), *reconsideration*, No. 81–0478 (July 7, 1982); Southwestern Bell Telephone Co., No. 134,218–U (Kansas PSC, March 4, 1983); Ohio Bell Telephone Co., No. 81–1433–TP–AIR (Ohio PUC, Dec. 22, 1982); Cincinnati Bell Inc., No. 81–1338–TP–AIR (Ohio PUC, Jan. 7, 1983). One other State is now considering requests for the adoption of seven-day studies. Mountain States Telephone and Telegraph Co., No. 82–049–08 (Utah PSC, filed June 18, 1982).

this Commission's depreciation methods and rates that are occurring to the detriment of federal policies.

Amendment of Part 31 (Preemption Order), Memorandum Opinion and Order, CC Docket No. 79-105 at para. 43 (released Jan. 6, 1983), *appeal docketed sub nom. Virginia State Corp. Comm'n v. FCC*, No. 83-1163 (4th Cir. Feb. 11, 1983) (citation omitted) (hereinafter cited as *Amendment of Part 31*). Similarly, in this case the disposition of the *Florida PSC Order* on reconsideration cannot dispel the uncertainty created by these other States' actions on a matter of such general concern, *i.e.*, the authority of States to act unilaterally in the area of jurisdictional separations. As we have noted, the disposition of the case on reconsideration was based on State statutory grounds and did not address issues of Federal preemption.

B. *Preemption*

10. Having concluded that uncertainty exists regarding the relationship between the Federal regulatory scheme and the scope of State regulatory authority, we find it within our discretion to take such action as may be necessary, including the preemption of State action,[5] to dispel the uncertainty. *See FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 142-43 (1940); *Ringen v. American Telephone & Telegraph Co.*, 67 FCC 2d 848, 849 (1978); *Telerent*, 45 FCC 2d at 214; *see also Cloverleaf Butter Co. v. Patterson*, 315 U.S. 148, 169 (1942) ("Nothing could be more fertile for discord * * * than a failure to define the boundaries of authority [between the Federal Government and the States] * * *.).

1. *General Rules; Statutory Framework*

11. The primary issue in preemption analysis is whether a national law enacted by the Congress should be deemed to override State laws.[6] The conclusion that preemption has occurred requires clear indication that the intention of the Federal enactment is to supersede State authority. "It will not be presumed that a federal statute was intended to supersede the exercise of the power of the state unless there is a clear manifestation of intention to do so. The exercise of federal supremacy is not lightly to be presumed." *Schwartz v. Texas*, 344 U.S. 199, 202-03 (1952), *quoted in New York Department of Social Services v. Dublino*, 413 U.S. 405, 413 (1973); *see Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142 (1963).

12. The most direct manner of exercising this Federal supremacy occurs when the Congress states explicitly in the Federal statute that it intends to preempt State authority. The preemptive effect of a national law, however, may be implied even without such an express provision. *See Cloverleaf Butter Co. v. Patterson*, 315 U.S. 148, 156 (1942); *Savage v. Jones*, 225 U.S. 501, 533 (1912) ("[W]hen the question is whether a Federal act overrides a state law, the entire scheme of the statute must of course be considered and that which needs must be implied is of no less force than that which is expressed.") Whether such a preemptive effect may be implied "turns on the peculiarities and special features of the federal regulatory scheme in question * * *." *Burbank v. Lockheed Air Terminal*, 411 U.S. 624, 638 (1973). Thus it is necessary to examine the "peculiarities and special features" of the regulatory scheme established in the Communications Act of 1934 (the Act) to govern the separations and interstate toll settlements process to determine the nature and extent of Federal authority.

13. This examination must begin with a review of the provisions of the Act taken as a whole. *See United States v. Storer Broadcasting Co.*, 351 U.S. 192, 203 (1956); *General Telephone Co. of California v. FCC*, 413 F.2d 390, 398 (D.C. Cir.), *cert. denied*, 396 U.S. 888 (1969). In reviewing the text of the Act, we first note that its purposes are stated in broad terms to include the following:

> [M]aking available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, [and] for the purpose of promoting safety of life and property through the use of wire and radio communication * * *.

Section 1 of the Act, 47 U.S.C. 151. Section 2(a) of the Act, 47 U.S.C 152(a), authorizes the Commission to regulate "all interstate and foreign communication by wire," and Section 3(a) of the Act, 47 U.S.C. 153(a), defines "communication by wire" to include "all instrumentalities, facilities, apparatus, and services" that are incidental to transmissions by wire. Section 4(i) of the Act, 47 U.S.C. 154(i), which has been construed broadly by the judiciary,[7] provides that the Commission "may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions."

14. In assessing these general provisions of the Act, and before specifically addressing more closely the particular provisions of the Act that are at issue in this proceeding, we reach two general conclusions. First, it is evident that the Congress has imparted to the Commission broad, plenary authority for the regulation and administration of interstate and foreign communications. The language of Section 2(a) of the Act, 47 U.S.C. 152(a), is unequivocal in giving the Commission authority to regulate "all interstate and foreign communication * * *." The Commission, in an early case, has noted that the common carrier provisions of the Act are comprehensive in scope and are intended to apply to facilities that are not exclusively interstate in nature. *Use of Recording Devices in Connection with Telephone Service*, 11 FCC 1033, 1047 (1947). We made a similar finding in the *Telerent* decision:

> That the Commission has plenary and comprehensive regulatory jurisdiction over interstate and foreign communications services and facilities of common carriers and all of the terms and conditions upon which such services and facilities are offered to the public is evident from the provisions of the Communications Act.

Telerent, 45 FCC 2d at 215. This reading of the Act also has been emphasized in judicial decisions. *See, e.g., California v. FCC*, 567 F.2d 84, 86 (D.C. Cir. 1977), *cert., denied*, 434 U.S. 1010 (1978); *Puerto Rico Telephone Co. v. FCC*, 553 F.2d 694, 698-700 (1st Cir. 1977); *North Carolina Utilities Commission v. FCC*, 552 F.2d 1036, 1046 (4th Cir.), *cert. denied*, 434 U.S. 874 (1977) (hereinafter cited as *NCUC II*); *North Carolina Utilities*

[5] Although we recognize the principle that "[o]nly the [Federal] judiciary may decide preemption questions authoritatively", Combined Communications of Oklahoma, Inc. (KOCO-TV), 59 FCC 2d 48, 50 (1976), we conclude that this truism in no way detracts from the authority of the Commission to render declaratory rulings in the first instance regarding preemption; in making these rulings we are in a unique position to draw upon our expertise as a regulatory agency to determine whether national communications policies are adversely affected by conflicting State policies. We recently took such an action in Amendment of Part 31.

[6] The Constitution provides that the laws of the United States "shall be the supreme Law of the Land * * *." U.S. Const. art. VI, § 2. Hence, State actions that are in conflict with national statutes cannot have any force or effect. In order for preemption to be valid, the Federal policy must be "a command with the force of national law." Note, *A Framework for Preemption Analysis*, 88 Yale L.J. 363, 382 (1978).

[7] *See* MTS and WATS Market Structure, CC Docket No. 78-72, Phase I, Third Report and Order, FCC 82-579, at para. 310 n.110 (released Feb. 28, 1983) (citing United States v. Southwest Cable Co., 392 U.S. 197 (1968); National Broadcasting Co. v. United States 319 U.S. 190 (1943)), *appeal docketed sub nom.* NARUC v. FCC, No. 83-1225 (D.C. Cir. March 1, 1983) (hereinafter cited as Access Charge Order).

Commission v. FCC, 537 F.2d 787, 793 (4th Cir.), *cert. denied*, 429 U.S. 1027 (1976) (hereinafter cited as *NCUC I*).

15. Second, we conclude that a major objective of the Act is to grant the Commission sufficient authority to ensure that regulatory policies relating to common carrier services will be developed and administered in a uniform, consistent manner. As we have noted, a chief purpose of the Act is to make available a "rapid, efficient, Nationwide" communications service. Section 1 of the Act, 47 U.S.C. 151. The very notion of a nationwide system, as well as its efficient operation, must be based on the assumption that carrier facilities and services will not be subject to a plethora of overlapping and conflicting regulatory requirements. The court in *NCUC II*, in upholding the authority of the Commission to preempt conflicting State regulations in establishing its terminal equipment registration program, noted that:

> [I]t is recognized that FCC regulations must preempt any contrary state regulations where the efficiency or safety of the national communications network is at stake, [and] there can be little argument that FCC regulation of jointly used terminal equipment for the purpose of improving or expanding interstate communication services may not also displace conflicting state regulations. * * * [T]he FCC has full statutory authority to regulate joint terminal equipment to ensure the safety of the national network, [and] we can discover no statutory basis for the argument that FCC regulations serving other important interests of national communications policy are subject to approval by state utility commissions.

NCUC II, 552 F.2d at 1046–47. The court thus recognized that the Commission effectively would be stripped of authority to establish and enforce uniform, nationwide rules and requirements applicable to terminal equipment interconnection with the national telephone network if the States had authority to take contrary action. Similarly, it has been held that the Commission has authority to regulate foreign exchange and common control switching arrangement facilities [8] even though these facilities are located entirely within single States. *California v. FCC*, 567 F.2d 84 (D.C. Cir. 1977), *cert. denied*, 434 U.S. 1010 (1978). The court noted that "[w]e agree with the Commission that * * * inconsistent state regulations could frustrate the congressional goal of developing a 'unified national communications service.' " *Id.* at 86 (quoting *American Telephone & Telegraph Co. & Associated Bell System Cos.*, 56 FCC 2d 14, 20 (1975)). This statutory objective calling for uniformity in the regulation of nationwide communications service forms an important element in the process of determining whether it is appropriate to preempt particular State actions and policies.

16. We now turn to a closer examination of the provisions of the Act which bear directly on the authority of the Commission in the separations and settlements areas. The authority of the Commission in the separations area is derived from Section 221(c) of the Act, 47 U.S.C. 221(c), and Section 410(c) of the Act, 47 U.S.C. 410(c). Section 221(c) authorizes the Commission to classify carrier property and determine the portion of carrier property which "shall be considered as used in interstate or foreign telephone toll service." Classifications by the Commission may be made only after hearings, with notice to the carrier involved, the States in which property of the carrier is located, and other interested persons. We have construed the language of Section 221(c) as "mak[ing] clear the primacy of Federal jurisdiction with respect to property clearly used to provide interstate and intrastate services and facilities." *Telerent*, 45 FCC 2d at 216. Thus, the plenary authority of the Commission regarding interstate communications services and facilities also applies directly in the separations field and relates to property used in connection with both interstate and intrastate services and facilities.

17. We have noted in a previous decision that regulatory uniformity is an important goal of Section 221(c):

> It is urged * * * that a fundamental principle to be observed in making jurisdictional separations is the need for uniformity in the procedures applied by both Federal and State authorities for ratemaking purposes. We subscribe fully to this objective, as we have in the past. Such uniformity obviates the danger that certain amounts of plant investment and expenses may be assigned to more than one jurisdiction to the detriment of ratepayers. Equally important, it obviates the risk that certain amounts of plant and expenses will be recognized in neither jurisdiction, to the economic detriment of the company and its owners.

American Telephone & Telegraph Co. & Associated Bell System Cos., 9 FCC 2d 30, 90–91 (1967). Thus, the general goals of the Act regarding the uniform regulation of national communications services are carried forward as specific objectives of the separations procedures embodied in Section 221(c).

18. In order to safeguard the plenary authority of the Commission and to achieve the objective of regulatory uniformity, it is necessary to conclude that actions taken in accordance with the Section 221(c) procedures are binding upon the States. This conclusion arises for two reasons. First, as we have noted, decisions of the Commission under Section 221(c) may be made only after the Commission has conducted a hearing in which affected States are permitted to participate. It has been held that the Congress, in establishing hearing requirements, generally intends that affected parties will be bound by decisions resulting from the hearings:

> The [Interstate Commerce] Commission is not only authorized but "directed" [by the statute] to give the hearing and make the determination requested. We cannot think that a determination so prescribed and safeguarded was intended to have no legal effect. On the contrary, in view of the nature and purpose of the proceeding, we must regard the determination as binding on both the carrier and the Mediation Board.

Shields v. Utah Central Railroad Co., 305 U.S. 177, 182 (1938) (Hughes, C.J.); *see Crowell v. Benson*, 285 U.S. 22 (1932); *Cameron v. United States*, 252 U.S. 450 (1920). Second, the Congress, in establishing the authority of the Commission in Section 221(c), made no attempt to insulate the States from Commission decisions resulting from the exercise of this authority. There is no language in Section 221(c) that suggests that the States are not bound by Commission determinations.[9]

19. Procedures applicable to separations decisions were affected by an amendment to the Act enacted in 1971.[10] Section 410(c) of the Act, 47

[8] Foreign exchange (FX) service is a local exchange service provided to a customer through a central office of an exchange other than the exchange in which the customer is located. American Telephone & Telegraph Co., *Telecommunications Glossary* 30 (1982). Common control switching arrangements (CCSA) is an inter-city private line switching network service: the service is provided for the exclusive use of the customer but the switches used to provide the service may also be used to serve other customers. *Id.* at 11.

[9] The approach taken by the Congress in Section 221(c) contrasts with the manner in which it chose to protect State interests in Section 221(a) of the Act, 47 U.S.C. 221(a). Section 221(a) authorizes the Commission to certify proposed telephone company consolidations, thus exempting the transactions from Federal statutes which otherwise would make the transactions unlawful. Section 221(a), recognizing the interests of the States, requires a public hearing with notice to the States, and also provides that "[n]othing in this subsection shall be construed as in anywise limiting or restricting the powers of the several States to control and regulate telephone companies." No similar provision protecting the authority of the States is contained in Section 221(c), leading to the conclusion that State authority is subject to, and limited by, Commission actions under Section 221(c).

[10] Federal-State Communications Joint-Board Act, Pub. L. No. 92–131, 85 Stat. 363 (1971) (codified at 47 U.S.C. 410(c)).

U.S.C. 410(c), which was added by the amendment, provides that the Commission "shall refer any proceeding regarding the jurisdictional separation of common carrier property and expenses between interstate and intrastate operations . . . to a Federal-State Joint Board." The Joint Board is comprised of three members of the Commission and four State commissioners, with the Chairman of the Commission (or another member of the Commission designated by the Commission) serving as Chairman of the Joint Board. Section 410(c) provides that the Joint Board shall prepare recommended decisions regarding separations matters "for prompt review and action by the Commission." Thus, the Commission is given ultimate authority to adopt decisions under Section 410(c). State members of the Joint Board are provided with an opportunity to participate in Commission deliberations regarding recommended decisions of the Joint Board, but the State members are not entitled to vote in these Commission proceedings. We recently have indicated that, as a result of the enactment of Section 410(c), "[t]he Commission was given the ultimate authority with respect to [cost] allocations [between Federal and State jurisdictions], further solidifying its superintendency over common carrier communications." *Amendment of Part 31*, CC Docket No. 79-105, at para. 39. The plenary authority of the Commission under Section 410(c) also has been judicially affirmed. *See NCUC II*, 552 F.2d at 1046 (describing "the recognition by Section 410(c) of federal supremacy in rate base allocation"); *NCUC I*, 537 F.2d at 795.

20. The effect of Section 410(c), in part, is to expand the role of the States beyond that which was established for them in Section 221(c) of the Act, 47 U.S.C 221(c). In recognition of the interests of States that are affected by separations policies, the procedure created in Section 410(c) enables States to be involved in the initial formulation of these policies. It must be noted, however, that Section 410(c) does not cede any unilateral authority to the States. Language included, for example, in Section 221(a) of the Act, 47 U.S.C 221(a),[11] to protect State authority does not appear in Section 410(c). In describing the procedures of Section 410(c), we have recognized that "separations procedures are binding on carriers, the states, and ourselves * * *." *American Telephone & Telegraph Co. (Manual and Procedures for Allocation of Costs)*, 84 FCC 2d 384, 391 (1981), *aff'd sub nam. MCI Telecommunications Corp. v. FCC*, 675 F.2d 408 (D.C. Cir. 1982) (hereinafter cited as *ICAM Proceeding*). The plenary authority of the Commission and the binding effect of Commission decisions under section 410(c) "provide for uniformity in the separations process, thereby insuring that plant, expenses and revenues will be rationally accounted for in the dual jurisdictional environment." *Amendment of Part 31*, CC Docket No. 79-105, at para. 39.

21. The authority of the Commission in the settlements area is derived from Section 201(a) of the Act, 47 U.S.C. 201(a), which requires carriers "to establish * * * divisions of * * * charges" and further provides that such action by carriers shall be "in accordance with the orders of the Commission, in cases where the Commission, after opportunity for hearing, finds such action necessary or desirable in the public interest * * *." Section 201(a), by its terms, applies to "every common carrier engaged in interstate or foreign communications * * *." Section 201(a) permits carriers to reach private agreements for the division of interstate toll revenues, but if they fail to do so (or if they do so in an inequitable manner), then this section "empowers the Commission to prescribe divisions of charges, after opportunity for hearing, where it finds such action necessary or desirable in the public interest * * *." *United Telephone Co. of the Carolinas*, 54 FCC 2d 289,290 (1975), *aff'd sub nom. United Telephone Co. of the Carolinas v. FCC*, 559 F.2d 720 (D.C. Cir. 1977).It is evident from the face of Section 201(a) that the Commission has exclusive power to provide for the division of interstate toll revenues, and that the States have no authority to establish division of revenue requirements applicable to interstate toll revenues.

2. *Regulatory Framework*

22. We find that issues relating to the jurisdictional separation of telephone company costs are subject to a comprehensive and pervasive Federal regulatory scheme. It is not necessary to look beyond the provisions of the *Separations Manual* to determine that the Commission, acting under its statutory authority, has established a pervasive regulatory framework in the separations area. The *Manual* is intended to serve as a comprehensive system of procedures for allocating property costs, revenues, expenses, taxes, and reserves to the Federal and State jurisdictions designed to meet the need for "a uniform method of separations, acceptable to the state and federal regulatory bodies * * *." *Forward* to *Separations Manual* at 5 (Feb. 1971 ed.). The *Manual* has been incorporated in the rules of the Commission, with procedures established by the Congress for adopting any changes to it. These procedures, set forth in Section 410(c) of the Act, 47 U.S.C. 410(c), must be viewed as the exclusive means for making any such changes. *See Jurisdictional Separations of Telephone Cos.*, 16 FCC 2d 317, 331 (1969); *American Telephone & Telegraph Co. & Associated Bell System Cos.*, 9 FCC 2d 30, 111 (1967).

23. Focusing upon the separations issue specifically involved in this proceeding, we make the following observations. First, the *Separations Manual* does not mandate any particular time period for making actual use measurements in connection with jurisdictional cost allocations.[12] The *Manual* instead requires that actual use measurements be made during "representative" periods, leaving to the carriers the determination of what time periods actually will be used. *See Reservation Telephone Coop. v. American Telephone & Telegraph Co.*, Order by acting Deputy Chief, Common Carrier Bureau, FCC File No. E-81-5, Mimeo No. 2037, at 3 (released July 17, 1981) *petition for review filed* (FCC, Sept. 11, 1981) (hereinafter cited as *Reservation Telephone*). Second, if carriers are not able to agree upon appropriate time periods for actual use measurements they do not have any recourse outside the framework of Section 410(c) of the Act, 47 U.S.C. 410(c), to seek the imposition of a specific time period. *See id.* at 4.

24 The issue of appropriate time period for actual use measurements presently is under consideration by a Federal-State Joint Board established under Section 410(c) of the Act, 47 U.S.C. 410(c). *See Amendment of Part 67*, 89 FCC 2d 1 (1982), *appeal docketed sub nom. MCI Telecommunications Corp. v. FCC*, Nos 82-1237 & 82-1456 (D.C. Cir. March 4, 1982) (hereinafter cited as *Amendment of Part 67*). In the *Reservation Telephone* proceeding, the complainants asked the Commission to construe the provisions of the *Separations Manual* and to require the defendants to accept the use of seven-day studies for actual use measurements. The Order, however, noted that:

> The fundamental issue raised by the complainants is * * * being considered in a forum which will benefit from the participation of a large segment of the

[11] See n.9, *supra*.

[12] See para. 3, *supra*.

telephone industry. Because of this and because matters of this general nature are ordinarily considered within the context of a joint Board, we believe it appropriate to dismiss the complaint and leave the resolution of the underlying issues to the expertise of the Joint Board.

Reservation Telephone, FCC File No. E-81-5, at 4.[13] It can be seen, then, that there are substantial grounds for concluding that the *Separations Manual* will be amended to address specifically the question of the appropriate period for actual use measurements.

25. Finally, the absence of any Federal rule defining the appropriate period for actual use measurements does not automatically free the States to roam unfettered across the separations terrain. The governing consideration is whether permitting the States to control activities potentially subject to Federal regulation will create too great a danger of conflict with national policy. *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959). For example, in determining whether a Federal statute regulating equipment used on railroad locomotives had preempted State laws the Supreme Court states:

> It is * * * urged that, even if the [Interstate Commerce] Commission has power to prescribe an automatic firebox door and a cab curtain, it has not done so; and that it has made no other requirement inconsistent with the state legislation. This * * * if true, is without legal significance. The fact that the Commission has not seen fit to exercise its authority to the full extent conferred, has no bearing upon the construction of the Act delegating the power.

Napier v. Atlantic Coast Line R.R. Co., 272 U.S. 605, 613 (1926).

26. In case involving facts analogous to those presented in this proceeding, the court held that the Commission could preempt State ratemaking authority over allegedly intrastate communications services regardless of whether the Commission was prepared to substitute its own tariff for the displaced State rates. *New York Telephone Co. v. FCC*, 631 F.2d 1059 (2d Cir. 1980) (hereinafter cited as *New York Telephone)*. The New York Public Service Commission had required New York Telephone to file a tariff with the State commission allocating a share of the costs of local exchange facilities to interstate FX and CCSA private line users. The court began its inquiry by noting that "there is no doubt that the NYT surcharge on interstate FX/CCSA users, ranging up to 1600% higher than the charge for comparable service to intrastate users, substantially affects the conduct or development of interstate communication and encroaches upon FCC authority." *New York Telephone*, 631 F. 2d at 1066. The court then rejected the argument advanced by the carrier that the Commission could assert jurisdiction only if it substituted its own tariff for the State rates. Unconvinced by the argument that "only a federally-approved tariff can constitute regulation, *id.* at 1067, the court concluded:

> In what is evidently an attempt by the [New York] PSC to force changes in national separations procedures, which the FCC already contemplates revising and which will be the subject of investigation and rulemaking, the PSC has put NYT in a difficult position, to be sure, but also has forced the FCC to act to protect interstate FX/CCSA users from discrimination.

Id. The finding of the court in *New York Telephone* that the Commission did not have to take direct regulatory action through the imposition or approval of a tariff in order to protect its jurisdictional prerogatives buttresses our conclusion that the present absence of specific Federal rules ragarding time periods for actual use measurements does not clear the path for unilateral State actions.

27. In the interstate toll settlements area, as we have noted,[14] the Commission has exclusive regulatory authority under Section 201(a) of the Act, 47 U.S.C 201(a). The Commission recently exercised this authority to establish a uniform, nationwide system of access charges to replace the existing scheme of access compensation arrangements. *See Access Charge Order*, CC Docket No. 78-72. This plenary Commission authority under Section 201(a) also eliminates State authority to serve as an alternative forum for the resolution of disputes relating to the division of interstate toll revenues. Consequently, we reject the argument advanced by GTE of Florida in its Reply Comments that the decision in *United Telephone Co. of the Carolinas v. FCC*, 559 F. 2d 720 (D.C. Cir. 1977) (hereinafter cited as *United Telephone)* supports such a view of State authority in circumstances in which the Commission has not exercised its authority under Section 201(a) to resolve a particular dispute. In *United Telephone*, the Commission had refused to impose a formula for the division of charges because the petitioners had not shown existing division of revenues rules in the contract between the parties to be unreasonable. The appellate court agreed that the petitioners "failed to allege that the result reached under the present division of charges formula does not actually compensate them for their costs." *Id.* at 723 (footnote omitted). There was no suggestion by the court, however, that inaction by this Commission somehow empowered the States to prescribe division of revenues formulas as a remedy in the case before the court. The court in fact suggested a quite different remedy:

> Although the Commission refused to increase United's and Carolina's share of the revenues from the joint venture, leaving them with an unsatisfactory economic choice, it is not forcing them to continue in the enterprise. * * * United and Carolina are free to remove their interconnection with Southern Bell and thereby also remove themselves completely from the jurisdiction of the Commission.

Id. at 723-24 (footnote omitted). Since the issue of State authority regarding the division of interstate revenues was never raised in *United Telephone*, and since the court upheld the refusal by the Commission to prescribe division of charges formulas without suggesting that this approval opened the way for State action in the area, we conclude that *United Telephone* cannot serve as a foundation for constructing an agrument that the absence of specfic Commission requirements regarding the use of seven-day studies for actual use measurements creates a vacuum that may be filled by unilateral State actions.

3. *Nature of Subject Matter Affected by State Action.*

28. The nature of the regulated subject matter at issue in a preemption case heavily influences whether it is appropriate to exercise Federal preemption. *See Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142 (1963); *Federal Power Commission v. Transcontinental Gas Pipe Line*, 365 U.S. 1, 19-20 (1961). The regulated subject matter with which we are concerned in this proceeding is the jurisdictional allocation of costs, expenses, revenues, taxes, and reserves, and the subsequent division of revenues carried out in connection with the separations process. The process of jurisdictional separations, first recognized as necessary in *Smith v. Illinois Bell Telephone Co.*, 282 U.S. 133 (1930), is applicable to telephone property used in common for both

[13] The Joint Board has found that evidence introduced in its proceeding "is heavily supportive of the adoption of seven-day usage studies." Amendment of Part 67, CC Docket No. 80-286, Order Requesting Further Comments, at para. 227 (released Nov. 15, 1982). Substantially all the parties submitting comments on this issue in response to the Joint Board's Order Requesting Further Comments were in favor of adopting the seven-day study proposal. The Joint Board adopted its final recommendations on April 15, 1983. A full text of the Joint Board's recommendations was not yet available at the time of the adoption of this Opinion and Order by the Commission.

[14] See para. 21, *supra*.

intrastate and interstate services and to expenses incurred in the delivery of these services. The fact that this common use of telephone property ignores political boundaries creates the need for "a uniform method of separations, acceptable to the state and federal regulatory bodies * * *." *Forward* to *Separations Manual* at 5 (Feb. 1971 ed.) This need for uniformity was addressed by the Congress in enacting Section 410(c) of the Act, 47 U.S.C. 410(c).

29. The uncertainty that would follow in the wake of any diminution of this uniformity was recognized by this Commission when we addressed the issue of interconnection of subscriber equipment:

> There is nothing in the Communications Act or its legislative history which supports the position * * * that Section 2(b) and/or 221(b) reflects a Congressional intent that where common exchange plant is used to provide both exchange and other intrastate services as well as interstate services, a State may, in effect, determine the terms and conditions upon which such common plant is to be used for interstate service. It is one thing to exempt intrastate services from Federal jurisdiction. It is quite a different matter to argue that by virtue of this exemption plant used in common for both intrastate and interstate services is beyond Federal jurisdiction and that subscribers can be subjected to a melange of regulations, determined by each of 50 separate jurisdictions, as to the terms and conditions upon which they shall have access to and use of the telephone network for interstate services. If each State were to be free to establish its own rules governing interconnection for the purposes of intrastate services, uniform nondiscriminatory interstate service throughout the country would be rendered difficult if not impossible.

Telerent, 45 FCC 2d at 219–20. Further, as a general matter it has been held that all the provisions of the Act "must be construed in light of the needs for comprehensive regulation and the practical difficulties inhering in state by state regulation of parts of an organic whole." *General Telephone Co. of California v. FCC*, 413 F.2d 390, 398 (D.C. Cir.), *cert. denied*, 396 U.S. 888 (1969). We conclude that the nature of the separations process and related settlements procedures makes it particularly appropriate to find that State policies that conflict with the federally established separations and settlements framework should be preempted.

4. *Conflicting State Actions*

30. In a case in which Federal and State regulations relate to the same subject matter, "[t]he test of whether both federal and state regulations may operate, or whether the state regulation must give way, is whether both regulations can be enforced without impairing the federal superintendence of the field * * *." *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142 (1963). It must be determined "whether, under the circumstances of [a] particular case, [a State] law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941) (footnote omitted); *see Head v. New Mexico Board of Examiners of Optometry*, 374 U.S. 424, 432 (1963). It is a fundamental principle of constitutional law that State laws "must yield to the law of congress * * *." *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 210 (1824). Justice Frankfurter has cogently presented the basis for this principle:

> To leave the State free to regulate conduct so plainly with the central aim of federal regulation involves too great a danger of conflict between power asserted by Congress and requirements imposed by state law * * *. [T]o allow the States to control conduct which is the subject of national regulation would create potential frustration of national purposes.

San Diego Building Trades Council v. Garmon, 359 U.S. 236, 244 (1959) (Frankfurter, J.); *see Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 158 (1978); *Perez v. Campbell*, 402 U.S. 637, 651–52 (1971); *Farmers Educational & Cooperative Union v. WDAY*, 360 U.S. 525, 535 (1959); *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947); *Savage v. Jones*, 225 U.S. 501, 533 (1912).

31. In the communications common carrier area, as we have noted, the courts generally have held that State policies must yield to the exercise of Federal authority. [15] *See, e.g., New York Telephone*, 631 F.2d at 1066; *California v. FCC*, 567 F.2d 84, 86 (D.C. Cir. 1977), *cert. denied*, 434 U.S. 1010 (1978). Most recently, the United States Court of Appeals for the District of Columbia Circuit, in holding that the Commission had acted properly in preempting the State tariffing of customer premises equipment, noted that:

> Courts have consistently held that when state regulation of intrastate equipment or facilities would interfere with achievement of a federal regulatory goal, the Commission's jurisdiction is paramount and conflicting state regulations must necessarily yield to the federal regulatory scheme.

Computer & Communications Industry Association v. FCC, 693 F.2d 198, 214 (D.C. Cir. 1982), *petitions for cert. filed*, 51 U.S.L.W. 3614, 3615 (U.S. Feb. 9 & 10, 1983) Nos. 82–1331 & 82–1352) (footnote omitted); *see NCUC II*, 552 F.2d at 1046; *NCUC I*, 537 F.2d at 793.

32. We now turn to an examination of the nature and extent of the conflict between State action and Federal authority presented in this proceeding. Action of the type taken by the Florida PSC requiring carriers to accept the use of seven-day studies in connection with actual use measurements has two effects. First, it imposes division of interstate revenues procedures upon carriers in the absence of carrier agreements. Such action by a State, as we have seen, is in direct conflict with the statutory mandate of Section 201(a) of the Act, 47 U.S.C. 201(a), and with the exercise of Commission authority under Section 201(a). [16] The Florida PSC now has determined that it does not have authority under Florida statutes to take such an action. [17] We conclude that such action would be a direct and substantial encroachment upon the authority of this Commission.

33. A division of revenues requirement of the type that the Florida PSC decision imposed on Southern Bell also affects the jurisdictional separations process by attempting to allocate a greater amount of costs to the interstate jurisdiction. That this result is intended is acknowledged by the Florida PSC. *See Florida PSC Order* at 2 ("We recognize that our decision will result in a shift of costs from local exchange to toll * * *.") This effect upon jurisdictional separations is in direct conflict with the *Separations Manual*, the provisions of which are binding upon the States. *See ICAM Proceeding*, 84 FCC 2d at 391; *Jurisdictional Separations of Telephone Cos.*, 16 FCC 2d 317, 331 (1969); *American Telephone & Telegraph Co. & Associated Bell System Cos.*, 9 FCC 2d 30, 111 (1967). The *Separations Manual* provides no mechanism by which States may unilaterally construe provisions of the *Manual* and impose these constructions upon carriers. The appropriate method for making changes in the jurisdictional separations process is through action of a Federal-State Joint Board under Section 410(c) of the Act, 47 U.S.C. 410(c). *See Reservation Telephone*, FCC File No. E–81–5, at 4. A Federal-State Joint Board is, in fact, currently considering the issue of

---

[15] See para. 15, *supra*.

[16] See paras. 21, 27, *supra*.

[17] See para. 6, *supra*. The pertinent Florida statute provides that "[t]he commission is authorized to review intrastate toll settlement agreements and disapprove any such agreement if such agreement is detrimental to the public interest * * *. The commission is also authorized to adjudicate disputes among telephone companies regarding intrastate telecommunications settlements." Section 8 of Chapter 80–36, Laws of Florida, § 364.07, Fla. Stat. 1981.

appropriate time periods for actual use studies.[18]

34. Action of the type taken by Florida also conflicts with Federal policy regarding use of the subscriber plant factor (SPF) for allocating costs between the interstate and intrastate jurisdictions. The *Florida PSC Order*, in imposing seven-day time studies, would have permitted GTE of Florida to increase its interstate SPF for purposes of calculating the division of revenues and for purposes of allocating costs between the interstate and intrastate jurisdictions. The *Order* thus placed an obstacle squarely in the path of effectuating separations and settlements policies established by this Commission. This Commission has acted to bar increases in interstate SPF on an interim basis. Because any growth in SPF would result in the inequitable treatment of interstate users, we have concluded that "[i]t is important to maintain the allocative factor for [non-traffic-senstitive] plant at current levels until we can implement a final plan." *Amendment of Part 67*, 89 FCC 2d at 6. The only changes to SPF permissible under this Commission ruling are changes to which carriers agree for divisions of revenue purposes. *Id.* at 14, 16-17. This decision, however, does not permit any changes in SPF in the absence of agreement on the part of the carriers involved. State action of the type taken in the *Florida PSC Order* directly contravenes the treatment of SPF we have established.

35. In assessing these conflicts between the Federal and State policies at issue in this proceeding, we first must remember that the Congress has given this Commission statutory authority in the separations and settlements areas in order to ensure a uniform regulatory framework for this subject matter. Because separations and settlements processes require a balancing of the interests of interstate and intrastate carriers and ratepayers, inconsistencies resulting from regulatory fragmentation can produce inequitable treatment of these carriers and ratepayers. The risk of such fragmentation is at the nub of this proceeding. The Joint Board procedures established in Section 410(c) of the Act, 47 U.S.C. 410(c), would be largely nullified, and the plenary authority of the Commission in the separations and settlements areas would be effectively undermined, if we were to accept the view that States have independent authority to impose changes in interstate settlements practices and separations procedures. If each State were to have unilateral authority to reach its own conclusion regarding appropriate time periods for actual use measurements, and to impose that conclusion upon carriers subject to its jurisdiction, then the goal of national regulatory uniformity would be endangered, the authority of the Commission under the Act would become hollow, and the established statutory procedures for making changes in the *Separations Manual* would become an empty exercise. In order to avoid these results, we must preempt State actions of the type taken by the Florida PSC in this proceeding.

5. *Scope of Preemption*

36. We emphasize that the preemption announced in this Opinion and Order reaches only the specific type of State action at issue in this proceeding, namely the prescription of time periods for use in connection with actual use measurements and the imposition of these time periods upon carriers.[19] We find it unnecessary at this time to take broader preemptive action. Since the dispute presented here does not strike at the center of our concerns regarding the division of regulatory authority between the Commission and the States in the separations and settlements areas, we believe it would be inappropriate to do more than resolve the issue before us. The conflicting State action at issue in this proceeding does not suggest widespread State efforts to wrest jurisdiction from the Commission in the separations and settlements areas.

37. The alternative of broad subject matter preemption would preclude the States from developing concurrent regulations even if these regulations were not in conflict with Commission policies. *See, e.g., San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 241-46 (1959). We do not see a need at this juncture to preempt complementary State regulations in the separations and settlements areas. *Cf.*, Brief for Respondents in *NARUC v. FCC*, No. 81-1556, at 27 n.20 (D.C. Cir., filed Feb. 23, 1983) (complementary State regulation that does not conflict with Commission policy is permissible). We hope that the adoption of this narrow preemption order will foster cooperation between the Commission and the States by minimizing any disruption in the existing regulatory scheme. If conflicting State policies regarding separations and settlements develop in the future, then we will dispose of these policies in the manner and to the extent we deem necessary to protect our plenary authority and to maintain a uniform, nationwide regulatory framework. We leave for another day the issue of whether conflicting State policies in these areas have become so substantial that a broader exercise of our preemption authority has become necessary.

III. Conclusion

38. In our review of the Emergency Petition for Declaratory Ruling filed by Southern Bell we conclude that this Commission has specific statutory authority to render a declaratory ruling in the circumstances presented by this proceeding. We also find that it is appropriate for the Commission to exercise this authority in this proceeding because uncertainty regarding the relationship between Federal and State authority has been created by the *Florida PSC Order* and by the action and potential actions of other States.

39. In addressing the preemption issues raised in this proceeding, we conclude that the Act has given the Commission broad, plenary authority to regulate interstate and foreign communications and that a primary objective of the Act is to ensure a uniform, nationwide system of regulation in the communications common carrier field. We find that Sections 201(a), 221(c), and 410(c) of the Act, 47 U.S.C. 201(a), 221(c), 401(c), the provisions specifically involved in this proceeding, empower this Commission with plenary authority in the separations and settlements areas, thus promoting the statutory goal of creating a uniform regulatory framework in these areas. Acting in accordance with our statutory authority, we have established in the *Separations Manual* a comprehensive and pervasive regulatory scheme in the separations and settlements areas. The absence of specific provisions in the *Separations Manual* regarding time periods for actual use measurements does not open the way for the States to establish these time period requirements and impose them upon carriers.

40. We find that the specific subject matter of this proceeding, the jurisdictional allocation of common carrier costs and the subsequent division of interstate toll revenues, uniquely requires a uniform, nationwide regulatory scheme. Because of this need

[18] See para. 24, *supra*.

[19] We reject the argument that there has not been sufficient notice of the issues we are addressing and that, therefore, it is premature for us to dispose of these issues in this proceeding. The Southern Bell petition makes it abundantly clear that the relief sought is the preemption of those portions of the Florida PSC Order that conflict with Federal authority. Southern Bell Emergency Petition for Declaratory Ruling at 7, 10, 11. Thus, parties have had sufficient opportunity to address this issue throughout the entire course of this proceeding either in their comments or reply comments.

it is particularly appropriate for us to preempt State laws found to be in conflict with this uniform regulatory scheme. We find that such a conflict has been created by actions of the type taken in the *Florida PSC Order*. In seeking to impose interstate settlements requirements upon Southern Bell, that *Order* would have directly encroached upon the authority of the Commission under Section 201(a) of the Act, 47 U.S.C. 201(a). State action of the type taken in the *Florida PSC Order* [20] also alters federally established separations procedures in a manner that is in direct conflict with the congressionally established process for making such alterations. Such State action also upsets our decision in *Amendment of Part 67* to bar further increases in SPF on an interim basis. For all these foregoing reasons, we must preempt State actions of the type taken in the *Florida PSC Order*. The scope to our preemption order is expressly limited to the specific type of actions taken by the Florida PSC. We have concluded that it would be inappropriate and unnecessary at this juncture to give a broader sweep to our preemptive authority in the separations and settlements areas.

41. Accordingly, it is ordered, pursuant to Sections 1, 4(i), 201(a), 221(c), and 410(c) of the Communications Act of 1934, 47 U.S.C. 151, 154(i), 201(a), 221(c), 410(c), Section 554(e) of the Administrative Procedure Act, 5 U.S.C. 554(e), and Rule 1.2 of the Rules of the Commission, 47 CFR 1.2., That the Emergency Petition for Declaratory Ruling filed by the Southern Bell Telephone and Telegraph Company is granted to the extent reflected herein.

42. It is further ordered, That the motion to accept additional comments made by the General Telephone Company of Florida is granted.

43. It is further ordered, That the motion to accept reply comments made by the District of Columbia Public Service Commission is granted.

44. It is further ordered, That the Secretary shall cause this Order to be published in the **Federal Register**.

45. It is further ordered, That the Secretary shall cause a copy of this Order to be served on each State commission.

[20] We wish to emphasize that this Order preempts two types of State action. First, any action that requires the use of a particular time period in connection with actual use measurements for interstate toll settlements. Second, any action that requires the use of a particular time period in connection with such measurements for purposes of cost allocations between the interstate and intrastate jurisdictions.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix—Summary of Comments

1. Southern Bell, in its Emergency Petition for Declaratory Ruling, argues that the *Florida PSC Order*, in attempting to prescribe new interstate toll settlements arrangements between Southern Bell and GTE of Florida, is in direct conflict with the authority and previous orders of the Commission. Southern Bell maintains that authority over interstate toll settlements rests with the Commission under Section 201(a) of the Act, 47 U.S.C. 201(a). By enacting Section 201(a), asserts Southern Bell, the Congress has occupied the field, thus preempting State law under the Supremacy Clause of the United States Constitution. Southern Bell argues that all State laws and regulations have been preempted, regardless, of whether they complement Commission policies or are in conflict with Commission policies.

2. Southern Bell also maintains that the prescription of seven-day studies of holding time usage in the *Florida PSC Order* allows GTE of Florida to increase its interstate SPF, since SPF is based in part upon such studies. Southern Bell asserts that this result of the *Order* is in conflict with the prohibition of increases in SPF adopted by the Commission in *Amendment of Part 67*, CC Docket No. 80-286. Southern Bell argues that the *Order* also conflicts with the Federal-State Joint Board process established in Section 410(c) of the Act, U.S.C. 410(c), and notes that a Joint Board currently is considering the issue of the appropriate time period for holding time usage. Southern Bell maintains that the Common Carrier Bureau decision in *Reservation Telephone* buttresses its argument that the *Florida PSC Order* should be preempted because it conflicts with the Joint Board proceeding, since the Bureau dismissed the complaint in *Reservation Telephone* primarily on the grounds that the issue of time periods for holding time usage was before the Joint Board.

3. GTE of Florida asserts that the Commission should dismiss the Petition filed by Southern Bell on the grounds that the Florida PSC is reconsidering its *Order* and there is no final order affecting interstate toll settlements. GTE of Florida also argues that Southern Bell has failed to demonstrate that an emergency exists and that the Commmission would be acting within its discretionary authority if it refused to issue a declaratory ruling. GTE of Florida maintains that the *Florida PSC Order* merely requires the payment of money by Southern Bell to GTE of Florida, and Southern Bell will get back these payments if the Florida PSC ultimately reverses its decision. GTE of Florida cites *Combined Communications of Oklahoma, Inc. (KOCO-TV)*, 59 FCC 2d 48 (1976) in support of the proposition that the Commission should refrain from issuing a declaratory ruling because only the judiciary may rule authoritatively regarding preemption issues. GTE of Florida asserts that Southern Bell has failed to meet traditional stay criteria in its petition and that the Commission should elect not to make a ruling because the State proceedings have not been shown to be clearly inadequate and, therefore, should be allowed to continue.

4. GTE of Florida argues that neither fact nor precedent supports the conclusion that the Commission has exclusive jurisdiction over traffic study methodology. GTE of Florida maintains that, although Section 201(a) of the Act, 47 U.S.C. 201(a), gives the Commission authority regarding the division of toll revenues, the Commission is not required to exercise this authority and in fact has not taken any specific action regarding the issues involved in this proceeding. GTE of Florida asserts that, if there is a dispute over the meaning of "representative period" as used in the *Separations Manual*, then this is a question of contract for the appropriate State agency or court to decide. GTE of Florida argues that the Commission's SPF "freeze" decision does not bar the Florida PSC action for two reasons: (1) The Commission action assumed a validly calculated SPF, which requires seven-day studies; and (2) the Commission allowed exceptions to the freeze by agreement of the parties and the purpose of this exception would be defeated if one party could unreasonably withhold consent to seven-day studies. GTE of Florida maintains that the Florida PSC action does not alter Federal regulations, but merely interprets a broad general term used in the regulations.

5. AT&T asserts that the Commission should issue a declaratory ruling granting Southern Bell's Petition in order to preserve Federal-State uniformity in the separations field, which is a fundamental principle and in the public interest. AT&T argues that separations uniformity has been placed in jeopardy, citing State court and State commission decisions stating that no legal requirement obligates them to adhere to Commission-prescribed separations procedures. AT&T maintains that inconsistent State regulation regarding separations and settlements threatens the financial viability of telephone utilities and undermines the access charge plan approved by the Commission. Separations "adjustments" ordered by the States deny the utilities the recovery of costs incurred in joint interstate-intrastate operations. This denial of recovery would force the utilities to place a surcharge on access charges applicable to interstate users in States in which State commissions had "allocated" costs to interstate operations. A denial of these surcharges by the Commission would be an unconstitutional confiscation of carrier property.

6. AT&T asserts that the prescription of separations procedures by the Commission preempts inconsistent State procedures. AT&T cites Section 221(c) of the Act, 47 U.S.C. 221(c), as giving the Commission express authority to establish jurisdictional separations procedures. AT&T argues that the Congress intended the States to be bound by Commission actions under Section 221. AT&T cites *Shields v. Utah Idaho Railroad Co.*, 305 U.S. 177 (1938), for the proposition that the Congress intends an agency decision to have binding effect if the decision is rendered after a hearing required by the statute. AT&T maintains that the Congress

must have intended decisions of the Commission under Section 221(c) of the Act to be binding because Section 221(c) contains a hearing requirement. AT&T asserts that Section 221(a) of the Act, 47 U.S.C. 221(a), is further evidence that the Congress intended Commission decisions under Section 221(c) to be binding on the States, because Section 221(a) contains language stating that its provisions do not affect the power of the States to regulate telephone companies, but Section 221(c) contains no such language.

7. AT&T argues that Section 410(c) of the Act, 47 U.S.C. 410(c), is further evidence that the Congress intended the Commission's separations decisions to bind the States. AT&T maintains that the Congress, in enacting Section 410(c), did not alter the authority of the Commission under Section 221(c) but merely established a Federal-State Joint Board mechanism to recommend decisions regarding separations to the Commission, thus retaining Federal superintendence in the separations area. AT&T asserts that State authorities cannot practicably regulate in the separations field and, citing *FPC v. Louisiana Power & Light Co.*, 406 U.S. 621 (1972), argues that the desirability of uniform Federal regulation in the separations area is clear and that State authority in this area must be preempted. AT&T maintains that the Commission, in prescribing separations procedures, intended to preempt State authority because of the need for uniformity in separation procedures. AT&T asserts that actions taken by the Commission in the separations area have manifested an intention to bind the States. AT&T cites the SPF freeze order in *Amendment of Part 67*, CC Docket No. 80-286, as an example of this intention and then argues that the *Florida PSC Order* would violate the SPF freeze. AT&T maintains that the *Florida PSC Order* must be regarded as a nullity with regard to the interstate division of revenues because Section 201(a) of the Act, 47 U.S.C. 201(a), gives the Commission exclusive authority in this area.

8. The Florida PSC asserts that it recognizes the potential jurisdictional infirmity of its *Order* as it relates to the disposition of interstate toll revenues. The Florida PSC argues that its action upon reconsideration may render Southern Bell's Petition to this Commission moot.

9. Citizens of the State of Florida (Citizens) maintains that there no longer is a controversy before the Commission sufficient to raise a question of Federal preemption because the Florida PSC is reconsidering its *Order*. Citizens asserts that the Commission should refrain from taking any action because many States would be potentially affected by a declaration of Federal preemption, but they are not represented in this proceeding. Citizens argues that it is not appropriate to address such significant constitutional questions as Federal preemption when only one State is involved in the proceeding, only two weeks have been allowed to address the matter, and the factual situation giving rise to the emergency petition no longer exists.

10. Reservation Telephone maintains that there is no emergency requiring immediate action by the Commission. If Southern Bell ultimately prevails before the Florida PSC it will have adequate means to recover any interstate settlement payments it has made to GTE of Florida. Reservation Telephone asserts that the *Florida PSC Order* does not conflict with Federal authority because it is consistent with the *Separations Manual* requirement that representative periods be used in determining actual holding time minutes of use for separations purposes. Reservation Telephone argues that the Commission's SPF freeze should not be construed as barring an independent telephone company from correctly calculating its 1981 SPF factor through the use of representative seven-day studies.

11. Southern Bell, in its Reply Comments, maintains that the issues before the Commission are not moot because Southern Bell remains at risk in Florida for the payment of statutory penalties. Southern Bell asserts that interference by other State commissions with the separations and settlements authority of the Commission is another reason for the Commission to act promptly in this proceeding. Southern Bell argues that the assertions of Reservation Telephone regarding the appropriateness of seven-day studies under the *Separations Manual* go beyond the scope of this proceeding because this proceeding is concerned only with jurisdictional issues and does not reach the validity of seven-day studies on the merits.

12. Southern Bell maintains that Reservation Telephone overlooks entirely the jurisdictional issues raised in the *Florida PSC Order* by ignoring the fact that the *Order* prescribes interstate settlement arrangements and requires the use of seven-day studies in the absence of carrier agreements. Southern Bell asserts that GTE of Florida is wrong in suggesting that a declaratory ruling should not be issued because Southern Bell has not demonstrated irreparable harm; Southern Bell argues that irreparable harm need not be shown in order for the Commission to issue a declaratory ruling and that the time now is ripe for the Commission to rule on the scope of its preemptive authority. Southern Bell maintains that it is not appropriate for the Commission to abstain from action in this proceeding in view of the fact that several States have taken or are planning to take action that contravenes the Commission's authority in the separations field. Southern Bell cites the Commission action in *Amendment of Part 31*, CC Docket No. 79-105, as a recent example of the assertion of preemptive authority in connection with the Commission's depreciation rules. Southern Bell asserts that GTE of Florida is wrong in suggesting that interstate settlement arrangements are matters of contract that may be settled by State commissions; interstate revenue divisions are the exclusive province of the Commission. Southern Bell argues that GTE of Florida is wrong in urging that the failure of the Commission specifically to prescribe representative periods for actual use measurements permits State commission usurpation in this area; the SPF freeze order in *Amendment of Part 67*, CC Docket No. 80-286, allows only carriers to agree to modifications in the time studies used for actual use measurements. Southern Bell maintains that the Commission ruling should apply retroactively in order to afford Southern Bell the protection it requires from the retroactive application of the *Florida PSC Order*.

13. GTE of Florida, in its Reply Comments, argues that AT&T's comments are an improper attempt to broaden the scope of the declaratory ruling sought by Southern Bell. GTE of Florida maintains that AT&T has incorrectly stated the issues in this proceeding, and that the correct framing of the issues is as follows: (1) Is there any longer a controversy ripe for Commission resolution? (2) May the Commission leave to non-federal forums the initial response to the issues raised in this proceeding? (3) Has the Commission so completely occupied the field as to preclude the States from interpreting, as a matter of contract between carriers, a term used in a Federal rule? GTE of Florida asserts that the Florida PSC has not "adopted" seven-day studies, but merely has interpreted the phrase "representative period" as used in the *Separations Manual*. GTE of Florida argues that State actions accepting seven-day studies are not deviations from Federal authority unless they distort traffic estimates, and no one has made a showing of any such distortion in this proceeding. GTE of Florida maintains that AT&T'S concerns that use of seven-day studies will lead to a "no-man's land" in which Southern Bell will be unable to recover costs in the interstate or intrastate jurisdictions are properly addressed in rate hearings and should not be raised in this proceeding.

14. GTE of Florida asserts that, although AT&T is correct in arguing that States should abide by Commission-prescribed separations procedures, the fact remains that the Commission has not asserted exclusive jurisdiction over traffic study methods. GTE of Florida argues that AT&T is wrong in arguing that the Commission has exclusive authority under Section 201(a) of the Act, 47 U.S.C. 201(a), to resolve carrier disputes regarding interstate toll revenue divisions. GTE of Florida maintains that this reading of the statute would compel the Commission to hear every dispute involving a settlements contract, and cites *United Telephone Co. of the Carolinas v. FCC*, 559 F.2d 720 (D.C. Cir. 1977), for the proposition that the Commission is free to decline to exercise its authority under Section 201(a). GTE of Florida asserts that this inaction by the Commission enables the Florida PSC to interpret division-of-revenue agreements under State contract law.

15. GTE of Florida, in its Additional Comments, argues that there is no basis for Southern Bell's reliance on the Commission's decision in *Amendment of Part 31*, CC Docket No. 79-105, because in that proceeding the Commission had actually prescribed depreciation rules whereas in this proceeding the Commission has not prescribed any specific time periods for actual use measurements. GTE of Florida cites the recent action taken by the Public Utilities Commission of Ohio in prescribing seven-day studies and maintains that the Ohio Commission action was consistent with the general guidance of the *Separations Manual*.

16. The Public Service Commission of the District of Columbia, in its Reply Comments, asserts that the District of Columbia PSC has discretionary authority to make independent appraisals of the appropriateness of Commission determinations regarding jurisdictional separations. The District of Columbia PSC argues that Commission preemption in the separations area is not mandated by the Act, the legislative history of the Act, or the nature of the jurisdictional separations process. The District of Columbia PSC argues that the Congress did not intend that Commission decisions regarding separations affect intrastate ratemaking decisions. The District of Columbia PSC maintains that the allocation of intrastate and interstate costs for ratemaking purposes is not an area that has been preempted by the Commission, because of the nature of the subject matter involved.

[FR Doc. 83-15698 Filed 6-10-83; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Parts 2, 73, and 74

[BC Docket No. 81-741; FCC 83-120; RM-3727; RM-3876]

Amendment to the Commission's Rules To Authorize the Transmission of Teletext by TV Stations

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: Action taken herein authorizes television stations to operate teletext services on the vertical blanking interval of the television video signal. This authorization was considered in the Notice of Proposed Rule Making in BC Docket 81-741. The Commission has determined that the public interest would be served by allowing television broadcasters to engage in teletext services. Action also is taken to deny a petition for reconsideration of an action in the Notice of Proposed Rule Making in this proceeding that denied a CBS request that the Commission establish a single technical system as the standard for all teletext operations.

DATE: Effective March 31, 1983.

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

FOR FURTHER INFORMATION CONTACT: Alan Stillwell, Broadcast Bureau, 202-632-6302.

List of Subjects

47 CFR Part 2

Frequency allocation, Radio.

47 CFR Part 73

Television.

47 CFR Part 74

Cable television.

Report and Order (Proceeding Terminated)

In the Matter of Amendment of Parts 2, 73 and 76 of the Commission's Rules to Authorize the Transmission of Teletext by TV Stations. FCC 83-120; BC Docket No. 81-741; RM-3727; RM-3876.

Adopted: March 31, 1983.
Released: May 20, 1983.

By the Commission; Commissioner Quello issuing a separate statement; Commissioner Jones concurring and issuing a statement; Commissioner Rivera dissenting in part and issuing a statement in which Commissioner Fogarty joins; Commissioner Sharp concurring and issuing a statement.

Introduction

1. On October 22, 1981, the Commission adopted a *Notice of Proposed Rule Making*, 46 FR 60851 (published December 14, 1981) to consider authorizing television stations to engage in teletext service. Teletext is a new form of radio communication that involves the transmission of textual and graphic data on the vertical blanking interval (VBI) of the video portion of the television signal.[1] The *Notice* was issued to study authorization of this new media form as a result of the considerable interest in teletext service and technology that has developed in the several component industries associated with television broadcasting.[2] In addition, the *Notice* was issued in response to separate petitions from CBS, Inc. (RM-3727) and the United Kingdom Teletext Industry Group (RM-3876) that requested the adoption of rules to authorize teletext.

2. We conclude that the overall record in this proceeding supports our initial assessment that authorization of teletext would serve the public interest. The specific rules being adopted are consistent with the proposals in the *Notice* and are discussed in detail below.[3]

Responses to the Notice

3. Forty-nine formal comments and twenty-seven reply comments were submitted by fifty-six parties in response to the *Notice*.[4] Four other major submissions in the form of reports and informal comments also were received. The comments and reports submitted essentially addressed issues and questions presented in the *Notice*. In addition, a large number of informal comments were received from hearing-impaired citizens and from groups representing the hearing-impaired concerning the relationship between teletext and the line 21 closed caption service. The only major new issue that was raised in the comments concerns the regulatory treatment of point-to-point and point-to-multipoint teletext services. A list of those filing formal comments, replies and major reports is contained in Appendix A.

4. *Authorization of Teletext Service*—The respondents who addressed the fundamental question of whether to permit stations to transmit teletext were unanimous in their support for authorizing the service. These parties generally cited the wide variety of applications and uses mentioned in the *Notice* as reasons why teletext would serve the public interest and thus should be authorized.

5. Commenters favoring teletext authorization were also unanimous in their support for the proposal to create a regulatory environment that would allow licensees to exercise their own judgment and discretion with respect to the kinds and levels of service to provide. The expressed consensus was that market forces would provide the best means for determining the mix of services that would most effectively meet the needs and interests of teletext users.

6. The proposal to regulate teletext under an open environment policy as described in the *Notice* was based in part on the proposal to treat teletext as an ancillary service. As such, teletext activities would not be a primary service of television stations. Licensees would continue to fulfill their public trust obligations through their regular programming. Thus, teletext operations would not be subject to service guidelines or other performance standards. All of the commenters who responded to this proposal agreed that teletext should be treated as an

---

[1] The vertical blanking interval is that portion of the television signal that appears as a black bar when the picture rolls.

[2] Examples of teletext service include news, weather reports, comparative shopping prices, entertainment schedules, closed captions for the hearing impaired, and business oriented information.

[3] A petition for reconsideration of Commission action taken in the *Notice* was filed by CBS requesting the selection of a single technical system. That petition is being denied for the reasons set forth *infra* under the heading *Authorization of Transmission Systems*.

[4] Time, Inc., which filed regular comments in this proceeding, has asked for leave to file a late reply to a letter dated March 8, 1982, to the Chairman of the Commission signed by 26 members of the U.S. Senate. In view of the short time period remaining for filing replies when this letter became available and in the interest of developing a full record in this proceeding, Time's reply to the subject letter has been accepted. Also, on July 9, 1982 the PLEAD Committee asked the Commission to accept late filed comments. Because PLEAD's request was made late in the process of our deliberations and did not raise any new significant points or issues, its request is being denied.

ancillary service. Some respondents also requested that the meaning of ancillary treatment be more fully described, while others expressed the view that it was necessary to develop a legal rationale for exempting teletext from certain statutory performance requirements such as the political broadcasting rules and the Fairness Doctrine contained in Sections 312(a)(7) and 315 of the Communications Act. In reply comments, several parties also recommended that stations not be required to submit notice to the Commission prior to initiating or terminating service.

7. The American Newspaper Publishers' Association (ANPA) stated that it was particularly interested in seeing that teletext be allowed to develop as an ancillary service that would be free from the service guidelines and performance standards of regular television service. It stated that the unique nature of this medium requires the absence of government mandated programming judgments. It also stated that there is no basis for applying affirmative programming obligations to teletext because it is an adjunct service that does not interfere with regular program service. The Videotex Industry Association (VIA) stated that if favors not applying the Fairness Doctrine and equal time regulations to teletext.

8. The National Association of Broadcasters (NAB) asked that the proposal to regulate teletext as an ancillary service be clarified. While it applauded the concept of affording maximum freedom to licensees in their provision of teletext service, the NAB urged the Commission to explain how such treatment could be accommodated under the Communications Act. This view also was expressed by the American Broadcasting Company. The VIA recommended that ancillary treatment be interpreted to mean that: (1) stations may engage in teletext without prior authorization from, or notification to, the Commission; (2) stations may operate on a subscription or advertising basis at their own discretion; (3) addressable teletext is permitted; and (4) subscribers may purchase teletext decoders.

9. In the *Notice*, the Commission proposed to define teletext as a data system for transmission of textual and graphic information intended for display on viewing screens. This definition was intended to make teletext available for a wide range of applications while at the same time limiting the service under consideration to teletext. Comments were requested as to whether this teletext definition should be expanded to include data transmissions not necessarily intended for visual display. A number of the commenting parties expressed a preference for expanding the teletext definition to incorporate the transmission of data not specifically related to the display function. Specifically, Community Telecasters of Southern California proposed that the definition of teletext be broadened to allow the transmission of control functions and the distribution of computer software. It stated that expanding the definition would stimulate the development of the widest range of teletext applications. Time, Inc. suggested that the proposed definition be amended to include reference to the delivery of data that is received by the home terminal and either played by it as an aural signal or delivered in hard copy form by a printer. Time, Inc. also stated that the definition should provide that the data stream can include computer software that contains instructions to the receiving equipment to enable it to process, display, or play the data. ABC submitted that the definition should be broadened to allow the use of printers in the home for hardcopy printed data, bulletins, and coupons. Statements and positions similar to these were also offered by the United Kingdom Teletext Industry Group, and the Corporation for Public Broadcasting.

10. Springfield Television Corporation submitted that the proposed definition was too restrictive and as an alternative suggested a broad and simple statement such as "a service for the provision of data to the general public or substantial segments thereof." The view that teletext should encompass a broad authorization was shared by Satellite Television Systems, Inc., and Antiope and Telematics Corporation.

11. The Commission also proposed that stations be permitted to engage in consumer subscription and business services as well as traditional advertiser supported services that may or may not be related to regular television program fare. Responses to this proposal were favorable. In fact, a number of respondents offered suggestions further to generalize this open approach to other service options. For example, the Videotex Industry Association recommended that both single franchise operators and multiple or time-sharing arrangements be permitted. With regard to franchise leasing, the American Newspaper Publisher's Association stated that participation by third parties would be an important economic factor in the growth of teletext. It submitted that the most substantial costs associated with teletext are those involving developing, maintaining, packaging, financing, and marketing a current and appealing data base. The ANPA contended that the broadcaster may be unwilling or unable to underwrite these costs, and that a broadcaster's freedom to lease its teletext service to other information providers is therefore necessary to facilitate the maximum growth of teletext service.

12. Several parties also raised questions concerning the regulatory status of teletext with respect to common carrier considerations. These issues were not specifically discussed in the Notice. The Videotex Industry Association urged the Commission to adopt a policy: (1) that teletext services offered by a broadcaster in general, and broadcaster franchising and/or timesharing practices in particular, would not be considered a common carrier service; (2) that providers could charge whatever they desired for the use of teletext; and (3) that they would not have to provide access on a first-come, first-served basis. Similar opinions on these issues were expressed by Golden West Broadcasters, Cox Broadcasting, and the NBC Television Network Affiliates. The American Society of Travel Agents took the opposite view on the access issue. It stated that the Commission should not allow the discriminatory access and rate practices that would be permitted under the proposed policy.

13. Another issue discussed by the commenters is whether public, noncommercial stations should be permitted to engage in for-profit teletext activities. The National Association of Public Television Stations stated that public television stations should have the same authority as all other television stations with respect to both content and terms of service. The University of Wisconsin also supported this position. It asked that public broadcast licensees be permitted to engage in the same advertiser supported, consumer subscription, and business services that were proposed for commercial stations. No commenter opposed such authorizations for public broadcast stations.

14. *Authorization of Transmission Systems*—One issue that received substantial attention and interest in the comments was the proposal to allow each station to use the transmission system of its choice for teletext operation. The only restriction proposed was that teletext signals could not interfere with the regular service of the originating station, the service of other

television stations, or stations in any other "legitimate" radio service. The responses on this subject were divided with fifteen parties in favor of allowing decisions concerning the selection of a system to be made in the market, and fourteen in favor of the Commission selecting a single system.[5] The two equipment manufacturers who submitted comments were also split on this issue. Zenith supported the open market approach and stated that it would design and build teletext receivers in response to market demand. However, RCA favored a single standard and stated that the "one-system" approach would protect the consumer from the excessive cost of a decoder capable of handling mutiple systems. Generally, commenters who preferred the British System supported the market approach while backers of the Antiope, Telidon, and North American Broadcast Teletext Specification tended to favor the single system plan.

15. Respondents supporting the open market proposal generally agreed with the statements in the *Notice* concerning the advantages of relying on market forces to direct the development of teletext in the technical area. For example, RBC Communications believed the forces of competition can effectively regulate the level and nature of teletext services in a particular market. It contented that government establishment of inflexible regulatory standards with respect to permissible services would only frustrate the ability to satisfy consumer needs through the marketplace. In a similar statement, Field Communications asserted that the economic forces of the marketplace are well equipped to balance and weigh the subtle economic and technical trade-offs between competing systems required in any system selection process. The NBC Television Network Affiliates submitted that an open market approach to the development of teletext would allow service providers, primiarly local television broadcasters, to apply the necessary discretion and expertise to utilize a service best suited to their needs and those of the public they serve. The Satellite Television Corporation also was concerned that teletext might be frozen at its current stage of development if a single system were to be adopted.

16. Another factor cited by several parties as a reason for supporting the open market proposal is the delay in initiation of service that would attend a proceeding to set standards. Zenith stated that while it believes a technical standard usually is desirable for major broadcast services, a number of considerations in the teletext area reduce the likelihood of establishing a single system standard at the outset. It stated that it would take a number of years to resolve pertinent issues and to conduct an associated rule making proceeding. Koplar Communications, the United Kingdom Teletext Industry Group, and others took similar positions. They also pointed out that a delay in authorization could result in very real competitive harm to broadcasters because cable and telephone systems are now implementing, or have plans to implement, teletext and videotex services in the open market, uninhibited by any regulatory proceeding or mandated standards.

17. The single system proponents supported the points brought out in comments on the two petitions for rule making filed by CBS and the United Kingdom Teletext Industry Group prior to issuance of the *Notice*. CBS, the most vigorous proponent of a single system, stated in its petition for reconsideration that, without a single system standard, teletext development would be slowed to such an extent that its ability to exist in a form that will serve the public in a useful manner would be impaired. It asserted that without such a standard: (1) receiver manufacturers would be hesitant to manufacture receivers containing teletext decoders; and (2) television stations would be reluctant to invest in teletext equipment and to commit resources to initiating and sustaining a teletext service. It also asserted that users would be unwilling to purchase several decoders to view the teletext transmissions of all broadcasters in a single market. Moreover, CBS claimed that a single system standard would hasten and intensify competition among licensees and networks willing to provide teletext service and would eliminate the unnecessary waste of resources caused by obsolescence. CBS stated that the Commission should adopt the North American Broadcast Teletext Specification as the standard for the United States. Positions similar to that of CBS also were presented by the Community Telecasters of Southern California, the National Association of Public Television Stations, Telidon Videotex System, Inc., and others. The NAB supported the adoption of a single system but did not take a position on which one should be chosen.

18. In reply comments, PBS responded to Satellite Television Corporation's concern that a standard system might freeze technology at its current level of development. Specifically, PBS suggested that there be a special provision in the rules to allow teletext operation using other systems upon application to the Commission.

19. The WGBH Educational Foundation was concerned about teletext service for the hearing-impaired. It stated that adoption of a teletext standard would be a step toward resolving present uncertainties in the deaf community and the closed captioning industry as to the future of the line 21 system. WGBH submitted that the disappointing sales of line 21 decoders have given rise to concern that the line 21 system may not be viable. It argued that, if closed captioning is to continue to be viable, it must be incorporated into a versatile and widely available standard teletext service.

20. *VBI Lines for Teletext Use*—The technical rules proposed in the *Notice* included authorization for specific lines in the VBI and interference-related technical parameters. The intent of these specifications was to define the segments of the VBI where teletext could be transmitted and to ensure that teletext would not produce interference to other radio communications services.

21. The Commission proposed to allow teletex on lines 14–18, 20 and 21 of the VBI upon adoption of the rules and to phase in authorization for lines 10–13 according to a pre-set schedule. It also emphasized that this proposal was merely to authorize use of these lines, and that the lines would not be reserved exclusively for teletext. Finally, it stated that this policy of non-reservation would allow new uses and services for the VBI to be considered without prejudice to the existing teletext authorization.

22. The majority of commenters supported the authorization of VBI lines as proposed. However, Springfield Television Corporation and Antiope and Telematics Corporation took issue with the plan to refrain from reserving lines for the exclusive use of teletext. Springfield was concerned that the

[5] The open market advocates were: Zenith Radio Corporation, Koplar Communications, Inc., United Kingdom Teletext Industry Group, Subscription Television Association, American Newspaper Publishers Association, the University of Wisconsin, Bonneville International Corp., RBC Communications, American Society of Travel Agents, Association of Maximum Service Telecasters, Inc., Field Communications Corp., Satellite Television Corp., NBC Television Network Affiliates, and Springfield Television Corp. The single system proponents were: Time, Inc., Times-Mirror Videotex Services, Inc., National Association of Public Television Stations, Telidon Videotex Systems, Inc., WGBH Educational Foundation, National Association of Broadcasters, PBS, Tribune Company Broadcasting, Inc., ABC, NBC, CBS, Marshall Wick, Antiope and Telematics Corporation, and Community Telecasters of Southern California.

development of teletext would be impeded unless lines are exclusively reserved for teletext. It recommended that the Commission initiate action to make line 19 (currently reserved for the Vertical Interval Reference Signals (VIRS)) available exclusively for teletext. The Cognitive Science Laboratory recommended that lines 10–13 be reserved for future technologies that could make new aural and visual service available for handicapped persons.

23. *Teletext and the Line 21 System for Closed Captions*—The majority of the thirteen formal respondents who addressed the proposed authorization of teletext on Line 21 expressed concern that such action would have an adverse effect on closed caption services and asked the Commission to protect the line 21 caption system.[6] [7] They contended that the nonprofit caption service would be placed in direct competition with commercial, profit oriented teletext service. Under these circumstances, they stated that market forces could be expected to give insufficient, if any, consideration to the needs of the hearing-impaired. They further stated that existing telecaption decoders would become obsolete if captions were transmitted on teletext and not on the line 21 system, and that therefore the utility of the substantial investment that has been made in line 21 system equipment would be lost. Moreover, they asserted that teletext would not be able to provide service similar to that on the system now in place at any time in the foreseeable future. PBS, the National Captioning Institute, and ABC also disputed the Commission's statement in the *Notice* that it appears that teletext has the capability of providing caption services that are superior in many respects to those of the line 21 system. These respondents recommended that: (1) line 21 be reserved for the existing caption system; (2) captions transmitted on teletext be simultaneously transmitted on line 21 [8]; and (3) cable systems not be permitted to delete or replace either teletext or line 21 captions. It was claimed that these measures also would allow for a gradual, non-disruptive transition to teletext-based captions in the future, if that is where technology and the market ultimately take this service.

24. On the other side of this issue, Antiope, NBC, and the WGBH Educational Foundation contended that the line 21 caption system doe not appear to be viable and that teletext authorization would be a step toward resolving uncertainties in the deaf community and the captioning industry with respect to the line 21 system. All three of these parties pointed to the low volume of decoder sales as evidence of the failure of this system to achieve market acceptance. The relatively high price of telecaption decoders was cited as the cause of the problems. Marshall Wick, who supported the more moderate approach of reserving line 21 for captions only for the time being, submitted that the survival of closed caption service may depend on teletext, as high volume sales are expected to bring the incremental cost of a teletext equipped receiver down to the range of $25 to $50.

25. *Technical Rules for Operation*—On the subject of interference standards, the majority of those who discussed this issue stated that they believed the proposed rules were adequate, but did not offer any technical elaboration or evidence to support their opinion. CBS provided the most extensive discussion of interference related standards. CBS stated that the proposal that a teletext signal subject no more than one percent of the total receiver population to interference, when coupled with the KCET visibility test, is a reasonable criterion to ensure that teletext would not interfere with regular broadcast operations.[9] CBS estimated that the design costs to incorporate the retrace circuitry necessary to eliminate totally the visibility problem in future receivers would be minimal. RCA submitted that it has conducted initial tests using simulated teletext signals and has found visible interference from signals on lines prior to line 15 at the proposed maximum IRE level. Based on these results, RCA suggested that the Commission defer any action on teletext authorization for six months to allow a more complete series of tests to be conducted.

26. CBS recommended that a single data rate be specified and that an optimal choice would be 5.7272 Mbits/sec. This would provide a high data rate without straining the teletext system. CBS also stated that the 5.7272 Mbits/sec. data rate would have the added advantage of bearing a specific relationship to the color subcarrier frequency. Antiope also recommended the 5.7272 Mbits/sec. rate and contended that authorization of two or more alternative data rates would complicate decoder circuitry and possibly cause degradation through mutual interference. PBS stated that it believes the Commission should set a single rate, as multiple rates would drive up decoder costs. It did not support a specific data rate but instead suggested relying on the results of studies by the EIA to determine an appropriate standard.

27. CBS recommended a pulse amplitude standard of 70 IRE units as a good compromise between a strong signal for decoder operation and interference considerations. Antiope joined in this position. PBS preferred lowering the proposed standard from 100 to 80 IRE units. It stated that higher signal levels likely would cause audio buzz.[10]

28. On the question of pulse shaping, CBS supported the Commission's proposal that "data pulses shall be shaped to limit spectral energy to the nominal video baseband." Antiope suggested that the raised cosine 100 percent roll-off pulse shape may be ideal for teletext, but that it had no objection to the proposed rule that would permit this as well other pulse shapes.

29. Following the suggestions of CBS and the United Kingdom Teletext Industry Group as set forth in their respective petitions for rule making, the Commission proposed to allow the use of an adaptive equalizer pulse to provide a reference signal for a device to compensate for multipath reflections. The specific proposal was to permit such pulses on any of the VBI lines authorized for teletext. In its petition for rule making, CBS mentioned including the reference signal in a portion of the vertical synchronization wave form (lines 1–9) as an alternative suggestion.

30. Four of the five parties responding to this question supported the proposal to authorize transmission of reference pulses. Community Telecasters of Southern California, Time, Inc., and Springfield Television Corporation all stated that the pulses should be transmitted in the vertical synchronizing

[6] See Section 73.682(a)(22)(i) of the Commission's Rules.

[7] The parties that commented on this issue were: Antiope and Telematics Corporation, Gallaudet College, American Speech-Language-Hearing Association, Alexander Graham Bell Association for the Deaf, United Kingdom Teletext Industry Group, National Association of Public Television Stations, WGBH Educational Foundation, NAB PBS, National Captioning Institute, ABC, NBC, and the Corporation for Public Broadcasting. In addition, on March 8, 1982, the Commission received a letter signed by 26 United States Senators urging the preservation of the line 21 caption system.

[8] In its petition for rule making (RM–3676), the United Kingdom Teletext Industry Group submitted that it has developed a device to translate British system captions to the line 21 system.

[9] KCET Teletext Project, "The Viewer's Perception of Teletext Transmissions on lines 10–14 of the Vertical Blanking Interval," (Los Angeles), July 16, 1980.

[10] There have been some reports from the EIA studies and the field tests conducted on several stations of minor interference, mainly of an audio buzz nature, where high signal levels were used for teletext or where teletext was transmitted concurrent with line 21 captions.

wave form to conserve spectrum. Zenith supported authorization of these signals on lines 10–13 and stated that the pulses would be of such short duration that they would not produce noticeable interference on existing receivers. Antiope was the only party to object to this proposal. It asserted that the use of an active equalizer pulse on any of the VBI lines would foreclose use of a line that might otherwise be employed for improved spectrum use. Antiope also submitted that Philips Corp. currently has a chip in development that can equalize a signal without special pulses using the transmitted data as a reference point. Thus, Antiope stated that an additional reference pulse is not necessary to reduce multipath-induced errors.

31. In the *Notice*, the Commission recognized the likelihood that equipment manufacturers would develop and market external decoders that could be attached to existing receivers to enable them to display teletext. Comments were requested as to whether such devices should be treated as a TV Interface Device, formerly Class I TV Device, under part 15 of the Rules or as a receiver under Part 15, Subpart C.[11] In response to this issue, Zenith and Community Telecasters of Southern California stated that to the extent that teletext decoders suppy a modulated RF signal to the terminals of a television receiver, such decoders should be considered TV Interface Devices. Zenith expressed concern that external decoders might be treated as TV receivers subject to the All Channel Receiver Act and offered the opinion that such treatment would be unnecessary if teletext is authorized as an ancillary service. Time, Inc. recommended that the Commission provide for implementation of text decoders as part of multi-function devices.

32. The Commission also proposed that when teletext is used to provide a captioning service, the captioning service should give way to visual emergency messages. This requirement currently exists for line 21 captioning services in Section 73.1250 of the Rules. With the exception of Springfield Television Corporation, which objects only to the principle of such a rule, all of the respondents who addressed this issue indicated that they supported the proposed extension of this rule to teletext.

33. *Teletext and Cable Carriage Issues*—The Commission did not make any specific proposals with respect to cable carriage of teletext signals. Instead, information was requested with regard to several questions concerning the possibility of permitting cable systems to delete or replace a broadcast station's teletext signals and the technical aspects of cable retransmission of teletext.

34. Twenty-four parties submitted information and opinions on this subject.[12] The central issue discussed was whether cable systems should be required to retransmit the teletext signals of broadcast stations they carry. Nineteen respondents favored some form of mandatory retransmission requirement. However, five respondents not only opposed such a policy, they also contended that cable systems should be allowed to strip off a station's teletext signal and replace it with material from other sources. In general, those associated with the broadcast industry favored mandatory carriage, while those involved with the cable industry opposed it.

35. Supporters of mandatory carriage focused on the following points: (1) the viability of teletext requires full access to its potential audience; (2) the vertical blanking interval should remain under the control of the station licensee; and (3) cable viewers might lose access to program-related teletext such as closed captions if cable carriage were not mandatory. On the viability point, the Tribune Company Broadcasters asserted that the proportion of households subscribing to cable service is growing each year. Tribune submitted that if cable operators are permitted to delete or replace the television VBI, stations could lose a substantial portion of their potential teletext audience. Tribune also contended that given the option to carry or not carry teletext, a cable system would choose to delete it because broadcast data services would compete directly with any teletext or videotex services that the cable system offered.

36. NBC, CBS, the Association of Maximum Service Telecasters, and several others asserted that teletext should be treated as an integral part of the television signal. They also generally argued for retransmission of the teletext signals of all cable-carried television stations, regardless of whether they are provided on a "must carry" or optional basis. Cox Broadcasting submitted that as an application of the licensee control principle, the Commission should not permit cable systems to delete or replace the signals of "must carry" stations. Cox and other parties emphasized that they considered mandatory teletext carriage especially important in the case of "must carry" stations because of the local service nature of teletext on these stations.

37. Several respondents representing the interests of the hearing-impaired were concerned that closed caption program material may be deleted if cable carriage of teletext is not made mandatory. The WGBH Educational Foundation stated that program-related teletext data should be considered an element of a station's main program service and therefore should be required carriage on cable systems. This position was echoed by the National Captioning Institute, the National Association for the Deaf, and others.

38. Finally, the NAB submitted that the *WGN* decision requires a determination, on a program-by-program basis, as to whether teletext is separable from regular programming, insofar as copyright law is concerned.[13] It stated that such determinations would be prohibitively costly. Therefore the *WGN* decision is unworkable in this context. The NAB asserted that requiring cable retransmission of all teletext signals of carried stations would remedy this problem. Cox Broadcasting stated that a rule prohibiting cable systems from deleting teletext would not be inconsistent with *WGN*. It submitted that the court expressly limited its decision to the copyright questions presented and disclaimed adjudication of WGN's equitable and property rights.

39. Supporters of the cable industry position opposed any rules that would restrict cable systems from deleting broadcast station's teletext and/or replacing it with material from another source. They asserted that there are sound legal, policy, practical, and technical reasons why cable carriage of teletext should not be mandatory. The

[11] In Docket 79-244, the rules regulating a Class I TV Device were replaced with new rules that renamed this kind of equipment a "TV Interface Device," revised the technical standards and changed the equipment approval requirement from type approval to certification. The *Report and Order* in this proceeding was adopted February 9, 1983 (48 FR 13029, published March 29, 1983).

[12] Parties responding to this subject included: Community Telecasters of Southern California, Time, Inc., Zenith Radio Corporation, Koplar Communications, Inc., National Association of Public Television Stations, University of Wisconsin, WGBH Educational Foundation, NAB, RBC Communications, PBS, Tribune Company Broadcasting, Inc., ABC, NBC, Association of Maximum Service Telecasters, Cox Broadcasting Corporation, Golden West Broadcasters, Storer Broadcasting Corporation, CBS, Springfield Television Corporation, NCTA, Marshall Wick, Joint Cable Systems, MultiVisions, Ltd., and the National Captioning Institute.

[13] *See WGN Continental Broadcasting Co. v. United Video, Inc.*, 523 F. Supp. 403 (1981), *Rev'd and remanded*, 685 F. 2d 218 (7th Cir. 1982), pet. for rehearing den'd, 693 F. 2d 628 (7th Cir. 1982).

legal and policy reasons were based on the premise that, as an ancillary service, teletext need not be used to address the problems, needs, and interests of society. The National Cable Television Association (NCTA) stated that, given this deregulatory environment, teletext would lack attributes that might otherwise entitle it to carriage by cable systems. In this context, NCTA submitted that the purpose of the mandatory signal carriage rules is to protect the viability of local television program service. It pointed out that carriage of other broadcast television services such as subscription television and low power stations is not required. NCTA also contended that exclusion of teletext from the mandatory signal carriage rules would not necessarily preclude delivery of teletext to cable subscribers. Instead, it would permit cable operators to exercise discretion in selecting services for subscribers. Further, several cable systems in "Joint Comments" asserted that the Commission does not have the authority to require cable systems to carry teletext if it is considered an ancillary service. They also asserted that mandatory carriage would violate cable systems' rights under both the First and Fifth Amendments to the Constitution.

40. On other matters, commenting parties on both sides of the teletext cable issue agreed that there are likely to be technical problems in retransmitting teletext through the equipment of some cable systems. Although no comprehensive research studies were available, the consensus of CBS, NCTA and several others was that the main difficulty arises in the capability of head-end processors to pass on teletext signals without degradation. NCTA stated that certain models appear to pass along teletext signals without degradation, while others either partially degrade the signals or block them altogether. It concluded that many cable systems would need to modify or possibly even replace head-end processors to retransmit teletext. CBS, which favored mandatory carriage, asserted that relatively new systems can handle high data rates, so that the retransmission problem is limited mainly to older systems. CBS stated that modification of the head-end processors of newer systems could be accomplished at minimal cost to the cable operator.[14] CBS also stated that reflections in a cable distribution facility and interchannel interference are not likely to pose any significant problems for teletext carriage. NCTA reserved its position on these two aspects, stating that they are areas in which little testing has been done. ABC suggested that the technical problems of retransmission could be addressed by a provision in the rules to allow teletext to be deleted upon submission of a statement of technical difficulties and information that establishes that there is no other reasonable way to avoid interference.

Discussion

41. After carefully examining the numerous submissions in this proceeding, the Commission has decided to authorize teletext service and to regulate it under the open market approach as proposed in the *Notice*. Thus, the rules we are adopting authorize licensees of both full service and low power television stations: (1) to operate teletext services and (2) to choose both the kinds of service to offer and the technical systems for transmitting the data signals.[15] The only major limiting factor in the authorization is that teletext operations must not interfere with the regular broadcast service of the originating station, the signals of other broadcast stations, or the signals of non-broadcast radio stations.

Authorization of Teletext Service

42. *Reasons for Authorizing Teletext Service*—We have concluded, as have all commenters, that authorization of teletext service is in the public interest. In this regard, the record in this proceeding clearly establishes that teletext offers opportunities for substantial enhancement of service in the public interest through its capabilities for enlarging and diversifying the operations of television stations as well as enhancing the means by which individuals can secure communication services they seek. The many variations of consumer and business-oriented applications of teletext attest to the value of this medium for encouraging new kinds of services. It also is apparent from the unanimous support for authorization in the comments and the high level of developmental activity in both the service provision and equipment manufacturing sectors of the industry that there is significant and substantial interest in implementing teletext service. The Commission also feels that teletext authorization would increase the efficiency of broadcast television spectrum use.

43. The record also indicates that teletext transmissions are technically compatible with existing broadcast television transmission standards. The experience from the various field trials on licensed stations shows that useable teletext signals can be transmitted on the VBI without degrading the quality or reception of the main television program signal or producing interference to other stations. Thus, teletext authorization will permit a significant expansion of broadcasters' capabilities for transmitting information with virtually no adverse effect on other existing services.

44. *Types of Teletext Services To Be Permitted and Franchise/Lease Arrangements*—In order to provide authority for the widest possible range of individual applications and services, the Commission is defining teletext only in general terms. Because teletext generally is understood to be a visual display medium, we believe it is appropriate to follow the proposal in the *Notice* and define it as a data system for the transmission of textual and graphic information intended for display on viewing screens.[16] In this regard, teletext data may be related to or associated with a station's normal programming or it may address subjects wholly unrelated to broadcast programs or activities. In this latter regard, we are making appropriate changes to Part 2 of the rules to permit teletext message services that are of a point-to-point or point-to-multipoint nature. We also believe it appropriate to expand the teletext definition to include data that is useful to widen and enhance the utility and service of teletext information, even though this latter data is not necessarily intended for display. Such non-display data must be directly related either to some feature to enhance the utility of the display function or to control equipment designed for secondary use of the display data. This expanded definition will permit coded data and presentation instructions for virtually

[14] CBS stated that cable head-end processors are designed to transmit a television broadcast signal meeting the minimum transmission standards of Section 73.687 of the Rules. It noted that head-ends are not designed to carry the Idealized Picture Transmission Amplitude Characteristic of Section 73.699, Figure 5 of the Rules. Therefore, the design of the video bandpass filter in such processors might not accommodate teletext signals. CBS submitted that equipment designed or modified to be compatible with the idealized amplitude characteristic should be capable of transmitting teletext.

[15] On August 18, 1982 the Commission received a petition for rule making from the *Loudon Times-Mirror* requesting that low power television stations be allowed to transmit teletext. Because the authorization we are adopting applies to both full service and low power stations the request in this petition is completely encompassed in this proceeding. *The Loudon Times-Mirror* petition will therefore be treated as comments.

[16] *See, Notice, supra* at para. 30.

any image pattern a licensee may wish to transmit and for operation of audible signals to attract a user's attention to specific information presented through the display function. In addition, it will provide for special instructions for controlling equipment that is peripheral to the viewing screen and for reformatting teletext data for storage on a secondary device. Specific examples of functions that can be initiated by such instructions include control of printers for hard copy items, such as reports and coupons, and data storage devices for subsequent use of the teletext data.[17] We believe that extending the teletext definition to allow transmission of codes to enhance use of the display data is consistent with the overall concept of teletext as discussed in the *Notice* and will significantly increase the range of benefits that can be obtained from teletext services.

45. Consistent with the above, stations will be permitted to engage in service to the public at large, limited segments of the public with special interests, individual firms, organizations, and persons. The authorization allows business and subscription operation as well as conventional advertiser supported service for the general public. This broad authorization will allow licensees to realize the most efficient and effective use of teletext, while imposing the least amount of governmental regulation. However, as discussed *infra*, some particular services may be subject to common carrier regulation.

46. The Commission recognizes that some stations might wish to operate their teletext service on a franchise basis or to lease space to multiple users. While such arrangements will be permitted under the new rules, licensees are advised that they remain responsible for all broadcast related teletext provided via their station's facilities, whether produced in-house or obtained from outside sources. In this context, it is emphasized that the Commission considers teletext to be an ancillary service of broadcasters. Therefore, as discussed *infra*, teletext will be regulated generally as an ancillary broadcast service under Part 73 of the Commission's rules. Point-to-point and point-to-multipoint teletext activities will be regulated according to the appropriate private radio or common carrier regulatory structure and rules.

47. Finally, stations will be permitted to intitiate or terminate service at their discretion without notifying the Commission.[18] Similarly, there will be no requirement for maintaining teletext program logs. While such requirements have been made a part of other subsidiary authorizations in the past, there is no indication that such record keeping and reporting requirements are necessary in the case of teletext.[19]

48. There are several reasons why the Commission has decided to use the open regulatory approach described above. First, there are many potential uses for teletext, and the different applications tend to be divergent in nature and, in some cases, with respect to technical requirements. Second, while very little is known about the market for teletext services, it is clear that the demand for its services will not be homogeneous. Based upon previous trials and tests of teletext, it appears that the need for and importance of the various applications are likely to vary across different markets and user groups. For example, it may develop that the demand in a single television market might be such that one station would focus on an advertiser-supported consumer oriented service. A second station might offer a restricted access subscriber service, while a third might provide a business data service. It is even possible that a single station would choose to offer more than one type of service, either at different times or concurrently, using different VBI lines or some other multiplexing technique. Third, the pattern of demand for service surely will shift over time as user interests change and new types of services are conceived and implemented. Market forces can be expected to provide amounts and types of service that are responsive to users' willingness and ability to pay for them. Thus, the open market approach provides a system for resolving trade-offs among various services and different technical systems' characteristics and prices.

49. Moreover, it would be very costly and difficult for the government to attempt to develop and apply specific performance regulations and standards to meet the wide variety and changing needs of teletext service. There also would be considerable risk that the results of such efforts would not provide an optimal policy solution. However, the open market approach offers features that allow it to provide for the needs of users with a minimum of involvement by the government. Its primary advantage stems from the fact that it relies on the forces of competition to direct the production and employment of resources to meet diverse user needs and preferences. Market forces can be expected to provide the amounts and types of service that are responsive to users' willingness and ability to pay for them.

50. *Teletext Authority for Public Broadcasting Stations*—In keeping with our efforts to identify and provide alternative sources for financing the operation of public television stations and our generally open approach to teletext, we are authorizing public television stations to engage in teletext services and to offer such services on a profit-making basis. Public stations are permitted the same discretion with respect to services and technical systems as commercial stations.

51. This action also reflects recent shifts in policy toward public broadcasting that have been enacted by Congress. It is clear from the Public Broadcasting Amendments Act of 1981 that Congress does intend, and expect, public television stations to provide more of their own support. In fact, the 1981 Amendments Act was enacted in large measure to make it easier for public stations to independently increase their revenue base. *See* Public Broadcasting Amendments Act of 1981, Pub. L. 97-35, 97th Cong., 1st Session.

52. We believe that authorization of profit-oriented teletext service by public broadcasters is consistent with the applicable statutory requirements and authorizations. The Act's only pertinent restriction is that any offering of services for remuneration "shall not interfere with the provision of public telecommunications services * * *"[20] After studying the 1981 Amendments and the accompanying legislative

---

[17] The teletext definition adopted herein will not permit the transmission of software to allow the user to manipulate interactively images or data that are in an intermediate form not to be decoded directly for viewing. This includes material such as video games, computational routines and other data intended for manipulation of data to dynamically revise or originate new information, and new data intended for input to some other processing system. The Commission believes that to expand the definition to allow this kind of data could or would be to permit transmission of material that cannot be properly termed teletext, even though it may be transmitted using teletext technology. However, we are considering the initiation of a separate rulemaking proceeding with regard to these potential uses of the VBI.

[18] However, initiation or termination of common carrier services rendered via teletext may require administrative action. *See* paras. 66, 68, *infra*. Similarly, initiation of private carrier service requires prior notice and certification to the Commission. *See* paras. 67-68, *infra*.

[19] The Commission's rules currently require licensees of FM radio stations to make formal application for a Subsidiary Communications Authorization (SCA) and to keep logs for SCA operations (Sections 73.293 and 73.295(e) of the Commission's Rules). The *Notice of Proposed Rule Making* recently adopted in BC Docket 82-536 examines the possibility of changing or deleting these and other rules relating to FM SCA's.

[20] *See* Section 399B of the Communications Act of 1934, as amended (47 USC § 399(b)).

history, the Commission is of the opinion that remunerative teletext activities would not constitute such interference. There is nothing in the Act to indicate that Congress intended to prohibit public broadcasters from offering such enhanced services.

53. *Teletext as an Ancillary Service*—Generally, teletext is expected to provide services that are ancillary to the regular broadcast audio-visual program service of television stations. As an ancillary activity, teletext will not be required to further or promote a station's performance with respect to its public service obligation as it relates to programming.

54. Although the comments supported our proposal in the *Notice* that the political broadcasting requirements in section 312(a)(7) and 315 of the Act should not apply to teletext, several respondents requested that we further explain the legal basis for our conclusion. As discussed below, we have concluded that, as a matter of law, these sections need not be applied to teletext service. Further, because of teletext's unique characteristics as a print medium and an ancillary service of broadcasting, we think application of these provisions to teletext is both unnecessary and unwise as a matter of policy.[21]

55. Section 312(a)(7) requires licensees to "allow reasonable access for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy." 47 U.S.C. § 312(a)(7). We believe the statutory requirement of affording reasonable access is adequately satisfied by permitting federal candidates access to a licensee's regular broadcast operation; it does not require access to ancillary or subsidiary service offerings like teletext. This conclusion is consistent with our previous determinations regarding the applicability of Section 312(a)(7) to other variant broadcast services, such as subscription television services. *Commission Policy in Enforcing Section 312(a)(7) of the Communications Act*, 68 F.C.C. 2d 1079, 1093 (1978). In that proceeding we held that it would ordinarily be unreasonable for a licensee to deny access to its prime time audience, 68 F.C.C. at 1090, because "prime time generally is the period of maximum audience potential." *Id.* at 1093. However, we noted that

> Those stations engaged in STV would have their periods of maximum audience potential outside of normal prime time viewing periods. Therefore, we do not believe that reasonable access requires STV stations to make available to Federal candidates those periods of time in which they are engaged in STV programming.

Id. Similarly, because of their ancillary nature, teletext offerings will not provide a candidate access to the broad television audience attracted to the station's regular broadcast operation. *See also Greater Washington Educational Telecommunications Association, Inc.*, 48 F.C.C. 2d 948 (1974) (Fairness Doctrine and Section 315 not applicable to FM SCA operations). Accordingly, we perceive no legal requirement that licensees grant federal candidates access to their teletext service offerings.

56. We also conclude that Section 315 is not applicable to teletext offerings. The equal opportunity requirement in Section 315 is triggered by a broadcast "use" by a candidate.[22] The term "use" is defined as a personal appearance by a legally qualified candidate by voice or picture. *Law of Political Broadcasting and Cablecasting*, 69 F.C.C. 2d 2209, 2218, 2240 (1978). Teletext, however, is inherently not a medium by which a candidate can make a personal appearance. It is designed to provide only printed words and graphics and thus does not allow a candidate to deliver a personal message to the public. Moreover, as discussed more fully below, teletext transmissions, given their dissimilarity to traditional broadcast programming, are likely to be utilized and regarded differently by those accessing them and thus are not susceptible to whatever potential abuse of broadcast facilities that Congress sought to forestall in enacting the equal opportunities provision *See Felix v. Westinghouse Radio Stations*, 186 F. 2d 1 (3rd Cir. 1950.) Accordingly, because the problem envisioned by Congress will not arise in teletext services, and because of the fundamental dissimilarity between teletext and the types of broadcast "uses" envisioned by Congress in Section 315, we also conclude that the equal opportunities requirement need not be applied to teletext services.

57. In 1959, Congress amended Section 315(a) to exclude certain types of news programming from the "equal opportunities" requirement, and, in doing so, added language recognizing the Commission's Fairness Doctrine policy.[23] In our view, Congress' purpose in adding this language was solely to ratify the Commission's then-existing policy concerning application of the Fairness Doctrine to news broadcasts. *See, e.g., Red Lion Broadcasting* v. *FCC*, 395 U.S. 367, 385 (1969). The Senate report specifically states that Congress' action exempting news programming from equal opportunities obligations does not diminish or affect in any way Federal Communications Commission policy or existing law . . ." Senate Rep. No. 562, 86th Cong. 1st Sess. 13 (1959).

58. By simply ratifying the FCC's Fairness Doctrine policies in 1959, Congress did not require nor prohibit possible extensions of that policy in the future. *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 385 (1969). Therefore, the 1959 legislative enactment concerning the Fairness Doctrine in Section 315 does not mandate extension of the Fairness Doctrine to new services like teletext, which did not even exist at the time when Congress acted. Rather, any determination concerning this question is one which has been entrusted to our sound judgment and discretion in the first instance.[24] Indeed, in light of the important First Amendment considerations raised by application of the Fairness Doctrine to new communications services, we are reluctant to extend these policies unless we find there is a compelling reason to do so. "Only when the interests of the public are found to outweigh the private journalistic interests of the broadcasters will government power be asserted within the framework of the Act." *CBS* v. *DNC* 412 U.S. 94, 110 (1973).

---

[21] Of course, to the extent that teletext is provided on a common carrier basis, we believe that these statutory provisions are inapplicable for other reasons as well. *See Report and Order on Interim Direct Broadcast Satellite Service*, 90 FCC 2d 676 (1982). Similarly, subscription teletext services may be classed as a "hybrid" point to point service outside the true broadcast mode, and, hence, not subjected to these statutory requirements. *See also WTFL Broadcasting Educational Telecommunications Association, Inc.*, 49 F.C.C. 2d 948 (1974).

[22] That provision states, in pertinent part, that: If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station. . . .

It applies "only to the personal use of radio facilities by the candidates themselves." and not to such use by a candidate's supporters. *Felix v. Westinghouse Radio Station*, 186 F. 2d 1, 5 (3rd Cir. 1950), *Cert. denied*, 341 U.S. 909 (1951).

[23] The relevant language provides that: Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with presentation of newscasts, news, interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this chapter to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

[24] We reach the same conclusion even if we assume, *Arguendo*, that the 1959 amendment functioned to incorporate the Fairness Doctrine as a statutory requirement since, regardless of how Congress' action is characterized, it seems clear that novel services such as teletext were beyond its scope.

59. After careful consideration of this question, we conclude that the Fairness Doctrine should not be applied to teletext services. Our determination stems primarily from a recognition that teletext's unique blending of the print medium with radio technology fundamentally distinguishes it from traditional broadcast programming. The special First Amendment treatment accorded to broadcasting under existing law is based largely upon a premise that the limited number of broadcast frequencies justifies curtailing the First Amendment rights of broadcasters in order to accommodate the parallel rights of viewers and listeners. *Red Lion, supra,* 395 U.S. at 390. Implicit in the "scarcity" rationale, however, is an assumption that broadcasters, through their access to the radio spectrum, possess a power to communicate ideas through sound and visual images in a manner that is significantly different from traditional avenues of communication because of the immediacy of the medium. Whether or not this assumption constitutes a sufficient basis for circumscribing the first amendment rights of those engaged in broadcasting, at a minimum, it is not apparent that similar reasoning should apply to teletext service. Indeed, it seems probable that teletext—a textual means of communication primarily not employing sound and pictures—more closely resembles, and will largely compete with, other print communication media such as newspapers and magazines. This assumption is amply borne out by the many comments in this proceeding suggesting that teletext will be used for providing services such as the direct video delivery of newspapers and magazines to homes. In this arena of competition, which includes all other sources of print material to which the public has access, we are not persuaded that teletext must be accorded special First Amendment treatment in order to protect the public's right of access to conflicting views on issues of public importance. To justify that result would require a substantial showing that teletext, solely because it utilizes a different method of delivery to readers, is likely to overshadow all other print sources of information. No basis exists in this record for such a finding. Indeed, it seems equally plausible that teletext may suffer inherent disadvantages in terms of format and convenience to readers that outweigh any benefits afforded by its different method of delivery.

60. Furthermore, we believe it would be undesirable for other reasons to extend these doctrines to teletext. As noted previously, it is widely believed that teletext may be used to provide an alternative method for the delivery of newspapers and other print media to consumers. However, many commenters have questioned whether such services would ever be economically viable if licensees are burdened with Fairness Doctrine obligations. We are persuaded that the likelihood of licensees' embarking upon these types of endeavors will be substantially affected by our determination to apply, or not apply, traditional broadcast policies like the Fairness Doctrine. We have no desire to block from the outset full development of this promising new service by the unreflective application of requirements that appear fundamentally unsuitable and which are not legally required. Such a course would be inconsistent with our statutory responsibility to promulgate policies that are responsive to the characteristics of new communications services so as to encourage, not frustrate, their development. 47 U.S.C. §§ 151, 303(g). Consequently, we believe the public interest is better served by not subjecting teletext to Fairness Doctrine obligations.

Regulatory Status of Teletext Services

61. As discussed above, teletext is being authorized for a wide range of services, most of which bear little, if any, relationship to the traditional forms of broadcasting. As ancillary activities, such services would not materially conflict with use of the television frequencies for the normal broadcast purposes to which their allocation is intended. However, circumstances could arise under which teletext service might take on characteristics of either communications common carriers or private carriers. For example, teletext might be used for some form of common carrier visual alert (*e.g.*, console display, not paging) or notification service (*e.g.*, electronic messages and/or mail).[35] Other forms of teletext, such as business data services, could involve only the provision of transmission facilities and, depending on how they were offered, might be similar to private carrier radio systems. Therefore, the teletext rules include provisions for applying the appropriate type of regulations to any private or common carrier teletext services.[36]

62. In *National Association of Regulatory Utility Commissioners* v. *F.C.C.* ("*NARUC I*"), the Court specifically stated that a carrier will not be considered a common carrier where its practice is to make individualized decisions, in particular cases, whether and on what terms to deal. 525 F. 2d 630 at 641 (D.C. Cir. 1976), *cert. denied,* 425 U.S. 922 (1976). The Court stressed that a company's clientele was not necessarily dispositive of the issue since common carriers in particular situations need not serve the entire public and private carriers may serve a significant portion of the population. The Court then reasoned that:

> "Since given private and common carriers may therefore be indistinguishable in terms of the clientele actually served, it is difficult to envision a sensible line between them which does not turn on the manner and terms by which they approach and deal with their customers." *Id.* at 642.

Assuming that no legal compulsion is present that requires an entity to offer its services on an indiscriminate basis, the court indicated that a finding of common carrier status would turn on whether a particular entity actually operates as a common carrier, that is, whether the carrier "undertakes to carry for all people indifferently."

63. The court then listed several factors indicative of whether the service offerings of a particular carrier could indeed be classified as common carriage. The establishment of medium-to-long contractual relationships with customers was considered inconsistent with the concept of an indifferent holding out. The court stated that a private carrier could be expected to serve a relatively stable clientele, with terminations and new clients the exception rather than the rule. Not holding out facilities indifferently would mean that the service provider would desire and expect to negotiate with and select future clients on a highly individualized basis. We note, in this connection, that the existing demands for a licensee's spectrum and the licensee's methods of operation may be sound bases for accepting or rejecting an applicant. Thus, a licensee's use of the facilities may make an indifferent holding out inherently impractical or impossible. Such activity would

[35] It appears that paging service, including conventional tone or tone and voice based paging, may be a potential VBI use. Since paging was beyond the scope of the *Notice*, we will issue a *Further Notice of Proposed Rulemaking* to explore such uses in the near future.

[36] To the extent, of course, that teletext services are offered in a broadcast mode, no novel questions of regulatory classification arise. Such services will be regulated consistent with our established treatment of ancillary services of a broadcast nature such as broadcast-related FM subcarriers (e.g., functional music).

necessarily preclude common carrier classification. 525 F. 2d at 643. Nonetheless, as the court noted in *NARUC I*, if a particular service provider behaves like a common carrier, common carrier regulations should be applied. Accordingly, with the exception of mobile radio services as noted below, whether common carrier obligations attach to teletext service that merely involves provision of transmission facilities will be determined by the manner in which the licensee conducts its business.

64. With regard to land mobile services, the Communications Amendments Act of 1982, Section 120, establishes a demarcation between private and common carrier land mobile services, and indicates that the test contained in the new Section 331(c) of the Communications Act is intended to supersede the *NARUC I* standard. Public Law No. 97-259, 96 Stat. 1087. The Act defines a "Mobile Service" as "* * * a radio communication service carried on between mobile stations or receivers and land stations, * * *, and includes both one-way and two-way radio communication services." Public Law 97-259 at Section 120(b)(2), 96 Stat. 1097, 47 U.S.C. 153(n). To the extent that teletext services may constitute mobile radio services within this definition, they will be governed by the new legislation, and such services will be judged by the test in the new Section 331(c). The new statutory test is based on the manner in which a multiple licensed or shared private land station is interconnected with a telephone exchange or interexchange service or facility.[27] *See also*, H.R. Rep. No. 765, 97th Congress, 2nd Session, pp. 52-56 (1982).[28] The statute also makes it clear that if it is a private system, it is exempt from state and local regulation. 47 U.S.C. 331(c)(3).

65. The determination as to whether a particular service offered by teletext is private or common carriage is, in the first instance, the responsibility of the licensee and must be made in accordance with the *NARUC I* test for all non-broadcast related services except mobile radio. For mobile radio services the new Section 331(c) standard will govern.

66. Once a licensee has determined that the proposed service is common carriage under the appropriate standard, it must seek authorization to provide that service from the Common Carrier Bureau (and state commissions, as appropriate). Because existing broadcast licensing procedures may not afford the needed mechanism by which necessary Commission determinations related to common carrier service offerings can be made, we will require any licensee intending to provide such services via teletext first to seek authorization by filing a suitable request under Parts 21 or 22, as appropriate. *See* 47 CFR Parts 21 and 22. Public notice will be given of each such request received, and a 30-day period will be afforded to all parties wishing to file comments in connection therewith. After considering any comments submitted and the substance of the underlying request, the Commission will issue a decision disposing of the matter. It is our intention that, in seeking such authorizations, the teletext operator will be in the same position, entitled to the same privileges and subject to the same obligations and regulations as established as a traditional offeror of such services.[29] For example, the Commission has established as a general matter that competition in the provision of certain common carrier services is in the public interest. *See, e.g., Specialized Common Carrier Decision*, 29 F.C.C. 2d 870 (1972), *aff'd sub nom. Washington Utilities and Transportation Commission* v. *FCC*, 513 F. 2d 1142 (9th Cir, 1975); *Graphnet Systems, Inc.*, 71 F.C.C. 2d 471 (1979), *aff'd sub nom. Western Union Telegraph Co.* v. *FCC*, 665 F. 2d 1112 (D.C. 1981); and *MTS and WATS Market Structure*, 81 F.C.C. 2d 177 (1980). Therefore, our policy is that applications to provide common carrier services from qualified applicants will be granted unless there is some basis to believe that such grant "is likely to produce results that conflict with the goals of the Communications Act." *MTS/WATS*, *supra* at 200. This policy applies equally to teletext operators proposing to provide these common carrier services.

67. Licensees seeking to provide private carrier teletext services must notify the Licensing Division of the Private Radio Bureau at Gettysburg, Pennsylvania, 17325, by letter, prior to initiating service. In the letter, they must certify that their facilities will be used in this regard only for permissible purposes. *See* 47 CFR Parts 90 and 94. When providing land mobile service, they must also certify that service will be offered only to users eligible under Part 90 of the Commission's Rules, and that any interconnection of the station with a telephone exchange or interexchange service or facility will be obtained in accordance with new Section 331 of the Communications Act, *supra*. Such notifications will not give rise to a comment period, and no separate authorization will be issued by the Commission. As in the case of common carrier services, the teletext operator offering a private service will be in the same position, entitled to the same privileges and subject to the same obligations and regulations as a traditional offerer of such services.

68. In all cases, involving either private or common carrier services, the applicant will not be seeking approval for its technical facilities. The Commission regards teletext use as a secondary privilege that runs with the primary television license. That right is conferred on the primary station licensee only.[30] In this regard, it should be noted that a television broadcaster that elects to use its teletext capacity for private or common carriage remains a broadcaster for all other purposes. Only the use of the VBI for nonbroadcast related teletext purposes would be regulated in accordance with private radio or common carrier regulations. *See NARUC* v. *FCC*, 533 F.2d 610 (D.C. Cir. 1976).

69. We recognize that there may be situations in which the delivery of services via teletext enjoys a competitive advantage over other carriers by virtue of the greater service area of some television stations. If we were to limit the transmitting facilities of teletext service offerors to equal that of competing carriers, however, we would be diminishing many of the

[27] New Section 331(c)(1) of the Act provides that "... private land mobile service shall include service provided by specialized mobile radio, multiple licensed radio dispatch systems, and all other radio dispatch systems, regardless of whether such service is provided indiscriminately to eligible users on a commercial basis, except that a land station licensed in such service to multiple licensees or otherwise shared by authorized users (other than a nonprofit, cooperative station) shall not be interconnected with a telephone exchange or interexchange service of facility for any purpose, except to the extent that (A) each user obtains such interconnection directly from a duly authorized carrier; or (B) licensees jointly obtain such interconnection directly from a duly-authorized carrier."

[28] The Commission's interpretation of the test in the new legislation will be fully explored in our reconsideration of the *Second Report and Order*, Docket No. 20846, 89 F.C.C. 2d 741 (April 8, 1982), and our treatment of land mobile services herein is expressly subject to the outcome of that proceeding.

[29] The nature and scope of any common carrier duties that would attach could be affected, *inter alia*, by the result of the Commission's competitive carrier proceeding. *See Deregulation of Telecommunications Service* 84 F.C.C. 2d 445 (*Further Notice of Proposed Rule Making*, 1981).

[30] A licensee may choose to lease its teletext capacity to an entity that will provide a private or common carriage service. In such cases, the lessee may seek the appropriate authorization, but the primary licensee remains responsible for the technical operation of the transmitting facilities, including the VBI.

spectrum efficiencies that we hope to gain through this proceeding. Furthermore, restrictions on the technical facilities of the teletext operator would necessarily constrict the coverage of the primary broadcast signal. This would subvert our basic allocations and spectrum utilization policies with respect to the broadcast service. On balance, therefore, we believe any possible inequity in technical facilities is overshadowed by the public interest benefits to be derived from innovative and spectrum-efficient teletext services that are possible under the decision herein. *See* 47 U.S.C. 303(g) which provides, *inter alia*, that the Commission should "* * * generally encourage the larger and more effective use of radio in the public interest."

Authorization of Transmission Systems

70. After reviewing the comments, the Commission has determined that individual licensees should be permitted discretion to select the technical system for teletext transmission that best suits their individual needs. The many divergent applications and uses for teletext will create broad opportunities for the success of technical variations and of specialized systems. It also is evident from the comments and the ongoing process of developmental activity that there is considerable interest in and support for alternative systems. The open market approach we are adopting will allow licensees the freedom of choice necessary to operate teletext services tailored to their own specific situations and to respond to changes in demand and technical options. One of the major advantages of the open market approach is that it will provide a mechanism for resolving the trade-offs among system features and prices that are extremely difficult for regulatory decision makers to resolve. While several major technical alternatives have been available for some time now, very little is knows about the actual market for teletext services in terms of what users want and the strength of their demand. Without such information, only informed guesses can be made with respect to the level of sophistication and kind of features a system has to support. Additionally, authorization of teletext without a standard system avoids what almost certainly would be years of delay in initiating service while the Commission attempted to specify standards for a single system. The open market approach thus facilitates introduction of teletext service at the earliest possible date.[31]

71. Finally, the open market approach will also facilitate the evolution and growth of the teletext services over time. As user's needs and technological capabilities change, the development of new features and new systems can progress unencumbered by the costs and delays associated with changing government regulations. We believe that this kind of flexibility is especially important for teletext in light of the fact that its initial development is still not complete.

72. As noted, *supra*, those parties who supported adoption of a single system standard pointed out that there are some potential costs associated with a market approach in this area. They suggested that a common transmission system would ensure that a single decoder design could receive and interpret the teletext signals of all the stations in any market in the country. It was their belief that a common system would alleviate much uncertainty on the part of broadcasters, manufacturers and consumers.

73. However, the Commission believes that any attempt by it to select a single system may well lead to a less than optimal choice. For example, if decoders for the system selected proved unnecessarily expensive for viewers, teletex service might fail to get off the ground or would be delayed until a more appropriate system could be chosen and new decoders could be built. Likewise, if the system selected did not provide a level of sophistication adequate to suit user tastes, teletex development might be similarly impeded. Thus, a single system standard might actually work to restrict the development of teletext. Moreover, the Commission cannot ensure the success of new media forms and services that may arise through the progress of technological development. The public will determine which media forms succeed. Thus, our role is to provide a regulatory structure that will permit new media services maximum freedom to develop according to the evolving requirements of the marketplace.

74. As discussed in the *Notice*, the Commission recognizes that it is possible for a single system to emerge through market forces under the open system approach. If there is sufficient demand for teletext and the only way to adequately meet this demand is for all service providers to use a common system, then we expect that market forces will bring forth a single system standard.

75. *VBI Lines Authorized for Teletext Use*—To provide for maximum flexibility and service potential, teletext signals will be authorized on lines 14–18, and 20 of the VBI. Additionally, lines 10-13 will be made available on a phase-in basis over the next several years as proposed in the *Notice*. The signal level permitted on line 14 initially will be significantly lower than that authorized for the other lines but will be gradually increased over time as receiver designs are modified to accommodate higher VBI signal levels. This provides six lines for teletext use now and an additional four in the future. These lines are authorized on a permissive use basis only and are not reserved for the exclusive use of teletext. Indeed, teletext already will be sharing some of these lines with other applications, such as the vertical interval test signal (VITS) on lines 17 and 18 and source identification codes (SIDS) on line 20.[32] We believe that this approach to authorization will allow us to give full consideration to other new uses of the VBI that may arise in the future without prejudice to teletext and that it will have no significant detrimental effect on the development or use of teletext.

76. *Teletext and the Line 21 System for Closed Captions*—A number of commenting parties expressed concern that direct competition between profit oriented teletext service and nonprofit caption service will adversely affect service for the hearing impaired if profit oriented teletext is allowed to operate on line 21. They further argued that the decoders for the line 21 system will become obsolete and the investment in such equipment will be lost if captions are transmitted on teletext rather than the line 21 system.

77. On the other side of this issue, the evidence in the record indicates that broadcasters do not expect in the near future to use all of the lines proposed for teletext authorization in the *Notice*. In fact, while there was widespread support for a broad authorization of VBI lines, including line 21, no one indicated any plans to use line 21. Most broadcasters stated that their current intentions were to use lines 15–18 for

[31] The Commission is also aware that cable and telephone systems that do not have to secure regulatory permission to engage in teletext and videotex activities are moving forward in testing and implementing such services. We believe that a delay in authorization of similar service for broadcasters might unjustifiably deprive the public of a greater choice of teletext services.

[32] On December 17, 1981, the Commission deleted the requirement that remotely controlled television stations transmit VITS on lines 17 and 18. However, VITS signals still are permitted on these lines. See *Report and Order in BC Docket 81–239*, 47 FR 3789 (January 27, 1982).

teletext. Thus, it does not appear essential that line 21 be authorized for teletext at this time.

78. In view of the apparent lack of immediate demand for line 21 on the part of the industry and the concerns of the hearing impaired with respect to potential teletext impact on closed caption service, the Commission has decided to adopt an approach that will withhold authorization of teletext on line 21 for a period of five years and will reconsider its decision at the end of that time. Postponement of action in this area will provide an opportunity to observe the development of both teletext and the line 21 caption system.

79. We note that those parties now providing caption service are doing so voluntarily, *i.e.* they are not required to provide captions. The Commission applauds the commitment of efforts and resources to closed caption service on the part of broadcasters, producers, private funding sources, and others in the industry. We encourage all industry participants and other interested parties to continue to provide and expand such services for the hearing impaired.

80. *Technical Rules for Operation*—As shown in Appendix B, the technical rules governing operation of teletext are for the most part written in general terms. They are intended principally to ensure that teletext signals do not interfere with other radio frequency services or degrade reception of the originating stations' regular programs. These rules, which are very similar to those proposed in the *Notice*, are designed to permit a broad range of alternative systems to operate to meet particular service needs. The only specific limitation is that placed on signal level. The 80 IRE unit maximum signal level that is being authorized for most lines is lower than the 100 IRE unit level originally proposed. This decision reflects our concern for the interference potential of higher signal levels that was discussed by several of the commenting parties. In addition, from the comments and other information available to the Commission, it appears that 80 IRE units will provide adequate signal strength to serve the requirements of all of the known technical systems and will also facilitate the operation of a wide range of other technical options. If, in the future, higher signal levels are needed, the Commission can reconsider this limit. In any case, the general provision against interference takes precedence over the use of any signal level that causes or results in unacceptable interference to other services. Live 14 is being authorized at a signal level of 40 IRE units through 1987 and this will be raised gradually to the 80 IRE level over the succeeding years. This will avoid potential degradation from line 14 use to reception of regular programs on some existing receivers. The schedule for phasing in lines 10–13 also increases the permissible signal levels on these lines over time.

81. One of the most important aspects of teletext interference is the potential for teletext signals to degrade significantly the ability of home television receivers to display regular programming. Because the performance capabilities of individual receivers vary considerably across both models and manufacturers, the most reasonable way to gauge the extent of receiver degradation appears to be to examine the proportion of the relevant receiver population that is affected. This approach was discussed in the *Notice* and a one-percent threshold limit was proposed. Although the comments were generally not opposed to this proposal, the Commission has decided not to include a threshold limit for receiver degradation in the rules. After carefully considering this issue, we believe that a specific standard in this area might ultimately prove too inflexible for adequately evaluating and limiting degradation of receiver performance in individual situations. Nevertheless, we do intend that teletext activities not interfere with regular program service. Therefore, as a matter of policy we will use the one percent of the receiver population figure discussed in the *Notice* as a general guideline for limiting teletext degradation of reception of regular television service.

82. *Adaptive Equalizer Pulses*—The rules provide authority for use of an adaptive equalizer pulse on any of the VBI lines approved for teletext to aid in the correction of multipath errors. While it appears that a device such as that suggested by the Antiope and Telematics Corporation would offer a more spectrum efficient solution since it could perform this function without transmission of a separate reference signal, the Commission believes that any decision to use a reference pulse is best left to the licensee's discretion. The use of such pulses on a non-reserved, discretionary basis will not affect the spectrum resources of stations that choose not to use an error compensation technique or that use a method that uses the data itself as a reference point. The Commission has decided not to authorize reference pulses in the vertical synchronizing waveform at this time because we have received no information concerning the potential of such signals in this area to degrade the performance of television receivers.

82. *Visual Emergency Messages*—The new rules also provide that any visual emergency messages transmitted pursuant to Section 73.1250 of the rules are to replace closed captions during an emergency situation. This action extends the policy in the line 21 rules that requires visual emergency messages on the main signal to replace closed captions on the viewing screen in order to resolve potential conflicts between open and closed captions in a single emergency. Thus, any teletext system used to provide closed caption service must have a facility for giving way to visual emergency messages during periods when captioning is being provided.

84. *Treatment of Teletext Decoders Under Part 15 of the Rules*—Finally, on the matter of the treatment of external teletext decoders under Part 15 of the rules, the Commission anticipates that there will be two basic categories of such external devices. These categories, and their associated treatment under Part 15 are:

(1) A teletext decoder, separate and external to a TV set, that supplies a modulated RF signal to the antenna input terminals of a television receiver—This is a TV Interface Device, subject to Part 15 Subpart H.[33] The decoder must in this instance be type approved.

(2) A teletext decoder, separate and external to a TV set, that uses digital circuitry to decode the teletext signal and provides output at video baseband—This is a Class B computing device, subject to verification by the manufacturer and the requirements of Part 15, Subpart J.

85. The treatment of decoders built-in to a TV receiver will depend on the arrangement of the receiver and decoder components. If the teletext signal is fed directly to the TV video amplifier circuits, the TV receiver requirements in Part 15, Subpart C, apply to the entire unit. On the other hand, if the teletext signal is fed to the TV receiver front end, the decoder will be treated separately as a Class I TV device. In either case, Sections 15.65 through 15.68 of the rules will not apply to teletext decoder circuitry, provided that a switch is included to permit reception of the normal television signal when not in the teletext mode.

Policy With Respect to Cable Carriage of Broadcast Teletext

86. In the *Notice* we asked whether cable systems should be prohibited from

[33] *See*, footnote 11, *supra*.

deleting teletext signals and, if so, whether such a policy should apply only to "must carry" stations. As noted above, some commenters maintained that cable companies should be required to carry teletext. NAB requested that we require carriage of all teletext in order to simplify copyright decisions that the *WGN* case will necessitate.

87. Initially, we note that since the filing of the comments, the decision in *WGN* has been reversed and remanded.[34] The Court of Appeals held that a teletext program and a conventionally broadcast program intended to be viewed in conjunction with one another (although on separate channels) constitute one copyrightable work. Specifically, the Court in *WGN* stated (at pages 6–7):

> United Video appears to concede, correctly in our view despite an absence of judicial authority on the point, that if WGN's teletext were intended to be overlaid on the television images of the nine o'clock news, in the manner of captions for deaf people or English subtitles for foreign movies, it would be covered by the copyright for that news. Cf. 1 Nimmer, Nimmer on Copyright § 2.09[A] (1981). It would be part of the performance intended to be seen by the viewer and thus one of the "related images" of which section 101 speaks. . . .
>
> There is no paradox in suggesting that teletext is covered by the copyright on a regular television program provided that it is intended to be viewed with and as an integral component of that program, even though we have just said that WGN's teletext is to be shown on a different channel from the nine o'clock news, which means that it cannot be viewed simultaneously, as subtitles are. . . .
>
> [I]f WGN wants to create multi-channel news or entertainment for viewers willing to switch back and forth between channels, we cannot find anything in the Copyright Act to prevent it from copyrighting its video smorgasbord.

Thus, copyright protection for teletext is available to broadcasters to the extent noted above independent of any action we take here.

88. It seems clear, however, that the communications policy concerns underlying our mandatory carriage requirements [35] are quite distinct from the considerations properly relied upon by the court in the *WGN* case to determine the scope of copyright protection for teletext services. NAB's suggestion, therefore, that cable television systems be required to carry teletext as a means of simplifying copyright determination is, in our view, neither appropriate nor required by the *WGN* decision. Indeed, given both their ancillary and discretionary nature, teletext transmissions are plainly not analogous to the types of services that we have traditionally accorded mandatory carriage status.[36] Accordingly, we will not require cable television systems to carry teletext services.

Conclusion

89. The Commission believes that teletext offers significant potential as a new media form and that its benefits can be realized most effectively in an environment that for the most part is free of government intervention. The many diverse and varied applications for this technology provide opportunities for service tailored to the interests of mass audiences, specialized groups, and individuals. The regulatory structure we are providing is intended to allow the broadcast industry the flexibility to develop and offer service that is specifically suited to the requirements of individual applications and to alter this service to meet changing conditions in a dynamic environment.

Implementation

90. We believe that the public interest would be served by making these rules effective upon adoption of this *Report and Order*. There are a number of outstanding experimental authorizations and special temporary authorizations (STAs) relating to teletext. We are also aware that some parties within the industry are prepared to begin immediate operation of teletext services on a production rather than test basis. Thus there is clear evidence that the industry desires and is ready to begin teletext services at the earliest possible time. In view of these factors, it appears that immediate implementation of the teletext rules would serve to further the development of services the Commission finds to be in the public interest. Therefore, the rules set forth in Appendix B will be effective with the adoption of this *Report and Order*.

Procedural Matters

91. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final regulatory flexibility analysis is as follows:

I. Need for and Purpose of the Rules

The Commission has concluded that permitting a portion of the television vertical blanking interval to be used for teletext would enhance the public interest by providing opportunities for extending and diversifying service from television stations and for improving the efficiency of spectrum utilization.

II. Summary of Issues Raised by Public Comments in Response to the Initial Regulatory Flexibility Analysis, Commission Assessment, and Changes Made as a Result

A. *Issues raised.*

1. No issues or concerns were raised specifically in response to the initial regulatory flexibility analysis. However, a number of issues and points that pertain to small businesses were mentioned in the comments. Most of these remarks were positive, although a few expressed concern that the open market approach would lead to uncertainties and other problems that might impede teletext development.

B. *Assessment.*

1. The Commission views the absence of specific claims of adverse impact with respect to its teletext proposals as indicative of their lack of potential for negative effects on small businesses. We also believe that the uncertainties of the market approach are factors that must be addressed in the course of virtually all business decisions and that these factors ultimately work to ensure better, more effective use of the VBI.

C. *Changes made as a result of such comments:* None.

III. Significant Alternatives Considered and Rejected

The Commission's other alternatives were: (1) not to authorize teletext at all or (2) to adopt a more restrictive approach such as a single system technical standard. To deny authorization would be to forego the beneficial objectives sought in this rule making. Similarly, a more restrictive approach to regulation likely would interfere with realization of the full potential and benefits of teletext and would represent an unnecessary intrusion by the government into the affairs of private businesses.

92. Authority for adoption of the rules contained herein is contained in Sections 2, 4(i), and 303 of the Communications Act of 1934, as amended.

93. Accordingly, it is ordered, that Parts 2, 73, and 76 of the Commission's Rules are amended as set forth in Appendix B, effective March 31, 1983, and the CBS petition for reconsideration is denied. In addition, it is ordered that the request by the plead Committee to accept late-filed comments is denied.

94. For further information concerning this proceeding, contact Alan Stillwell, Mass Media Bureau, (202) 632–6302.

---

[34] *See*, footnote 13, *supra*.

[35] *Cable Television Report and Order*, 36 FCC 2d 143, 173 (1972).

[36] *See, e.g., Report and Order Authorizing Low Power Television Service*, 47 FR 21468, 21492 (released May 18, 1982).

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Attachments: Appendices.

Appendix A—Parties Filing Formal Comments in the Teletext Proceeding

1. Gallaudet College
2. Hazeltine Research
3. Community Telecasters of Southern California—Filed as comments in support of the CBS petition for reconsideration
4. American Speech-Language-Hearing Association
5. Cognitive Science Laboratory/ University of California, San Diego
6. Time Incorporated
7. Zenith Radio Corporation
8. Koplar Communications, Inc.
9. Taft Broadcasting Company
10. Alexander Graham Bell Association for the Deaf, Inc.
11. Times-Mirror Videotext Services, Inc.
12. United Kingdom Teletext Industry Group
13. Subscription Television Association
14. Satellite Television Systems, Inc.
15. American Newspaper Publishers Association
16. National Association of Public Television Stations
17. University of Wisconsin
18. Telidon Videotex Systems, Inc.
19. Bonneville International Corporation
20. WGBH Educational Foundation
21. National Association of Broadcasters
22. RBC Communications
23. Public Broadcasting Service
24. Border Broadcast Stations
25. National Captioning Institute
26. Videotex Industry Association
27. Tribune Company Broadcasting, Inc.
28. American Broadcasting Companies, Inc.
29. National Broadcasting Company, Inc.
30. American Society of Travel Agents
31. RCA Corporation
32. Association of Maximum Service Telecasters, Inc.
33. Field Communications Corporation
34. Cox Broadcasting Corporation
35. Satellite Television Corporation
36. Golden West Broadcasters
37. NBC Television Network Affiliates
38. Storer Broadcasting Company
39. CBS, Inc.
40 Springfield Television Corporation
41. National Cable Television Association
42. Corporation for Public Broadcasting
43. E. Marshall Wick
44. Antiope and Telematics Corporation
45. Joint Comments of Cable Systems
46. MultiVisions, Ltd.
47. Media Access Project
48. National Association for the Deaf
49. Radiofin

Other Major Items

1. AMC-Working Paper No. 1 on the Teletext Experiment in Washington
2. Neustadt, Skall, and Hammer—The Regulation of Electronic Publishing
3. National Association for the Deaf (Informal Comments)
4. EIA—Interim Report

Responses to the CBS Petition for Reconsideration

1. National Cable Television Association
2. United Kingdom Teletext Industry Group
3. Time Incorporated
4. Antiope and Telematics Corporation
5. National Association of Broadcasters
6. Telidon Videotex Systems, Inc.
7. Community Telecasters of Southern California (treated as comments in proceeding per request of respondent)
8. CBS, Inc. (reply)

Teletext Reply Comments

1. Midwest Radio-Television, Inc.
2. Corporation for Public Broadcasting
3. Videotex Industry Association
4. Association of Independent Television Stations
5. Tribune Company Broadcasting
6. National Captioning Institute, Inc.
7. Louisiana Television Broadcasting Corporation
8. Metropolitan Pittsburgh Public Broadcasting, Inc.
9. National Broadcasting Company, Inc.
10. WGBH Educational Foundation
11. Storer Broadcasting Company
12. Springfield Television Corporation
13. National Association of Public Television Stations
14. Koplar Communications, Inc.
15. Taft Broadcasting Company
16. United Kingdom Teletext Industry Group
17. MultiVisions, Ltd.
18. Bonneville International Corporation
19. Zenith Radio Corporation
20. National Citizens' Committee for Broadcasting
21. National Cable Television Association, Inc.
22. RCA Corporation
23. Association of Maximum Service Telecasters, Inc.
24. National Association of Broadcasters
25. Antiope and Telematics Corporation
26. Telidon Videotex Systems, Inc.
27. CBS, Inc.
28. Time Incorporated (in response to Senatorial Letter)

Appendix B

Chapter I of Title 47 of the Code of Federal Regulations is amended and revised as set forth below.

PART 2—[AMENDED]

1. Section 2.106 is amended by revising the following entries the Table of Frequency Allocations and adding new footnote NG142 to read as follows:

§ 2.106 Table of frequency allocations.

7	8	9	10	11
Band (MHz)	Service	Class of station	Frequency (MHz)	Nature of services of stations
*	*	*	*	*
54-72	BROADCASTING (NG142)	Television broadcasting	55.25	Video Channel 2
			59.75	Sound Channel 2
			61.25	Video Channel 3
			65.75	Sound Channel 3
			67.25	Video Channel 4
			71.75	Sound Channel 4
*	*	*	*	*
76-88	BROADCASTING (NG142)	Television broadcasting	77.25	Video Channel 5
			81.75	Sound Channel 5
			83.25	Video Channel 6
			87.75	Sound Channel 6
*	*	*	*	*
174-216	BROADCASTING (NG142)	Television broadcasting	175.25	Video Channel 7

7	8	9	10	11
Band (MHz)	Service	Class of station	Frequency (MHz)	Nature of services of stations
			179.75	Sound Channel 7
			181.25	Video Channel 8
			185.75	Sound Channel 8
			187.25	Video Channel 9
			191.75	Sound Channel 9
			193.25	Video Channel 10
			197.75	Sound Channel 10
			199.25	Video Channel 11
			203.75	Sound Channel 11
			205.25	Video Channel 12
			209.75	Sound Channel 12
			211.25	Video Channel 13
			215.75	Sound Channel 13
*	*	*	*	* * *
470-512	BROADCASTING (NG142)	Television broadcasting		BROADCASTING
	LAND MOBILE (NG66) (NG114).	Land Mobile Base		PUBLIC SAFETY INDUSTRIAL LAND TRANSPORTATION DOMESTIC PUBLIC
*	*	*	*	* * *
512-806	BROADCASTING (NG142)	Television broadcasting		
*	*	*	*	* * *

NG142 TV broadcast stations authorized to operate in the bands 54–72, 76–88, 174–216, 470–512, and 512–806 MHz may use a portion of the television vertical blanking interval for the transmission of teletext messages, on the condition that harmful interference will not be caused to the reception of primary services, and that such teletext service must accept any interference caused by primary services operating in these bands.

* * * * *

PART 73—[AMENDED]

2. New § 73.646 is added to read as follows:

§ 73.646 Teletext service.

(a) Teletext is a data system associated with a television broadcast signal that is used for the transmission of textual and graphic information intended for display on the screens of suitably equipped receivers and of data that is intended to enhance the use of teletext information.

(b) TV broadcast stations are authorized to transmit teletext data during any time period, including portions of the day when normal programming is not broadcast. Such transmissions must be in accordance with the technical provisions of § 73.682.

(c) Teletext service is of an ancillary nature and as such is an elective, subsidiary activity. No service guidelines, limitations, or performance standards are applied to it other than the definitional aspects of the authorization. The kinds of services teletext may be used to provide include, but are not limited to, advertiser-supported consumer information, subscription data services, and business-oriented information.

(d) Teletext services that are common carrier in nature are subject to common carrier regulation. Licensees operating such services are required to apply to the Commission for the appropriate authorization and to comply with all policies and rules applicable to the service. Responsibility for making the initial determination of whether a particular activity is common carriage rests with the licensee. Initial determinations submitted by licensees are subject to Commission examination and may be reviewed at the Commission's discretion.

(e) The grant or renewal of a TV station license or permit will not be furthered or promoted by proposed or past teletext operation; the licensee must establish that its broadcast operation is in the public interest wholly apart from teletext activities. (Violation of rules applicable to teletext operation would, of course, reflect on a licensee's qualifications to hold its broadcast license or permit.)

(f) In all arrangements entered into with outside parties affecting non common carrier teletext operation, the licensee or permittee must retain control over all material transmitted in a broadcast mode via the station's facilities, with the right to reject any material that it deems inappropriate or undesirable.

3. Section 73.621 is amended by revising the section heading and adding new paragraph (f) to read as follows:

§ 73.621 Noncommercial educational TV stations.

* * * * *

(f) Teletext service. The provisions governing teletext service in § 73.646 are applicable to noncommercial educational TV stations.

4. Section 73.682 is amended by adding new paragraph (a)(24) to read as follows:

§ 73.682 Transmission standards.

(a) * * *

(24) Specific scanning lines in the vertical blanking interval may be used for the purpose of transmitting teletext signals, subject to certain conditions:

(i) Teletext may be transmitted on Lines 10–18 and 20, all of Field 2 and Field 1. Use of specific lines is to be in accordance with Schedule I.

(ii) No observable degradation may be caused to any portion of the visual or aural signals.

(iii) Teletext signals must not produce emissions outside the authorized television channel bandwidth. Data pulses must be shaped to limit spectral energy to the nominal video baseband.

(iv) Transmission of emergency visual messages pursuant to § 73.1250 must take precedence over, and shall be cause for interrupting, teletext that provides a visual depiction of information simultaneously transmitted on the aural channel.

(v) A reference pulse for a decoder associated adaptive equalizer filter designed to improve the decoding of teletext signals may be inserted on any portion of the vertical blanking interval authorized for teletext, in accordance

with the signal levels set forth in Schedule I.

(vi) All lines authorized for teletext transmissions may be used for other purposes upon prior approval by the Commission.

* * * * *

PART 76—[AMENDED]

5. Section 76.64 is revised to read as follows:

§ 76.64 Carriage of subscription television broadcast programs and teletext information services.

The provisions of §§ 76.57, 76.59, 76.61, and 76.63 do not require carriage of any subscription TV broadcast program or any teletext information service.

BILLING CODE 6712-01-M

Schedule I

	1983	1984	1985	1986	1987	1988	1989	1990	1991
10	X	X	X	X	X	50 IRE	→	→	70 IRE
11	X	X	X	X	X	50 IRE	→	→	70 IRE
12	X	X	X	X	X	50 IRE	→	→	70 IRE
13	X	X	X	X	X	70 IRE	80 IRE	80 IRE	80 IRE
14	40 IRE	→	→	→	→	70 IRE	80 IRE	80 IRE	80 IRE
15	80 IRE	→	→	→	→	→	→	→	→
16	80 IRE	→	→	→	→	→	→	→	→
17	80 IRE */**	→	→	→	→	→	→	→	→
18	80 IRE */**	→	→	→	→	→	→	→	→
19	***								
20	80 IRE **	→	→	→	→	→	→	→	→

* Also authorized for Vertical Interval Test Signals (VITS) that are used with remote controlled transmitters.

** Also authorized for SID signals (Source Identification signals).

*** Presently reserved to the Vertical Interval Reference (VIR) signal.

BILLING CODE 6712-01-C

March 31, 1983.

Separate Statement of FCC Commissioner James H. Quello

In re: Authorization of Teletext Transmissions by TV Stations, BC Docket No. 81-741

My decision not to support mandatory cable carriage of teletext should not be interpreted to indicate any reduction in my strong commitment to continuing the manadatory cable carriage rules as they apply to conventional television programming. In my view, the strong justification for imposing these requirements—protecting the availability of local broadcast service to the public—does not apply to the ancillary teletext service. Therefore, I concluded it would not be proper to extend the rules' effects to this new service.

When the Commission declined to require cable television carriage of subscription television stations, it stated that "concern with the impact on broadcast service to the public . . . provided the most fundamental bases (sic) for the mandatory carriage rules."[1] The Commission recognized that cable carriage was not fundamental to the survival or economic success of STV stations, and thus it did not require such carriage.[2] This reasoning applies with equal force to teletext service.

Preserving the availability of conventional local broadcast service is a sound basis for the cable carriage rules. I am concerned that applying these rules to protect teletext would be an overextension of the Commission's authority which could ultimately undermine the Commission's valid exercise of authority in this area.

When the teletext signal is an integral part of conventional broadcast programming (*e.g.*, closed captioning), mandatory carriage obligations may properly attach. It is my understanding, however, that existing copyright law can protect teletext carriage in this situation without Commission intervention.[3] Should the state of the law change on this subject, I might well support a limited revisiting of the Commission's decision.

March 31, 1983.

Concurring Statement of Commissioner Anne P. Jones

In Re: Amendments of Parts 2, 73, and 76 of the Commission's Rules to Authorize Transmission of Teletext by TV Stations. (BC Docket No. 81-741)

I agree with the basic decision and many of the subsidiary decisions in this proceeding, such as to continue reserving line 21 for closed captions and to leave selection of the technical system for teletext transmission largely to the discretion of each licensee electing to provide this service. However, much of the reasoning given for these and the other decisions announced in this Report and Order seems to me a case of pouring new wine in old bottles. It just doesn't work very well.

For one thing, there is to my mind a basic inconsistency between the justifications given for permitting broadcasting licensees to use the vertical blanking interval (VBI) to provide teletext while at the same time exempting teletext from broadcasting regulation. On the one hand it is said that the VBT is part of the spectrum licensees are authorized to use. On the other hand, teletext is said to be a different service which, because it "more closely resembles, and will largely compete with, other print media, such as newspapers and magazines," should be exempt from the Fairness Doctrine and the political broadcasting laws. This sounds to me like having one's cake and eating it too.

This inconsistency also raises an issue of broader significance. As broadcast technology evolves, new uses of broadcast spectrum become possible. Teletext is just one example. Since existing broadcast licensees are already authorized as such to use spectrum, they have immediate access to the frequencies necessary to offer teletext, even though this service was not and could not have been contemplated by either the Commission or the broadcasters when the broadcasting licenses were initially issued. I think it is entirely appropriate for the Commission to ask whether existing broadcast licensees necessarily have an implied exclusive franchise to offer new services on their assigned frequencies.

If the Commission desires to establish new markets in communications services made possible by advancing technology, it should consider the competitive implications of an incumbent licensee's automatic access to the spectrum. To enable new participants to enter the market for new communications services, the Commission may wish to redefine the nature of the implicit "spectrum rights" granted to broadcast licensees. Early resolution of this issue might greatly expand opportunities for participation in the communications industry by minorities and other groups who have not as yet participated extensively in the growth and development of telecommunications services.

Another notion in this Report and Order which strikes me as peculiar is the suggestion that licensees proposing to offer teletext in competition with existing common carrier service may be themselves regulated as common carriers. I can think of nothing more likely to chill an innovative new service than a threat that it may be burdened with common carrier regulation. Of course such may be the law, but I believe we should at least note that, if it is, it makes very little sense.

And finally, a consideration which I find curiously absent from this Report and Order is the fact that in many respects teletext may compete head-to-head with videotex provided on an unregulated basis as an "enhanced service" under our Computer II decisions. Surely this fact is a major reason for regulating teletext as little as possible, or even not at all, so as not to disadvantage it in this competition.

It may be that on these points and others this Report and Order is the best we can do at present, and I do not advocate delaying authorization of teletext while we ponder a more elegant way to explain our regulatory treatment of it. I therefore concur.

Statement of Commissioner Henry M. Rivera, in Which Commissioner Joseph R. Fogarty Joins, Dissenting in Part

Re: Authorization of Teletext Transmissions by Television Stations.

I dissent to that part of the Commission's *Report and Order* that permits cable television systems to delete teletext provided on the vertical blanking interval of broadcast signals entitled to must carry status. Although I have substantial reservations about the must carry rules in general, I believe the Commission should maintain the *status quo* pending a plenary reexamination of this complex area. Instead, the majority has decided to chip away at the rules, beginning another exercise in disjointed policymaking. The vigorous advocacy on both sides of the teletext must carry issue underscores the considerable symbolic significance of this decision and the inappropriateness of the majority's piecemeal approach.

The must carry rules decree that a broadcast signal entitled to cable carriage shall be carried in its entirety, except where technically infeasible.[1] Teletext is offered on the vertical blanking interval, which is an integral part of a broadcast signal.[2] It logically follows, therefore, that teletext provided on a signal with must carry status is entitled to carriage without alteration. While it may be true that teletext did not exist when the must carry rules were first adopted and therefore was not considered when the signal carriage duty was formulated, a narrowing construction here unduly tips the balance on the larger policy issue toward cable interests. It is my understanding that most cable systems are technically capable of carrying teletext.[3] To avoid the regulatory favoritism resulting from a contracted interpretation of "signal" under our rules, the Commission should have required carriage of teletext, thereby preserving the rules in their current form pending reexamination of cable system rights and duties vis-a-vis broadcast signals *as a whole*.

---

[1] *Memorandum Opinion and Order—Signal Carriage Rules—STV*, 77 FCC 2d 523, 528 (1980), *aff'd sub nom. WWHT, Inc. v. FCC*, 656 F. 2d 807 (D.C. Cir. 1981).

[2] *Id.* at 528.

[3] *WGN Continental Broadcasting Co. v. United Video, Inc.*, 693 F. 2d 622, *rehearing denied*, 693 F. 2d 628 (7th Cir. 1982).

[1] See 47 C.F.R. § 76.55(a).

[2] Thus, the issue before us is unlike that posed by whether to mandate carriage of LPTV signals; an LPTV transmission is technically unrelated to any existing signal entitled to cable carriage. Furthermore, because the issue here, as I see it, is whether to maintain the *status quo* on the must carry rules, I see no need for this agency to require carriage of teletext provided via distant signals. *See* 47 C.F.R. § 76.55(b).

[3] Parties have asserted that some older cable systems cannot carry teletext without spending an unreasonable amount of money for system modification. I would grandfather such cable systems; when the must carry rules were adopted, those systems could not have planned for teletext. The Commission is fully capable of fashioning a rule of reason for determining a cable system's eligiblity for grandfathering.

Concurring Statement of Commissioner Stephen A. Sharp

Re: Report and Order, BC Docket No. 81-741
Transmission of Teletext by TV Stations

I welcome the authorization of television broadcast teletext services. As a result, I can only concur in this decision because part of it inevitably inhibits the development of this technology.

My disagreement lies with the majority's decision to permit a cable television operator to strip the teletext service offered by the broadcaster on the vertical blanking interval (VBI) portion of the television signal, and substitute its own teletext service. The Commission licenses a broadcaster to transmit a signal on a particular channel of which the VBI is an integral part. The VBI cannot exist without the rest of the signal; it is merely an increment of time which uses the same spectrum as the main part of the signal. I cannot rationalize permitting the deletion of this part of the signal while prohibiting the deletion of program content or commercials.

More importantly, the sanctioning of stripping the VBI by a cable operator, which may be an anticompetitive action, may well stifle investment in teletext service by broadcasters. As an infant service, broadcast teletext depends on a large potential audience in order to attract enough advertising to make it profitable. Even under the best conditions, the profitability of teletext may be marginal. Where the broadcaster is faced with a potential loss of audience equal to cable penetration because the cable operator may strip the VBI, the broadcaster may be unwilling to risk investing in this new service. While the majority seeks to stimulate competition, its action will have the opposite effect by discouraging the initial investment by broadcasters in teletext.

I disagree also with the notion that copyright remedies are sufficient to protect broadcasters' investment in teletext service. The limited scope of the *WGN* decision and the uncertainty surrounding any general protection for teletext appear to afford insufficient protection to encourage the investment necessary to bring this service to the public in a meaningful way.

It is suggested that to consider the VBI as part of the broadcast signal, rather than looking to the type of service which is offered, is to invite the full panoply of broadcast regulation to the teletext service. To the extent that such regulation applies, I am prepared to accept it. I am not convinced, however, that this would occasion much, if any, additional regulation for broadcasters.

[FR Doc. 83-15214 Filed 6-10-83; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 31

[CC Docket No. 82-680; RM-4076]

Amendment of Annual Report Form M; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Commission adopted a Report and Order, Docket 82-680 (48 FR 19373), which amended six schedules and eliminated four schedules of Annual Report Form M. The Report and Order was inadvertently published without the Attachment A which related to amendments made to Schedule 34, Operating Revenues.

FOR FURTHER INFORMATION CONTACT: Gerald P. Vaughan, Chief, Accounting and Audits Division, Common Carrier Bureau; (202) 634-1861.

SUPPLEMENTARY INFORMATION:

Erratum

In the matter of amendment of Annual Report Form M; CC Docket No. 82-680 (RM-4076), see 48 FR 19373, 4-29-83.

Released: May 19, 1983.

The Report and Order, FCC 83-138, adopted April 7, 1983 and released April 28, 1983 in the above-entitled matter is corrected to include Attachment A at the end of the Report and Order.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Attachment A

34. Operating Revenues (Account 300)

Line No.	Particulars (a)	Amount for the year (b)	Increase over preceding year (c)	Interstate and foreign revenues included in column (b) (d)
	Local Service Revenues			
1	500 Subscribers' station revenues.	$	$	$
2	501 Public telephone revenues.			
3	503 Service stations.			
	504 Local private line services:			
4	Voice Grade Services—Other Than Data.			
5	Less Than Voice Grade Services.			
6	Data Services			
7	Program transmission—Audio.			
8	Program transmission—Television.			
9	Other services			
10	Subtotal (account 504).			
11	506 Other local service revenues.			

34. Operating Revenues (Account 300)—Continued

Line No.	Particulars (a)	Amount for the year (b)	Increase over preceding year (c)	Interstate and foreign revenues included in column (b) (d)
12	Total (lines 1, 2, 3, 10 and 11).			
	Toll Service Revenues			
13	510 Message tolls			
14	511 Wide area toll services.			
	512 Toll private line services:			
15	Voice Grade Services—Other Than Data.			
16	Less Than Voice Grade Services.			
17	Data Services			
18	Program transmission—Audio.			
19	Program transmission—Television.			
20	Other services			
21	Subtotal (account 512).			
22	516 Other toll service revenues.			
23	Total (lines 13, 14, 21 and 22).			
	Miscellaneous Revenues			
24	521 Telegraph commissions.			
25	522 Earth station revenues.			
26	523 Directory advertising and sales.			
27	524 Rent revenues			
28	525 Revenues from general services and licenses.			
29	526 Other operating revenues.			
30	Total (lines 24 to 29, inclusive).			
	Uncollectible Revenues			
31	530 Uncollectible operating revenues—Dr.			
32	Total operating revenues (lines 12, 23 and 30, less line 31).			

( ) Denotes reverse amount.

[FR Doc. 83-15413 Filed 6-10-83; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 30527-98]

Pacific Halibut Fisheries

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

ACTION: Final rule.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission, publishes notice of regulations promulgated by that Commission and approved by the United States Government to govern the Pacific halibut fishery for 1983. These regulations are intended to enhance the conservation of Pacific halibut stocks in order to help rebuild and sustain them at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: June 10, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802; (907) 586-7221, or Executive Director, International Pacific Halibut Commission, P.O. Box 5009, University Station, Seattle, Washington 98105; (206) 624-1838.

SUPPLEMENTARY INFORMATION: The International Pacific Halibut Commission (IPHC), under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, D.C. on March 29, 1979), has promulgated regulations governing the Pacific halibut fishery for 1983. The regulations have been approved by the Secretary of State of the United States of America and by the Governor-General of Canada, by Order-in-Council. On behalf of the International Commission, the 1983 regulations are published in the **Federal Register** to provide notice of their effectiveness, and to inform persons subject to the regulations of the restrictions and requirements established therein.

The regulations are similar to those which have been in effect in previous years under the Convention, except that: (1) Area 4 has been divided into new smaller areas—4A, 4B, 4C, and 4D; (2) different seasons and catch limits are established; (3) a new vessel clearance requirement in Area 4C is established; and (4) certain requirements for marking of gear are established. Only those sections or paragraphs which have been changed since 1982 are published; sections which remain the same can be found at 50 CFR Part 301 (46 FR 30345, June 8, 1981 and 47 FR 20000, May 10, 1982).

Because approval by the Secretary of State of the IPHC regulations is a foreign affairs function, *Jensen v. National Marine Fisheries Service*, 512 F.2d 1189 (9th Cir., 1975), the Administrative Procedure Act, Section 553, Executive Order 12291, and the Regulatory Flexibility Act do not apply to this notice of the effectiveness and content of the regulations.

List of Subjects in 50 CFR Part 301

Fish, Fisheries.

Dated: June 7, 1983.

Carmen J. Blondin,

Acting Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

PART 301—PACIFIC HALIBUT FISHERIES

50 CFR Part 301 is amended as follows:

1. The authority citation for Part 301 reads as follows:

Authority: 5 UST5; TIAS 2900; 16 U.S.C. 772–722j.

2. In § 301.1, paragraph (a) is amended by adding the phrase "Figure 1," after "***Canada***", and by adding a new Figure 1 at the end of this same paragraph, by revising paragraph (g), and by adding new paragraphs (h), (i), and (j) to read as follows:

§ 301.1 Regulatory areas.

* * * * *

(g) Area 4A includes all waters in the Bering Sea and all waters of the Gulf of Alaska west of Area 3B and west of the closed area defined in Section 5, east of the meridian of 172° W. and south of latitude 56°20'00"N.

(h) Area 4B includes all waters in the Bering Sea and the Gulf of Alaska west of Area 4A and south of latitude 56°20'00"N.

(i) Area 4C includes all waters in the Bering Sea north of Area 4A and north of the closed area defined in Section 5 that are east of a line extending true northwest (315°) from a point at latitude 56°20'00"N., longitude 170°00'00"W.

(j) Area 4D includes all remaining waters in the Bering Sea north of Area 4A and 4B, and west of Area 4C.

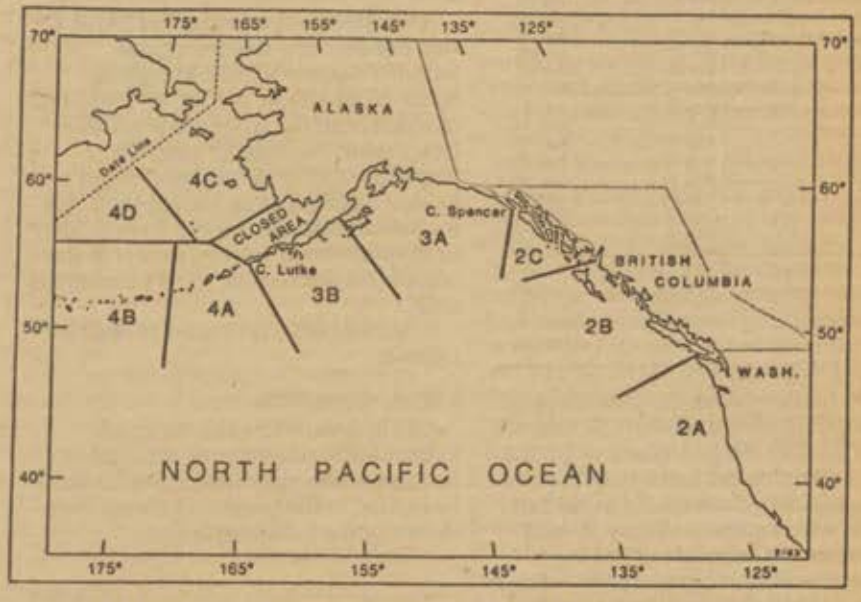

Figure 1. Regulatory areas for the Pacific halibut fishery, 1983

3. Section 301.3 is revised to read as follows:

§ 301.3 Fishing seasons.

(a) The fishing seasons for each Regulatory Area are shown in the following table and will apply providing that the catch limits specified in § 301.6 are not taken earlier.

Regulatory area and fishing period	Opening date	Closing date
2A:		
1	June 15	June 28.
2	July 14	July 27.
3	Aug. 13	Aug. 26.
4	Sept. 11	Sept. 24.
2B:		
1	May 3	May 15.
2	June 14	June 26.
3	July 12	July 24.
4	Aug. 16	Aug. 28.
5	Sept. 13	Sept. 25.
2C:		
1	June 17	June 22.
2	July 16	July 21.
3A:		
1	June 16	June 23.
2	July 15	July 22.
3	Aug. 14	Aug. 19.
3B:		
1	June 15	June 23.
2	July 15	July 22.
3	Aug. 27	Sept. 1.
4	Sept. 13	Sept. 18.
4A:		
1	June 16	June 23.
2	July 15	July 22.
3	Sept. 13	Sept. 27.
4	Oct. 9	Oct. 25.
4B:		
1	June 16	June 23.
2	July 15	July 22.
3	Sept. 13	Sept. 29.
4	Oct. 9	Oct. 25.
4C:		
1	June 16	June 20.
2	June 21	June 25.
3	June 26	June 30.
4	July 1	July 5.
5	July 6	July 10.
6	July 11	July 15.
7	July 16	July 20.
8	July 21	July 25.
9	July 26	July 30.
10	July 31	Aug. 4.
11	Aug. 5	Aug. 9.
12	Aug. 10	Aug. 14.
13	Aug. 15	Aug. 19.
14	Aug. 20	Aug. 24.
15	Aug. 25	Aug. 29.
16	Aug. 30	Sept. 3.
17	Sept. 4	Sept. 8.
18	Sept. 9	Sept. 13.
19	Sept. 14	Sept. 15.
4D:		
1	June 16	June 23.
2	July 15	July 22.
3	Sept. 13	Sept. 29.
4	Oct. 9	Oct. 25.

(b) Notwithstanding the provisions of paragraph (a) of this section), if Area 3A is closed under the provisions of § 301.6 prior to attaining the catch limit in Area 3B, Area 3B will close on the same date. Area 3B will reopen on August 27 and continue on the schedule of fishing periods specified in paragraph (a) of this section or until the catch limit specified in § 301.6 is attained.

(c) Notwithstanding the provisions of paragraph (a) of this section, if Area 3A is closed under the provisions of § 301.6 prior to attaining the catch limit in Area 4A, Area 4A will close on the same date. Area 4A will reopen 10 days later or on July 15, whichever is later, for a 12-day fishing period and then continue on the schedule of fishing seasons specified in paragraph (a) of this section or until the catch limit specified in § 301.6 is attained.

(d) Notwithstanding the provisions of paragraph (a) of this section, if Area 3A is closed under the provisions of § 301.6 prior to attaining the catch limit in Area 4B, and/or Area 4D, Area 4B and/or Area 4D will close on the same date. The affected area(s) will reopen 10 days later for 14-day fishing period and then continue on the schedule of fishing seasons specified in paragraph (a) of this section or until the catch limit specified in § 301.6 is attained.

(e) Each fishing period shall begin and terminates at 1200 hours on the designated dates. All hours of opening and closing shall be Pacific Standard Time (See Table 1).

TABLE 1.—LEGAL OPENING AND CLOSING HOURS FOR HALIBUT FISHING

[Standard time (ST) and daylight saving time (DT) in different time zones of the northeastern Pacific Ocean]

Pacific		Yukon		Alaska		Bering Sea	
PST	PDT	YST	YDT	AST	ADT	BST	BDT
1200	1300	1100	1000	1000	1100	0900	1000

4. Section 301.5 is revised to read as follows:

§ 301.5 Closed area.

All waters in the Bering Sea (Area 4) that are east of a line from Cape Sarichef Light to a point at latitude 56°20′ N. longitude, 168°30′ W. and south of a line from the latter point to Cape Newenham (latitude 58°39′00″ N. longitude, 162°10′25″ W.) are closed to halibut fishing and no person shall fish for halibut therein, or shall have halibut in his possession therein, except in the course of a continuous transit across the area.

5. Section 301.6 is revised to read as follows:

§ 301.6 Catch limits.

(a) The total allowable catch of halibut to be taken during the halibut fishing periods specified in § 301.3 shall be limited to the pounds or metric tons shown in the following table:

Regulatory area	Catch limits	
	Pounds	Metric tons
2A	200,000	91
2B	5,400,000	2,449
2C	3,400,000	1,542
3A	14,000,000	6,350
3B	5,000,000	2,268
4A	1,200,000	544
4B	800,000	363
4C	400,000	181
4D	200,000	91

(b) All weights in each limit shall be computed as with heads of and entrails removed.

(c) The commission will determine and announce the date on which the catch limit will be attained in each area. Fishing for halibut in the area will be prohibited after that date.

6. In § 301.8, paragraphs (d) through (i) are revised, and a new paragraph (j) is added to read as follows:

§ 301.8 Licensing of vessels.

* * * * *

(d) The captain or operator of any vessel licensed under these regulations that shall fish for halibut in Areas 4A, 4B and 4D must obtain a vessel clearance which must be validated both prior to such fishing and prior to unloading any halibut. This vessel clearance and validation shall be obtained at Dutch Harbor, Alaska, from United States customs officers, United States fishery officers, or by authorized representatives of the Commission. This regulation does not apply to fishermen who are residents in Area 4 and unload all of their catches at ports within Area 4.

(e) The captain or operator of any vessel that shall fish for halibut in Area 4C must obtain a vessel clearance which must be validated both prior to such fishing in each fishing period and prior to unloading any halibut. This vessel clearance and validation shall be obtained at Dutch Harbor, Alaska, from United States customs officers, United States fishery officers, or by authorized representatives of the Commission. This regulation does not apply to fishermen who are residents in Area 4C and unload all of their catches at ports within Area 4C.

(f) A halibut license shall not be valid for halibut fishing nor for possession of halibut in any area closed to halibut fishing except while in transit to an area open to halibut fishing, or to or within a port of sale. The license shall be invalid for the possession of halibut if the licensed vessel is fishing or attempting to fish for any species of fish in any area closed to halibut fishing.

(g) Any vessel which is not required to be licensed for halibut fishing under paragraph (a) of this section shall not possess any halibut of any origin in any area closed to halibut fishing except

while in actual transit to or within a port of sale.

(h) No person on any vessel required to be licensed under paragraph (a) of this section shall fish for halibut or have halibut in his possession, unless said vessel had a valid license issued in conformity with the provisions of this section.

(i) The captain or operator of any vessel holding a license under these regulations shall keep an accurate log of all fishing operations including date, locality, amount or gear used, and total weight of halibut taken daily in each such locality. This log shall be updated no later than 24 hours after midnight local time for each day fished and within 24 hours following the closure of the area in which the vessel is fishing. This log record shall be retained for a period of two years and shall be open to inspection by fishing officers and authorized representative of the Commission.

(j) The captain, operator, or any other person engaged on shares in the operation of any vessel licensed under these regulations may be required by the Commission or by any officer of the Governments to certify to the correctness of such log record to the best of his information and belief and to support the certificate by a sworn statement.

8. Section 301.10 is amended by adding paragraphs (d) and (e) to read as follows:

§ 301.10 Fishing gear

* * * * *

(d) All longline or skate marker buoys carried aboard or used by any United States halibut vessel shall be marked with one of the following: the vessel name, the vessel's state license number, the vessel's registration number, or the letter X followed by the vessel's IPHC license number. These markings shall be in characters at least four inches in height and one-half inch in width in a contrasting color visible above the water, and shall be maintained in legible condition.

(e) All longline or skate marker buoys carried aboard or used by a Canadian halibut vessel shall be marked as required by the British Columbia fishing regulations.

9. Section 301.14 is revised to read as follows:

§ 301.14 Previous regulation superseded.

These regulations shall supersede all previous regulations to the Commission. These regulations shall be effective each succeeding year until superseded.

[FR Doc. 83-15709 Filed 6-10-83; 8:45 am]
BILLING CODE 3510-22-M

---

50 CFR Part 611

[Docket No. 30517-88]

Foreign Fishing; 1983 Poundage Fees

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

ACTION: Final rule.

SUMMARY: NOAA issues the final rule establishing 1983 poundage fees for foreign vessels fishing in the fishery conservation zone. Under this schedule, foreign fishermen will pay approximately 30 percent of the FY 1982 Magnuson Act costs. This rule complies with section 204(b)(10) of the Magnuson Act.

EFFECTIVE DATE: July 13, 1983.

ADDRESS: Copies of the revised regulatory impact review (RIR) are available at: Permits and Regulations Division, F/M12; National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Susan E. Jelley, 202-634-7432.

SUPPLEMENTARY INFORMATION: NOAA establishes a final fee schedule for fish caught by foreign vessels during 1983 in the fishery conservation zone (FCZ). The final schedule will result in collections of $43 million. No poundage fee will be assessed for U.S.-caught fish received at sea by foreign flag processing vessels.

A proposed schedule of fees was published at 47 FR 51336 (November 12, 1982) for a 30-day comment period. Many of the affected parties requested an extension. NOAA granted the requests at 47 FR 56650 (December 20, 1982) and extended the comment period through January 19, 1983. The proposed schedule was implemented as an interim final rule until this notice could be prepared.

Nine parties submitted comments on the derivation of the fees. The comments generated a rigorous internal review of the methodology of calculating the costs of the Magnuson Act. A few relatively minor errors within the NMFS assessment are corrected.

The comments are addressed below.

Comments

Section 204(b)(10) of the Magnuson Fishery Conservation and Management Act (Magnuson Act) (16 U.S.C. 1801 *et seq.*) requires NOAA to set fees at a certain percentage of the total Magnuson Act costs. Most comments addressed calculating the percentage or the total costs.

1. *Comment.* In calculating the ratio of foreign to U.S. catch: (a) More recent recreational catch data are available; (b) the Canadian share of the catch should be included in the calculations; and (c) internal waters fisheries should not be included in the total domestic catch.

Response. (a) Since the time the proposed rule was published, more recent recreational catch data have been collected. The new estimate increases the U.S. recreational catch from 185,068 mt to 190,102 mt.

(b) The question of including the Canadian catch in the ratio was raised last year in the comment process. Four options were considered: (1) Delete the Canadian catch from the calculations; (2) delete the Canadian catch from the foreign harvest and put it in the U.S. harvest; (3) delete the Canadian and U.S. catches on Georges Bank from the calculations; or (4) delete the fees Canada would pay from the fee collection target.

Option (4) was excluded because Canada does not have a Governing International Fisheries Agreement (GIFA) with the United States, and therefore does not come under the provisions of 50 CFR 611. Furthermore, this option would not ensure collection of the target amount.

Option (3) was excluded because not counting the U.S. harvest on Georges Bank might prejudice our claim vis-a-vis Canada regarding the boundary of the FCZ. Option (2) was excluded because there is no statutory basis for treating Canadian harvests as harvests by "domestic fishing vessels." Therefore, option (1) was chosen.

NOAA reviewed the decision made in 1982 and decided it is still correct. There is not a Canadian share of fees to be subtracted. The costs that might be attributed to Canadian fishing in the disputed area would be incurred in the absence of Canadian vessels, because of the current U.S. fisheries in that area.

(c) The comment that the catch from internal waters, e.g., within closed bays, should be not included in the U.S. catch, also was submitted in 1982. NOAA's legal staff researched this issue and concluded that the term "territorial waters" has a distinct usage, especially in fisheries legislation, and means both the territorial sea and internal waters. As Congress specified "territorial waters" rather than simply "territorial sea," catch from internal waters is by law included in the calculation. NOAA reviewed the arguments again, and concluded that the internal waters catch

is properly included in establishing the ratio.

In light of the above, NOAA has recalculated the ratio. (Table 1). The small adjustment in recreational catch does not change the final ratio from the proposed ratio of 0.303.

TABLE 1.—ESTIMATE OF RATIO OF FOREIGN CATCH TO TOTAL CATCH 1981

	Metric tons
U.S. reported commercial catch [1]	2,925,981
Exclusions:	
International waters (exc. tuna)	17,265
Tunas	222,207
Freshwater (including Great Lakes alewives)	56,043
Total	(295,515)
Adjusted U.S. commercial catch in territorial waters and FCZ	2,630,466
Add correction for molluscs [2]	787,920
Add recreational catch [3]	190,102
Add Total Foreign Catch FCZ less Canadian Catch [4]	1,567,015
Final total	5,175,503

Ratio of foreign catch to total is 30.3 percent.

[1] This figure and all following figures for U.S. commercial catch from pages 8–11, "Fisheries of the United States, 1981." Calculated in pounds and converted to metric—figures may not add to total.

[2] Addition of mollusk shells. U.S. statistics for internal use include only edible portions of mollusks, but international standard is whole animal. Conversation factor varies for each species; they are available upon request.

[3] Source: NMFS, Resource Statistics Division 1980 Recreational harvest.

[4] From pages 28, 29 "Fisheries of the United States, 1981." Conversion factor of 8.3 is used to convert scallop meats into live weight.

2. *Comment.* The Independent Offices Appropriations Act (IOAA) limits NMFS to cost recovery only, and such items as differential fees (e.g., on bycatch) and the capture of economic rent are inappropriate.

Response. NOAA General Counsel has concluded that, as a result of the 1980 American Fishery Promotion Act amendment to the Magnuson Act, the IOAA does not apply to foreign fishing fees.

3. *Comment.* It is inappropriate to charge for costs that are attributable to the Magnuson Act, but carried out under authorizations for other Acts.

Response. Some of the costs included in the proposed schedule are not under the Magnuson Act appropriation authority. The fee provision requires assessment of all costs of "carrying out the provisions of this Act (including, but not limited to, fishery conservation and management, fisheries research, administration, and enforcement * * *)".

Not all costs of carrying out the Act are incurred under Magnuson Act appropriations. In fact, enforcement costs are primarily under the Coast Guard, which has no specific Magnuson Act appropriation authorization. Furthermore, not all relevant costs are incurred by the Federal government. States and universities conduct research on species managed under the Act. While this information is used to carry out the Act, its costs were not included unless Federal expenditures occurred. In some cases the Federal expenditure was indirect, through Pub. L. 88–309, Sea Grant, or other funding programs. Some of these were included within the terms of the fee authority, but others were not. There is nothing in the Act to limit the recoverable costs to Magnuson Act authorization levels.

NOAA concludes that it is reasonable to include other Federal costs of carrying out the provisions of the Act, and not just the Magnuson Act authorization levels. The question of including non-Federal costs (State and private) will be reviewed when NOAA prepares the 1984 fee schedule.

4. *Comment.* Fees must be based on incremental costs since passage of the Magnuson Act, not on total program costs.

Response: This comment was raised last year, when NOAA decided it was legal to recover total program costs rather than incremental costs. "Incremental" infers NOAA should recover only those costs for programs operating on funds appropriated since FY 1976. The American Fisheries Promotion Act directed NOAA to collect fees "in an amount which bears to the total cost of carrying out the provisions of this Act, including, but not limited to, fishery conservation and management, fisheries research, administration, and enforcement." NOAA believes that the intent of Congress was to collect a specific portion of the total costs of administering the provisions of the Magnuson Act. Also, the Congress was well aware of the difference in total costs versus what had been appropriated for new programs since FY 1976. The congressional budget justifies NOAA's programs based on Magnuson Act operations in total, rather than the funds received for new programs since FY 1976.

NOAA still concludes that calculating the total costs is the appropriate approach to use. Incremental costs are therefore not adopted for this fee schedule.

5. *Comment.* An accounting system is needed to track better the Magnuson Act costs.

Response. Many commenters criticized the methods used in calculating agency costs of administering the Magnuson Act. Issues that were addressed include:

(a) Development of agency policy and legal guidance in establishing guidelines for inclusion of particular activities as a Magnuson Act cost;

(b) Consistent application of the guidelines; and

(c) Development of a suitable means for accounting of costs incurred in administering the Magnuson Act.

Issue (a)—The guidance provided by the Washington Office of NMFS shows an evolutionary path toward a clear and consistent approach. These guidelines form the basis for NMFS field managers to determine which proportion of their program costs should be attributed to the Magnuson Act.

Issue (b)—The guidelines issued in establishing the basis for a cost allocation process must be applied on a consistent basis if an associative cost accounting system is to function properly. The guidelines issued in 1982 were consistently applied among the regions, with a few exceptions. (See Table 2, below). The inconsistencies are corrected in this final rule.

Issue (c)—The current process for estimating Magnuson Act costs is based upon proper cost allocation guidelines and the application of these guidelines through associative cost accounting principles. The NMFS financial accounting system could be modified by using the guidelines to segregate costs into two accounts—one related to the Magnuson Act and the other not. However, this would be a waste of human and computer resources, since the information is needed only once per year.

In conclusion, NMFS uses a formal set of guidelines for its managers to use in determining which program costs are attributable to the Magnuson Act. The same managers would use the same guidelines to break-out Magnuson Act activities if a more detailed accounting system were used. However, there would be no added utility in such a system, but there would be substantial additional burdens placed on fiscal resources. The current system will continue to be used, with appropriate refinements.

6. *Comment.* The criteria used to develop the cost of Magnuson Act activities were not applied consistently and accurately.

Response. NOAA published final cost criteria at 47 FR 625 (January 6, 1982). Several commenters, most notably the Japan Fisheries Association (JFA), questioned: (1) Whether those criteria have been applied consistently by each region and center to each current year operating plan, and (2) whether activities that are only partly attributable to the Magnuson Act have been accurately apportioned. JFA proposed that "specific, detailed, and unambiguous guidelines" be developed

for use by all NMFS offices. Since the only existing guidance (an internal memo to all field offices) is deemed by JFA as vague and conflicting with earlier directives, JFA has disputed the cost allocations of regions and centers.

NOAA agrees that the method used for calculating costs is complex. However, NOAA maintains the general procedure used to determine costs is appropriate. Upon review, NOAA found that the criteria were applied consistently and accurately in all but a few instances. The net change after corrections is insignificant. The JFA concern about consistency is largely a reaction to the different accounting methods used by field offices to budget similar items. For example, Laboratory Directors and their supporting elements may be treated as part of Management Fund in one Center with many programs at each laboratory but as direct program costs in another Center. This approach is consistent with NOAA accounting principles for establishing management funds and simply reflects differing program mixes at the various financial management centers. This causes an appearance of inconsistency when one compares the proportion of the management fund attributable to the Magnuson Act claimed by each financial management center. The Magnuson Act cost will be the same either way and both approaches are proper. Despite such inconsistencies in style, each program and its components have been treated similarly throughout NMFS; the total costs are comparable.

7. *Comment.* The cost estimates are not consistent with last year's methodology, and this fails to conform to the statement in the January 6, 1982 final rule that "The total cost used in future fees can be predicted by applying budget increases, decreases, and reprogramming in Magnuson Act related activities plus an inflation factor to the total cost figure established for the 1982 fees."

Response. While this statement expressed the Agency's intent at the time, it did not create any binding obligation or restrain the Agency from improving its cost determination methodology in future years.

The commenter misleadingly attempts to raise a statement of intent to the level of a binding commitment. Even if the statement quoted were part of a regulation, or a formal interpretive policy statement, it could be changed by the Agency through this rulemaking. There is no requirement to bind NOAA to the January 6, 1982, statement of intent.

8. *Comment.* NOAA must undertake a more detailed and realistic study of the economic impacts of the fee schedule.

Response. The extent of any analysis is largely determined by the amount and level of information available upon which to base that analysis. Congress took this limitation into consideration when it passed the Magnuson Act. Limited information availability constrains the degree of analysis NOAA can perform on related actions such as setting fees.

As a result of limited available economic information, NOAA was forced to confine its study to a review of aggregate effects of the fees. Data which are critical to an analysis of the effects of the proposed fees includes the financial structure of foreign vessels and the flow of fishery products taken in U.S. waters. Because specific financial data were not available, NOAA was unable to analyze the effect of specific fees on foreign vessels fishing in the U.S. FCZ. Furthermore, the RIR was limited to a non-quantitative analysis of the effect of fees on U.S. consumers because of a lack of data concerning the flow of fishery products harvested in the FCZ. As the RIR states, "no factual information is available to distinguish between products caught in the FCZ from those that were not."

The analysis conducted in the RIR is as extensive as possible considering the amount and detail of information available. NOAA believes the analysis is based on the best current information available.

Those nations affected by the fee schedule will have to provide a complete and accurate accounting of the financial structure of their vessels fishing in U.S. waters under all types of harvesting arrangements if they contend better information should be used in the analyses of fee schedules. Those nations will also have to provide data concerning the flow of fishery products taken in the FCZ with particular emphasis on products marketed in the United States.

9. *Comment.* This action should be considered a "major rule."

Response. Executive Order 12291 of February 17, 1981, requires that each agency initially determine whether a rule it intends to propose or to issue is a "major rule." The term "major rule" is defined as any regulation that is likely to result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(c) 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.

Comments received on the foreign fee schedule for 1983 questioned the determination that the proposed rule was not a major rule. The determination was questioned on the basis of the analysis of the effects presented. Specific reference was made to:

(a) The effects of the increase in fees on the profitability of foreign vessels.

(b) The effects on joint venture operations between foreign and United States vessels.

(c) The effect on consumers.

(d) The effect on U.S. imports of fishery products.

The draft RIR determined that there would not be a $100 million impact on the economy, no major increase in costs or prices, nor a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S. enterprises to compete in domestic or export markets.

The RIR concluded that the increases in foreign fees for 1983 would add costs to foreign operations and would somewhat reduce their profits. However, no evidence was found in the RIR or presented by other sources during the 68-day comment period to indicate that foreign vessels would actually be forced from the fishery because of the increase in foreign fishing fees. Foreign vessels will likely continue to earn a profit and could continue to operate.

The question concerning the continued operation of joint ventures is based on an assumption that allocations are necessarily made in conjunction with a joint venture. Such allocations may be made to recognize the cooperation of a nation toward development of U.S. fisheries, but no requirement exists to offer such allocations at reduced fees. Joint ventures are not affected by fees for target or bycatch species (the major component of fee schedule). Rather, the fee schedule could promote the expansion of joint venture operations in the foreseeable future since such operations could be conducted at a lower relative cost in 1983.

The amount of foreign fees that could be passed on to U.S. consumers is expected to be insignificant. The RIR estimates that, at a maximum, 1.5 cents per pound in foreign fees could be passed on to consumers. Assuming, as suggested, by one commenter, that this figure should be adjusted for conversion

to a fillet-weight basis for comparative purposes, the effect would still be insignificant at less than 3 percent of average retail prices.

Likewise, consumer prices will not be significantly affected by a possible reduction in imports. The RIR states that imports of the *type* harvested in the FCZ amounted to 265 million pounds. No evidence is available, however, that this total amount is actually taken in the U.S. FCZ. Rather, it is extremely likely that much of this imported fish was *not* caught in U.S. waters and, therefore, would not be subject to a reduction in shipment to the United States. Furthermore, the maximum amount represents only about 3 percent of the total amount of edible fishery products available in the U.S. and additional supplies would likely be available from alternate sources.

A final point of consideration in a determination of "major" is that only incremental costs need be considered. In a June 13, 1981 memorandum, the Office of Management and Budget provided interim regulatory impact analysis guidance which states that "the analysis should include estimates of the present value of all the real incremental costs of the proposed regulatory change." As a result, only the incremental fee increase need be considered in an analysis of the effects of the proposed rule.

None of the comments provided quantifiable information to support a finding that the foreign fishing fee schedule is major.

10. *Comment.* Attributable overhead costs from NOAA and DOC should be included in the recoverable costs in determining foreign fishing fees.

Response. The appropriate proportion (0.5 percent) of the actual 1982 expenditures for NOAA and DOC components that are involved with the Magnuson Act, are included in the final computation of FY 1982 Magnuson Act costs.

11. *Comment.* The costs recovered should include the costs of negotiating and arbitrating the international boundaries of the FCZ.

Response. Under section 202 of the Magnuson Act, State Department was authorized to negotiate the boundaries of the FCZ with adjacent and opposite countries. An agreement was negotiated with Canada under which the location of the boundary of the Gulf of Maine area is being submitted to the International Court of Justice for arbitration. The State Department has set up a special office for this arbitration, and NOAA has devoted many employee-hours to providing necessary background material and new analyses.

Any negotiation or arbitration that deals with the boundary of the FCZ is a cost of carrying out the provisions of the Magnuson Act, especially the provision noted above. To the extent that the Gulf of Maine boundary arbitration deals with the boundary for other purposes (continental shelf mineral rights), however, it is not appropriate to attribute 100 percent of these costs to the Magnuson Act.

Most costs for boundary arbitration are being incurred in FY1983, and will be included in subsequent fee schedules. Those costs incurred by NOAA in FY82 are presently included in the NOAA cost for that year.

12. *Comment.* The Coast Guard cost estimates are invalid.

Response. The Coast Guard provided NMFS with a 1982 estimate of costs for the Magnuson Act of $78,137,100. This compares to a 1981 estimate of $56,700,000. The large increase has been questioned because there has not been a commensurate increase in the Coast Guard budget or its operations. The Japan Fisheries Association submitted a detailed review of the Coast Guard cost-estimating procedures. Several important points are made in that analysis which NOAA pursued with the Coast Guard.

Using summaries of operations data in "Abstracts of Operations," the Coast Guard determines what percentage of its vessel and aircraft direct operating hours are devoted to fisheries enforcement. This percentage is applied to the total costs of maintaining and operating the vessel or aircraft. Some commenters asked whether the activities of Training, Cadet OC, Co-op, Public Information, and Miscellaneous should be excluded from the total costs. After review of these items, it is evident that the Co-op item should be excluded since, per Coast Guard instructions, it is used only for those activities that are not part of the mission of the Coast Guard. However, the other four categories are legitimate overhead items.

The pro rata inclusion of many facility costs which directly support vessel and aircraft operations were included in the Magnuson Act costs for this year. This is the principal reason for the cost increases over the previous year.

The Coast Guard in prior years broke out fisheries from other operational activities. As of October, 1982, they further categorized fisheries activities into domestic and foreign-related activities. Commenters suggested that this be further broken down into Magnuson Act and non-Magnuson Act activities. The Coast Guard operations employees and accountants maintain that nothing would be gained by these further breakdowns because there is virtually no money going to non-Magnuson Act fisheries activities.

The Coast Guard attributes 90 percent of the fisheries activity cost as an estimate of the costs that are devoted to Magnuson Act operations. In reviewing the basis for the 90 percent estimate, it becomes clear that the estimate is very conservative. For example, all aircraft used in fisheries activities are Magnuson Act related. To apply 10 percent against fishery activity cost reduces the overall costs attributable to the Magnuson Act considerably. On review of vessel operations, the 10 percent estimate represents a maximum figure, and Magnuson Act costs could be understated. The Coast Guard is logging their actual operations during 1983 to refine their 10 percent estimate.

The Coast Guard methodology uses data on the direct operating hours of its vessels and aircraft in the calculation to determine the amount of their time spent on fisheries matters as a percentage of total law enforcement time. District Commanders provide percentage estimates of resource utilization for facilities for law enforcement. This latter percentage multiplied by the cost of the facility and the percentage of law enforcement time that is fisheries yields an estimated facility costs for fisheries. One of the commenters did an alternate analysis and, rather than going through an aggregate analysis as used by the Coast Guard, provided a station-by-station analysis. The costs using this alternate methodology appear to be considerably lower. However, this alternative methodology is flawed by not including aircraft operations.

The Coast Guard transfers its personnel about every three years. The costs of the transportation of personnel and related costs are kept in a separate accounting category. The fisheries portion of this category, is $10,575,427, or 8.3 percent of personnel transfer costs. Comments were received suggesting this cost is too high. In reviewing the number of people assigned to fisheries, the three-year rotation period, and the average cost of moves of $10,500, NOAA believes the figure provided for this category of costs is reasonable.

The Coast Guard, in arriving at its estimates of Magnuson Act costs, uses the methodology discussed above. One commenter suggests that direct costs be used as an alternative and cites the standard rates used by the Coast Guard when charging for its services to private entities. However, in reviewing the Coast Guard standard rates, NOAA

found that these rates are based on incremental costs only and are not meant to recover the full costs of providing the services. NOAA believes that full cost recovery is required under the Magnuson Act and that the Coast Guard methodology, as currently used, is the correct approach. NOAA believes the Coast Guard has been very conservative in its determination of the costs attributable to the Magnuson Act.

A summary of the revised 1983 costs are presented in Table 2. Adjustments in the cost schedule are indicated where appropriate.

TABLE 2.— FISCAL YEAR 1982 MAGNUSON ACT COSTS

[Dollars in thousands]

FMC	May 13, 1983 Request estimated costs	Mar. 30, 1983 Adjusted changes	Costs
WO	$13,157.0		$13,157.0
F/NEC	11,576.0		11,576.0
F/SEC	8,999.5		8,999.5
F/SWC	5,485.2		5,485.2
F/NWC	10,338.0	Increase MF to $1,006.0; decrease fish enhance to $55.0	10,676.0
F/NER	3,183.3	80 percent of enforcement = $1,109.3; decrease 83-309 to $378.6	2,749.6
F/SER	2,878.0	88-309 = $1,312.9	2,625.9
F/SWR	1,804.9	88-309/89-304 = $891.8	1,773.3
F/NWR	2,182.2	Delete "International"	2,065.8
F/AKR	2,641.6	Delete $86.OK development; keep MF at 50 percent; delete 38-309/89-304; use 66 percent of $550.OK.	1,919.6
NMFS Total	62,245.7		60,991.9
NOAA:			
0.5 percent of 82 actual for A, MB and NC			506.3
National Ocean Survey fleet operations			146
National Ocean Survey ship operations			2,836
Sea Grant			493
Procurement and Personnel			490
Environmental Data Services			245
NOAA Total			4,716.3
DOC: 0.5 percent 82 actual for GA account			147.8
Grand total			65,856.0

12. *Comment.* An environmental impact statement (EIS) must be prepared to meet the requirements of National Environmental Policy Act (NEPA).

Response. No NEPA document (EIS or environmental assessment (EA)) has ever been prepared on the foreign fee schedule. This decision has been based on the NOAA determination that the schedule represents a "[p]rogrammatic function with no potential for significant environmental impacts" (Revised NOAA Directive (Manual 02-10) Implementing the NEPA and Executive Order No. 12114, sec. 6(c)(3), under "Categorical Exclusions"). Some comments were received by NMFS in 1982 on the categorical exclusion from NEPA, but those arguments were not substantive or compelling. This issue has been raised once again by the Japan Fisheries Association in their comments on the proposed rule. JFA contends that higher fees will reduce foreign harvests, alter population structures, and perhaps even disrupt traditional fishing pattens, the possibility of which they claim constitutes reason enough for NMFS to prepare an EIS. NOAA asserts that environmental considerations for foreign harvests, discussed as total allowable level of foreign fishing (TALFF), are described in the fishery management plans and NEPA documents for the fisheries. JFA disputes this by pointing out that such EISs do not discuss potential effects of *not* harvesting fish.

13. *Comment.* Most foreign vessel operators already minimize their catch of non-target species. Therefore, higher fees for "bycatch" species will not decrease the catch. Under fishery management plans in Alaska, and in the Pacific whiting fishery, there are no provisions for foreign nations to harvest any species on a "bycatch" basis in the sense used in the proposed rule and RIR.

Response. The provision for assessing higher fees for significant bycatch species is removed at this time because some NOAA officials believe it may not be needed to control bycatch in the fisheries in which bycatch fees would be assessed. NOAA will continue to monitor such catch, and the need for improved management controls over the catch.

14. *Comment.* The fees for Atlantic hakes and Pacific whiting should not be unchanged from the 1982 schedule.

Response. The Magnuson Act allows NOAA to consider the economic viability of various fisheries, when setting fees. The extremely low harvest of TALFF for these species may be due to the fees or perhaps other impediments. Since NOAA is not obligated to increase the fees for all species across the board, each year, the proposed fees are unchanged in the final rule.

15. *Comment.* Foreign vessels receiving U.S.-caught fish ("joint venture") should pay poundage fees.

Response. The Magnuson Act directs the agency to encourage the development of the U.S. fishery industry. Greater fees for foreign joint venture vessels, while permissable under the Act, might discourage expansion of joint venture harvests. NOAA has therefore not assessed poundage fees for joint venture catch received by foreign vessels.

Summary

As a result of the comments and responses, the final fee collection target is $43,117,000 (30.3% x $142,591,600 Magnuson Act costs, minus $87,400 in permit application fees). The 1983 fees are 1.28 times the 1982 fees, with the exception of royal red shrimp, Western Pacific precious coral, Atlantic hakes, and Pacific whiting (see preamble to proposed rule).

The 1.28 figure equals $43,117,000 minus the revenues expected from the 4 groups above, divided by the revenues expected from all other fish caught during 1983 at the 1982 price. The final fees are presented in Table 1 at the end of this document.

Response To Request for Additional Comments

NOAA will complete its review of the comments received on proposals for sealed competitive bidding for allocations, and of offering discounted fees. These will be addressed in a future notice.

Classification

The Assistant Administrator has determined that this rule is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator prepared a regulatory impact review which concludes that this rule is not a major rule under E.O. 12291.

The General Counsel of the Department of Commerce certified to the Small Business Administration that the final fee schedule will not have a significant economic impact upon a substantial number of small entities.

Therefore, a regulatory flexibility analysis was not prepared.

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02-10. See response to comment #12 for further discussion.

This rule does not contain a collect of information requirement, for purposes of the Paperwork Reduction Act.

List of Subjects of 50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting requirements.

Dated: June 7, 1983.

Carmen J. Blondin,

Acting Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

PART 611—[AMENDED]

For the reasons in the preamble, 50 CFR Part 611 is amended as follows:

1. The authority citation for Part 611 is:

Authority: 16 U.S.C. 1801 *et seq.*, 22 U.S.C 1980.

2. The title of § 611.22 and Table I of § 611.22(a)(2) are revised to read as follows:

§ 611.22 Fee schedule for foreign fishing.

* * * * *

(a) * * *

(2) * * *

TABLE 1.—SPECIES AND POUNDAGE FEE

[Dollars per metric ton, unless otherwise noted]

Species	Fee
1. Butterfish	150
2. Hake, red	15
3. Hake, silver	18
4. Herring, river	22
5. Mackerel, Atlantic	51
6. Other finfish (Atlantic)	101
7. Sharks (Atlantic)	64
8. Squid, illex	29
9. Squid, Loligo	110
10. Shrimp, royal red	463
11. Atka mackerel	17
12. Cod, Pacific	58
13. Flatfish (Alaska)	22
14. Flounders (Pacific)	116
15. Jack mackerel	15
16. Pacific ocean perch	93
17. Other groundfish (Alaska)	19
18. Other fish (Pacific)	46
19. Pollock, Alaska	29
20. Sablefish (Alaska)	140
21. Sablefish (Pacific)	150
22. Rockfish	55
23. Snails	40
24. Squid (Pacific)	22
25. Whiting, Pacific	10
26. Western Pacific corals (per kilogram)	70
27. Seamount groundfish	29
28. Dolphinfish (mahi mahi)	110
29. Wahoo	17
30. Sharks (Pacific)	18
31. Swordfish (Pacific)	342
32. Striped marlin (Pacific)	549
33. Other Pacific billfish	220

[FR Doc. 83-15672 Filed 6-7-83; 4:54 p.m.]

BILLING CODE 3510-22-M

50 CFR Part 674

[Docket No. 30607-103]

High Seas Salmon Fishery Off Alaska

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

ACTION: Rule-related notice; closure.

SUMMARY: NOAA issues this notice of closure of the southeast Alaska commercial salmon fishery in the fishery conservation zone beginning at 12:00 (midnight), June 8, Pacific Daylight Time, and continuing until such time that the Director, Alaska Region, National Marine Fisheries Service, in consultation with the Alaska Department of Fish and Game, announces that the fishery will reopen. The closure is necessary to conserve chinook salmon stocks that contribute to the Alaska, Oregon, and Washington salmon fisheries and to delay achievement of the 1983 chinook salmon harvest guideline until after the peak of the coho salmon fishery. This closure complements an identical closure in Alaska territorial waters.

DATES: This notice is effective at 12:00 (midnight), Pacific Daylight Time (PDT), June 8, 1983. This notice of closure was filed for public inspection with the Office of the **Federal Register** on June 8, 1983, at 2:25 p.m. Public comments on this notice of closure are invited until July 9, 1983.

ADDRESS: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Robert W. McVery, 907-586-7221.

SUPPLEMENTARY INFORMATION: Salmon fishing in the fishery conservation zone (FCZ) off Alaska is managed under the Fishery Management Plan for the High Seas Salmon Fishery Off the Coast of Alaska East of 175° East Longitude (FMP), developed and amended by the North Pacific Fishery Management Council (Council) and implemented by NOAA through regulations appearing at 50 CFR Part 674 (46 FR 33041, June 26, 1981; 46 FR 57299, November 23, 1981). Section 674.23 describes procedures to adjust seasons and areas through field order. Section 674.23 was amended as published on April 22, 1983 (48 FR 17358) to clarify the authority of the Secretary of Commerce to use the field order authority to manage the fishery to achieve any specific harvest level within the chinook salmon optimum yield range determined necessary for the conservation and management of chinook salmon. This authority has been delegated to the Director, Alaska Region, National Marine Fisheries Service (Regional Director).

The Council has recommended to the Regional Director that the 1983 harvest guideline for southeast Alaska chinook salmon commercial fisheries be 255,500 fish, the same as in 1982. The Alaska State Board of Fisheries (Board) adopted the identical harvest guideline for State territorial waters. The Council and Board further recommended that the fishery be managed, to the extent possible, with the goal of delaying achievement of the chinook salmon harvest guideline until after the majority of the coho salmon catch has occurred, thereby avoiding a lengthy end-of-season chinook salmon closure while fishermen continued to harvest coho salmon. The chinook salmon season was terminated in 1982 on July 29, near the peak of the coho salmon fishery, because the 255,500 chinook salmon harvest guideline had been reached. Subsequently and as a result of the single species closure, substantial numbers of chinook salmon were reportedly caught and released incidental to coho salmon fishing. This situation was not only harmful to the chinook salmon resource, but if created a serious public relations problem with fishermen.

The Regional Director concurs with the Council and Board and intends to manage the 1983 southeast Alaska commercial salmon fishery in the FCZ, in coordination with the State of Alaska, to achieve a total chinook salmon harvest of 255,500 fish. The Regional Director will coordinate inseason closures with the State of Alaska to attempt to delay the achievement of the chinook salmon harvest guideline until after the peak of the coho season (expected in mid-to late August) and to avoid confusion and facilitate enforcement.

In order to achieve the foregoing objectives, the Regional Director, in consultation with the Alaska Department of Fish and Game (ADF&G), has determined that the southeast Alaska commercial salmon fishery in the FCZ, which opened on May 15, 1983, should be closed for an indefinite length of time beginning at 12:00 p.m. (midnight) PDT, June 8, 1983. Following closure of the fishery on June 8, 1983, the Regional Director will examine the catch and effort data from the May 15 through June 8 fishing period and, in consultation with ADF&G, will determine the date on which the fishery shall be reopened. It is expected that high catches and effort during the early fishing period will result in extending the closure while low

catches and effort will advance the reopening date.

Unless a subsequent rule-related notice in the **Federal Register** provides otherwise, the fishery will reopen beginning on a date between June 25 and July 10 inclusive. The Regional Director will announce the reopening date in accordance with procedures specified in 50 CFR 674.23(b)(2).

This closure will not be effective prior to filing of this notice for public inspection with the Office of the Federal Register and publicizing the closure for 48 hours through ADFG procedures, under 50 CFR 674.23(b)(2). Under 50 CFR 674.23(b)(3), public comments on this notice of closure may be submitted to the Regional Director at the address stated above for 30 days following the effective date. During the 30-day comment period, the data upon which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m.) at the NMFS Alaska Regional Office, Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska. If comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the **Federal Register**, either confirming this notice's continued effect, modifying it, or rescinding it, unless it has already expired.

Other Matters

The Regional Director has determined that the chinook salmon resource harvested in southeast Alaska will be subject to harm due to overharvest unless this order takes effect promptly. The Agency therefore finds for good cause that advance notice and public comment on this order is contrary to the public interest and that there should be no delay in its effective date.

This action is taken under the authority of regulations specified at 50 CFR 674.23, and is taken in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 674

Administrative practice and procedure, Fish, Fisheries, Fishing, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: June 8, 1983.

Carmen J. Blondin,

Acting Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 83-15708 Filed 6-8-83; 2:25 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 48, No. 114
Monday, June 13, 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 AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

Registration of Firms To Engage in Foreign Commerce Grain Business

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: In compliance with the requirements for periodic review of existing regulations, the Federal Grain Inspection Service (FGIS or Service) has reviewed and is proposing to revise the regulations under the United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (Act), concerning the requirement and procedures for registration of firms to engage in foreign commerce grain business. The proposed revision involves rewriting and reorganizing these regulations to simplify, clarify, and condense certain language.

The proposed revision also includes provisions that would: (1) Delete procedures used only during initial implementation of the registration program; (2) delete provisions dealing with withdrawal of an application; (3) delete provisions dealing with possession of certificates since they are issued annually to each approved applicant; (4) delete the requirement that firms that have their registration suspended or revoked return their registration certificates; and (5) delete the provisions concerning numbering and nomenclature of renewed certificates to simplify the mechanics of the registration program so that only a new certificate is issued each year.

DATE: Comments must be submitted on or before August 12, 1983.

ADDRESS: Comments should be submitted in writing, in duplicate, to Lewis Lebakken, Jr., Regulations and Directives Management, USDA, FGIS, Room 0667 South Building, 14th Street and Independence Ave, S.W., Washington, D.C. 20250, telephone (202) 382–1738. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., address as above, telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Secretary's Memorandum 1512–1. This action has been classified as "nonmajor" because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

Kenneth A. Gilles, Administrator, FGIS, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it applies to a limited number of firms which engage in foreign commerce grain business and are not considered to be small entities because they are dominant in their area of operation.

Regulation Review

The review of the regulations on Registration (7 CFR 800.30–800.40) included a determination of the continued need for a consequences of the regulations.

An objective of the review was to insure that the language of the regulations is clear and that the regulations are consistent with FGIS policy. FGIS has determined that these regulations are serving their intended purpose; are consistent with FGIS policy; and should remain in effect. FGIS proposes, however, to amend:

(1) Section 800,30 by clarifying and condensing language in the section;

(2) Section 800.31 by clarifying and condensing language in the section;

(3) Section 800.32 by clarifying and condensing language in the section and by deleting the provisions concerning initial implementation of the registration provisions. The initial implementation provisions provided that no person be required to register until 6 months after the effective date of the regulations. Since the initial implementation period is past, these provisions are no longer necessary and FGIS proposes to delete them.

(4) Section 800.33 by clarifying and condensing language in the section and by deleting the provisions concerning withdrawal of an application. These provisions state that an application may be withdrawn at any time. The provisions concerning withdrawal of an application could lead to confusion because registration is mandatory under the Act for firms regularly engaged in foreign commerce grain business and all those firms have registered to date. Accordingly, FGIS proposes to delete the provisions concerning withdrawal of an application. In any event, a firm which withdraws its application any time prior to approval will have the fee refunded in full by FGIS.

(5) Section 800.34 by clarifying and condensing language in the section and by deleting the provisions concerning the prorating of registration fees during initial implementation of these sections. Firms engaged in foreign commerce grain trade were required to register initially in October 1980, and the initial registration was made effective through December 31, 1981. The provisions concerning the prorating of registration fees were included to reduce the cost of initial registration. Since the initial registration period is past, the provisions are no longer applicable and FGIS proposes to delete them.

(6) Section 800.35 by clarifying and condensing language in the section.

(7) Section 800.36 by clarifying and condensing language in the section and by deleting the provisions concerning possession of registration certificates. These provisions state that registration certificates are the property of the Service and that each person who is registered shall have the right to possess the certificate unless it is revoked or suspended. These provisions were included in conjunction with § 800.40 which provides for the return of certifictes in cases where a registration is suspended or revoked. FGIS proposes to change this concept. FGIS proposes to delete § 800.40 concerning the surrender of suspended or revoked certificates so as to simplify the mechanics of the registration program. Accordingly, the provisions on possession of certificates would not be needed and FGIS proposes to delete them.

(8) Section 800.37 by condensing language in the section.

(9) Section 800.38 by clarifying and condensing language in the section and by deleting provisions concerning the content of certificates that are renewed. The provisions regarding renewed certificates were included in the regulations because FGIS initially believed a large number of firms would register. Fewer than 150 firms have registered during each of the 3 years the program has been in effect. While firms will still be permitted to renew their registrations, FGIS proposes to delete the provisions concerning renewed certificates to simplify the mechanics of the registration program. FGIS would issue the same type of registration certificate to all firms regardless of whether they are renewing a registration or registering for the first time. Therefore, FGIS proposes to delete the provision concerning renewed certificates.

(10) Section 800.39 by clarifying and condensing language in the section.

(11) Section 800.40 which requires firms to surrender to FGIS suspended or revoked certificates of registration. These provisions are not needed since a certificate of registration is valid only for the calendar year in which it is issued, and the possession of a suspended or revoked certificate does not enable a firm to engage in foreign commerce grain business. Also, the proposed changes to § 800.36 would no longer make the provisions necessary. FGIS proposes to delete section 800.40.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Export, Grain.

Accordingly, it is proposed that § 800.40 be removed and §§ 800.30–800.39 be revised to read as follows:

PART 800—[AMENDED]

Registration

§ 800.30 Foreign commerce grain business.

"Foreign commerce grain business" is defined as the business of buying grain for sale in foreign commerce or the business of handling, weighing, or transporting grain for sale in foreign commerce. This provision shall not include:

(a) Any person who only incidentally or occasionally buys for sale, or handles, weighs, or transports grain for sale and is not engaged in the regular business of buying grain for sale, or handling, weighing, or transporting grain for sale;

(b) Any producer of grain who only incidentally or occasionally sells or transports grain which the producer has purchased;

(c) Any person who transports grain for hire and does not own a financial interest in such grain; or

(d) Any person who buys grain for feeding or processing and not for the purpose of reselling and only incidentally or occasionally sells such grain as grain.

§ 800.31 Who must register.

Each person who has engaged in foreign commerce grain business totaling 15,000 or more metric tons during the preceding or current calendar year must register with the Service and shall be deemed to be regularly engaged in foreign commerce grain business. This includes foreign-based firms operating in the United States but does not include foreign governments or their agents. The Service will, upon request, register persons not required to register under this section if they comply with the requirements of §§ 800.33 and 800.34.

§ 800.32 When to register.

A person shall submit an application for registration to the Service at least 30 calendar days before regularly engaging in foreign commerce grain business according to § 800.31. For good cause shown, the Service may waive this 30-day requirement.

§ 800.33 How to register.

Any person who is required or desires to register must submit an application for registration to the Service. Application forms can be obtained from the Service. Each application shall:

(a) Be typewritten or legibly written in English;

(b) Include all information required by the application form; and

(c) Be signed by the applicant.

The information required by this paragraph may be submitted to the Service via telephone, subject to written confirmation. An applicant shall furnish any additional information requested by the Service for consideration of the application.

§ 800.34 Registration fee.

An applicant shall submit the registration fee prescribed in § 800.71 with the completed application. If an application is dismissed, the fee shall be refunded by the Service. No fee or portion of a fee shall be refunded if a person is registered and the registration is subsequently suspended or revoked under § 800.39.

§ 800.35 Review of applications.

(a) The Service shall review each application to determine if it complies with §§ 800.32, 800.33, and 800.34. If the application complies and the fee has been paid, the applicant shall be registered.

(b) If the application does not comply with §§ 800.32, 800.33, and 800.34 and the omitted information prevents a satisfactory review by the Service, the applicant shall be provided an opportunity to submit the needed information. If the needed information is not submitted within a reasonable time, the application may be dismissed. The Service shall promptly notify the applicant, in writing, of the reasons for the dismissal.

§ 800.36 Certificates of registration.

The Service shall furnish the applicant with an original and three copies of the registration certificate. The registration shall be effective on the issue date shown on the certificate. Each certificate of registration is issued on the condition that the registrant will comply with all provisions of the Act, regulations, and instructions. The Service shall charge a fee, in accordance with § 800.71, for each additional copy of a certificate of registration requested by a registrant.

§ 800.37 Notice of change in information.

Each registrant shall notify the Service within 30 days of any change in the information contained in the application for registration. If the notice is submitted orally, it shall be promptly confirmed in writing.

§ 800.38 Termination and renewal of registration.

Each certificate of registration shall terminate on December 31 of the calendar year for which it is issued. The Service shall send a letter to each registrant notifying the registrant of the impending termination of the registration and providing instructions for requesting renewal. The registration may be renewed in accordance with §§ 800.33 and 800.34. Failure to receive the letter shall not exempt registrants from the responsibility of renewing their registration if required by § 800.31.

§ 800.39 Suspension or revocation of registration for cause.

(a) *General.* Registration is subject to suspension or revocation whenever the Administrator determines that the registrant has violated any provision of the Act or regulations, or has been convicted of any violation involving the handling, weighing, or inspection of grain under Title 18 of the United States Code.

(b) *Procedure.* Before the Service suspends or revokes a registration, the

registrant (hereinafter the "respondent") shall be notified of the proposed action and the reasons therefor, and shall be afforded opportunity for a hearing in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under Various Statutes (7 CFR 1.130–1.151). Prior to formal adjudicatory proceedings, the Service may allow the respondent to express views on the action proposed by the Service in an informal conference before the Administrator. If the Service and the respondent enter into a consent agreement, no formal adjudicatory proceedings shall be initiated.

§ 800.40 Surrender of certificate of registration. [Removed]

(Secs. 18 and 22, Pub. L. 94–582, 90 Stat. 2884 and 2886; 7 U.S.C. 87e and 87f–1)

Dated: May 27, 1983.

Kenneth A. Gilles,

Administrator.

[FR Doc. 83-15797 Filed 6-10-83; 8:45 am]

BILLING CODE 3410-02-M

---

7 CFR Part 800

Duties and Conduct of Licensed and Authorized Personnel

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: In compliance with the requirements for the periodic review of existing regulations, the Federal Grain Inspection Service (FGIS or Service) has reviewed its regulations on Duties and Conduct of Licensed and Authorized Personnel. FGIS proposes to amend its regulation on: (1) Duties of official personnel and warehouse samplers by deleting the requirement that licensees and warehouse samplers report changes in the scope of their duties and employment; (2) Standards of conduct by adding the coerce or attempt to coerce provision of the regulation on "Conflicts of Interest;" and (3) Conflicts of interest by deleting the provisions on coerce or attempt to coerce and by adding a new paragraph which states that warehouse samplers are exempt from the conflict-of-interest provisions.

DATE: Comments must be submitted on or before August 12, 1983.

ADDRESS: Comments must be submitted in writing, in duplicate, to Lewis Lebakken, Jr., Regulations and Directives Management, USDA, FGIS, Room 0667 South Building, 14th Street and Independence Avenue, SW., Washington, D.C. 20250, telephone (202) 382–1738. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., (address above), telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Secretary's Memorandum 1512–1. The action has been classified as nonmajor, because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

Kenneth A. Gilles, Administrator, FGIS has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because: (1) It applies to a limited number of delegated States and designated official agencies under the Act which are not considered to be small entities because they are dominant in their area of operation based on the delegation/designation process; and (2) most other users of FGIS' services are not considered to be small entities.

Review of Regulations

The review of the regulations on Duties and Conduct of Licensed and Authorized Personnel included a determination of the continued need for and consequences of the regulations. An objective was to assure that the language of the regulations is clear and that the regulations are consistent with FGIS policy. FGIS has determined that these regulations in general are serving their intended purpose; are consistent with FGIS policy; and should remain in effect. FGIS proposes, however:

1. To amend § 800.185 by deleting paragraph (g) "Reporting changes" and by redesignating paragraphs (h) as (g), (i) as (h), and (j) as (i). This action eliminates a duplication of effort inasmuch as § 800.185(g) requires of the licensee what § 800.208(a) requires of the agency.

2. To amend §§ 800.186 and 800.187 by deleting paragraph (b)(7) from § 800.187 and adding it to § 800.186 as (b)(7). FGIS believes this provision addressing coerce or attempt to coerce would be more appropriately located under Standards of conduct.

3. To further amend § 800.187 by deleting the words "and warehouse samplers" from paragraphs (c), (d), and (e)(1); by deleting the words "or warehouse samplers" from paragraph (e)(2); by deleting the words "or warehouse sampler" from paragraph (e)(3); by adding a new paragraph (a) to state that warehouse samplers are exempt from the conflict-of-interest provisions of § 800.187; and by redesignating paragraphs (a) as (b), (b) as (c), (c) as (d), (d) as (e), and (e) as (f).

Section 11(a) of the U.S. Grain Standards Act (7 U.S.C. 87(a); the Act) authorizes the Administrator to license qualified employees of any grain elevator or warehouse to perform official sampling functions under such conditions as the Administrator may by regulation prescribe. The 1968 Act contained an almost identical provision (7 U.S.C. 87 (1968)). The Regulations promulgated under the 1968 Act were such that warehouse samplers were not included in the conflict-of-interest provisions (7 CFR 26.87 (1972)). When the regulations were promulgated in 1980 implementing 1976 and 1977 Amendments to the Act, FGIS revised its conflict-of-interest provisions in § 800.187 of the regulations to include warehouse samplers. Presently, warehouse samplers are required to obtain exceptions for any conflict of interest that they may have, including their employment status. Inasmuch as there have not been any problems which have surfaced with respect to conflicts of interest in the warehouse sampler program, FGIS proposes to simplify the conflict-of-interest provisions for warehouse samplers by providing them an exemption from all of the conflict-of-interest provisions of § 800.187. In doing so, the proposal would return the regulations to their pre 1980 treatment of conflicts of interest as to warehouse samplers. However, warehouse samplers would be still subject to the standards of conduct requirements of § 800.186 of the regulations. This proposed change would be consistent with the purposes and objectives of the Act.

No changes to §§ 800.188 and 800.189 are proposed.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Export, and Grain.

Accordingly, it is proposed that regulations on "Duties and Conduct of Licensed and Authorized Personnel" be amended as follows:

§ 800.185 [Amended]

1. Section 800.185 be amended by removing paragraph (g) and redesignating paragraphs (h) as (g), (i) as (h), and (j) as (i).

§§ 800.186, 800.187 [Amended]

2. Sections 800.186 and 800.187 be amended by removing paragraph (b)(7) from § 800.187 and adding it to § 800.186 as (b)(7).

3. That § 800.187 be further amended by removing the words "and warehouse samplers" from paragraphs (c), (d), and (e)(1); by removing the words "or warehouse samplers" from paragraph (e)(2); by removing the words "or warehouse sampler" from paragraph (e)(3); by adding a new paragraph (a); and by redesignating paragraphs (a) as (b), (b) as (c), (c) as (d), (d) as (e), and (e) as (f) to read as follows:

§ 800.187 Conflicts of interest.

(a) *General.* Warehouse samplers are exempt from the conflict-of-interest provisions of this section.

(b) *What constitutes a gratuity.*

* * * * *

(c) *Conflicts.*

* * * * *

(d) *Reports of interests.* Official personnel shall report information regarding their employment or other business or financial interests which may be required by the Service.

(e) *Avoiding conflicts of interest.* Official personnel shall not acquire any financial interest or engage in any activity that would result in a violation of this § 800.187, or § 800.186, or Section 11 of the Act and shall not permit their spouses, minor children, or blood relatives who reside in their immediate households to acquire any such interest or engage in any such activity. For the purpose of this section, the interest of a spouse, minor child, or blood relative who is a resident of the immediate household of official personnel shall be considered to be an interest of the official personnel.

(f) *Disposing of a conflict of interest.*—(1) *Remedial action.* Upon being informed that a conflict of interest exists and that remedial action is required, an applicant for a license and official personnel shall take immediate action to end the conflict of interest and inform the Service of the action taken.

(2) *Hardship cases.* Applicants and official personnel who believe that remedial action will cause undue personal hardship may request an exception by forwarding to the Service a written statement setting forth the facts, circumstances, and reasons for requesting an exception.

(3) *Failure to terminate.* If a final determination is made by the Service that a conflict of interest does exist and should not be excepted, failure to terminate the conflict of interest shall subject: (i) An applicant for a license to a dismissal of the application; (ii) an employee of the Service to disciplinary action; and (iii) a licensee to license revocation.

(Sec. 13, 18, Pub. L. 94–582, 90 stat. 2880, 2884; (7 U.S.C. 87, 87e))

Dated: May 27, 1983.

Kenneth A. Gilles,

Administrator.

[FR Doc. 83-15796 Filed 6-10-83; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 83-NM-42-AD]

Airworthiness Directives: Boeing Model 707 and 720 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes an Airworthiness Directive (AD) that would require inspection and repair, as necessary, of the rudder tab control rod assemblies on Boeing Models 707 and 720 series airplanes. Two operators have reported complete fracture of one of the two rudder tab control rod assemblies. Numerous occurrences of cracking and corrosion have also been reported. Inspection of the rudder tab rod assemblies is necessary to detect failed or severely damaged rudder tab control rods. Failure of both rods could result in loss of the airplane.

DATE: Comments must be received on or before July 18, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Holmes, Airframe Branch, ANM–120S, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington; telephone (206) 767–2516. Mailing Address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. All communications should identify the regulatory docket number and be submitted in duplicate to the address specified below. Communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date of comment at the FAA, Northwest Mountain Region, Office of Regional Counsel, 17900 Pacific Highway South, C–68966, Seattle, Washington, 98168.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped post card on which the following statement is made: Comments to Docket No. 83–NM–42–AD. The post card will be date stamped and returned to the commenter.

Discussion

There are two control rods which drive the rudder tab. One is the rudder tab control rod assembly and the other is the rudder trim tab control rod assembly. During a recent modification, corrosion was found on several rudder tab control rod assemblies. Corrosion has also been reported in the rudder trim tab control rods. Six of seventeen tab control rods initially X-ray inspected had cracks, and two had corrosion. Subsequently, two operators reported complete fracture of the control rod.

Cracks and corrosion have typically been found near the end fitting attachments. An external visual check is required to verify structural integrity. Cracks are apparently initiated by stress corrosion and may exist in rods for a considerable period of time until corrosion inside the tubular section causes total fracture.

Failure of one of the rudder tab control rods may or may not be detected. Failure of both the rudder tab control rod and the rudder trim tab control rod can result in tab flutter with possible loss of the airplane.

Since this condition is likely to exist or develop on other airplanes of the same type design, the proposed AD would require visual inspections of both rudder tab control rod assemblies on all 707 and 720 aircraft.

It is estimated that 300 airplanes of U.S. Registry would be affected by this AD, and that it would take 16 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD is estimated to be $192,000. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few

shall entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulation (14 CFR 39.13) by adding the following new airworthiness directive:

Boeing: Applies to Model 707 and 720 Series Aircraft certificated in all categories. Accomplish the following within 300 hours time in service or 12 months, whichever occurs first, after the effective date of this AD, unless already accomplished within the 12 months, and at intervals thereafter not to exceed 12 months:

(a) Remove and visually inspect the entire outside surface of all rudder tab control rods identified by part numbers 69–14346–2, 69–11772–6, 69–11772–12, 69–11275–7, 9–676–3015, 69–11191–1, which have been in service more than 5 years since new or reconditioned. Use a 10X or greater magnification aid for this inspection. Replace the rod if it exhibits cracks, blisters, or corrosion.

(b) Alternate inspection methods or intervals may be used when approved by the Manager, Seattle Aircraft Certification Office, ANM–100S.

(c) Aircraft may be ferried to a base for maintenance in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble: the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory evaluation has been prepared and has been placed in the public docket.

Issued in Seattle, Washington on June 1, 1983.

Wayne J. Barlow,

Acting Dirctor, Northwest Mountain Region.

[FR Doc. 83–15795 Filed 6–10–83; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 82–NM–119–AD]

Airworthiness Directives: CASA Models C–212CB and C–212CC Airplanes

AGENCY: Federal Aviation Adminstration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes adoption of a new airworthiness directive (AD) that would require replacement and/or modification of certain components on CASA Models C–212CB and C–212CC airplanes, as necessary, to correct certain unsafe conditions relating to door opening modes including: (1) Forward service doors that do not lock open in the 180 degree position so as to permit safe egress, (2) doors that do not have an appropriate lock indication means, and (3) an inward aft door opening that could be blocked during rapid egress.

DATE: Comments must be received no later than August 1, 1983.

ADDRESSES: Applicable service bulletins may be obtained from Construcciones Aeronauticas S.A., Getafe, Madrid, Spain, or may also be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Foreign Aircraft Certification Branch, ANM–150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 767–2530. Mailing Address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available both before and after the closing date for comments in the Rule Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filled in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 82–NM–119–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The FAA has discovered several unsafe items on certain CASA 212 CB and CC airplanes. At present there are approximately 4 CASA Model C–212CB and 27 Model C–212CC airplanes on the U.S. Register. It is considered necessary to issued an AD to modify these airplanes to correct the conditions listed below.

A. *Forward Service Doors.* The forward service door on the left hand side of the CB model and the forward service doors on the left and right hand sides of the CC model are hinged at the forward door frame and open outward. These doors are used by the flight crew but can be used by passengers during emergency egress. The doors are capable of being rotated a full 180 degree arc but only open freely to 90 degrees from the airplane centerline, i.e., the door must be pushed to and held at the 180 degree position. The propeller plane is aft of the door opening. The opening position of the door could result in deplaning occupants moving aft toward the propeller plane and being injured by a propeller blade which could be rotating (spinning down) in an emergency evacuation situation. An evaluation has shown that with the door completely open in the 180 degree position, a safer egress will result. Therefore, the proposed AD requires the installation of an automatic restraining mechanism for the forward doors to lock them open in the 180 degree position to prevent pasenger/crew injury.

B. *Main Aft Passenger Door.* This type I size exist door, located on the left side, is hinged at the aft doorframe and, on opening swings inward and aft. Passengers could crowd against the door during an emergency evacuation preventing the door from being opened which could seriously affect the rapid egress desired. The proposed AD provides for the installation of an outward opening door or cabin rearrangement. If the cabin interior rearrangement option is selected, the CB model airplane will require a cabin attendant seat and related equipment.

C. *Door Locking Mechanism Inspection.* Direct visual inspection of the door locking mechanism is impracticable. The proposed AD provides an individual door warning switch which illuminates a light in the cockpit. This is necessary to assure that the locking mechanism is functioning properly.

This airplane model is manufactured in Spain and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions exist on airplanes of this model registered in the United States, an AD is proposed that would require the previously mentioned modifications.

It is estimated that 31 airplanes would be affected by this AD, that it would take approximately 320 manhours per airplane to accomplish the required actions, and that the average labor cost will be $35 per manhour. Repair parts are estimated at $30,000 per airplane. Based on these figures, the total cost impact of this AD is estimated to be $1,300,000. For these reason, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

CASA: Applies to all model C-212CB and Model C-212CC airplanes certificated in all categories. Compliance required as indicated.

A. To reduce the potential for passenger injury during egress from the forward door, within 600 hours time in service or 4 months after the effective date of this AD, whichever comes first, unless already accomplished modify the forward exit door on the CB model and doors on the CC model to automatically lock full open in accordance with CASA Service Bulletin 212-52-13 dated September 17, 1982.

B. To prevent inability to open the aft left door during an emergency evacuation, accomplish one of the following no later than March 31, 1984: (1) install an FAA approved outward opening door or, (2) rearrange the cabin interior in accordance with CASA Service Bulletin 212-25-30 dated September 14, 1982 and Aircraft Furnishings International Limited Service Bulletin 25-89 dated September 1982.

C. To preclude improper passenger door locking, within the next 600 hours time in service or four months, whichever occurs first after the effective date of this AD, install an individual switch door warning light system for cockpit warning of an unlocked passenger door in accordance with CASA Service Bulletin 212-52-14 R2 dated February 14, 1983.

D. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

(Secs 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble: The FAA has determined that this document (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory evaluation has been prepared and has been placed in the public docket.

Issued in Seattle, Washington, on June 1, 1983.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 83-15802 Filed-6-10-83; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 82-NM-121-AD]

Airworthiness Directives: Gates Learjet Models 24 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new Airworthiness Directive (AD) applicable to all Gates Learjet Model 24 airplanes which provides the hardware changes to correct safety of flight conditions identified by the Special Certification Review (SCR) and relieves limitations imposed by AD 80-19-11. Specifically, this AD requires the installation of an improved pitch trim actuator, trim-in-motion warning, pitch axis master interrupt, autopilot roll rate limiter, autopilot roll monitor, autopilot G-limiter and several other associated alterations found necessary to prevent the hazard created by certain failures of these components in conjunction with the high response rate of the aircraft. Airplanes which have complied with AD 81-16-08, amendment 39-4546, to permit operation at 51,000 feet have met the requirements of this proposed AD.

DATE: Comments must be received on or before August 1, 1983.

ADDRESSES: The applicable service information may be obtained from Gates Learjet Corporation, P.O. Box 7707, Wichita, Kansas 67277.

Send comments on this proposal to: FAA, Northwest Mountain Region, Office of the Regional Counsel, Attn: Airworthiness Rules Docket No. 82-NM-121-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

FOR FURTHER INFORMATION CONTACT: Robert R. Jackson, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, Central Region, Room 238, Terminal Building No. 2299, Mid-Continent Airport, Wichita, Kansas 67209, telephone (316) 269-7008.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should identify the AD Docket Number and be submitted in duplicate to the address specified above. All comments received on or before the closing date for comments will be considered by the Administrator before action is taken on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report will be filed summarizing each FAA/public contact concerned with the substance of this proposal.

Availability of NPRNS

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 82-NM-121-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Gates Learjet Special Certification Review (SCR) was initiated

in June 1980, after several unexplained accidents occurred on the Model 25 series airplanes earlier that year. The SCR identified deficiencies in certain Model 20 series airplane systems and revealed inadequate operational procedures that could result in unsafe conditions in the event of system malfunction or airplane upset. Airworthiness Directive (AD) 80-19-11; Amdt. 39-3932 (45 FR 65999, October 6, 1980), provided and interim solution to the major deficiencies outlined in the SCR. In order to provide an acceptable interim level of safety, AD 80-19-11 through AFM operational and limitations changes, shifted a large burden of responsibility to the pilot to assure that flight critical systems were properly preflighted and operated within an acceptable flight envelope. Since operational changes tend to lose their effectiveness if relied on for extended periods, these changes were envisioned to be used only until the manufacturer developed hardware changes that would provide the permanent improved level of safety required on the affected Learjet models. The initial effort in providing hardware changes was concentrated on the Model 25 series airplanes. Gates Learjet has now developed similar kits for the Model 24 series and the proposed AD requires installation of these kits. Since the issuance of AD 80-19-11, a high altitude accident has occurred on a Model 24 series airplane. The exact cause of this accident has not been determined; however, the accident profile was similar to accidents which have previously occurred on Model 25 airplanes. Pilot training and proficiency may have been a major factor in this particular accident. Additionally, an incident occurred on a Model 24 involving an autopilot pitch synchronizer malfunction which the crew was able to overpower. The SCR modifications would not have prevented the pitch synchronizer malfunction from occurring, but the addition of aural trim-in-motion and pitch axis interrupt could have resulted in earlier recognition and quicker pilot reaction to the malfunction.

The airplane modification kits, prescribed, in the body of this AD, incorporate the inproved pitch trim actuator, trim-in-motion warning, redesigned pitch axis master interrupt, autopilot roll rate limiter, autopilot roll monitor, G-limiter, and stick pull/mach warning changes for all Gates Learjet Model 24 airplanes. The Airplane Flight Manual (AFM) changes, provided with kits, listed in paragraph A.1. of the proposed AD, relieve the limitations, normal operation, and emergency procedures in paragraphs A.2., A.5., and A.6. of AD 80-19-11.

Since unsafe conditions may still exist on Gates Learjet Model 24 airplanes where there is not strict adherence to the procedural changes of AD 80-19-11 and/or maintenance programs, an Airworthiness Directive is being proposed which requires modification of all Learjet Model 24 series airplanes to minimize the potential for hazardous flight conditions.

Approximately 214 airplanes will be affected by this AD. It will take approximately 375 manhours per airplane to accomplish the required action, and the average labor cost will be $34 per hour. Modification kit cost is estimated at $13,600 per airplane. The loss associated with two weeks of down time is estimated to be $7,000. Based on these figures, the total cost impact of this proposed AD is estimated to be $7,136,900. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, the FAA proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new Airworthiness Directive:

Gates Learjet: Applies to Gates Learjet Model 24 series airplanes certificated in all categories. Compliance required by June 30, 1984, unless previously accomplished or prior compliance with AD 81-16-08, Amendment 39-4546.

A. Accomplish the requirements of this paragraph at an FAA certificated maintenance repair agency. However, the modification and inspection of the horizontal stabilizer trim actuator as required in the airplane modification kits referenced in Table I may be performed by another FAA certificated repair agency utilizing qualified technicians who must have recent accessory overhaul experience performing the overhaul and test of the Gates Learjet Horizontal Stabilizer Trim Actuator with the necessary shop equipment (Attachment I hereto) as referenced in Learjet Repair Manual Number 1711-9, or the equivalent equipment.

1. Modify all Learjet Model 24 airplane flight control systems, stall warning, and control wheel in accordance with the following:

TABLE I

Gates Learjet airplane modification kit	Learjet Models
AMK 82-5	24, 24A.
AMK 82-1	24B, 24B-A.
AMK 81-18	24D, 24D-A.
AMK 81-13	24E, 24F, 24F-A.

Note.—Modification of JET Autopilot Controllers and Computers required by the above kits must be performed in an FAA approved facility for maintenance of the JET FC-110 autopilot. Facilities not possessing JET FC-110 capability approved by the FAA must send units to an approved facility for modification.

B. Required Airplane Maintenance Record entry must be accomplished by the facility performing its portion of the AD as prescribed in paragraph A. of this AD.

C. Insert in the appropriate sections of the existing Airplane Flight Manual (AFM) the FAA approved temporary Airplane Flight Manual Change or equivalent permanent AFM revision, pertaining to procedures required as a result of the modification of the flight control system in accordance with Airplane Modification Kits. Upon completion of the modifications required by paragraph A. of this AD and the insertion of the temporary AFM changes or equivalent permanent AFM revision, the identified, more restrictive paragraphs A.2., A.5., and A.6., of AD 80-19-11 are no longer applicable.

D. Prior to accomplishing the modification required by paragraph A. of this AD, contact the FAA office noted in paragraph E. of this AD if any modification or alteration has been performed on the affected airplane for further instruction relative to the compatibility of the modification of this AD.

E. Alternate methods of compliance with this AD may be used if they are approved by the Manager, Wichita Aircraft Certification Office, FAA, Central Region.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421 and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble: The FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291, and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory evaluation has been prepared and has been placed in the public docket.

Issued in Seattle, Washington, on June 1, 1983.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

Attachment I

The stabilizer actuator test stand (P/N St-00463) is used to functionally test the

stabilizer actuator after overhaul. The physical structure of the test must be capable of withstanding a minimum load of 2500 lbs. without any bending or deformation.

The stabilizer actuator is vertically mounted on the test stand with one end stationary and the other end movable through a hydraulic actuator. The test stand consists of the following components:

a. Hydraulic Actuator—The hydraulic actuator is capable of applying a regulated load of 0 to 2500 lbs. on the stabilizer actuator during the entire extend or retract cycles.

b. Hydraulic Pressure Regulator—The pressure regulator is used to select hydraulic pressures applied to the stabilizer actuator during the functional test.

c. Hydraulic Pressure Gauge—The hydraulic pressure gauge is used to monitor hydraulic pressure applied to the stabilizer actuator. The gauge must be certified at least monthly.

d. Digital Position Readout—The digital position readout indicator is used to monitor the travel of the stabilizer actuator. Signals to the indicator are picked up from a rigid mounted linear potentiometer and movable wiper attached to the hydraulic actuator. The digital readout is accurate to 1/1000th of an inch.

e. Linear Scale—A linear scale, graduated in 100th of an inch, is permanently mounted on the test stand to verify the digital readout. A tool of known length is used to verify the linear scale and digital readout before the stabilizer actuator functional test is performed. The tool length must be certified at least yearly.

f. Lapse Timer—A lapse timer is coupled to the control switches and the stabilizer actuator to monitor travel time during the extend and retract cycles. The lapse timer must measure seconds to be accurate to 1/100th of a second.

g. Trim Controller—The trim controller is used to simulate two-speed input to the stabilizer actuator primary motor. The trim controller part number is EM 2079-6.

h. Pre-Select Timer—The pre-select timer is used to check stabilizer actuator travel vs. time, voltage, and amperage inputs in accordance with the functional test.

i. Power Supply—The power supply is variable through 0-30 volts DC and 0-30 amperes DC.

j. DC Voltmeter—The DC voltmeter must be capable of measuring 0-30 volts DC and must be certified at least yearly. The voltmeter is used to monitor the voltage inputs to the stabilizer actuator in accordance with the functional test.

k. DC Ammeter—The DC ammeter must be capable of measuring 0-30 amperes DC and must be certified at least yearly. The ammeter is used to monitor the amperes inputs to the stabilizer actuator in accordance with the functional test.

l. Millivolt Meter—The millivolt meter is used to monitor the stabilizer actuator linear potentiometer for a smooth and steady signal output. The meter is 0-50 volts graduated in 100 mv increments.

m. Switches—Necessary switches installed to operate the stabilizer actuator primary and secondary motors to extend or retract.

n. A digital or Simpson 260 meter, not a part of the test stand, is used to verify the resistance of the stabilizer actuator linear potentiometer. The digital or Simpson 260 meter must be certified at least every 90 working days.

[FR Doc. 83-15794 Filed 6-10-83; 8:45 am]
BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 811 0048]

State Volunteer Mutual Insurance Co., Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violation of federal law prohibiting unfair acts and practice and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, that a physician-owned medical malpractice insurance company located in Brentwood, Tenn. cease failing to apply the same underwriting criteria to both physicians affiliated with self-employed nurse midwives as supervisors or otherwise and those physicians who employ nurse midwives; and refrain from adopting any underwriting criterion or taking any other action that would discriminate between physicians affiliated with nurse midwives and those who are not, without a reasonable underwriting basis for doing so. For a period of ten years from the effective date of the order, the company would have to supply rejected physicians having affiliations with nurse midwives with written notice of specific reasons for the rejection; afford the physician a reasonable opportunity to respond; provide reasons for any final adverse determination; and maintain records of all relevant data. Further, the insurer would have to alter its Underwriting Manual so as to conform with requirements of the order; make its best efforts to have an announcement published in the *Journal of the Tennessee Medical Association* in the form specified; and mail a copy of the announcement to its members and upon request from others.

DATE: Comments must be received on or before August 12, 1983.

ADDRESS: Comments should be directed to: FTC/S, Office of the Secretary, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/CS-8, Arthur N. Lerner, Washington, D.C. 20580. (202) 724-1341.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Insurance, Midwives, Physicians, Trade practices.

Before Federal Trade Commission

In the Matter of State Volunteer Mutual Insurance Company, Inc., a corporation. File No. 811 0048.

Agreement containing consent order to cease and desist.

The Federal Trade Commission having initiated an investigation of certain acts and practices of State Volunteer Mutual Insurance Company, Inc., and it now appearing that State Volunteer Mutual Insurance Company, Inc., hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between State Volunteer Mutual Insurance Company, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent is organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its office and principal place of business located at 5200 Maryland Way, Suite 100, in the City of Brentwood, State of Tennessee.

2. Solely for purposes of this agreement and order and any subsequent action pursuant to the Federal Trade Commission Act for a violation of this order, proposed respondent admits all the jurisdiction facts set forth in the draft complaint here attached.

3. Proposed respondent waives: (a) Any further procedural steps; (b) the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; (c) all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and (d) any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft complaint contemplated thereby, will be

placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent: (1) Issue its complaint corresponding in form and substance with the draft complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondent State Volunteer Mutual Insurance Company, Inc., and its committees, officers, representatives, agents, employees, successors, and assigns, shall cease and desist from, directly or indirectly:

1. Failing to apply the same underwriting criteria to all physicians who employ, supervise, or are affiliated in any manner with one or more nurse midwives;

2. Adopting any underwriting criterion or taking any other action that has the purpose or effect of discriminating between physicians who supervise or are affiliated in any manner with one or more self-employed or otherwise economically independent nurse midwives and physicians who employ nurse midwives;

3. Adopting any underwriting criterion or taking any other action that has the purpose or effect of discriminating between physicians who employ, supervise, or are affiliated in any manner with one or more nurse midwives and physicians who do not employ or supervise or are not affiliated in any manner with nurse midwives, without a reasonable underwriting basis at the time the action is taken; and

4. For a period of ten (10) years after this Order becomes final, if respondent determines not to insure a physician who employs, supervises, or is affiliated in any manner with one or more nurse midwives, failing to:

a. Provide to the physician clear written notice of the reasons for the determination, specifying the underwriting criteria not met by the physician and explaining in what manner the criteria are not met;

b. Provide to the physician a reasonable opportunity to respond;

c. Provide to the physician a written statement of the reasons and basis for the final decision; and

d. Keep written records of the reasons provided to the physician, the physician's response thereto, if any, and the reasons and basis for the final decision.

II

It is further ordered that respondent State Volunteer Mutual Insurance Company, Inc. shall:

1. Incorporate the requirements of this Order into its Underwriting Manual and make such other changes in its Underwriting Manual as are necessary to make it consistent with the provisions of this Order;

2. Within thirty (30) days after this Order becomes final make its best efforts to have an announcement in the form shown in Appendix A published in the *Journal of the Tennessee Medical Association;* and

3. Disseminate the announcement promptly by mail to its members and to anyone else upon request.

III

It is further ordered that respondent State Volunteer Mutual Insurance Company, Inc. shall:

1. Within sixty (60) days after this Order becomes final submit a written report to the Federal Trade Commission setting forth in detail the manner and form in which the respondent has complied with this Order;

2. For a period of five (5) years after this Order becomes final maintain in a separate file and make available to the Federal Trade Commission staff for inspection and copying, upon reasonable notice, the records required to be kept by Part I of this Order and all documents that discuss, refer or relate to the decisions reflected in those records; and

3. Notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this Order.

Appendix A—Announcement

Pursuant to the provisions of a Federal Trade Commission consent order, State Volunteer Mutual Insurance Company makes the following announcement:

State Volunteer Mutual Insurance Company will insure any otherwise insurable physician at non-discriminatory rates regardless of whether he or she has a contractual or other particular financial arrangement with nurse-midwives. It will evaluate each physician's insurability on an individual basis based on sound, non-discriminatory underwriting criteria. SVMIC will apply the same underwriting criteria to all physicians who are affiliated with nurse-midwives, regardless of the particular form of the arrangement between the physician and the nurse-midwives.

If SVMIC determines not to insure a physician who is affiliated with nurse-midwives, it will notify the physician in writing of the reasons for the determination. The notice will specify the underwriting criteria not met by the physician and explain in what manner the criteria were not met. It will advise that upon written request, SVMIC will provide a hearing at which the physician will have an opportunity to respond to the preliminary determination. SVMIC will also notify the physician in writing of its final determination and, if a decision not to insure the physician has been made, the specific reasons for the determination.

[File No. 811 0048]

Analysis of Proposed Consent Order To Aid Public Comment; State Volunteer Mutual Insurance Company, Inc.

The Federal Trade Commission has accepted an agreement to a proposed consent order from State Volunteer Mutual Insurance Company, Inc. ("SVMIC").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint

The complaint prepared for issuance by the Commission along with the proposed order alleges that SVMIC, a Tennessee physician-owned medical malpractice insurance company, has

combined or conspired with its physician members to restrict competition in the provision of health care services in Tennessee. SVMIC has allegedly manifested a policy against providing malpractice insurance to physicians who agree to provide ongoing medical supervision to self-employed nurse midwives, because those nurse midwives are not employees of the physicians, without any reasonable basis for making this distinction. The complaint alleges that this policy constitutes a boycott or concerted refusal to deal with self-employed nurse midwives and physicians who supervise them, and is a violation of Section 1 of the Sherman Act and Section 5 of the Federal Trade Commission Act.

According to the complaint, the physicians SVMIC insures are its members and elect its Board of Directors, and they are in competition among themselves and with other health care practitioners in Tennessee. The complaint also asserts that for various reasons SVMIC has substantial market power as the dominant malpractice insurer in Tennessee. In 1980 it insured about 80% of those Tennessee physicians who had malpractice insurance.

The complaint alleges that in spring 1980, two nurse midwives, who were licensed by the state of Tennessee and certified by the American College of Nurse-Midwives, established an independent practice. According to the complaint, a licensed physician entered into an agreement to serve as their medical consultant and back-up physician under a written protocol for medical supervision that set forth the relationship and responsibilities of the nurse midwives and the physician for the care of patients. The physician who contracted to provide medical supervision to the nurse midwives was a SVMIC policyholder and member.

The physician-owned SVMIC made a decision, the complaint also alleges, to refuse to continue insuring the nurse midwives' supervising physician, although it continued to insure physicians who employ nurse midwives. Thus, SVMIC allegedly manifested its policy against insuring physicians who agree to provide ongoing medical supervision to self-employed nurse midwives. The complaint alleges that SVMIC had no reasonable justification or substantial basis for its decision. It asserts that SVMIC did not review the medical supervision protocol or consult with physicians familiar with the practice of nurse midwifery, and did not compare the actual operation of the practice of the self-employed nurse midwives to those situations where nurse midwives are employed by physicians. SVMIC allegedly based its decision on the ground that undue risk would be an inherent result of the economic relationship between the midwives and their supervising physician.

According to the complaint, SVMIC did not advise the supervising physician of the reasons or bases for its refusal to continue to insure him and did not allow a record to be kept of the informal hearing it held on his termination.

The complaint alleges several anticompetitive effects resulting from the actions of the physician-owned insurance company. First, physician members of SVMIC who wish to compete through supervision or affiliation with independent nurse midwives have been impeded from doing so, and nurse midwives in Tennessee who wish to engage in independent practices have had difficulty finding physicians to supervise their practices as required by state law. Second, patients have been unreasonably limited in their ability to choose among a variety of health care services on the basis of price, service, and quality. Third, the development of independent nurse midwifery services as a competitive, efficient, cost-effective, and innovative form of health care delivery has been hindered.

The Proposed Consent Order

The proposed order is intended to dissipate the effects of SVMIC's alleged policy of unreasonably refusing to insure physicians who are affiliated with self-employed nurse midwives. Thus, it would prohibit SVMIC from adopting any underwriting criterion, or taking any other action, with the purpose or effect of discriminating between physicians who are affiliated with economically independent nurse midwives and physicians who employ nurse midwives. If SVMIC at some future time obtains evidence that different underwriting risks are associated with the practices of physicians who are affiliated with self-employed nurse midwives and physicians who employ nurse midwives, SVMIC may, of course, petition the Commission for an appropriate modification of the order.

The order also would require SVMIC to apply the same underwriting criteria to all physicians who are affiliated in any manner with nurse midwives. SVMIC could not, therefore, treat physicians who supervise self-employed nurse midwives differently from those who employ nurse midwives. In addition, the order would prohibit SVMIC from adopting any underwriting criterion, or taking any other action, which would have the purpose or effect of discriminating between physicians who are affiliated with nurse midwives and physicians who are not affiliated with nurse midwives, unless SVMIC has a reasonable underwriting basis for such an action at the time it is taken.

The order further requires that, if SVMIC determines not to insure any physician who is affiliated with a nurse midwife, it will provide to the physician clear written notice of the reasons for its determination, a reasonable opportunity for the physician to respond to its determination, and a written statement of the reasons for its final decision. SVMIC would also be required to keep written records of the reasons given to the physician and the physician's response. This provision expires after 10 years.

The proposed order would require that SVMIC incorporate the provisions of the order into its Underwriting Manual. SVMIC would also be required to disseminate to its members (and others upon request) an announcement that it will insure an otherwise insurable physician at non-discriminatory rates, regardless of whether the physician has a contractual or other financial arrangement with nurse midwives, and to make its best efforts to have this announcement published in the *Journal of the Tennessee Medical Association.*

The proposed order is intended to remove a perceived obstacle to the development of the independent practice of nurse midwifery. Independently practicing nurse midwives are likely to provide an innovative form of competition in the delivery of health care services.

The proposed order does not set forth underwriting criteria that SVMIC must use in determining whether to insure physicians who are affiliated with nurse midwives. Rather, the proposed order is intended to ensure that any underwriting criteria applicable to physicians who affiliate with nurse midwives are non-discriminatory and are applied in a non-discriminatory manner. Thus, otherwise insurable physicians who wish to affiliate with nurse midwives will not have to be concerned that they will be denied or will lose medical malpractice insurance coverage as a result of their economic or

financial relationship with the nurse midwives.

Publication of the announcement described above is expected to provide notice to nurse midwives who have been discouraged from setting up independent practices and to physicians considering supervising such midwives that the economic terms under which their practices operate will not jeopardize the malpractice insurance coverage of supervising or consulting physicians who are insured by SVMIC.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 83-15798 Filed 6-10-83; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Baudette and Warroad, Minnesota, and Dunseith, North Dakota; Change in Hours of Service

AGENCY: Customs Service, Treasury.

ACTION: Wthdrawal of proposed rule.

SUMMARY: This document withdraws a proposal to change the hours of service currently provided at the Customs ports of entry at Baudette and Warroad, Minnesota, and Dunseith, North Dakota, located on the U.S.-Canadian border, in the Pembina, North Dakota, Customs district. Currently, service at these ports is provided on a 24-hour basis daily by Customs and Immigration and Naturalization Service (INS) personnel. However, recently INS withdrew one permanent inspector position from each of these ports. Because of budgetary and personnel constraints, Customs proposed to reduce the current hours of service at these ports to 9:00 a.m. to 10:00 p.m., daily.

After consideration of the numerous comments received in response to the proposal and further review of the matter, it has been determined that service at these ports should continue to be provided on a 24-hour basis for the time being.

DATE: Withdrawal effective June 13, 1983.

FOR FURTHER INFORMATION CONTACT: A. Donald Gilman, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-9425).

SUPPLEMENTARY INFORMATION:

Background

Section 101.6, Customs Regulations (19 CFR 101.6), provides that each Customs office shall be open for the transaction of Customs business between the hours of 8:30 a.m. and 5:00 p.m. on all days of the year except Saturdays, Sundays, and national holidays. It also provides that services performed outside a Customs office generally shall be furnished between the hours of 8:00 a.m. and 5:00 p.m. Many offices provide service during hours in addition to those specified in the regulations.

Currently, the Customs ports of entry at Baudette and Warroad, Minnesota, and Dunseith, North Dakota, located on the U.S.-Canadian border, in the Pembina, North Dakota, Customs district, provide service on a 24-hour basis, daily. These ports are jointly staffed by Customs and Immigration and Naturalization Service (INS) personnel. However, recently INS withdrew one permanent inspector position from each of these ports. Because of budgetary and personnel constraints, by notice published in the **Federal Register** on January 4, 1983 (48 FR 268), Customs proposed to reduce the current hours of service at these ports to 9:00 a.m. to 10:00 p.m., daily. Before taking any final action, however, public comments were solicited on the proposed change. Comments were to have been received on or before March 4, 1983.

Discussion of Comments

Approximately two hundred comments were received in response to the notice. All of the comments opposed the change on the grounds that if adopted, it would severely impact agriculture, tourism, local commerce, and the general health and welfare of the affected communities. After careful consideration of these comments and further review of the matter, it has been determined that service at the ports of Baudette, Warroad, and Dunseith, should continue to be provided on a 24-hour basis for the time being. As an interim solution, Customs will reallocate its inspector positions for locations where INS reduces its staff. Accordingly, the proposal is withdrawn.

Drafting Information

The principal author of this document was Jesse V. Vitello, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

William von Raab,

Commissioner of Customs.

Approved:

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

May 16, 1983.

[FR Doc. 83-15745 Filed 6-10-83; 8:45 am]

BILLING CODE 4820-02-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2670 and 2675

Powers and Duties of Plan Sponsor of Plan Terminated by Mass Withdrawal; Plan Insolvency

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed regulation sets forth the procedure by which the plan sponsor of a multiemployer plan terminated by mass withdrawal must notify plan participants and beneficiaries and the Pension Benefit Guaranty Corporation of benefit reductions and benefit suspensions. The regulation also prescribes certain determinations to be made by the plan sponsor with respect to the plan's solvency. If a multiemployer plan terminates by mass withdrawal, the Employee Retirement Income Security Act requires the plan sponsor to amend the plan to eliminate certain benefits, to the extent that plan assets are not sufficient to pay all nonforfeitable benefits. If the terminated plan becomes insolvent, the Act requires the plan sponsor to suspend benefits above the highest level that can be paid out of the plan's available resources, but not below the level of basic benefits guaranteed by PBGC. The Act requires PBGC to issue regulations governing notice to participants and beneficiaries concerning these benefit suspensions. The Act also provides that the plan sponsor of a terminated plan that is insolvent has the same powers and duties as the plan sponsor of a non-terminated plan in reorganization that becomes insolvent, except to the extent PBGC regulations modify the exercise of those powers and duties. The effect of this regulation if adopted would be to prescribe certain powers and duties of a plan sponsor of a plan terminated by mass withdrawal and to prescribe the procedures for issuing the notices required by the statute.

DATE: Comments must be received on or before August 12, 1983.

FOR FURTHER INFORMATION CONTACT: J. Ronald Goldstein, Office of the Executive Director, Policy and Planning (140), 2020 K Street, N.W., Washington, D.C. 20006; 202-254-4862.

SUPPLEMENTARY INFORMATION:

Benefit Reductions

Under section 4041A(a) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA" or "the Act"), a multiemployer plan is terminated in one of two ways: (1) A plan amendment is adopted which either provides that participants will receive no credit for any purpose under the plan for service with any employer after a specified date, or causes the plan to become a defined contribution plan; or (2) every employer either withdraws from the plan or ceases to have an obligation to contribute to the plan ("termination by mass withdrawal"). If a plan terminates by mass withdrawal, section 4281 of ERISA imposes certain obligations on the plan sponsor.

Under section 4281(b)(1), the plan sponsor must value the plan's nonforfeitable benefits and plan assets (including outstanding claims for withdrawal liability), in accordance with PBGC regulations, as of the end of the plan year in which the plan terminates by mass withdrawal and each year thereafter. (PBGC expects to prescribe, at a later date, rules for valuing assets and benefits under section 4281(b)(1).) Section 4281(c) provides that if, based on this valuation, nonforfeitable benefits exceed assets, the plan sponsor must amend the plan to reduce benefits that are not eligible for the PBGC guarantee under section 4022A(b) to the extent necessary to ensure that the plan's assets are sufficient, as determined and certified in accordance with PBGC regulations, to pay all nonforfeitable benefits under the plan when due. (PBGC expects to prescribe, at a later date, rules for determining and certifying plan sufficiency under section 4281(c)(1).) Benefits not eligible for the PBGC guarantee under section 4022A(b) are generally non-pension benefits and benefits in effect for less than 5 years. *See* section 4022A(b) of ERISA.

Under section 4281(c)(2)(C) of ERISA, plan amendments reducing benefits must comply with the rules under section 4244A for reducing benefits during reorganization, except to the extent that PBGC prescribes by regulation other rules. For a plan in reorganization, section 4244A(b)(1) prohibits an amendment reducing benefits unless notice has been given at least six months before the first day of the plan year in which the amendment reducing benefits is adopted, advising plan participants and beneficiaries, employers contributing to the plan and employee organizations representing participants that the plan is in reorganization and that accrued benefits will be reduced (or an excise tax imposed) unless contributions are increased. This advance notice permits the parties to the collective-bargaining agreement to negotiate increased contributions to avoid the need for benefit reductions.

In contrast, section 4281(c)(2)(D) requires that a plan terminated by mass withdrawal be amended to reduce benefits no later than six months after the end of the plan year for which the plan sponsor determines that the present value of nonforfeitable benefits exceeds the value of plan assets. These benefit reductions are mandatory, not merely permissible as for plans in reorganization.

Obviously, for the terminated plan, it would serve no purpose to require the six-month advance notice under section 4244A, because there are no employers still contributing to the plan and, therefore, no possibility that contributions may be increased to avoid the need for benefit reductions. However, participants and beneficiaries affected by the benefit reduction should nevertheless be informed that their benefits have been reduced. Therefore, § 2675.2 (a) and (b) of the regulation eliminates the section 4244A(b)(1) notice requirement, and instead requires the plan sponsor to notify PBGC and affected plan participants and beneficiaries of the adoption of an amendment reducing benefits by the earlier of 45 days after the adoption date of the date or the first reduced benefit payment.

Under section 4281(c) of ERISA, a plan sponsor is required to reduce benefits that are not eligible for the PBGC guarantee under section 4022A(b) only to the extent necessary to ensure that plan assets are sufficient to pay all nonforfeitable benefits under the plan when due. Therefore, there may be several amendments adopted reducing benefits under the plan before all benefits that are not eligible for the PBGC guarantee have been eliminated. The notice requirement of § 2675.2(a) applies to each amendment reducing benefits.

Under § 2675.2(c) of the regulation, personal notice is required to participants and beneficiaries who are in pay status as of the date notice is given and to participants and beneficiaries reasonably expected to enter pay status during the plan year after the plan year in which the amendment is adopted. These participants and beneficiaries will be most immediately affected, and they should receive prompt notice so that they can plan for the benefit reduction. In most cases the plan sponsor will be able to provide notice to participants in pay status no later than 45 days after adoption of the amendment by delivering the notice concurrently with the first benefit payment made after the adoption of the amendment. As a result, the plan will ordinarily incur minimal additional expense in issuing these notices. Identifying and notifying participants and beneficiaries reasonably expected to enter pay during the plan year after the plan year in which the amendment is adopted will involve a slight additional expense to the plan. However, PBGC believes this expense is outweighed by the need to inform these participants of the benefit reductions, because the reductions may affect their decision to retire.

The term "participants and beneficiaries reasonably expected to enter pay status" is defined in § 2670.4 to mean "participants and beneficiaries (other than participants and beneficiaries in pay status) according to plan records, who are disabled, have applied for benefits, or have reached the normal retirement age under the plan, and any others who it is reasonable for the plan sponsor to expect will enter pay status during the applicable period." This determination is to be made by the plan sponsor, and PBGC urges that in doing so, the sponsor keep in mind the importance of notice of the benefit reductions to participants who may be in the process of deciding whether to retire. For example, participants who will attain normal retirement age during the next plan year should normally be included in this group for purposes of issuing the notice of benefit reductions.

Participants and beneficiaries who are not in pay status, nor reasonably expected to enter pay status during the plan year after the plan year in which the amendment is adopted, need not be notified individually of the adoption of an amendment reducing benefits. Section 2675.2(c) of the regulation permits the plan to notify these participants and beneficiaries in any manner reasonably calculated to reach those individuals, such as posting the notice at the worksite, or publication in a union newsletter or newspaper of general circulation in the area or areas where participants reside. PBGC believes that this form of notice is

appropriate because these participants and beneficiaries are not immediately affected by the adoption of an amendment reducing benefits; to require personal notice to each of these participants and beneficiaries would increase the financial burden of the already cash-short plan.

In determining the method of delivery to use, plan sponsors should consider the need for different methods of delivery to different categories of participants, in order to provide adequate notice to all participants and beneficiaries. For example, while posting the notice at the worksite is normally a method of delivery reasonably calculated to reach active participants, it is unlikely to reach participants who have been separated from employment. Therefore, the plan sponsor should consider posting the notice at the worksite, and using another method of delivery, such as publication in a newspaper of general circulation, to reach other participants and beneficiaries.

Under § 2675.2(d) of the regulation, a notice of benefit reductions to PBGC must include the name and other identifying information concerning the plan and a statement that a plan amendment reducing benefits has been adopted, listing the date of adoption and the effective date of the amendment. In addition, the notice must include a certification that all participants and beneficiaries whose benefits are reduced by the plan amendment have been notified.

Under § 2675.2(e) of the regulation, a notice of benefit reductions to participants and beneficiaries must state the name of the plan and that a plan amendment reducing benefits has been adopted, listing the date of adoption and the effective date of the amendment. The notice must also provide a summary of the amendment, including a description of the effect of the amendment on the benefits to which it applies. Finally, the notice must identify an individual designated by the plan sponsor to answer inquiries by participants or beneficiaries concerning benefits (§ 2675.2(e)). This information shall be provided in lieu of the information required by section 4244(b)(2) of the Act (§2675.2(a)). (Section 4244A(b)(2) of the Act requires that a notice of benefit reductions to plan participants and beneficiaries include information as to their rights and remedies, as well as how to contact the Department of Labor for further information and assistance.

Insolvency

If the plan becomes "insolvent" despite elimination of all benefits that are not eligible for the PBGC guarantee, benefits above the "resource benefit level" or the level of basic benefits guaranteed by PBGC, whichever is greater, must be suspended (ERISA, section 4281(d)(1)). Under section 4281(d)(2) of ERISA, a multiemployer plan terminated by mass withdrawal is insolvent if the plan has been amended to eliminate benefits not eligible for PBGC's guarantee, and the plan's available resources (cash, marketable assets, contributions, withdrawal liability payments and earnings, less reasonable administrative expenses) for a plan year are not sufficient to pay benefits under the plan when due for that year. (Of course, a plan also may be insolvent within the meaning of section 4281(d)(2) without being amended to reduce benefits, if all benefits under the plan as of the date the plan terminated by mass withdrawal are eligible for PBGC's guarantee. In this situation, an amendment reducing benefits is unnecessary. *See* § 2670.4 of the regulation.) The resource benefit level is the highest level of monthly benefits that the plan will be able to pay out of available resources for an insolvency year.

(Section 4245(c)(2) requires that benefit suspensions be in substantially uniform proportions with respect to all participants in pay status under the plan, in accordance with regulations prescribed by the Secretary of the Treasury. In addition, the Secretary of the Treasury is authorized to prescribe rules under which the benefits of different groups of participants could be suspended in disproportionate fashion, if varied equitably to reflect variations in contribution rates and other relevant factors reflecting differences in bargained-for levels of financial support for plan benefit obligations. Regulations under section 4245(c)(2) have not yet been issued.)

Section 4281(d)(3) provides that the plan sponsor of an insolvent multiemployer plan terminated by mass withdrawal has the same powers and duties as a plan sponsor of an insolvent multiemployer plan in reorganization. Those powers and duties are described in section 4245 of ERISA. In addition, section 4281(d)(3) requires PBGC to issue regulations governing the plan sponsor's exercise of its powers and duties, and to prescribe notice requirements to assure that plan participants receive adequate notice of benefit suspensions.

Section 4245(d) requires the plan sponsor to make certain determinations relating to the solvency of the plan. Section 4245(d)(1) provides that every three years during the period when a plan is in reorganization, beginning with the end of the first such plan year, the plan sponsor must compare the value of plan assets with the total amount of benefit payments for the year. Unless plan assets exceed three times the total amount of benefit payments, the plan sponsor must determine whether the plan will be insolvent during any of the next three plan years. Under section 4245(d)(2), if at any time the plan sponsor of a plan in reorganization determines, on the basis of the plan's financial experience, that the plan's available resources are not sufficient to pay benefits when due for the forthcoming plan year, the sponsor must make this determination available to interested parties. Finally, section 4245(d)(3) requires the plan sponsor of a plan in reorganization to determine in writing for each insolvency year, the resource benefit level and the level of basic benefits, no later than three months before the insolvency year.

Under section 4245(e)(1) of ERISA, the plan sponsor of a multiemployer plan in reorganization must notify the Secretary of the Treasury, PBGC, contributing employers, employee organizations representing participants, and plan participants and beneficiaries whenever it determines that the plan may become insolvent. For each insolvency year, section 4245(e)(2) further requires the plan sponsor to send written notice of the resource benefit level to the same parties at least two months before the first day of the insolvency year. Under section 4245(e)(3) of ERISA, if the plan sponsor anticipates that the resource benefit level for an insolvency year may not exceed the level of basic benefits, the plan sponsor must notify PBGC.

PBGC believes it is unnecessary to require the plan sponsor of a plan terminated by mass withdrawal to follow all the requirements prescribed for ongoing plans in section 4245 (d) and (e). The principal reason for this is that, typically, when such a plan becomes insolvent, it will continue to be insolvent in subsequent plan years because there are no contributing employers. Accordingly, in the interests of preserving plan assets and minimizing reporting and record-keeping requirements to the extent reasonable, this regulation modifies and reduces the determination and notice requirements under section 4245 (d) and (e) of the Act. Pursuant to section 4281(d)(3) of ERISA, this regulation supersedes the

requirements of section 4245 (d) and (e) as they apply to plans terminated by mass withdrawal.

Determinations of Plan Solvency

Section 2675.3(a) of the regulation requires an annual insolvency determination. For a plan that has been amended to eliminate all benefits not eligible for the PBGC guarantee, the plan sponsor must determine whether the plan is expected to be insolvent for the plan year beginning after the amendment is effective and for each plan year thereafter. For a plan under which all benefits are eligible for the PBGC guarantee as of the date the plan terminated by mass withdrawal, the plan sponsor must determine whether the plan is expected to be insolvent for the second plan year beginning after the first plan year for which it is determined under section 4281(b)(1) of the Act that the value of nonforfeitable benefits under the plan exceeds the value of the plan's assets and for each plan year thereafter. In both situations, the determination must be made no later than six months before the beginning of the plan year to which it applies.

The determination required under § 2675.3(a) is different from the determinations required under ERISA section 4245(d)(1). PBGC believes that the annual determination required under § 2675.3(a) provides a more direct and meaningful method of determining whether a plan terminated by mass withdrawal is in imminent danger of becoming insolvent. Further, PBGC believes that the § 2675.3(a) annual determination requirement is likely to be less burdensome than the rules in section 4245(d)(1) for a marginally solvent or insolvent plan, *i.e.*, a plan that does not have available plan assets that exceed three times benefit payments. This is because under section 4245(d)(1) the plan sponsor must determine whether the plan will be insolvent in any of the next three plan years, while under § 2675.3(a) an insolvency determination must be made for the next plan year only.

Section 2675.3(b) of the regulation provides that, notwithstanding a prior determination of plan solvency for the current or next plan year under § 2675.3(a), a plan sponsor who has reason to believe, taking into account the plan's recent and anticipated financial experience, that its determination for the current or next plan year is incorrect, shall redetermine whether the plan is expected to be insolvent for that plan year.

Required Notices

Once the plan sponsor determines that the plan is, or is expected to be, insolvent for a plan year, the sponsor must issue certain notices. The regulation limits the notices to only PBGC and plan participants and beneficiaries. Because all employers have withdrawn from, or are not longer obligated to contribute to, the plan, there are no contributing employers to notify. There will also be no collective bargaining representative with respect to the plan. A mass withdrawal would result only if: (a) There had been bargaining with the representative resulting in the cessation of the obligation to contribute; or (b) there were a cessation of the employer's entire operations, in which case no bargaining representative would remain; or (c) there were a cessation only of those operations covered by the plan, in which event there would be no affected employees for which there would be a bargaining representative. Requiring plans to identify and notify collective bargaining representatives of employees in plans that have terminated by mass withdrawal would create additional costs to the plan, with little benefit to participants and beneficiaries. (However, notice to collective bargaining representatives of employees covered by the plan may be permitted as an alternative method of notifying certain groups of participants and beneficiaries. *See* below.) Finally, PBGC and the Internal Revenue Service have agreed that, pending the issuance of Treasury regulations, giving notice to PBGC under this regulation will satisfy the requirement to give notice to the Secretary of the Treasury under section 4281(d)(3) of the Act.

Under this regulation, plan sponsors of insolvent plans terminated by mass withdrawal are required to give two types of notices to PBGC and to participants and beneficiaries: (1) A notice of insolvency when the plan sponsor first determines that the plan is or may be insolvent and an annual update thereafter; and (2) a notice of the insolvency benefit level for each insolvency year.

Notice of Insolvency and Annual Update

Under § 2675.4(a) of this regulation, a plan sponsor who determines under § 2675.3(a) or (b) that the plan is or may be insolvent for a plan year, must send a notice of insolvency to PBGC and to plan participants and beneficiaries. The notice must be delivered generally within 30 days after the plan sponsor makes the determination that the plan is or may become insolvent (§ 2675.4(c)). For participants and beneficiaries in pay status, the plan sponsor may deliver the insolvency notice concurrently with the first benefit payment made after the determination of insolvency, even if that payment is later than 30 days after the insolvency determination is made (§ 2675.4(c)). PBGC believes that the additional administrative expense that would result from requiring a separate mailing to these individuals outweighs the benefits from giving them notice within a shorter time.

Typically, when a plan that has terminated by mass withdrawal becomes insolvent, it will continue to be insolvent in subsequent plan years (because there is no ongoing funding of the plan). Section 2675.4(a) provides, therefore, that a new notice of insolvency need not be sent to PBGC and to plan participants and beneficiaries for subsequent insolvency years. Instead, under § 2675.4(b), an abbreviated annual update must be sent to PBGC and plan participants and beneficiaries for each plan year beginning after the plan year for which the notice of insolvency was required to be delivered. The plan sponsor is required to deliver the annual updates no later than 60 days before the beginning of each year (§ 2675.4(d)). The annual update must be issued for each year after the first insolvency year, whether or not the plan will be insolvent for that year. (However, to avoid duplication during insolvency years, the plan sponsor need not issue an annual update to plan participants and beneficiaries who are issued a notice of involvency benefit level for the year. The notice of insolvency benefit level is discussed in the next section of this preamble.)

If, after determinng under § 2675.3(a) that the plan will not be insolvent for the next plan year and issuing annual updates on that basis, the plan sponsor determines under § 2675.3(b) that the plan is or may be insolvent for that year, the plan sponsor need not issue revised annual updates (§ 2675.4(b)). PBGC believes that there is no need to require the plan sponsor to issue revised annual updates because the notice of insolvency benefit level will provide adequate notice of plan insolvency to the immediately affected plan participants and beneficiaries and to PBGC. However, if the plan sponsor has not yet issued annual updates for that year, the plan sponsor must mail or otherwise deliver the annual updates by the later of 60 days before the beginning of the plan year for which the annual update is issued or 30 days after the date of the plan sponsor's determination

under § 2675.3(b)(2675.4(d)). This allows the plan sponsor at least 30 days after the date of its determination under § 2675.3(b) to prepare and send the annual updates to PBGC and plan participants and beneficiaries.

The following example illustrates the application of these rules regarding the notice of involvency and annual updates. Plan X has a calendar year plan year. In June 1983, the plan sponsor of Plan X determines that Plan X will be insolvent in 1984. The plan sponsor must issue a notice of insolvency to PBGC and to participants and beneficiaries within 30 days after making the determination. (Participants and beneficiaries in pay status may be sent the insolvency notice concurrently with the first benefit payment made after the determination of insolvency. *See* Discussion above.) The plan sponsor must issue an annual update to PBGC and to participants and beneficiaries for 1985 and for each year thereafter, no later than 60 days before the beginning of each year.

Under § 2676.4(e) of the regulation, notices of insolvency are required to be delivered by mail or by hand to participants and beneficiaries in pay status as of the date the notice is given. These participants and beneficiaries will be most immediately affected by the insolvency, and it is, therefore, most important that they receive notice of the insolvency so that they can plan for the anticipated suspension of part of their benefits. Further, the plan is already communicating with participants and beneficiaries in pay status, and therefore the inclusion of the insolvency notice with benefit payments should not add significantly to the financial burden of the plan.

Participants and beneficiaries not in pay status need not be notified individually of the insolvency. Section 2675.4(e) of the regulation permits the plan to notify these participants and beneficiaries in any manner reasonably calculated to reach them (as permitted under § 2675.2(c) for the notice of benefit reductions. PBGC believes that this form of notice is appropriate because these participants and beneficiaries are not immediately affected by the insolvency; to require personal notice to each of these participants and beneficiaries would unnecessarily increase the financial burden of the already cash-short plan.

Similarly, under § 2675.4(f) of the regulation, an annual update must be provided to participants and beneficiaries in any manner reasonably calculated to reach them. However, for an insolvency year, the plan sponsor need not issue an annual update to plan participants and beneficiaries who are issued a notice of insolvency benefit level. PBGC believes that this is adequate notice under the circumstances, and, of course, it will lessen the plan's expenses. When a plan terminated by mass withdrawal becomes insolvent, it typically will continue to be insolvent in subsequent years. PBGC expects that participants and beneficiaries, having previously been advised of plan insolvency by the notice of insolvency, will keep informed about the plan's financial condition through inquiries to plan officials and word of mouth. In addition, the notice of insolvency benefit level (discussed in the next section of this preamble) will provide personal notice of benefit suspensions to these individuals.

Section 2675.5 of the regulation prescribes the contents of the notices of insolvency and annual updates. Under § 2675.5(a), the notice of insolvency to PBGC must include the name and other identifying information concerning the insolvent plan, the plan year for which the plan sponsor has determined that the plan is or may be insolvent, a copy of the plan document currently in effect and a comparison of the plan's available resources with annual benefit payments for the insolvency year. A copy of the most recent actuarial report must accompany the notice. In addition, a copy of the most recent Schedule B (Form 5500) must be submitted, if the Schedule B was prepared more recently than the most recent actuarial report. If a notice of insolvency is filed less than five months before the beginning of the plan year for which it applies (*i.e.*, after the date when the notice should have been filed if the plan sponsor had determined the potential insolvency pursuant ot § 2675.3(a)), it must contain a statement whether the date of filing is the result of an insolvency determination under § 2675.3(b). This information is necessary because the notice is normally issued by a certain date, and when it is issued after that date the reason for the delayed filing should be disclosed. (All other notices required by this regulation whose filing is delayed because of an insolvency determination under § 2675.3(b) must also so state.) Finally, a certification that all participants and beneficiaries have been notified must be included in the notice.

Under § 2675.5(b) of the regulation, the notice of insolvency to participants and beneficiaries must state the plan year for which the plan sponsor has determined that the plan is or may be insolvent, and that, during an insolvency year, benefits above the amount that can be paid from available resources or the level guaranteed by PBGC, whichever is greater, will be suspended.

Section § 2675.5(c) of the regulation provides that an annual update to PBGC must contain only a copy of the update issued to participants and beneficiaries and a certification that all participants and beneficiaries required to be notified have been notified. Section 2675.5(d) of the regulation provides that the annual update to participants and beneficiaries must state when the notice of insolvency was sent and the insolvency year identified in that notice, the plan year to which the update pertains, and the plan sponsor's determination whether the plan may be insolvent in that year. If the plan may be insolvent in that year, the update must state the benefits above the amount that can be paid from available resources or the level guaranteed by PBGC, whichever is greater, will be suspended. If the plan will not be insolvent for the plan year, the update must state that full nonforfeitable benefits under the plan will be paid.

Notice of Insolvency Benefit Level

Under section 4245(e)(2) of ERISA, the plan sponsor of a multiemployer plan in organization must notify PBGC and interested parties of the plan's resource benefit level for an insolvency year, at least two months before the first day of the year. If the resource benefit level is below the basic benefit level guaranteed by PBGC, the plan sponsor must apply to PBGC for financial assistance (section 4245(f)(2) of ERISA). Because benefits cannot be suspended below the level guaranteed by PBGC, the regulation provides the the notice to participants and beneficiaries must state the level of benefits that will be paid to the participant or beneficiary during the year (the "insolvency benefit level"), rather than the resource benefit level. This will avoid creating unnecessary concern among participants and beneficiaries that benefits will be reduced below the guaranteed level.

Section 2675.6(a) of the regulation requires that a plan sponsor issue notices of insolvency benefit level for each insolvency year to PBGC and to participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year. Notices must be delivered by mail or by hand, no later than 60 days before the beginning of each insolvency year (§ 2675.6 (b) and (c)). A plan sponsor who determines under § 2675.3(b) that the plan is or may be insolvent for a plan year shall mail or otherwise deliver notices of insolvency benefit level by the later of 60 days before the beginning of the insolvency year or 60 days after

the date of the plan sponsor's determination under § 2675.3(b) (§ 2675.6(b)). Participants and beneficiaries neither in pay status, nor expected to enter pay status during the insolvency year, need not be notified of the insolvency benefit level. Because the purpose of the notice of insolvency benefit level is to advise participants and beneficiaries of the reduced benefits they will receive during the insolvency year, it follows that only participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year need be given the notice.

Section 2675.7 prescribes the contents of the notices in insolvency benefit level. Under § 2675.7(a), a notice of insolvency benefit level to PBGC must include the name and other identifying information concerning the insolvent plan, the insolvency year for which the notice is being filed, a comparison of the plan's available resources with annual benefit payments in the insolvency year, the estimated amount of the annual benefits guaranteed by PBGC for the insolvency year, and the amount of financial assistance, if any, requested from PBGC. A copy of the plan document in effect during the insolvency year and the most recent actuarial report must be included. In addition, a copy of the most recent Schedule B (Form 5500) must be submitted, if the Schedule B was prepared more recently than the most recent actuarial report. The plan sponsor need not submit a copy of the plan, the most recent actuarial report or the Schedule B, if the document was previously submitted.

Under § 2675.7(b) of the regulation, a notice of insolvency benefit level to participants and beneficiaries must state the insolvency year for which the notice is being sent and the benefit that the participant or beneficiary will receive during that year. The notice must also state that in subsequent plan years, depending on the plan's available resources, the benefit may be increased or decreased, but not below the level guaranteed by PBGC, and that the participant or beneficiary will be notified in advance of the new benefit level if it is less than the participant's full nonforfeitable benefit under the plan. In addition, the notice must state the amount of the participant's monthly nonforfeitable benefit under the plan and the amount of the participant's monthly benefit is guaranteed by PBGC, in order to inform the participant of the highest and lowest monthly amount he or she may receive in subsequent plan years.

Financial Assistance

If the plan's resource benefit level is less than the level of benefits guaranteed by PBGC, the plan sponsor is required to apply to PBGC for financial assistance (section 4245(f)(2)). Furthermore, under section 4245(f)(1), a plan sponsor who anticipates that the plan will not have sufficient funds to pay guaranteed benefits for any month of an insolvency year may apply to PBGC for financial assistance, even though the resource benefit level is above the guarantee level. Under section 4281(d)(3), these rules apply to multiemployer plans that have terminated by mass withdrawal. Section 4261(b)(1) provides that financial assistance shall be provided under such conditions as PBGC determines are equitable and are appropriate to prevent unreasonable loss. Therefore, § 2675.7(a)(12) of the regulation provides that PBGC may request additional information if the plan sponsor requests financial assistance.

E.O. 12291 and Regulatory Flexibility Act

The Pension Benefit Guaranty Corporation has determined that this regulation is not a "major rule" for the purposes of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under section 605(b) of the Regulatory Flexibility Act, the Pension Benefit Guaranty Corporation certifies that this rule will not have significant economic impact on a substantial number of small entities. Pension plans with fewer than 100 participants have traditionally been treated as small plans. The proposed regulation affects only multiemployer plans covered by PBGC. Defining "small plans" as those with under 100 participants, such plans represent only 10 % of all multi-employer plans covered by PBGC (200 out of 2000). Further, small multiemployer plans represent only .3% of all small plans covered by the PBGC (200 out of 61,200) and less than .05% of all small plans (200 out of 427,900). Moreover, PBGC expects that this regulation will affect very few plans. Based on PBGC's experience to date, it is estimated that no more than 10 multiemployer plans will be terminated by mass withdrawal in any given year, and that many of these plans will close-out by distributing all plan assets in satisfaction of all nonforfeitable benefits under the plan. Thus, PBGC expects there to be few plans that may need to reduce or suspend benefits. Therefore, compliance with sections 603 and 604 of the Regulatory Flexibility Act is waived.

Comments

Interested parties are invited to submit comments on this proposed regulation. Comments should be addressed to: Assistant Executive Director for Policy and Planning, Pension Benefit Guaranty Corporation (140), 2020 K Street, NW., Washington, D.C. 20006. Written comments will be available for public inspection at the above address, Suite 7100, between the hours of 9:00 a.m. and 4:00 p.m. Each person submitting comments should include his or her name and address, identify this proposed regulation, and give reasons for any recommendation. This proposal may be changed in light of the comments received.

List of Subjects

29 CFR Part 2670

Employee benefit plans, Pension insurance.

29 CFR Part 2675

Employee benefit plans, Pensions.

In consideration of the foregoing, it is proposed to amend Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, as follows:

1. Part 2670 is amended by adding a new § 2670.4 at the end to read as follows:

PART 2670—DEFINITIONS

Authority: Section 4002(b)(3), Pub. L. 93-406, as amended by Section 403(1), Pub. L. 96-364, 94 Stat. 1208, 1302 (1980) (29 U.S.C. 1302).

§ 2670.4 Insolvency definitions for ongoing and terminated plans.

For purposes of Parts 2674 and 2675—

"Actuarial report" means a report submitted to the plan in connection with a valuation of plan assets and liabilities, prepared in accordance with generally accepted actuarial principles.

"Available resources" means, for a plan year, the plan's cash, marketable assets, contributions, withdrawal liability payments and earnings, less reasonable administrative expenses and amounts owed for the plan year to PBGC under section 4261(b)(2) of the Act.

"Financial assistance" means financial assistance from PBGC under section 4261 of the Act.

"Insolvent" means that a plan is unable to pay benefits when due for the plan year. A plan terminated by mass withdrawal is not insolvent unless it has been amended to eliminate all benefits that are not eligible for PBGC's guarantee under section 4022A(b) or, in the absence of an amendment, all benefits under the plan are eligible for PBGC's guarantee under section 4022A(b).

"Insolvency benefit level" means the greater of the resource benefit level or the basic benefit level guaranteed by PBGC for each participant and beneficiary in pay status.

"Insolvency year" means a plan year in which the plan is insolvent.

"Participants and beneficiaries reasonably expected to enter pay status" means plan participants and beneficiaries (other than participants and beneficiaries on pay status) according to plan records, who are disabled, have applied for benefits, or have reached the normal retirement age under the plan, and any others who it is reasonable for the plan sponsor to expect will enter pay status during the applicable period.

"Reorganization" menas reorganization under section 4241(a) of the Act.

"Resource benefit level" means the highest level of monthly benefits that the plan sponsor determines can be paid for a plan year out of the plan's available resources.

"Terminate by mass withdrawal" means to terminate under section 4041A(a)(2) of the Act.

2. A new Part 2675 is added to read as follows:

PART 2675—POWERS AND DUTIES OF PLAN SPONSOR OF PLAN TERMINATED BY MASS WITHDRAWAL: PLAN INSOLVENCY

Sec.

Authority: Sections 4002(b)(3) and 4281, Pub. L. 93-406, 88 Stat. 829, 1004 (1074), as amended by sections 403(1) and 104 (respectively), Pub. L. 96-364, 94 Stat. 1302 and 1261-3 (1980) (29 U.S.C. 1302(b)(3) and 1441).

§ 2675.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to prescribe certain powers and duties of plan sponsors of multiemployer plans terminated by mass withdrawal. This part establishes the procedures for notifying plan participants and beneficiaries and PBGC of benefit reductions or suspensions, pursuant to section 4281 of the Act. This part also prescribes the determinations to be made by plan sponsors with respect to plan solvency, pursuant to section 4281 of the Act. The rules prescribed in this part supersede the notice requirements of section 4244A(b)(1)(A) and (b)(2) of the Act and the determination and notice requirements of section 4245(d) and (e) of the Act.

(b) *Scope.* This part applies to multiemployer plans covered by section 4021(a) of the Act and not excluded by section 4021(b), that have terminated by mass withdrawal under section 4041A(a)(2) of the Act.

§ 2675.2 Notice of benefit reductions.

(a) *Requirement of notice.* A plan sponsor of a multiemployer plan under which a plan amendment reducing benefits is adopted pursuant to section 4281(c) of the Act, shall so notify PBGC and plan participants and beneficiaries whose benefits are reduced by the amendment. The notices shall be delivered in the manner and within the time prescribed, and shall contain the information described in this section. The notice required in this section shall be filed in lieu of the notice described in section 4244A(b)(2) of the Act.

(b) *When delivered.* The plan sponsor shall mail or otherwise deliver the notices of benefit reduction no later than 45 days after the amendment reducing benefits is adopted, or the date of the first reduced benefit payment, whichever is earlier.

(c) *Method of delivery.* The notices of benefit reductions shall be delivered by mail or by hand to PBGC and to plan participants and beneficiaries who are in pay status when the notice is required to be delivered or who are reasonably expected to enter pay status during the plan year after the plan year in which trhe amendment is adopted. The notice to other participants and beneficiaries whose benefit is reduced by the amendment shall be provided in any manner reasonably calculated to reach those participants and beneficiaries.

Reasonable methods of notification include, but are not limited to, posting the notice at participants' worksites or publishing the notice in a union newsletter or newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to that participant's beneficiary or beneficiaries.

(d) *Contents of notice to PBGC.* A notice of benefit reductions required to be filed with PBGC pursuant to paragraph (a) of this section shall contain the following information:

(1) The name of the plan.

(2) The name, address and telephone number of the plan sponsor and of the plan sponsor's duly authorized representative, if any.

(3) The nine-digit Employer Identification Number (EIN) assigned by the Internal Revenue Service to the plan sponsor and the three-digit Plan Identification Number (PIN) assigned by the plan sponsor to the plan, and, if different, the EIN or PIN last filed with the PBGC. If no EIN or PIN has been assigned, the notice shall so state.

(4) A statement that a plan amendment reducing benefits has been adopted, listing the date of adoption and the effective date of the amendment.

(5) A certification, signed by the plan sponsor (or a duly authorized representative), that notice of the benefit reductions has been given to all participants and beneficiaries whose benefit is reduced by the plan amendment, in accordance with the requirements of this section.

(e) *Contents of notice to participants and beneficiaries.* A notice of benefit reductions required under paragraph (a) of this section to be given to plan participants and beneficiaries whose benefit is reduced by the amendment shall contain the following information:

(1) The name of the plan.

(2) A statement that plan amendment reducing benefits has been adopted, listing the date of adoption and the effective date of the amendmemt.

(3) A summary of the amendment, including a description of the effect of the amendment on the benefits to which it applies.

(4) The name, address and telephone number of the plan administrator or other person designated by the plan sponsor to answer inquiries concerning benefits.

§ 2675.3 Periodic determinations of plans solvency.

(a) *Annual insolvency determination.* The plan sponsor of a plan that has been amended under section 4281(c) of the Act to eliminate all benefits not eligible for PBGC's guarantee under section 4022A(b) of the Act, shall determine in writing whether the plan is expected to be insolvent for the plan year beginning after the amendment is effective and for each plan year thereafter. The plan sponsor of a plan under which all benefits are eligible for PBGC's guarantee under section 4022A(b) of the

Act as of the date the plain terminated by mass withdrawal, shall determine in writing whether the plan is expected to be insolvent for the second plan year beginning after the first plan year for which it is determined under section 4281(b)(1) of the Act that the value of nonforfeitable benefits under the plan exceeds the value of the plan's assets and for each plan year thereafter. A determination required under this paragraph shall be made no later than six months before the beginning of the plan year to which it applies.

(b) *Other determination of insolvency.* Notwithstanding a prior detemination of plan solvency for the current or next plan year under paragraph (a) of this section, a plan sponsor who has reason to believe, taking into account the plan's recent and anticipated financial experience, that its determination for the current or next plan year is incorrect, shall redetermine whether the plan is expected to be insolvent for that plan year.

§ 2675.4 Notice of insolvency and annual updates.

(a) *Requirement of notice of insolvency.* A plan sponsor who determines that the plan is, or is expected to be, insolvent for a plan year, shall issue a notice of insolvency to PBGC and to plan participants and beneficiaries. Once a notice of insolvency has been issued to PBGC and to plan participants and beneficiaries, no notice of insolvency need be issued for subsequent insolvency years. Notices shall be delivered in the manner and within the time prescribed in this section and shall contain the information described in § 2675.5.

(b) *Requirement of annual update.* A plan sponsor who has issued notices of insolvency to PBGC and plan participants and beneficiaries shall thereafter issue annual updates to PBGC and participants and beneficiaries for each plan year beginning after the plan year for which the notice of insolvency was issued. However, for an insolvency year, the plan sponsor need not issue an annual update to plan participants and beneficiaries who are issued a notice of insolvency benefit level in accordance with § 2675.6 A plan sponsor who, after issuing annual updates for a plan year, determines under § 2675.3(b) that the plan is or may be insolvent for a plan year, need not issue revised annual updates. Annual updates shall be delivered in the manner and within the time prescribed in this section and shall contain the information described in § 2675.5.

(c) *Notice of insolvency—when delivered.* Except as provided in the next sentence, the plan sponsor shall mail or otherwise deliver the notices of insolvency no later than 30 days after the plan sponsor determines that the plan is or may be insolvent. However, the notice to plan participants and beneficiaries in pay status may be delivered concurrently with the first benefit payment made after the determination of insolvency.

(d) *Annual updates—when delivered.* Except as provided in the next sentence, the plan sponsor shall mail or otherwise deliver annual updates no later than 60 days before the beginning of the plan year for which the annual update is issued. A plan sponsor who determines under § 2675.3(b) that the plan is or may be insolvent for a plan year and who has not at that time issued annual updates for that year, shall mail or otherwise deliver the annual updates by the later of 60 days before the beginning of the plan year for which the annual update is issued or 30 days after the date of the plan sponsor's determination under § 2675.3(b).

(e) *Notice of insolvency—method of delivery.* The notices of insolvency shall be delivered by mail or by hand to PBGC and plan participants and beneficiaries in pay status when the notice is required to be delivered. Notice to participants and beneficiaries not in pay status shall be provided in any manner reasonably calculated to reach those participants and beneficiaries. Reasonable methods of notification include, but are not limited to, posting the notice at participants' worksites or publishing the notice in a union newsletter or newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to that participant's beneficiary or beneficiaries.

(f) *Annual update—method of delivery.* Each annual update shall be delivered by mail or by hand to PBGC. Each annual update to plan participants and beneficiaries shall be provided in any manner reasonably calculated to reach participants and beneficiaries. Reasonable methods of notification include, but are not limited to, posting the notice at participants' worksites and publishing the notice in a union newsletter or newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to that participant's beneficiary or beneficiaries.

§ 2675.5 Contents of notice of insolvency and annual updates.

(a) *Notice of insolvency to PBGC.* A notice of insolvency required under § 2675.4(a) to be filed with PBGC shall contain the following information:

(1) The name of the plan.

(2) The name, address and telephone number of the plan sponsor and of the plan sponsor's duly authorized representative, if any.

(3) The nine-digit Employer Identification Number (EIN) asigned by the Internal Revenue Service to the plan sponsor and the three-digit Plan Identification Number (PIN) assigned by the plan sponsor to the plan, and, if different, the EIN or PIN last filed with PBGC. If no EIN or PIN has been assigned, the notice shall so state.

(4) The IRS Key District that has jurisdiction over determination letters with respect to the plan.

(5) The case number, if any, assigned to the plan by PBGC. If the plan has no case number, the notice shall state whether the plan previously filed a notice of benefit reduction with PBGC or a notice of insolvency with PBGC prior to the plan's termination and, if so, the type of notice and the date on which it was filed.

(6) A statement of the plan year for which the plan sponsor has determined that the plan is or may be insolvent.

(7) A copy of the plan document currently in effect, *i.e.*, a copy of the last restatement of the plan and all subsequent amendments.

(8) A copy of the most recent acturial report for the plan. In addition, a copy of the most recent Schedule B (form 5500) for the plan, if the Schedule B was prepared more recently than the most recent actuarial report.

(9) The estimated amount of annual benefit payments under the plan (determined without regard to the insolvency) for the insolvency year.

(10) The estimated amount of the plan's available resources for the insolvency year.

(11) The estimated amount of the annual benefits guaranteed by PBGC for the insolvency year.

(12) If a notice of insolvency is filed less than five months before the beginning of the plan year for which it applies, a statement whether this is the result of an insolvency determination under § 2675.3(b).

(13) A certification, signed by the plan sponsor (or a duly authorized representative), that notices of insolvency have been given to all plan participants and beneficiaries in accordance with this part.

(b) *Notice of insolvency to participants and beneficiaries.* A notice of insolvency required under § 2675.4(a) to be issued to plan participants and

beneficiaries shall contain the following information:

(1) The name of the plan.

(2) A statement of the plan year for which the plan sponsor has determined that the plan is or may be insolvent.

(3) A statement that, during the insolvency year, benefits above the amount that can be paid from available resources or the level guaranteed by PBGC, whichever is greater, will be suspended, with a brief explanation of which benefits are guaranteed by PBGC.

(4) If the notices of insolvency are issued to plan participants and beneficiaries (other than those in pay status) less than five months before the beginning of the plan year for which they are issued, a statement whether this is the result of an insolvency determination under § 2675.3(b).

(5) The name, address, and telephone number of the plan administrator or other person designated by the plan sponsor to answer inquiries concerning benefits.

(c) *Annual updates to PBGC.* Each annual update required by § 2675.4(b) to be filed with PBGC shall contain the following information:

(1) The case number assigned to the plan by PBGC.

(2) A copy of the annual update to plan participants and beneficiaries, as described in paragraph (d) of this section, for the plan year.

(3) If an annual update is filed less than 60 days before the beginning of the plan year for which it is issued, a statement whether this is a result of an insolvency determination under § 2675.3(b).

(4) A certification, signed by the plan sponsor (or a duly authorized representative), that the annual update has been given to all plan participants and beneficiaries in accordance with this part.

(d) *Annual updates to participants and beneficiaries.* Each annual update required by § 2675.4(b) to be issued to plan paticipants and beneficiaries shall contain the following information:

(1) The name of the plan.

(2) A statement of when the notice of insolvency was issued and the insolvency year identified in the notice.

(3) A statement of the plan year to which the annual update pertains and the plan sponsor's determination whether the plan may be insolvent in that year.

(4) If the plan may be insolvent for the plan year, a statement that benefits above the amount that can be paid from available resources or the level guaranteed by the PBGC, whichever is greater, will be suspended, with a brief explanation of which benefits are guaranteed by PBGC.

(5) If the plan will not be insolvent for the plan year, a statement that full nonforfeitable benefits under the plan will be paid.

(6) If the annual updates are issued less than 60 days before the beginning of the plan year for which they are issued, a statement whether this is the result of an insolvency determination under § 2675.3(b).

(7) The name, address and telephone number of the plan administrator or other person designated by the plan sponsor to answer inquiries concerning benefits.

§ 2675.6 Notice of insolvency benefit level.

(a) *Requirement of notice.* For each insolvency year, the plan sponsor shall issue a notice of insolvency benefit level to PBGC and to plan participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year. The notices shall be delivered in the manner and within the time prescribed in this section and shall contain the information described in § 2675.7.

(b) *When delivered.* The plan sponsor shall mail or otherwise deliver the notices of insolvency benefit level no later than 60 days before the beginning of the insolvency year. A plan sponsor who determines under § 2675.3(b) that the plan is or may be insolvent for a plan year shall mail or otherwise deliver the notices of insolvency benefit level by the later of 60 days before the beginning of the insolvency year or 60 days after the date of the plan sponsor's determination under § 2675.3(b).

(c) *Method of delivery.* The notices of insolvency benefit level shall be delivered by mail or by hand to PBGC and to plan participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year.

§ 2675.7 Contents of notice of insolvency benefit level.

(a) *Notice to PBGC.* A notice of insolvency benefit level required by § 2675.6(a) to be filed with PBGC shall contain the following information:

(1) The name of the plan.

(2) The name, address and telephone number of the plan sponsor and of the plan sponsor's duly authorized representative, if any.

(3) The nine-digit Employer Identification Number (EIN) assigned by the Internal Revenue Service to the plan sponsor and the three-digit Plan Identification Number (PIN) assigned by the plan sponsor to the plan, and, if different, the EIN or PIN last filed with PBGC. If no EIN or PIN has been assigned, the notice shall so state.

(4) The IRS Key District that has jurisdiction over determination letters with respect to the plan.

(5) The case number assigned to the plan by PBGC.

(6) The insolvency year for which the notice is being filed.

(7) A copy of the plan document currently in effect, *i.e.*, a copy of the last restatement of the plan and all subsequent amendments. However, if a copy of the plan was submitted to PBGC with a previous notice of insolvency or notice of insolvency benefit level, only subsequent plan amendments need be submitted, and the notice shall state when the copy of the plan was submitted.

(8) A copy of the most recent actuarial report for the plan. In addition, a copy of the most recent Schedule B (Form 5500) for the plan, if the Schedule B was prepared more recently than the actuarial report. If the actuarial report or Schedule B was previously submitted to PBGC, it may be omitted from the notice. If the actuarial report or Schedule B is omitted, the notice shall state the date on which the document was filed and that the information is still accurate and complete.

(9) The estimated amount of annual benefit payments under the plan (determined without regard to the insolvency) for the insolvency year.

(10) The estimated amount of the plan's available resources for the insolvency year.

(11) The estimated amount of the annual benefits guaranteed by PBGC for the insolvency year.

(12) The amount of financial assistance, if any, requested from PBGC. When financial assistance is requested, PBGC may require the plan sponsor to submit additional information necessary to process the request.

(13) If the notice of insolvency benefit level is filed less than 60 days before the beginning of the plan year for which it is issued, a statement whether this is the result of an insolvency determination under § 2675.3(b).

(14) A certification, signed by the plan sponsor (or a duly authorized representative) that a notice of insolvency benefit level has been sent to all plan participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year, in accordance with this part.

(b) *Notice to participants in or entering pay status.* A notice of insolvency benefit level required by § 2675.6(a) to be delivered to plan

participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year for which the notice is given, shall contain the following information:

(1) The name of the plan.

(2) A statement of the insolvency year for which the notice is being sent.

(3) The monthly benefit that the participant or beneficiary will receive during the insolvency year.

(4) A statement that in subsequent plan years, depending on the plan's available resources, this benefit level may be increased or decreased but not below the level guaranteed by PBGC, and that the participant or beneficiary will be notified in advance of the new benefit level if it is less than the participant's full nonforfeitable benefit under the plan.

(5) The amount of the participant's or beneficiary's monthly nonforfeitable benefit under the plan.

(6) The amount of the participant's or beneficiary's monthly benefit that is guaranteed by PBGC.

(7) It the notices of insolvency benefit level are issued less than 60 days before the beginning of the plan year for which they are issued, a statement whether this is the result of an insolvency determination under § 2675.3(b).

(8) The name, address and telephone number of the plan administrator or other person designated by the plan sponsor to answer inquiries concerning benefits.

§ 2675.8 PBGC address.

All notices required to be filed with PBGC under this part shall be addressed to the Division of Case Classification and Control, Office of Program Operations (542), Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006.

Issued in Washington, D.C. on this 8th day of June, 1983.

Raymond Donovan,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above, pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this Notice of Proposed Rulemaking.

Henry Rose,

Secretary, Pension Benefit Guaranty Corporation.

[FR Doc. 83-15828 Filed 6-10-83; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Consideration of Amendments to the Kentucky Permanent Program Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Reopening of public comment period.

SUMMARY: OSM is reopening the period for review and comment on certain amendments submitted by the Commonwealth of Kentucky to its program for the regulation of suface coal mining and reclamation in the State. The amendments relate to: (1) Operations involving the crushing, screening or loading of coal, and (2) auger mining. OSM is reopening the comment period to allow the public sufficient time to consider and comment on the proposed amendments in light of revised Federal rules published in the **Federal Register** subsequent to the close of the initial public comment period on Kentucky's amendments.

DATES: Written comments, data or other relevant information must be received on or before 4:00 p.m., June 28, 1983, to be considered.

ADDRESSES: Comments should be sent or hand-delivered to: W. H. Tipton, Director, Kentucky Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40507.

FOR FURTHER INFORMATION CONTACT: W. H. Tipton, Director, Kentucky Field Office, Office of Surface Mining, 340 Legion Drive, Suite, 28, Lexington, Kentucky 40504. Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION: On May 28, 1982, OSM received, pursuant to the 30 CFR 732.17 State program amendment procedures, certain revisions to the State rules and laws. On july 23, 1983, OSM published a notice in the **Federal Register** announcing receipt of the amendments to the Kentucky program and inviting public comment thereon (47 FR 31890-31896). The public comment period ended August 23, 1982. A public hearing was held August 12, 1982. OSM published a second notice in the **Federal Register** on September 8, 1982, announcing receipt of provisions to satisfy conditions (k) and (l), and inviting public comment on whether the proposed amendments corrected these deficiencies (47 FR 39536-39537). The public comment period ended October 8, 1982. A public hearing scheduled September 22, 1982, was not held because no one expressed a desire to present testimony.

On January 4, 1983 (48 FR 245-252), OSM published a notice in the **Federal Register** which: (1) Removed and amended certain conditions; (2) approved certain other program amendments; (3) deferred Secretarial action on the following proposed Kentucky rule revisions: 405 KAR 7:020 Section 1(86), 8:050 Section 2, 16:020 Section 4 and 16:190 Section 2(2); (4) deferred Secretarial action on the following proposed Kentucky statutory revisions: KRS 350.060 Sections 5(21) and 5(22), 350.093(2), and 350.062(9), contained in Senate Bill 218; (5) approved certain clarifications to the Kentucky program contained in a letter from the State, dated June 18, 1982; (6) deferred Secretarial action on the clarification in the June 18, 1982, letter relating to incidental boundary revisions; and (7) deferred Secretarial action on whether the material submitted by Kentucky satisfied condition (1).

On May 13, 1983 948 FR 21574-21579), OSM published a notice in the **Federal Register** which: (1) Removed condition (1); (2) approved amendments to KRS 350.062(9) and 350.093(2) and 405 KAR 16:020 Section 4; and (3) created two new conditions of approval, relating to the deferral of contemporaneous reclamation (KRS 350.093(2) and 405 KAR 16:020 Section 4) and the definition of "principal shareholder" (KRS 350.060 Section 5(g) and 405 KAR 7:020 Section 1(86)).

On April 28, 1983 (48 FR 19314-19322), OSM published a notice in the **Federal Register**, effective May 27, 1983, revising its rules for conducting auger mining. On May 5, 1983 (48 FR 20392-2402), OSM published a notice in the **Federal Register**, effective June 6, 1983, amending its rules applicable to support facilities and coal preparation plants. These OSM rule revisions relate to certain of the items listed above on which the Secretary deferred action in the January 4, 1983 **Federal Register** notice as follows: (1) 405 KAR 8:050 Section 2 and 16:190 Section 2(2), and KRS 350.060 Section 5(21) (augering), and (2) KRS 350.060 Section 5(22) (support facilities and coal preparation plants).

OSM is reopening the comment period to allow the public sufficient time to review and comment on the above Kentucky amendments as they relate to the above described OSM rule changes. If the amendments are approved, they will become part of the Kentucky program.

This announcement is made in keeping with OSM's commitment to public participation as a vital component in fulfilling the purposes of SMCRA.

Additional Information

1. *Compliance With the National Environmental Policy Act.* Pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental document need be prepared on this rulemaking as State program decisions are exempt from compliance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*

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 would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure 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 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

(Pub. L. 95–87; Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*)

Dated: June 8, 1983.

J. Steven Griles,

Acting Director, Office of Surface Mining.

[FR Doc. 83–15800 Filed 6–10–83; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 938

Public Comment Period and Opportunity for Public Hearing on Proposed Condition of Approval to the Pennsylvania Permanent Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for the public comment period and the opportunity for public hearing on the proposed action to impose a new condition of the Secretary of the Interior's approval of the Pennsylvania Permanent Regulatory Program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed action is made to comply with a United States District Court decision in *Pennsylvania Coal Mining Assoc.* v. *Watt* regarding the hearings provision for bond release in the Pennsylvania program.

This notice sets forth the times and locations that the Pennsylvania program is available for public inspection, the comment period during which interested persons may submit written comments on the proposed action, and information pertinent to the public hearing.

DATES: Written comments, data or other relevant information relating to the imposition of the condition to the Pennsylvania program not received on or before 4:00 p.m. on July 13, 1983 will not necessarily be considered.

A public hearing on the proposed modifications has been scheduled for July 8, 1983, at the address listed under **"ADDRESSES."**

Any person interested in making an oral or written presentation at the hearing should contact Mr. Robert Biggi at the address or phone number listed below by the close of business *four working days* before the date of the hearing. If no one has contacted Mr. Biggi to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Biggi by the above date, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: Written comments should be mailed or hand delivered to: Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, 101 South 2nd Street, Suite L–4, Harrisburg Pennsylvania 17101.

The public hearing will be held at the Penn Harris Gator Inn and Convention Center at the Camp Hill bypass at U.S. 11 and 15, Camp Hill, Pennsylvania in the Keystone-A Convention Room.

Copies of the Pennsylvania program, a listing of any scheduled public meetings and all written comments received in response to this notice will be available for review at the OSM and State regulatory authority offices listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Room 5315, 1100 "L" Street NW., Washington, D.C. 20240;

Harrisburg Field Office, Office of Surface Mining, 101 South 2nd Street, Suite L–4, Harrisburg, Pennsylvania 17101; or

Pennsylvania Department of Environmental Resources, Fulton Bank Building, Tenth Floor, Third and Locust Streets, Harrisburg, Pennsylvania 17120.

FOR FURTHER INFORMATION CONTACT: Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, 101 South 2nd Street, Suite L–4, Harrisburg, Pennsylvania 17101; Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION: The Pennsylvania program was conditionally approved by the Secretary of the Interior on July 30, 1982 (47 FR 33050–33080). Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the condition of approval of the Pennsylvania program can be found in the July 30, 1982 **Federal Register.**

Background

Section 509(a) of SMCRA provides that the permittee file a performance bond with the regulatory authority before a surface coal mining and reclamation permit is issued. The permittee may file a request for release of all or part of the performance bond as specified in section 519 of SMCRA. Section 519(f) further provides that a hearing, if requested, be held within 30 days of the request for the hearing, and that a decision be rendered within 30 days of the conclusion of the hearing. Similarly, the Federal regulations at 30 CFR 807.11(e)(2), (f)(2) and (h)(ii) require the regulatory authority to hold the informal conference or hearing within 30 days of the receipt of the request for review and that the hearing decision be

made within 30 days of the hearing or informal conference.

The United States District Court for the Middle District of Pennsylvania in *Pennsylvania Coal Mining Assoc.* v. *Watt*, civil No. 82–1129, April 20, 1983, remanded to the Secretary the corresponding provision in the Pennsylvania program concerning the timing of the bond release hearing and decision. The District Court decided that Pennsylvania's bond release provisions are not consistent with SMCRA and the Federal regulations in that the Pennsylvania program does not provide when or how soon the hearing must be held after it is requested and does not require a decision to be announced until 60 days after the hearing. The District Court remanded this provision of the Pennsylvania program to the Secretary with instructions to rectify this matter.

Therefore, the Secretary proposed to add a new condition to the Pennsylvania program whereby the State must amend its program by a specified date to incorporate requirements no less effective than 30 CFR 807.11(e)(2), (f)(2) and (h)(ii). The Secretary requests public comment on this proposed action.

Pursuant to 30 CFR 732.17(e), the Secretary notified Pennsylvania by letter of June 7, 1983, that a State program amendment is required because conditions or events indicate that the approved State program no longer meets the requirements of SMCRA and the Federal regulations. Therefore, pursuant to 30 CFR 732.17(f)(1), Pennsylvania shall submit to the Secretary within 60 days after notification either a proposed written amendment or a description of an amendment to be proposed that meet the requirements of SMCRA and the Federal regulations, and timetable for enactment which is consistent with established administrative or legislative procedures. Failure of the State to submit the proposed amendment or description and the enactment timetable within the prescribed 60 days, or subsequent failure to comply with the submitted timetable, or disapproval by the Secretary of the amendment, could result in proceedings under 30 CFR Part 733 to either enforce that part of the State program affected or withdraw approval, in whole or in part, of the State program and implement a Federal program.

Additional Determinations

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 for 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, for this action OSM is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirement; rather, it would insure that existing requirements established by SMCRA and the Federal rules would 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 938

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, 30 CFR Part 938.11 is proposed to be amended as set forth herein.

Dated: June 7, 1983.

J. R. Harris,

Director, Office of Surface Mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

PART 938—PENNSYLVANIA

30 CFR 938.11 is proposed to be amended by adding new paragraph (k) to impose an additional condition as follows:

§ 938.11 Conditions of State regulatory program approval.

* * * * *

(k) Termination of the approval found in § 938.10 will be initiated on ————, unless Pennsylvania submits to the Secretary by that date, a copy of promulgated regulations, or otherwise amends its program to certain provisions no less effective than 30 CFR 807.11 (e)(2), (f)(2) and (h)(ii) to require the State to provide for hearings or informal conferences to be held within 30 days from the receipt of the request and that the hearing decision be made within 30 days of the hearing or informal conference.

[FR Doc. 83-15806 Filed 6-10-83; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 162

[CGD 78–151]

Inland Waterways Navigation Regulations; Connecting Waters From Lake Huron to Lake Erie

Correction

In FR Doc. 83–14897 beginning on page 25231 in the issue of Monday, June 6, 1983, make the following correction:

On page 25233, first column, under *Speed Rules, § 162.138*, third paragraph, fourth line, "patterns or vessel" should have read "patterns of vessel".

BILLING CODE 1505-01-

POSTAL SERVICE

39 CFR Part 111

Identification of Special Rate Bulk Third-Class Mailers

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule is designed to assure that, when an authorized nonprofit organization or political committee sends bulk third-class matter at special rates of postage, the full name and return address of the special-rate permit holder will appear both on the envelope and in a prominent location on the enclosed material. The existing regulation requires only that this information appear either on the envelope or in a prominent location on the enclosed material.

The primary purpose of the proposal is to assist postal employees in the task of verifying the eligibility of matter posted at taxpayer-subsidized special third-class rates. As a byproduct the members of the public who receive these mailings also should be better able to tell who the permit holder is.

DATE: Comments must be received on or before July 13, 1983.

ADDRESS: Written comments should be mailed or delivered to the Director, Office of Mail Classification, Rates and Classification Department, Room 8340, 475 L'Enfant Plaza West, SW., Washington, D.C. 20260. Copies of all written comments will be available for

inspection and photocopying between 9:00 AM and 4:00 PM, Monday through Friday, in Room 8340, at the above address.

FOR FURTHER INFORMATION CONTACT: James F. Harding, (202) 245-4512.

SUPPLEMENTARY INFORMATION: On September 12, 1980, the Postal Service published for comment in the **Federal Register** a proposed change to 623.6 of the Domestic Mail Manual as described above. 45 FR 60452. Interested persons were invited to submit written comments concerning the proposed changes by October 14, 1980.

Written comments were received from a labor organization, an individual, four advertising or public relations companies, and sixteen nonprofit organizations. Because of the length of time since the first proposal was published, the fact that we are revising and clarifying the proposal in accordance with certain letters of comment, and the need to know how much lead time would be required to permit mailers to use existing stationery stocks, we have decided to publish this second proposal and seek comments from the public on it. Our analysis of the comments on the first proposal and the action we took on those comments, as reflected in the second proposal, follow.

One commenter approved the proposed change generally, but opposed the portion which would require written permission from the General Manager in order to use an abbreviation of the nonprofit organization's name. The reason given was an expectation of "devastating" delays before the General Manager reaches a decision. The requirement for approval of the use of abbreviations is needed to avoid circumvention of the regulation by use of little-known abbreviations. We agree that undue administrative delays could be harmful. If a final rule is adopted, special attention will be given by the General Manager to assure prompt action on such requests. Sufficient lead time will be provided initially so that current permit holders will not be disadvantaged.

Some commenters expressed fears that the proposed regulation would curtail the use of "creative," "personalized," "individual" fund-raising communications, and that solicitors would be "locked in" to using nothing but "inflexible" or "official looking" requests for contributions. In particular, several commenters opposed any prohibition against using a "famous name" to attract attention, in a letterhead, or above the return address on the envelope or as signer. The same concern was expressed about a "personalized" appeal by a patient, or the parents of a sick child. We have taken care to assure that such fears are without foundation. The proposed amendment to the regulation would not preclude or restrict the use of another name as "sponsor" or "endorser" of the fund appeal. It would only require that the name of the nonprofit organization appear on the mail, along with anything else that is included. For further reassurance on this point, the proposed regulation has been revised to spell out more specifically that the name of sponsors or endorsers may appear on the material being mailed.

One commenter suggested that where a fund appeal uses the letterhead of a "famous" person, the name and address of the nonprofit organization should be printed at the bottom of the page of the solicitation letter. We have not specified where the nonprofit organization's name and address should appear, other than to say it should be in "a prominent location." Generally speaking, we see no reason why the bottom of the page could not qualify as "a prominent location."

One commenter argued that the proposal would regulate the content of letterheads in a manner that violates the First Amendment to the U.S. Constitution. It was apparent from the enclosure offered by this commenter as an example of what it wanted to retain the right to mail at reduced rates that the argument rested on a misunderstanding of what we are proposing. The sample mailing enclosed by this commenter does prominently disclose the name of the permit holder, although not in the letterhead. This practice would continue to be permissible under the proposed rule. Since the First Amendment argument was addressed to a hypothetical situation not raised by the proposed rule, we find it unnecessary to consider that argument in detail. The proposed rule requires only the affirmative inclusion of needed identifying information relating to the permit holder in order to exercise the benefit of the permit. It does not impinge on constitutionally protected expression.

The initial proposed rule included a portion of the existing regulation which provides that "Pseudonyms or bogus names of persons or organizations may not be used." Upon further consideration, we have eliminated this sentence from the second proposal for several reasons. The sentence could be read to cover a trade name, since trade names are pseudonyms employed for marketing purposes. Prohibiting the inclusion of trade names in this way might amount to a prior restraint on free speech, *Near* v. *Minnesota*, 283 U.S. 697 (1931); such prior restraints must be supported by governmental interests strong enough to scale the high constitutional barriers placed against them. *Nebraska Press Ass'n* v. *Stuart*, 427 U.S. 539 (1976). We do not believe the quoted sentence from the present rule is supported by very strong governmental interests, since the needs of consumers are met by the required inclusion of identifying information and by existing statutory and regulatory provisions, such as 18 U.S.C. 1341 (Frauds and swindles), and 39 U.S.C. 3001 (Nonmailable matter), 3003 (Mail bearing a fictitious name or address), 3005 (False representations; lotteries), and 3007 (Detention of mail for temporary periods).

We have attempted in the revised proposal and in this Supplementary Information to respond fully to the comments received. We hope that a close review of the revised proposal and the explanation will resolve any outstanding questions in this area. Nevertheless, we are inviting any further comments which the public may have on the proposed regulation as revised. We also specifically solicit mailers' advice concerning the lead time that may be needed in making the changes effective, including estimates of the time they would need to exhaust existing supplies of stationery.

Accordingly, although exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revision of the Domestic Mail Manual, which is incorporated by reference in the **Federal Register**. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 623—SPECIAL BULK RATES

In part 623 of the Domestic Mail Manual, revise 623.6 to read as follows:

623.6 Identification. The full name and return address of the organization authorized under 642 to mail at the special bulk rates must appear both on the address side of the mailing piece and in a prominent location on the material being mailed at the special rates. The name used must be the name that appears on the special rate authorization issued by the Postal Service to the mailing organization. The name of a subpart of the authorized organization, or the name of a sponsor (such as a celebrity who endorses the work of the nonprofit organization) or other prominently placed identifying information may also appear on the material being mailed at the special rates. This section is to be interpreted only to require the

inclusion of certain identifying information, and not to prohibit the inclusion of endorsements or other information.

Note.—A well recognized alternative designation or abbreviation such as "The March of Dimes" or the "AFL–CIO" may be used in place of the full name of the organization with the written permission of the General Manager, Domestic Mail Classification Division.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

(39 U.S.C. 401(2))

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 83-15792-Filed 6-10-83; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 302

[Docket—Prep—302A]

Civil Defense; State and Local Emergency Management Assistance Program; Contributions for Civil Defense Personnel and Administrative Expenses

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This notice or proposed rulemaking is designed to elicit comment on the factors that should be used to allocate funds to the States for necessary and essential civil defense personnel and administrative expenses under section 205 of the Federal Civil Defense Act. This allocation formula, set out at 44 CFR 302.5 needs to be revised because of a recent amendment to the Act requiring that in allocating of funds due regard be given to areas that may be affected by natural disasters. Also, the allocation formula and various other provisions of Part 302 need revision to reflect changes in civil defense concepts, needs, and conditions.

DATE: Comments are due August 12, 1983.

ADDRESS: Send comments to Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, Washington, D.C. 20472.

FOR FURTHER INFORMATION CONTACT: Donald J. Carbone, Office of Emergency Management Preparedness, Federal Emergency Management Agency, Washington, D.C. 20472 (202–287–3650).

SUPPLEMENTARY INFORMATION: On April 5, 1982, FEMA published for comment in the **Federal Register** (V 47 FR 14500–14501) an advance notice of proposed rulemaking on Section 205 of the Federal Civil Defense Act.

Subsection 205(d) of the Act specifies that for each fiscal year the FEMA Director "shall allocate to each State, in accordance with his regulations and the total sum appropriated hereunder, amounts to be made available to the States for the purposes of this section."

The subsection further stipulates: "Regulations governing allocations to the States shall give due regard to: (1) The criticality of the target and support areas *and the areas which may be affected by natural disaster* [Italicized phrase added by Pub. L. 97–86, December 1, 1981] with respect to the development of the total civil defense readiness of the Nation, (2) the relative state of development of civil defense readiness of the State, (3) population, and (4) such other factors as the Director shall prescribe."

The EMA program funds are allocated annually to the States based on a formula developed in accordance with those stipulations and set forth in the existing rule, § 302.3.

The formula computation in the rule must be revised to take into consideration that areas that may be affected by natural disasters, in accordance with the amendment to subsection 205(d) of the Act by Pub. L. 97–86. Also, the Federal Civil Defense Act in 1980 and 1981 defined an improved civil defense program, encompassing under "civil defense" preparedness for natural (and technological) disaster as well as enemy attack. Therefore, a thorough reassessment of the allocation formula is needed to ensure that it best serves the amended civil defense program.

Comments and Considerations

During the initial stage of rulemaking, FEMA solicited advice about what information and factoring data should be used for "areas which may be affected by natural disasters" in the State allocation computations.

A total of 18 comments were received; 15 were from State officials, one from FEMA Region VIII consolidated comments from its six States, one was from a county director of civil defense, and one was from a coastal area planning and development commission.

There was little consensus among the various comments received.

Base

Comments regarding the basic amount to be assigned to each State ranged from eliminating a base amount altogether, to retaining the current $25,000, to increasing the amount to $500,000 per State. Also included were suggestions to include an index for inflation in addition to the basic amount and to allow each State a percentage of the EMA budget amount.

In considering these comments, initial calculations were made with an equal base for each State, ranging in $50,000 increments from $100,000 to $250,000. These same amounts were also considered as a minimum allocation if a State's share, based solely on population, were less than that level. It was then determined that this base would be better as a percentage of the total EMA funds, rather than a fixed amount, so that it would vary with that total.

For clarity of understanding, the base was also redefined as the "State factor" and made a part of the formula computation.

Statutory Requirements

Subsection 205(d) of the Act stipulates that "regulations govering allocations to the States shall give due regard to" four specified considerations. The following numbered paragraphs summarize comments regarding these allocation factors. Each is followed by a discussion of FEMA's subsequent consideration of those comments and eventual position with regard to those factors, as reflected in § 302.5 of this proposed rule.

1. Criticality of Target, Support, and Natural Disaster Areas

a. Suggestions included: a claim that the allocation formula is too cumbersome, especially the complexity factor; an accurate determination of Nuclear Civil Protection is impossible and other base data are inaccurate; the two-ninths weights in the current formula given to criticality of host areas is puzzling and should be deleted; use the ratio of risk areas to State population, not to national risk area population; use the ratio of host areas to total State population rather than to the national population, so as to be more favorable to small States. Four of the comments were that the current formula complexity factors are too subjective and should be made more objective.

b. Comments on consideration of areas prone to disaster included suggestions for using a history of disaster occurrences for periods ranging from 2 to 20 years, with various data sources. The numbers of comments pro and con on the use of American Red Cross disaster data were approximately equal. One suggestion was to use American Red Cross and National Governors' Association disaster statistics for a 5- to 10-year period. Some

suggestions were to use presidentially declared disasters using different periods of history, but one commentor said these declarations are distorted in number because of changes in criteria and difficulty in obtaining the declarations. One said to consider Federal dollars spent; another, to consider costs of disasters at fixed nuclear facilities; another, to factor in numbers of risk and host areas within 50 miles of nuclear facilities and hazardous materials waste sites (Environmental Protection Agency data). Another idea was to use presidentially and gubernatorially declared disasters for a 10-year span.

The natural disaster factor as currently prescribed is best observed by using State population, since the addition of "areas which may be affected by natural disasters" literally leaves out no part of the country and to try to assess areas in terms of degrees of vulnerability would be a highly judgmental—and highly difficult—task for the Federal Government. Furthermore, the original concern for "target and support" areas is now less relevant to FEMA with the broadened scope of civil defense as defined by the Act and with the current existence of other funds for "risk and host area" planning. FEMA therefore concludes that this factor equates with the existing statutory requirement to consider population and should be considered as one with that factor.

2. State of Development

The law simply calls for the Director to "give due regard to . . . the relative state of development of civil defense readiness of the States" with no further explanation or instruction. The existing regulation, however, prescribes a complicated calculation involving two "complexity factors."

To comply with this statutory consideration in a less arbitrary and simpler manner, three factors were selected.

One applies to the State as a whole, in relation to other States: prior-year dollars, or the amount of the State's formal allocation for the preceding year (i.e., FY 1983 for determining FY 1984 allocations). This recognizes EMA funding as a principal determinant of civil defense capability development. While dollars alone do not measure capability, this appears to be a valid consideration when tempered by the other factors applied.

The second, or "State," factor (see also the discussion under Base above) acknowledges that each State government needs and has a civil defense capability centered around its emergency management agency. This indicator of development varies in size (and cost) from State to State, but other allocation factors take that into consideration. For that reason, the "State factor" is represented by a set amount (or percentage) identical for each State. While, the existing allocation process sets aside, from the total available, a $25,000 "base" for each State, the proposed revision includes the equivalent State factor in the actual formula.

The third factor for "state of development" applies to local government. Here the best measure appears to be the level of local participation in the EMA program. To use numbers of participant jurisdictions, however, would be unfair, especially to States that have chosen to consolidate civil defense units for efficiency. Population is a better measure—that is, the extent of State population covered by EMA-participant jurisdictions. This can be addressed in two ways: the State's EMA-covered population (1) relative to the national EMA-covered population, or (2) as a percentage of the State's total population. Since the first of these two choices would be affected by State size (the State with more population in participant jurisdictions would be allocated more EMA funds), which is already recognized by the population factor in the law and the criticality factor as applied both in the past and as proposed, the second method of recognizing EMA participation—as a percentage of State population—was selected.

3. Population

Suggestions included: factoring total State population plus natural disasters, hazardous-materials highway and railway transport routes, and demonstrated commitment of funds, manpower and other resources beyond those reimbursed by Federal funds; using nuclear risk population in the State; having only one factor based on State population as a percent of national population rather than in the current three factors; considering the number of EMA participating counties and cities in the State with more than 5,000 population; considering State area as a percent of area of the United States. Five commentors favored using the State population as a ratio to the national population, as is done in the existing formula.

Of the three "specific" factors listed in the Act, this is simplest: the one word "population." For this, the State's population as a percentage of the national population has always been used. To keep this factor current, however, the Census estimates for the latest available year should and can be used. For example, the FY 1984 initial calculation might have to make use of 1981 population data but would be modified to use 1982 data before the actual allocations are made. Population would be updated annually rather than decennially, thus modifying the impact of changes. By no longer using population of risk and host (target and support) areas, FEMA can avoid a costly and time-consuming task of extrapolating needed estimates from existing Census data.

4. Other Factors

In addition to the above considerations, the Act allows application of "such other factors as the Director shall prescribe." No responses dealt directly with this.

This provision allows FEMA to reserve or exempt from the allocation "formula" an amount to be used, at the Director's discretion, for considerations beyond those accommodated by the other factors.

One consideration is incentive—to augment the basic allocation with some additional funds for special efforts that would enhance State or local capabilities but that are not otherwise financially aided by the Federal Government. For example, the allocation process would consider existing EMA participation but not provide a specific means of increasing that participation; supplemental funding could help achieve that objective.

Another consideration—especially important when radically changing allocation procedures—is to avoid hardship on States that would consequently face smaller allocations than previously. This could mean cuts in State or local staff or in productivity. States and localities, many already bearing more than half of these emergency management personnel and administrative expenses, might well be unable to compensate for less FEMA funding. A reserve or supplemental funds could ease this effect.

To avoid excessive reliance on subjectivity, however, standards would be issued for equitable use of this reserve. These would provide the basis for State requests, Regional Office recommendations, and the Director's decision.

As at present, tentatively allocated funds that cannot be matched would be reallocated to other States. These funds would, in effect, be additions to the reserve.

Another use of this reserve would be to provide EMA funds to eligible United

States territories and possessions (the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands). These are not included in the proposed allocation formula process, principally because of their relatively small size. The District of Columbia and the Commonwealth of Puerto Rico, however, would for allocation purposes be considered in the same manner as the 50 States.

Relative Weights of Allocations Factors

A few other comments pertained to factors of the entire formula and their assigned weights. One was to allow one-third each for 20-year history of all disasters ratioed to damage costs, State to national; for population at natural disaster risk divided by ratio of State to U.S. population; and for population at manmade disaster risk divided by ratio of State to U.S. population. One would allow two-thirds for attack preparedness and one-third for natural disasters, while another suggested increasing the disaster weight and decreasing that for civil defense. Another proposed variation: make formula factors one third each for population (State percentage of national), for plans completion as percentage of requirements, and for disaster history in each State. Miscellaneous suggestions: give up to one-sixth for locations of fixed nuclear facilities; include one-ninth for hazard mitigation; include level of State's development of the total emergency management program (on the premise that better programs need more dollars). Most of these suggestions became moot in light of the factors selected and reflected in this proposed rule.

These factors had to be considered in relation to one another and weights (percentages) assigned for balance, reasonableness, and practicality. Dozens of variations of weights were tried and even some factors omitted or altered. The following formula was selected as most suitable.

With the primary purpose of the EMA funding being to maintain and enhance existing State and local capability, relative "state of development" was adjudged to be the most significant factor, as determined by prior-year allocations. This was assigned one-half weight, or 50 percent of the total available for allocation.

State size, in population, is another major determinant of EMA need. Therefore the "population" factor was designated for the second largest "share"—33 percent, or almost one-third.

Five percent was determined to be the most reasonable level for the "state" factor. It also represents a funding level sufficient, when matched equally, to support a minimum State emergency management or civil defense staff. The same for each State, this factor is equivalent in purpose to the present "base" although in dollars it equates to roughly twice that amount.

For the "local" factor, based on EMA participation, a 10-percent weight was assigned. This recognizes the extent of local government participation and encourages fuller coverage of the population. That this "local" weight is twice that of the "State" factor coincides with FEMA's standard that States suballocate to their local participant jurisdictions at least two-thirds of their allocation—that is, twice the amount retained for State-level use.

The remaining 2 percent for the "reserve" is considered sufficient to provide for the territories (estimated to require approximately 0.4 to 0.5 percent of the total, or one-fifth to one-fourth of the reserve) and for supplemental funding. The relatively small percentage assures the States a greater amount determined by the formula factor, yet allows an amount sufficient for incentive purposes or contingency needs.

With the application of these constant weights to the annually determined bases of the factors, State allocations are more likely to vary from year to year but these changes are less likely to be disruptive. Use of the allocation formula for almost the entire amount of available funds—98 percent—each year rather than only for any increase in EMA funds will be more dynamic and equitable. For these reasons, FEMA proposes the allocation formula and procedure set forth in this rule.

Other Changes in the Regulations

Comments Received. The few comments on 44 CFR Part 302 other than those concerning the EMA allocation process included these suggestions: reflect demonstrated commitment to use State resources towards Comprehensive Emergency Management beyond 50-percent match; rely on Program Papers and Statements of Work as measures; provide for FEMA Regional Office and State discussions of the formula; reserve a percentage of the annual EMA funds for a block grant for particular State and local needs.

These comments were not considered feasible or relevant to changes in the regulations or are otherwise accommodated in the proposed change.

Use of the Formula

As § 302.5 indicates, the dollar amounts produced by the formula computation are not necessarily the amounts to be allocated. Section 302.5(d) lists factors to be considered for possible modification of formula figures in addition to supplemental amounts. The formula amounts are provided to the Regional Directors for their review. They recommend to the Director any modifications based on these factors. These five factors are unchanged in the regulations; the sixth has been dropped because the formula change makes it moot. The tentative and formal allocations are to be made in accordance with sections 302.5 (f) and (g).

This rule contains references to the applicability to EMA of OMB Circular A–102, Uniform Requirements for Assistance to State and Local Governments and to OMB Circular A–87, Cost Principles Applicable to Grants and Contracts with State and Local Governments, the provisions of which are set forth in 44 CFR Part 13, Financial Assistance: Grants and Cooperative Agreements, and in related FEMA guidance. For this reason, §§ 302.10, Cost principles, and 302.11, Implementation of OMB Circular A–102, have been removed from this proposed rule except for a paragraph on "Waiver of 'single' State agency requirements" retained as § 302.8 in the proposed rule. The provisions of §§ 302.12, Other Federal requirements, and 302.13, Projects involving construction, are also contained in 44 CFR Part 13, and consequently have been deleted from 44 CFR Part 302.

Implementing Guidance

These regulations refer to CPG 1–3 throughout, but FEMA is continuing to rely upon actual notice, through distribution of CPG 1–3 to all participating State and local governments and requiring certification of receipt thereof.

Nonapplicability

As Federal funding to which these regulations will be applicable is less than $100,000,000 annually, the regulation is not considered to be a major regulation requiring a regulatory analysis under Executive Order 12291. The regulation also is applicable to States to whom the funding is made available, and thus is not subject to the requirements of the Regulatory Flexibility Act, which is concerned with small entities. No regulatory flexibility analysis will be prepared.

Collection of Information

Section 302.3 concerns documentation of eligibility. This section of the rule

contains collection of information requirements which have been submitted to Office of Management and Budget under the provisions of Section 3504(h) of the Paperwork Reduction Act. Comments on this collection of information should be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503 Attention: FEMA Desk Officer.

Comments

Comments on these matters are solicited and should be submitted to the above address in writing. Two copies are requested.

Upon receipt of and action of these suggestions, a final rule will be published in the **Federal Register**. The target date for this issuance is September 1, 1983.

List of Subjects in 44 CFR Part 302

Grants programs—national defense.

Accordingly, it is proposed to revise Part 302 to read as follows:

PART 302—CIVIL DEFENSE—STATE AND LOCAL EMERGENCY MANAGEMENT ASSISTANCE PROGRAM

Sec.

Authority: Sec. 401, Federal Civil Defense Act of 1950, as amended, 64 Stat. 1255, 50 U.S.C. App. 2253; Reorg. Plan No. 1 of 1958, 72 Stat. 1799, 23 FR 4991, E.O. 10952, 26 FR 6577; 29 FR 5017, Apr. 10, 1964; Reorg. Plan No. 3 of 1978 (43 FR 41943), E.O. 12148 (44 FR 43239), unless otherwise noted.

§ 302.1 Purpose.

(a) The regulations in this part prescribe the requirements applicable to Federal financial contributions to the States and through the States to their political subdivisions for up to one half of the necessary and essential State and local civil defense personnel and administrative expenses, under section 205 of the Federal Civil Defense Act of 1950, as amended, and set forth the conditions under which such contributions will be made.

(b) The intent of this program is to increase civil defense operational capability at the State and local levels of government by providing Federal financial assistance so that personnel and other resources can be made available for essential planning and other administrative functions and activities required in order to accomplish this objective.

§ 302.2 Definitions.

Except as otherwise stated or clearly apparent by context, the definitions ascribed in this section to each of the listed terms shall constitute their meaning when used in the regulations in this part. Terms not defined in this part shall have the meaning set forth in their definition, if any, in the Federal Civil Defense Act of 1950, as amended.

(a) *Act.* The Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251–2297).

(b) *Administrative expenses.* Necessary and essential expenses, other than personnel expenses as defined in this section, of a grantee and its subgrantees incurred in the administration of their civil defense programs, as detailed in CPG 1–3, Federal Assistance Handbook, and in CPG 1–32, FEMA Financial Assistance Guidelines.

(c) *Annual submission.* The State's annual request for participation in the contribution program authorized by section 205 of the Act. As specified in CPG 1–3, it includes staffing patterns (including job description changes), budget requirements and any amendments to the State administrative plan to the request for funds covering the State and its subgrantees and to the program statement of work for the grantee and subgrantees under the Comprehensive Cooperative Agreement.

(d) *Approval.* All approvals by the Federal Emergency Management Agency (FEMA) as grantor agency required under the regulations in this part means prior approval in writing signed by an authorized FEMA official. When failure to obtain prior approval of an action has not resulted and is not expected to result in any failure of compliance with a substantive requirement, and approval after the fact is not contrary to law (or regulation having the effect of law), written approval after the fact may be granted at the discretion of the authorized official.

(e) *CPG 1–3.* Civil Preparedness Guide entitled "Federal Assistance Handbook," which sets forth detailed guidance on procedures that a State and, where applicable, its political subdivisions must follow in order to request financial assistance from the grantor agency. It also sets forth detailed requirements, terms and conditions upon which financial assistance is granted under these regulations. Included are amendments by numbered changes. References to CPG 1–3 include provisions of any other volumes of the CPG series specifically referenced in CPG 1–3. Copies of the Civil Preparedness Guides and the Civil Preparedness Circulars may be ordered by FEMA Regional Offices using FEMA Form 60–8 transmitted to FEMA, P.O. Box 8181, Washington, D.C. 20024. One or more copies of CPG 1–3 have been distributed to each State and to each local government participating in the program under the regulations in this part. Copies of revisions and amendments are distributed to participating governments (addressed to the Emergency Management Coordinator) upon issuance.

(f) *Comprehensive Cooperative Agreement (CCA).* Provides for each State a single vehicle for applying for and receiving financial assistance for several discrete FEMA programs and for organizing and reporting on emergency management objective and accomplishments, particularly under the funded programs.

(g) *Emergency management* refers to the activities and measures undertaken by a State, or one of its political subdivisions, to manage a "civil defense program" as defined and provided for by the Federal Civil Defense Act of 1950, as amended, including without limitation Title V, added by Public Law 96–342, and section 207, added by Public Law 97–86. Title V calls for an improved civil defense program that includes: "(1) a program for the resources to be used for attack-related civil defense; (2) a program structure for the resources to be used for disaster-related civil defense; and (3) criteria and procedures under which those resources planned for attack-related civil defense and those planned for disaster-related civil defense can be used interchangeably." Thus, emergency management includes "civil defense" for and operations in either attack-related or disaster-related emergencies. Section 207 allows Federal Civil Defense Act funds to be used for disaster preparedness and response if such use is "consistent with, contributes to, and does not detract from attack-related civil defense preparedness." Also 44 CFR Part 312, Use of Civil Defense Personnel, Materials and Facilities for Natural Disaster Purposes, provides terms and conditions for such use.

(h) *Director.* The Director of the grantor agency or another official of the Agency authorized in writing by the Director to act officially on behalf of the Director.

(i) *Forms prescribed by the grantor agency.* Forms prescribed by the grantor

agency are identified in CPG 1-3 and may be ordered by FEMA Regional Offices using FEMA Form 60-8 transmitted to FEMA, P.O. Box 8181, Washington, D.C. 20224.

(j) *Grantee.* A State that has received EMA funds as a result of having a State administrative plan, a statement of work and an annual submission, all approved by the grantor agency as meeting the requirements prescribed in this part and in CPG 1-3 for necessary and essential State and local civil defense personnel and administrative expenses for a current Federal fiscal year.

(k) *Grantor agency.* The Federal Emergency Management Agency.

(l) *Interstate civil defense authority.* Any civil defense authority established by interstate compact pursuant to section 201(g) of the Act.

(m) *Necessary and essential civil defense expenses.* Necessary and essential civil defense expenses are those required for the proper and efficient administration of the civil defense program of a grantee or a subgrantee as described in a State administrative plan and statement of work approved by the Regional Director as being consistent with the national plan (i.e., program) for civil defense and as meeting other requirements for civil defense prescribed by or under provisions of the Act.

(n) *OMB Circular A-8.* "Cost Principles Applicable to Grants and Contracts with State and Local Governments," promulgated by the Office of Management and Budget, Executive Office of the United States, as published in the **Federal Register** (46 FR 8548) and subsequent amendments or revisions. (See Appendix B of CPG 1-3.)

(o) *OMB Circular A-102.* "Uniform Administrative Requirements for Grants-in-aid to State and Local Governments," promulgated by the Office of Management and Budget, Executive Office of the President of the United States (42 FR 45828, 9-12-77), including amendments or revisions as published in the **Federal Register**. (See Appendix A of CPG 1-3).

(p) *Operational plans.* Operational plans are part of the State administrative plan. They identify the available personnel, equipment, facilities, supplies, and other resources and provide for coordinated operations to be taken throughout the State in the event of an attack or other disaster.

(q) *Personnel expenses.* Necessary and essential civil defense expenses for personnel on the approved staffing pattern of a grantee of subgrantee (including but not necessarily limited to salaries, wages, and supplementary compensation and fringe benefits) for such employees appointed in accordance with State and local government laws and regulations under a system which meets Federal merit system and other applicable Federal requirements. Such expenses must be supported by job descriptions, payrolls, time distribution records and other documentation as detailed in CPG 1-3. Personnel compensation and other costs incurred with regard to employees who are not on the civil defense staff but whose work serves the civil defense agency (e.g., State's budget and accounting office) may be charged as civil defense expense to the extent covered thereof in a federally approved indirect cost allocation plan.

(r) *Political subdivisions.* Local governments, including but not limited to cities, towns, incorporated communities, counties, or parishes, and townships.

(s) *Regional Director.* A FEMA official delegated authority to exercise specified functions as they apply to grantees and subgrantees, within the geographical area of a particular region as identified (including address) in 44 CFR Part 2.

(t) *State.* Any of the actual States, the District of Columbia, the Commonwealth of Puerto Rico, (the Commonwealth of the Northern Mariana Islands and the territories of American Samoa, Guam, and the Virgin Islands).

(u) *State administrative plan.* A one-time submission with periodic amendments to keep it current, the plan is a formal description of each participating State's total civil defense program and of related State and local laws, executive directives, rules and plans and procedures, including personnel standards administered on a merit basis, existing operational plans, travel regulations, indirect cost allocation plans and other information necessary to reflect the total civil defense program throughout the State. The plan also includes without limitation documentation as to administrative and financial systems to assure compliance with uniform grant-in-aid administrative requirements for States and subgrantees as required under OMB Circular A-102 and with other requirements relevant to the eligibility of the State and its political subdivisions for participation in financial assistance programs for civil defense purposes. Detailed requirements are prescribed in CPG 1-3. (Also see § 302.3).

(v) *Statement of work.* Formal identification of specific actions to be accomplished by a State and its political subdivisions during the fiscal year for which Federal funds are being requested by the State. Submission is made to the FEMA Regional Director as part of the CCA Program Narrative.

(w) *Subgrantee.* A political subdivision of a State listed in the State's annual submission (or amendments thereto) as approved by the grantor agency (including any grantor agency-approved amendments thereto) as eligible to receive a portion of the Federal financial contribution provided for use within the State.

§ 302.3 Documentation of Eligibility.

In order to remain eligible for Federal financial contributions under the regulations in this part, each State must have on file with FEMA a current State administrative plan, an emergency operational plan for civil defense, and an annual submission (including a statement of work) which have been approved by the Regional Director as being consistent with national plan (i.e., program) for civil defense and as meeting the requirements of the regulations in this part and of CPG 1-3.

(a) *State administrative plans.* Every State has a State administrative plan on file with FEMA and is required to keep that plan current through amendments as necessary. Such plans and amendments shall be reviewed by the Regional Director, who will advise the State in writing as to the effect, if any, changes will have on the continued eligibility of the State and its subgrantees. The Regional Director shall not however, approve any amendment that would result in failure of the plan to meet these criteria:

(1) Provides for and is, pursuant to State law, in effect in all political subdivisions of the State, mandatory on them and, unless waived by the Director under section 204 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4214), administered or supervised by a single State administrative agency. In demonstrating that the State administrative plan for civil defense is in effect in all political subdivisions of the State and mandatory on them, the plan shall contain references to the applicable State statutes and local ordinances, executive orders and directives, rules and regulations, at the State and local level that establish the civil defense authority, structure, plans, and procedures, including those relating to emergency operations, throughout the State.

(2) Provides that the State shall meet at least 50 percent of the necessary and essential costs eligible under this program from any source consistent with State law, but not from another Federal source unless Federal law specifically authorizes the use of funds

from such Federal source as part of the State's share.

(3) Provides for the development of State and local government civil defense operational plans pursuant to the standards approved by the Director.

(4) Provides for the employment by the State of a full-time civil defense director or deputy director.

(5) Provides for the establishment and maintenance of methods of personnel administration in public agencies administering or supervising the civil defense program, at both the State and local government levels, in conformity with the Standards for a Merit System of Personnel Administration, (5 CFR Part 900) which incorporate the Intergovernmental Personnel Act Merit Principles (Pub. L. 91-648, Section 2, 84 Stat. 1909) perscribed by the Office of Personnel Management pursuant to Section 208 of the Intergovernmental Personnel Act of 1970 as amended.

(6) Provides for the establishment of safeguards to prohibit State and local government employees from using their positions for a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

(7) Provides that the State shall make such reports (including without limitation, financial reports) in such form and content as the Director may require.

(8) Provides that the State and all subgrantees shall retain, in accordance with OMB Circular A-102, and make available to duly authorized representatives of the Director and the U.S. Comptroller General all books, records, and papers pertinent to the grant program for the purpose of making audits, examinations, excerpts, and transcripts necessary to conduct audits.

(9) Provides for establishment and maintenance of financial management system of grant-supported activities of the State and all subgrantees which meets the Federally prescribed standards promulgated in "Standards for Grantee Financial Management Systems," Attachment G of OMB Circular No. A-102.

(10) Provides for establishment and maintenance of procedures for monitoring and reporting grant program and project performance of the State and its subgrantees which meet the Federally prescribed standards promulgated in Attachment I of OMB Circular No. A-102.

(11) Provides for the establishment and maintenance at the State level and by subgrantees of property management systems in accordance with the Federally prescribed standards set forth in Attachment N of OMB Circular A-102.

(12) Provides for the establishment and maintenance at the State level and by subgrantees of systems for the procurement of supplies, equipment, construction, and other services, with the assistance of grant funds, in accordance with federally prescribed standards set forth in Attachment O of OMB Circular A-102.

(13) Provides for disbursement of the appropriate share of the Federal grant to the State's subgrantees in accordance with requirements detailed in CPG 1-3.

(14) Provides for the State's supervision and review of the civil defense plans, programs, and operations of its subgrantees to obtain conformity and compliance with Federal requirements and goals set forth or referenced in the regulations in this part and as detailed in CPG 1-3.

(15) Contains a Statement of Compliance with grantor agency regulations relating to nondiscrimination in FEMA programs (See 44 CFR Part 7 and CPG 1-9, Nondiscrimination in Federally Assisted Programs of FEMA).

(16) Provides for timely submission to the appropriate Regional Director, of amendments to the administrative plan as necessary to reflect the current laws, regulation, criteria, plans, methods, practices, and procedures for administration of the State's civil defense program and those of its subgrantees.

(17) Conforms to other Federal standards and requirements set forth or referenced in the regulations in this part and as detailed in CPG 1-3.

(18) Provides for performance of independent organizationwide audits, by State and local governments that receive EMA funds, of their financial operations, including compliance with certain provisions of Federal law and regulation in accordance with Attachment P of OMB Circular A-102.

(b) *Emergency operational plans.* Each participating State shall have an emergency operational plan approved by the Regional Director as complying with the criteria therefor set forth in this part and in CPG 1-3, which provides for coordinated actions to be undertaken throughout the State when the attack-caused or other major emergencies occur. Included are the basic operational plans of the State and the operational plans for each department of the State government which has an emergency mission. In addition, each subgrantee shall have a local operational plan which conforms with the criteria therefor set forth in CPG 1-3 and CPG 1-5 "Objectives for Local Civil Preparedness", and which has been approved by the local chief executive or other authorized official and accepted by the Governor or other authorized State official as being consistent with State's operational plan.

(c) *Annual submission.* Each State should include in its annual Comprehensive Cooperative Agreement (CCA) application the amount of funding requested not to exceed the amount of its preliminary or tentative allocation at the time of the application. However, in order to participate for a particular Federal fiscal year, each State must, within 60 days of receipt or notice of a formal allocation made pursuant to the critieria set forth in § 302.5 and in accordance with procedures and criteria specified in CPG 1-3 submit to the Regional Director an approvable annual submission which includes:

(1) A request or amended request for a financial contribution from FEMA in a specified amount for civil defense personnel and administrative expenses;

(2) Unless previously submitted for the particular Federal fiscal year, a statement of work for the State and proposed subgrantees or amendments to a statement or work previously submitted under the CCA.

(3) Staffing patterns (including new or revised job descriptions not previously submitted) on forms prescribed by FEMA for the civil defense organizations of the State and proposed subgrantees; and

(4) Any amendments to the State administrative plan required to reflect current status.

(d) *Approval of State administrative plan and annual submission.* If the State administrative plan and the annual submission are determined to be approvable, the Regional Director will so notify the State in writing. The State administrative plan is a one-time submission. Unless amendments are necessary to meet Federal standards prescribed in the the regulations in this part or in CPG 1-3 or to reflect changes in the State's administrative structure, procedures, criteria, or activities, or unless a portion were conditionally approved by the Regional Director as provided for in paragraph (e) of this section, no approval regarding the State administrative plan will be required for a State which participated for the preceding Federal fiscal year.

(e) *Agreement for contribution.* Approval pursuant to procedures and criteria described in this part and in CPG 1-3 of an annual submission of a State whose administrative plan is approved and current shall constitute agreement between FEMA and the State as grantee for its participation and that

of its subgrantees in this program during the Federal fiscal year covered by the approved annual submission on the basis of the requirements and conditions prescribed in this part, in CPG 1–3 and in other federally promulgated criteria referenced in this part. Refusal or failure to comply with such requirements and conditions may result in the grantor agency cancelling, terminating, or suspending the grant, in whole or in part, and refraining from extending any further assistance to the grantee or subgrantee until satisfactory assurance of future compliance has been received.

(f) *Disapproval or conditional approval.* If a State's administrative plan or annual submission is disapproved, the Regional Director will advise the State in writing, including the reasons for such disapproval and the revisions required for approval. The State shall have 30 days from date of such notification in which to submit its revisions. In the event more time is required in which to place the revisions into effect, the Regional Director may conditionally approve the State administrative plan or annual submission subject to the specified conditions to be met within a specified time, as agreed by the State and FEMA.

(g) *Appeals.*—(1) Appeal from a Regional Director's disapproval of a State administrative plan or an annual submission or other final action may be made by letter to the Associate Director, State and Local Programs and Support (FEMA), signed by an authorized State official and submitted through the Regional Director. Such appeal letter shall be mailed or otherwise transmitted so as to reach the Regional Director within 15 days after receipt of the notification of disapproval. Failure to file its appeal on time may result in withdrawal of the State's allocation and the proposed funding being reallocated by the Director.

(2) A local jurisdiction that regards the final action on its subgrant made by a State as unjustified under the criteria in CPG 1–3 may submit an appeal through the State to the Regional Director. Upon receipt of such an appeal the Regional Director shall forward the letter, together with all available pertinent documentation from the Regional Director's files and any additional documentation submitted by the local jurisdiction in support of its appeal, to the Director for review and determination. The appeal shall contain all of the exceptions being taken by the State or local jurisdiction and no exceptions will be determined piecemeal.

(3) No portion of the appellant State's allocation shall be reallocated by FEMA, and no portion of a local jurisdiction's allocation shall be reallocated by the State pending determination of its appeal by the Director. The State and local jurisdiction (if applicable) will be notified in writing of the Director's decision, including a statement of the reasons therefor.

§ 302.4 Merit personnel systems.

(a) *Background.* Section 208 of the Intergovernmental Personnel Act, as amended (42 U.S.C. 4728) authorizes Federal agencies to require, as a condition of participation in Federal assistance programs, systems of a personnel administration consistent with personnel standards prescribed by the Office of Personnel Management (OPM). OPM has promulgated Standards for a System of Personnel Administration (5 CFR Part 900) which prescribe intergovernmental personnel standards on a merit basis as a condition of eligibility, in the administration of grant programs. OPM has approved the adoption made by the regulations in this part.

(b) *Adoption.* Participation by each grantee and each subgrantee under the program covered in this part is subject to compliance with the following conditions regarding merit personnel systems:

> Methods of personnel administration will be established and maintained in public agencies administering or supervising the administration of the civil defense program in conformity with the Standards for a Merit System of Personnel Administration 5 CFR Part 900, which incorporate the Intergovernmental Personnel Act Merit Principles (Pub. L. 91–648 Section 2, 84 Stat. 1909) prescribed by the Office of Personnel Management pursuant to Section 208 of the Intergovernmental Personnel Act of 1970 as amended.

Section 302.3(a)(5) of this part provides, in part, that State administrative plans that fail to provide for fulfilling this condition are not approvable.

§ 302.5 Allocations and reallocations.

(a) The Director shall allocate the entire amount of funds available for the purposes of this program from the appropriation for each fiscal year. The allocation made to each State represents the total amount of funds available to pay the Federal share of necessary and essential civil defense personnel and administrative expenses of the State and its participating subdivisions during the fiscal year.

(b) The first calculation for developing the allocation for each State will be a formula distribution in accordance with section 205(d) of the Act, made by applying the following percentages to the total sum for Emergency Management Assistance in the President's budget request to Congress:

(1) Fifty (50) percent will be allocated on the basis of the prior year State allocations, in fulfilment of the statutory requirement to give due regard to "the relative state of development of civil defense readiness of the State" (State and local levels).

(2) Thirty-three (33) percent will be allocated on the basis of the ratio of the State's population to the national population (50 States, District of Columbia, and Puerto Rico), in fulfilment of the statutory requirements to give due regard to "population" and to "the criticality of target and support areas and the areas which may be affected by natural disasters with respect to the development of the total civil defense readiness of the Nation."

(3) Ten (10) percent will be allocated on the basis of the State's population in EMA participant jurisdictions (county or municipal) as a percentage of the State's total population, in fulfilment of the statutory requirement to give due regard to "the relative state of development of the civil defense readiness of the State" (local level).

(4) Five (5) percent will be divided equally among the 50 States, the District of Columbia, and Puerto Rico, in fulfilment of the statutory requirement to give due regard to "the relative state of development of civil defense readiness of the State" (State level).

(5) In consonance with the statutory provision allowing the Director to prescribe other factors concerning the State allocations, the remaining two (2) percent will be held temporarily in reserve, to be used first to fund the four territories of the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Marianas Islands. Conditions peculiar to those areas make strict application of the mathematical formula in § 302.5(b) inequitable. Therefore, the Director will consider prior year allocations, percentage of total United States population, and the factors set out in § 302.5(c) (1), (2), (4) and (5) in determining their allocations. The remaining balance of the reserve fund will constitute a supplemental fund from which the Director will consider State requests for additional funding, and the needs of any interstate civil defense authorities. Certain standards applicable to the use of the reserve fund will be set forth in Civil Preparedness Guide (CPG) 1–3.

(c) The formula distribution shall be reviewed and evaluated, and adjusted

as appropriate, by the Director, based on the current situation in the State and recommendations by the Regional Directors. The Director will consider the following five factors:

(1) The ability of the State and its subgrantees to effectively expend such an amount for necessary and essential civil defense personnel and administrative purposes. Past performance is a factor in this determination.

(2) Special circumstances existing in the State at the time of allocation which require unusual expenditures for civil defense.

(3) Conditions peculiar to the State which make strict application of mathematical formula inequitable either to that State or other States.

(4) The relative cost of civil defense personnel and administrative services in that State; that is, whether such costs are considerably above or below the national average for similar services and expenses.

(5) Substantial changes in the civil defense readiness of the State not reflected by its recent civil defense expenditures.

(d) For initial planning purposes only, each State will then be informed of the preliminary budget allocation figure by the Regional Director. The State will base its initial EMA application upon that figure but may request a smaller amount or, with appropriate justification, larger amount.

(e) The amount requested by the State shall not exceed 50 percent of its estimate of necessary and essential State and local personnel and administrative expenses for the fiscal year.

(f) On or about September 1 of each year, based on applications received and recommendations by the Regional Directors, the Director will make a tentative allocation to the States. This will include adjustments for States that have indicated they will not be using the total of the preliminary budget allocation. States can then revise their earlier plans and applications to more nearly reflect the level of funding expected to become available.

(g) By September 30 (or as soon thereafter as feasible) the Director will make a formal allocation based on, or subject to, appropriation by Congress and allotment of the funds. This allocation for each State can include any additional amounts from the supplemental portion of the EMA funds.

(h) Based on, and within 60 days after notification of, its formal allocation the State shall provide to the Regional Director an annual submission in compliance with the criteria prescribed therefor by the regulations in this part and by CPG 1–3.

(i) In the event a State fails to provide an approvable annual submission on time, the Director may reallocate that State's share of the funds or portions thereof among the other States in such amounts as in the Director's judgment will best assure adequate development of the civil defense capability of the Nation.

(j) In addition, the Director may from time-to-time reallocate the amounts released by a State from its allocation as no longer being required for utilization in accordance with approved annual submission.

§ 302.6 Fiscal year limitation.

Federal appropriations for the program covered by the regulations in this part are limited for obligation on a Federal fiscal year basis. Each annual submission (or amendment thereto) which results in a change in scope (e.g., an increase in the amount of funds other than a cost overrun) must be approved during the Federal fiscal year for which the funds to be charged were appropriated. Valid expenses incurred by a State or its subgrantee during the fiscal year but before obligation by FEMA of funds under this program may qualify for payment of a Federal financial contribution out of the funds subsequently appropriated for that fiscal year.

§ 302.7 Use of funds, materials, supplies, and personnel.

Financial contributions provided under the authority of Section 205 of the Act are provided for necessary and essential State and local civil defense personnel and administrative expenses as prescribed by the regulations in this part and the provisions of CPG 1–3, and are obligated only on the basis of documentation justifying such need.

(a) *Emergencies.* In addition to such civil defense use, Federal funds obligated under a grantee's approved annual submission may be used, to the extent and under such terms and conditions as prescribed by the Director in CPG 1–3, for providing emergency assistance, including the use of civil defense personnel, organizational equipment, materials, and facilities, in preparation for and response to actual attack-related events or natural disasters (including manmade catastrophies).

(b) *Limitations.* Section 207 of the Act allows use of funds under the Act including those for this program, for natural (including manmade) disaster preparedness and response purposes only to the extent that such use is consistent with, contributes to, and does not detract from attack-related preparedness (reference 44 CFR 312).

§ 302.8 Waiver of "Single" State agency requirements.

Section 205 of the Act requires that plans for civil defense of the United States shall be administered or supervised by a single State agency (50 U.S.C. App 2286). Notwithstanding such law, Section 204 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4214) provides authority for the Director as head of the grantor agency, upon the State's request, to waive the single State agency requirement and to approve other State administrative structure or arrangements, upon adequate showing that the requirement prevents the establishment of the most effective and efficient organizational arrangements within the State government. First, however, the Director must have found that the objectives of the Act (50 U.S.C. App. 2251–2297) will not be endangered by the use of such other State structure or arrangements. Attachment D of OMB Circular A–102 requires that such requests shall be given expeditious handling by the grantor agency and that, whenever possible, an affirmative response shall be made.

Dated: June 6, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-15744 Filed 6-10-83; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 542, 543 and 544

[General Orders 40, 37 and 41; Docket No. 83-13]

Financial Responsibility for Water Pollution

AGENCY: Federal Maritime Commission.

ACTION: Discontinuance of proceeding.

SUMMARY: The Commission instituted this proceeding by Notice of Proposed Rulemaking published March 7, 1983 (48 CFR 9543). The purpose of the rule was to delete from appropriate Commission General Orders reference to the Panama Canal as being within the navigable waters of the United States. Since publication of the notice, responsibility for establishment of financial responsibility for water pollution has been transferred to the United States Coast Guard, Department of Transportation by the President. (See

Executive Order 12418 signed May 5, 1983.) Accordingly, the Commission no longer has the authority to issue rules concerning financial responsibility for water pollution and, therefore, this proceeding is discontinued.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573; (202) 523-5725.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 83-15741 Filed 6-10-83; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 94

[PR Docket No. 19309; File Nos. 19393-19415-(G-60X); FCC 83-173]

Preston Trucking Company, Inc.; Inquiry Into Certain Arrangements for Cooperative Use of Microwave Facilities

AGENCY: Federal Communications Commission.

ACTION: Order terminating proceeding.

SUMMARY: This document terminates the proceeding in Docket No. 19309 addressing permissible forms of cooperative sharing in the Private Operational-Fixed Microwave Service without adopting new rules. Instead, the Commission has commenced a new proceeding in which it is proposing to authorize private carriers under Part 94 of the FCC Rules and to relax certain of the cooperative sharing rules. Docket 19309 is being terminated because the specific issues involved in the Preston Trucking case are now moot and because the records in this proceeding are now over a decade old.

FOR FURTHER INFORMATION CONTACT: Eugene C. Bowler or Frederick J. Day, Private Radio Bureau (202) 634-2443.

Order

In the matter of Preston Trucking Company, Inc., inquiry into certain arrangements for cooperative use of private microwave facilities, FCC 83-173; PR Docket No. 19309, File Nos. 19393-19415-(G-60X).

Adopted: April 27, 1983.

Released: May 17, 1983.

By the Commission; Commissioner Jones absent.

Summary

1. By this Order the Commission is terminating its proceeding in this Docket. It is taking this action in light of the staleness of the record on the subject of third party licensing. Instead, the Commission has commenced a new docketed proceeding proposing to authorize private carriers under Part 94 of its rules and to relax certain of its cooperative sharing rules.[1]

Background

2. Docket 19309 originated from applications for microwave facilities filed by Preston Trucking Company, Inc. (Preston) to set up a microwave relay system for a number of truckers that would run east from Tonawanda, New York (just north of Buffalo) to Albany, New York, then south to Jersey City, New Jersey, and from there southwest to Ivy Hill, Pennsylvania (just north of Philadelphia), a distance of approximately 480 miles. In this system, Transportation Microwave Corporation (TMC), a company having no direct connection with Preston or any other motor carrier, was to undertake the financing necessary to construct the microwave system which Preston and the other participants wanted to use. While TMC was to own the system, it was not seeking to be authorized by the Commission to offer communications service. Instead, TMC sought to function as a system supplier and manager who would lease the facilities to Preston Trucking Co., who would, in turn, apply to the Commission and be licensed to operate the shared facility pursuant to the Commission's cooperative sharing rule. Cf. 47 CFR 94.17. There was to be a lease agreement between Preston and TMC under which TMC was to operate and maintain the system. To provide for cooperative use of the system, Preston, as licensee, was to enter into a separate "participant's agreement" with each motor carrier who desired to use the system. Each such private user of the system, including Preston, was to pay to TMC a fixed amount for each dedicated voice and teletype channel negotiated between Preston and TMC. Under these arrangements, only TMC was to receive a profit from the system. No profit was to accrue to Preston, the system's licensee. It was anticipated that 40 to 60 of the approximately 280 motor carriers in the region initially would participate in the system.[2]

3. The Commission granted Preston's application on February 18, 1971, concluding the system did satisfy its cooperative use requirements, but these grants were opposed by a number of parties in petitions for reconsideration. In a Memorandum Opinion and Order, Notice of Inquiry and Notice of Proposed Rule Making, released on August 24, 1971,[3] the Commission found Preston's plan to be substantially consistent with the cooperative use provisions of its rules; nevertheless, it had some reservations concerning this type of arrangement and decided to explore them more fully in an inquiry and rule making proceeding. Accordingly, the Commission modified Preston's authorizations to make them subject to the outcome of this proceeding, stating that any expansion of Preston's backbone facilities would be denied. The Commission also required Preston to submit reports every six months detailing the operation of the system. Concerning the inquiry and rule making, the Commission included issues and questions "designed to determine whether, in general licensing situations, under this type of arrangement, a licensee will be in a position to exercise the degree of responsibility over authorized facilities normally expected and required by rule and statute; or whether the public interest would be better served by amending the rules to permit direct licensing of entities such as TMC; or whether the arrangement should be treated as a common carrier function and regulated as such."[4]

4. In response to this Memorandum Opinion and Order, Notice of Inquiry, and Notice of Proposed Rulemaking, on September 23, 1971, Preston filed a petition for reconsideration requesting that the Commission lift its ban on expansion of the backbone facilities of the system to allow construction of a link between the terminal point at Ivy Hill, Pennsylvania and Preston's headquarters at Preston, Maryland (a distance of approximately 130 miles). This request was opposed by four common carriers who, in addition, sought the initiation of an evidentiary hearing or revocation proceeding to explore a number of overall aspects of the proposal and to resolve certain alleged issues of Preston's character and financial qualifications. In a Memorandum Opinion and Order, released February 2, 1972,[5] the

[1] *Notice of Proposed Rule Making*, Docket No. 83-426, —— FCC ——, adopted April 27, 1983.

[2] Within the ruling of Docket No. 18921, what Preston proposed was a "Stage III cooperative." *Report and Order*, FCC 82-129, adopted March 18, 1982, released April 13, 1982, 89 FCC 2d 766, 786.

[3] *Memorandum Opinion and Order, Notice of Inquiry, and Notice of Proposed Rule Making*, Docket No. 19309, 31 FCC 2d 769 (1971).

[4] *Id.* at 769.

[5] *Memorandum Opinion and Order*, Docket No. 19309, 33 FCC 2d 385 (1973).

Commission denied Preston's request to extend the system and the relief requested by the common carriers.

5. On the same date that Preston filed its petition for reconsideration of the Commission's initial order in this proceeding, MCI-New York West, Inc. and Microwave Communications, Inc. filed in the U.S. Court of Appeals for the District of Columbia their Notice of Appeal of Preston's grants and, also, of the initial order. However, before this appeal was heard by the court, the Commission on July 31, 1973 released a third document in this proceeding, a Memorandum Opinion and Order,[6] which induced the applicants to file a motion with the court asking that their appeal be dismissed without prejudice. This Memorandum Opinion and Order granted a request by TMC whereby Preston would assign its rights to TMC, and TMC would apply for authorization to operate the facilities as a specialized common carrier under policies adopted in Docket 18920 dealing with the Specialized Common Carrier Services.[7]

6. At the time this request was made, the backbone microwave system had been constructed and there were some 23 stations in operation. In addition to Preston, the Commission had, at that time, authorized 45 other trucking companies to share the system. Of these, however, only ten had entered into service contracts, and only two were actually receiving service. Connecting facilities to three more trucking companies were under construction. In its request, TMC alleged that this under-utilization resulted principally from the uncertainties about the future of the Preston grants, from the difficulties and delays encountered in arranging interconnection with common carrier wireline facilities, and from the Commission's restrictions against extension of the backbone facilities. In addition, TMC stated that, although $4 million had been invested in the system, it then had financial resources available for only a few months of operations, with no likelihood of obtaining additional financing as long as Preston's grants remained uncertain. To resolve these difficulties, TMC proposed its compromise solution under which the system would operate as a special common carrier pursuant to the Commission's Rules.

7. As part of this proposal, TMC, which was to be assigned the rights of Preston, requested a waiver of the Commission's rules to permit it to apply for and operate on the private microwave frequencies already authorized to Preston and to apply for additional private microwave grants to extend the system from Albany, New York to Boston, Massachusetts and from Ivy Hill, Pennsylvania to Washington, D.C. TMC proposed to operate on private microwave frequencies for five years during which it would attempt to convert the system to common carrier frequencies. TMC proposed to reserve fifty percent of the total available capacity of the system for customers eligible as licensees in the private radio services who were permitted under the rules to use and share private microwave frequencies.

8. In the third order in Docket 19309, the Commission recognized TMC's right under Docket 18920, Specialized Common Carrier Services, to apply and operate as a specialized common carrier under Part 21, and granted TMC's request for a waiver of the rules to conduct this proposed common carrier operation for five years using the existing Preston system which was authorized on private microwave frequencies. The Commission, however, denied TMC's request to extend the system to Boston and Washington, D.C. on private microwave frequencies because it believed that common carrier frequencies over those proposed extensions would be difficult to find in five years and, consequently, it would be more prudent to design the system initially for common carrier frequencies. In addition, the Commission concluded that TMC's proposal to reserve 50% of the system capacity for customers eligible in the private services would, in effect, create a preferred class of customers contrary to Section 202(a) of the Communications Act of 1934, as amended, which generally prohibits discriminatory practices by common carriers.

9. Because of continued financial difficulties aggravated by the inability to acquire local distribution facilities, the limited geographical coverage, and the regulatory uncertainties in the Specialized Common Carrier Service, TMC sought to sell its system. In June 1974, Sunset Communications Company (Sunset), an affiliate of Southern Pacific Communications Company (SPCC), acquired a 95% stock interests in TMC. SPCC, a specialized common carrier operating in the western part of the 48 contiguous United States, interconnected its terrestrial microwave system with TMC's system and leased the bulk of TMC's capacity in order to extend its services to the east coast. When it first began operations, SPCC was granted a waiver by the Commission to lease private microwave links from the Southern Pacific Transportation Company, a licensee in the Railroad Radio Service, for an interim period of six months until it could construct common carrier facilities to provide its services.[8]

10. By an order released on February 8, 1979,[9] the Commission extended TMC's waiver to operate on private microwave frequencies until SPCC completed construction of a parallel common carrier system between Buffalo, New York, and Mt. Darby. SPCC already operated a system which paralleled TMC's system between Mt. Darby and Philadelphia. The extended waiver was subject to the following conditions: (1) That TMC submit a progress report of its efforts to convert this system to common carrier frequencies every six months; (2) that TMC submit its station licenses for renewal every year beginning March 1, 1979; and (3) that, if SPCC completed its parallel system between Buffalo and Mt. Darby before TMC converted to common carrier frequencies or retired its system, TMC would transfer all of its services to the SPCC system, file appropriate applications to dismantle its stations and return its licenses to the Commission for cancellation. Thus, the Preston system is no longer before us as an issue.

Conclusion

11. Since the specific issues of the Preston case are moot, and since the records in this proceeding are now over a decade old, we find no reason for continuing this proceeding. Instead, we are commencing a new proceeding to explore the entire issue of private carrier microwave systems and the restructuring of our microwave cooperative sharing rules. In the interim we will not authorize Stage III cooperatives, such as Preston Trucking proposed, in the Private Operational-Fixed Microwave Service. However, as

[6] *Memorandum Opinion and Order*, Docket No. 19309, 42 FCC 2d 245 (1973).

[7] TMC subsequently submitted applications for common carrier authorization for the existing Preston microwave system, and these applications were granted by the Commission on December 12, 1973. *In Re: Applications of Transportation Microwave Corp. for licenses in the Point-to-Point Microwave Radio Service or stations at Tonawanda, N.Y., Philadelphia, Pa. and 27 Intermediate Points, Order*, 44 FCC 2d 641 (1973).

[8] *In re: the Matter of Transportation Microwave Corporation Request for an Extension of the waiver of Sections 2.106, 21.120 and 21.701 of the Commission's Rules and Regulations, Order*, FCC 79-70, adopted January 31, 1979, released February 8, 1979.

[9] *In re: Applications of Southern Pacific Communications Co. and Southern Pacific Transportation Co., Memorandum Opinion and Order and Temporary Authorization*, 43 FCC 2d 483 (1973).

noted in our accompanying Notice of Proposed Rule Making, the reason for any restrictions on how private operational-fixed microwave eligibles may share costs may be obviated by that proceeding.

12. Accordingly, it is ordered this proceeding is terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 83-15696 Filed 6-10-83; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 48, No. 114
Monday, June 13, 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.

ACTION

Information Collection Request Under Review

AGENCY: ACTION.

ACTION: Information collection request under review.

SUMMARY: This notice sets forth certain information about an information collection proposal by ACTION, the national volunteer agency.

Background: Under the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Office of Management and Budget (OMB) reviews and acts upon proposals to collect information from the public or to impose recordkeeping requirements. ACTION has submitted the information collection proposal described below to OMB. OMB and ACTION will consider comments on proposed collection of information and recordkeeping requirements. Copies of the proposed forms and supporting documents [request for clearance (SF 83), supporting statement, instructions, transmittal letter and other documents] may be obtained from the agency clearance officer.

Information about this proposed collection: Agency Clearance Officer—William W. Lovelace, 202–254–8523.

Agency Address: ACTION, 806 Connecticut Ave., N.W., Washington, D.C. 20525.

Office of ACTION issuing proposal: Domestic Operations.

Title of form: Project Narrative.

Type of request: New/Revision/Reinstatement.

Frequency of collection: Annually.

General description of respondents: State or local governments, non-profit institutions, small businesses.

Estimated number of annual responses: 2,780.

Estimated annual reporting or disclosure burden: 39,615 hours.

Respondent's obligation to reply: Required for obtaining benefit.

Person responsible for OMB Review: James L. Thomas, 202–395–6880.

William W. Lovelace,

ACTION Clearance Officer.

[FR Doc. 83-15703 Filed 6-10-83; 8:45 am]

BILLING CODE 6050-01-M

Information Collection Request Under Review

AGENCY: ACTION.

ACTION: Information collection request under review.

SUMMARY: This notice sets forth certain information about an information collection proposal by ACTION, the national volunteer agency.

Background: Under the Paperwork Reduction Act (44 U.S.C., Chapter 35), the Office of Management and Budget (OMB) reviews and acts upon proposals to collect information from the public or to impose recordkeeping requirements. ACTION has submitted the information collection proposal described below to OMB. OMB and ACTION will consider comments on proposed collect of information and recordkeeping requirements. Copies of the proposed forms and supporting documents (request for clearance (SF 83), supporting statement, instructions, transmittal letter and other documents) may be obtained from the agency clearance officer.

Information about this proposed collection: Agency Clearance Officer—William W. Lovelace, 202–254–8523.

Agency address: ACTION, 806 Connecticut Ave., NW., Washington, D.C. 20525.

Office of ACTION issuing proposal: Domestic Operations.

Title of form: ACTION pre-application inquiry.

Type of request: Revision/reinstatement.

Frequency of collection: On occasion.

General description of respondents: State or local governments, non-profit institutions, small businesses.

Estimated number of annual responses: 2,050.

Estimated annual reporting or disclosure burden: 4,100 hours.

Respondent's obligation to reply: Required for obtaining benefit.

Person responsible for OMB review: James L. Thomas, 202–395–6880.

William W. Lovelace,

ACTION Clearance Officer.

[FR Doc. 83-15704 Filed 6-10-83; 8:45 am]

BILLING CODE 6050-01-M

Information Collection Request Under Review

AGENCY: ACTION.

ACTION: Information collection request under review.

SUMMARY: This notice sets forth certain information about an information collection proposal by ACTION, the national volunteer agency.

Background: Under the Paperwork Reduction Act (44 U.S.C., Chapter 35), the Office of Management and Budget (OMB) reviews and acts upon proposals to collect information from the public or to impose recordkeeping requirements. ACTION has submitted the information collection proposal described below to OMB. OMB and ACTION will consider comments on proposed collection of information and recordkeeping requirements. Copies of the proposed forms and supporting documents [request for clearance (SF 83), supporting statement, instructions, transmittal letter and other documents] may be obtained from the agency clearance officer.

Information about this proposed collection: Agency Clearance Officer—William W. Lovelace, 202–254–8523.

Agency address: ACTION, 806 Connecticut Ave., N.W., Washington, D.C. 20525.

Office of ACTION issuing proposal: Domestic Operations.

Title of form: Project Progress Report.

Type of request: New/Revision/Reinstatement.

Frequency of collection: Quarterly.

General description of respondents: State or local governments, non-profit institutions, small businesses.

Estimated number of annual responses: 7,132.

Estimated annual reporting or disclosure burden: 42,792 hours.

Respondent's obligation to reply: Required for obtaining benefit.

Person responsible for OMB review: James L. Thomas, 202–395–6880.

William W. Lovelace,

ACTION Clearance Officer.

[FR Doc. 83–15705 Filed 6–10–83; 8:45 am]

BILLING CODE 6050–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Pacific Southwest Region, California, Nevada—Mineral, Esmeralda, Carson City, Douglas and Washoe Counties, Oregon—Jackson County; Public Review of Draft Environmental Impact Statement on Vegetation Management for Reforestation

The Department of Agriculture, Forest Service, Pacific Southwest Region, invites public comment on the Draft Environmental Impact Statement (DEIS) on Vegetation Management for Reforestation issued June 17, 1983. The DEIA proposes alternatives for selecting vegetation management practices for the purposes of reforestation and afforestation on National Forest System lands in the region and assesses the environmental effect of each alternative. Specifically, the alternatives address vegetation treatments to be applied for: (1) Preparing sites for planting, (2) release of established seedlings from competing vegetation, and (3) pre-commercial thinning.

Comments are being solicited on the alternatives presented in the draft document, the effects of treatments or practices presented, better or more effective or efficient methods of treatments not identified in the DEIS, and on this analysis of environmental consequences. Copies have been mailed to interested and affected parties identified during earlier stages of public involvement for the DEIS.

Review copies will be available at County Libraries, major university or college libraries, at all National Forest Supervisor and Ranger District headquarters in the Pacific Southwest Region, and at the Regional Forester's office in San Francisco, California.

Formal Public Hearings for the purpose of receiving public comment on the DEIS will be held between July 11 and August 5, 1983, in Redding, Sacramento and in the Los Angeles area. Public Briefings for the purposes of informing the public on the contents of the draft document will be held at locations throughout California between July 5 and August 12, 1983. Dates, locations and times for these activities will be published in local newspapers. Federal, State and local agencies, and individuals and organizations who may be interested or affected by the guidelines proposed in this document are invited to participate. Comments on the DEIS must be postmarked no later than August 19, 1983.

Comments or inquires about the DEIS should be mailed to: Office of Information, Pacific Southwest Region, USDA Forest Service, 630 Sansome Street, San Francisco, California 94111.

Dated: June 3, 1983.

John W. Chaffin,

Deputy Regional Forester.

[FR Doc. 83–15747 Filed 6–10–83; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Preliminary Negative Countervailing Duty Determination; Pork Rind Pellets From Mexico

AGENCY: International Trade Administration, Commerce.

ACTION: Preliminary negative countervailing duty determination.

SUMMARY: We preliminarily determine that certain benefits are being provided to manufacturers, producers, or exporters in Mexico of pork rind pellets, as described in the "Scope of Investigation" section of this notice. However, the estimated net bounty or grant is *de minimis*, and therefore our preliminary determination is negative. If this investigation proceeds normally, we will make our final determination by August 22, 1983.

EFFECTIVE DATE: June 9, 1983.

FOR FURTHER INFORMATION CONTACT: Rick Herring, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone (202) 377–3963.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that there is no reason to believe that benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to producers or exporters in Mexico of pork rind pellets, as described in the "Scope of Investigation" section of this notice.

For purposes of this investigation, we preliminarily determine that, while preferential loans from the Guarantee and Development Fund for Medium and Small Industries (FOGAIN) confer a benefit to manufacturers, producers, or exporters in Mexico of pork rind pellets, the estimated bounty or grant is *de minimis*, and therefore our preliminary determination is negative.

Case History

On March 14, 1983, we received a petition from counsel for Evans Food Company, filed on behalf of the pork rind pellet industry in the United States. The petition alleges that the government of Mexico bestows bounties or grants upon the production or exportation of pork rind pellets within the meaning of section 303 of the Act.

We found the petition to contain sufficient grounds upon which to initiate a countervailing duty investigation and, on April 4, 1983, we initiated a countervailing duty investigation (48 FR 15308). We stated that we would issue a preliminary determination on or before June 7, 1983.

Mexico is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and, therefore, section 303 of the Act applies to this investigation. Under this section, since the merchandise being investigated is dutiable, the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of this product cause or threaten material injury to a U.S. industry.

On April 18, 1983, we presented a questionnaire concerning the allegations in the petition to the government of Mexico in Washington, D.C. On May 18, 1983 and June 3, 1983, we received the response to our questionnaire from the government of Mexico.

Scope of Investigation

The product covered by this investigation is pork rind pellets and is currently imported under item 107.7880 of the *Tariff Schedules of the United States Annotated (TSUSA)*. Pork rind pellets are produced by cooking pork skins at very high temperatures. They are used in the production of puffed pork skins, a snack food.

Alimentos Selectos de Saltillo S.A. (Selectos) is the sole producer and exporter of pork rind pellets from Mexico.

The period for which we are measuring subsidization is January 1, 1982 to April 30, 1983.

Analysis of Programs

In its response, the government of Mexico provided data for the applicable period. Based upon our analysis of the petition and the response to our

questionnaire, we determine the following:

I. Programs Preliminarily Determined To Confer Bounties or Grants

We preliminarily determine that a bounty or grant is provided to manufacturers, producers, or exporters in Mexico of pork rind pellets under the program listed below.

A. *Guarantee and Development Fund for Medium and Small Industries (FOGAIN).* We preliminarily determine that the Guarantee and Development Fund for Medium and Small Industries (FOGAIN) program confers a benefit which constitutes a bounty or grant within the meaning of the countervailing duty law upon the producers, manufacturers, or exporters of pork rind pellets from Mexico. The FOGAIN program provides preferential financing at interest rates below prevailing commercial rates to all small and medium sized firms in Mexico. However, interest rates will vary depending upon: (a) Whether a small or medium size business has a designated priority status, and (b) the geographical location of the business. Small and medium size businesses with priority designation and located in specific zones targeted for industrial growth receive the most preferential rate. Medium sized businesses, not designated as priority and located in an area of controlled industrial growth, may receive the least preferential FOGAIN interest rate. We determine this program to be countervailable because it provides preferential financing on the basis of priority status for designated industries and regional preferences within the program. Without these designations, FOGAIN would not be countervailable, since all small and medium size firms in Mexico are at least eligible to receive FOGAIN loans at the least preferential rate of interest available under the program. Therefore, we determine the program is countervailable to the extent that the interest rate received by a particular company is below the least preferential rate that a company would receive under FOGAIN.

In a recent final determination involving iron metal construction castings (48 FR 8834), we used a commercial bank rate for loans to determine the net bounty or grant conferred upon Mexican firms under FOGAIN. We used this rate because it was the best information available at the time. Since that investigation, additional information regarding the FOGAIN program has been developed.

To determine the estimated bounty or grant conferred upon Selectos, we used as our benchmark the least preferential interest rate available under FOGAIN. Selectos obtained FOGAIN financing in June 1979, July 1980, June 1981 and July 1982. The most adverse rates applicable on those dates were 21%, 21%, 22%, and 37%, respectively. Selectos obtained its loans at rates lower than these.

We computed the difference in payment streams between the FOGAIN loans received by Selectos and that which would have been incurred had the loans been made at the least preferential rate of interest under this program. We allocated the amount of benefit from the loans over the company's total value of sales of all products during 1982. We determine the net amount of the bounty or grant to be 0.187 percent *ad valorem.*

II. Programs Determined Not to be Countervailable

We preliminarily determine that the following programs do not confer bounties or grants upon the manufacturers, producers, or exporters in Mexico of pork rind pellets.

A. *Certificates of Fiscal Promotion (CEPROFI).* In 1979 the government of Mexico introduced a four-year National Industrial Development Plan (NIDP) which sets forth broad economic goals for the country. Tax credits, which are called CEPROFIs, are used to promote the NIDP goals, which include increased employment, encouragement of regional decentralization, and industrial development, particularly of small-and medium-sized firms.

CEPROFI certificates are non-transferable tax certifcates of fixed value which may be used for a five-year period to pay federal taxes. Certain CEPROFI certificates are granted for carrying out investments in "priority" industrial activities; others are available to all industries on equal terms. The amount of the CEPROFI is based upon the location of the acitivity, the number of jobs generated, the value of investment in new plant and equipment, or the value of purchases of capital goods produced in Mexico.

We consider CEPROFI to be countervailable if it is obtained for a priority industrial activity in a particular region of Mexico. The CEPROFI received by Selectos was granted for investment in Mexican-made machinery and equipment. In a previous determination, *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Litharge, Red Lead and Lead Stablizers from Mexico* (47 FR 54847), we determined that CEPROFIS granted for the acquisition of new, Mexican-made capital goods are generally available to all industries on equal terms without regard to region or industrial activity. Therefore, we do not consider this type of CEPROFI, provided for this purpose, to be countervailable.

B. Dual Level Currency Exchange Rate System. Petitioner alleges that the dual level exchange rate system existing in Mexico constitutes a countervailable benefit to the pork rind industry. Petitioner states that Selectos, when exchanging pesos for dollars to make foreign purchases, is allowed to convert currency at a "controlled" rate, but that Selectos is entitled to exchange its export proceeds at the free market rate. Currently, the controlled rate is less than the "free" rate of exchange.

According to the government of Mexico's response, any company which obtains dollars from the government at the controlled rate to purchase imports is also obligated to deposit and exchange dollars earned from exports for pesos at the controlled rate. In previous determinations regarding the dual exchange rate in Mexico, we determined that, when the controlled rate applies to both exchanges of pesos to dollars for import purchases and exchanges of dollars earned by exports to pesos, there is no countervailable benefit. We preliminarily determine that the dual currency exchange rate system does not confer a bounty or grant to the manufacturers, producers, or exporters in Mexico of pork rind pellets.

On June 3, 1983, we received additional information from petitioner regarding his allegation that the dual exchange rate constitutes a countervailable benefit to Selectos. Petitioner contends that this exchange rate system should be considered as a preferential loan to Selectos because, according to the petitioner, the number of peso converted dollars that Selectos receives to make U.S. purchases exceeds the number of dollars received from its exports that are, in turn, converted back to pesos. Before our final determination, we will again carefully review the Mexican exchange rate program.

C. *Preferential Rates on Commercial Risk Insurance.* The petitioner alleges that the pork rind pellet industry has benefited from preferential rates on commercial risk insurance through the Compania Mexicana de Seguros de credito (COMESEC). COMESEC, which provides export insurance, was specifically established by law, although it is owned by private insurance companies. In the Department's previous determination, *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Toy*

Balloons (Including Punchballs) and Playballs from Mexico (47 F.R. 57532), we determined that COMESEC did not provide a bounty or grant to manufacturers, producers, or exporters of the subject merchandise in those investigations. We determined that the premium rates that COMESEC charged the manufacturers, producers, or exporters cover COMESEC's operating costs and losses on insurance operations.

The response states that Selectos has not received commercial risk insurance from COMESEC because it has not received FOMEX loans. The FOMEX program is described in section III A of this notice. We preliminarily determine that this program does not confer a bounty or grant on the Mexican producer of pork rind pellets.

III. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that the following programs have not been used by the pork rind pellet industry.

A. *Fund for the Promotion of Exports of Mexican Manufactured Products (FOMEX).* The Fund for the Promotion of Exports of Mexican Manufactured Products (FOMEX) is a trust established by the government of Mexico to promote the manufacture and sale of exported products. The fund is administered by the Mexican Treasury Department with the Bank of Mexico acting as the trustee. The Bank of Mexico administers the financing of FOMEX loans through financial institutions which establish contracts for lines of credit with manufacturers and exporters.

In order for a company to be eligible for FOMEX financing for exports, the following requirements must be met: (1) The product to be manufactured must be included on a list made public by FOMEX: (2) the articles to be exported must have a minimum of 30 percent national content in direct production costs; (3) loans granted for pre-export must be in Mexican currency, while loans for export sales are established in U.S. dollars or any other foreign currency acceptable to the bank of Mexico; and (4) the exporter must carry insurance against commercial risks to the extent of the loans. In previous final countervailing duty determinations regarding Mexico, we have found the FOMEX program to confer benefits constituting bounties or grants.

The government of Mexico has stated that Selectos has not received FOMEX financing. Therefore, we preliminarily determine that this program confers no countervailable bounty or grant upon Selectos.

B. *Fund for Industrial Development (FONEI).* FONEI is a specialized financial development fund, administered by the Bank of Mexico, which grants long-term preferential credit for the creation, expansion or modernization of enterprises in order to foster the efficient production of industrial goods, the production of goods capable of competing in the international market, and industrial decentralization.

Since the government of Mexico has indicated that Selectos has not received FONEI Loans, we preliminarily determine that this program confers no countervailable bounty or grant upon Selectos.

C. *Mexican Institute for Foreign Trade (IMCE).* Created by a law published December 31, 1970 in the *Diario Oficial*, IMCE has as its organizational purpose the promotion of the foreign trade of Mexico and the coordination of efforts stimulating foreign trade. In addition, IMCE functions as an advisory board in the previously mentioned matters. IMCE performs a number of functions including organizing and directing trade fairs abroad, promoting the visits of foreign trade missions to Mexico, carrying our investigations to identify national products or services which might be in demand abroad, and providing exporters with technical assistance. The government of Mexico has indicated that Selectos has not availed itself of the services offered by IMCE.

D. *Trust for Industrial Parks, Cities, and Commercial Centers (FIDEIN).* Operating under Nacional Financiera S.A. (NAFINSA),/this program is aimed at the development of industrial parks and cities. In its response, the government of Mexico stated that Selectos in not located in an industrial park and is, therefore, not eligible for assistance under this program.

E. *National Preinvestment Fund for Studies and Projects (FONEP).* FONEP is a trust administered by NAFINSA. Its primary objective is to assist firms to invest in economic feasibility studies. The government of Mexico states in its response that Selectos has not received benefits under FONEP or through NAFINSA.

F. *Favorable Tax Treatment.* Petitioner alleges that certain Mexican industries receive special tax incentives such as favorable tax treatment in the form of special rates and a reduction in tax liabilities. The government of Mexico states that Selectos has not received such benefits.

G. *Preferential Pricing for Fuel and Energy.* Petitioner alleges that the pork rind pellet industry may have benefited from preferential prices and discounts on fuel and energy. In its response, the Mexican government states that Selectos received no such benefits.

H. *Fondo Nicional de Fomento Industrial (FOMIN).* Petitioner alleges that FOMIN provides producers, manufacturers, or exporters of the subject merchandise with a bounty or grant. FOMIN operates as a trust fund, providing funding to certain companies through either stock acquisition or the provision of convertible loans at rates below those of commercial lending institutions.

The Mexican government's response states that Selectos does not receive benefits through FOMIN.

I. *Import Duty Reductions and Exemptions.* Petitioner alleges that companies establishing facilities in the border zone are eligible for import duty reductions or exemptions on raw materials, machinery, and equipment. Petitioner also alleges that companies or producers capable of demonstrating increased export volume may receive a reduction or exemption of duties on imported machinery or equipment used in the manufacture of exported products. Petitioner also alleges that producers or exporters of pork rind pellets may benefit from their location in areas which are declared "free zones" into which merchandise may be imported duty free.

In its response, the government of Mexico stated that Selectos has not benefited from any type of duty reductions or exemptions.

J. *Preferential State Investment Incentives.* Under this program, an industry may receive partial or total exemption from state taxes or other tax benefits such as special treatment on real estate taxes or infrastructure taxes. The government of Mexico has stated that Selectos has not received any of these benefits.

IV. Program Determined To Be Suspended

We preliminarily determine that the following program has been suspended.

A. *Certificado de Devolucion de Impuesto (CEDI).* The Certificado de Devolucion de Impuesto (CEDI) is a tax certificate issued by the government of Mexico in an amount equal to a percentage of the f.o.b. value of the exported merchandise or, if national insurance and transportation are used, a percentage of the c.i.f. value of the exported product. The CEDIs are non-transferable and may be applied against a wide range of federal tax liabilities (including payroll taxes, value-added

taxes, federal income taxes, and import duties) over a period of five years from the date of issuance.

The government of Mexico suspended eligibility for CEDI tax rebates by an Executive Order published on August 25, 1982, in the *Diario Oficial*. The order abrogates prior executive orders which contained the list of products eligible to receive CEDI certificates. Suspension of eligibility to apply for the CEDI was effective one day after publication of the executive order in the *Diario Oficial*. According to the response, and U.S. import statistics, Selectos did not start exporting to the U.S. until February 1983, so it could not have benefited from CEDI while the program was in effect.

Verification

In accordance with section 776(a) of the Act, we will verify all the information used in reaching our final determination.

Public Comment

In accordance with section 355.35 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10 a.m. on July 14, 1983, at the U.S. Department of Commerce, Room D, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs must be submitted to the Deputy Assistant Secretary by July 7, 1983. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 355.46 within 30 days of this notice's publication, at the above address and in at least 10 copies.

John L. Evans,

Acting Deputy Assistant Secretary for Import Administration.

June 7, 1983.

FR Doc. 83-15730 Filed 6-10-83; 8:45 am]

BILLING CODE 3510-25-M

Minority Business Development Program; Solicitation for Applications

AGENCY: Department of Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) program to operate one project for a 12-month period beginning 1 October, 1983, in the El Paso, Texas, SMSA. The cost of the project is estimated to be $451,000. The maximum Federal participation amount is $405,900. The minimum amount required for non-Federal participation is $45,100. The award number will be 06-10-83017-01.

Applicants shall be required to contribute at least 10% of the total program costs through non-Federal funds. Cost sharing contributions can be in the form of cash contributions, fee for services or in-kind contributions.

CLOSING DATE: 5:00 p.m., July 8, 1983.

ADDRESS: Dallas Regional Office, Minority Business Development Agency, 1100 Commerce Street, Suite 7B19, Dallas, Texas 75242.

FOR FURTHER INFORMATION CONTACT: Ben Chavez, telephone (214) 767-8001.

The closing date for submitting an application is 5:00 p.m., 8 July, 1983. An application kit is available upon written request.

The date and place of a pre-application conference to assist all interested applicants will be announced with the application package.

Ruben Porras,

Acting Regional Director.

[FR Doc. 83-15748 Filed 6-10-83; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council and its Administrative Subcommittee; Change in Meeting Location

AGENCY: National Marine Fisheries Service, Commerce.

ACTION: The Caribbean Fishery Management Council and its Administrative Subcommittee have changed the meeting location for the public meetings, from that which was announced previously in the **Federal Register**, May 25, 1983 (48 FR 23472), to the following:

From Council and Administrative Subcommittee, University of Puerto Rico, Humacao Campus, Conference Room of the Students Center, Humacao, Puerto Rico.

To Council and Administrative Subcommittee, Federal Building, Room G51, Chardon Street, Hato Rey, Puerto Rico.

Also, please refer as necessary to the amended notice for the public meetings of the Council and its Administrative Subcommittee, published in the **Federal Register** June 2, 1983 (48 FR 24759), concerning changes in the public meeting dates. All other information remains unchanged.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, Puerto-Rico 00918, telephone (809) 753-4926.

Dated: June 8, 1983.

Ann D. Terbush,

Acting Chief, Operations Coordination Group, National Marine Fisheries Service.

[FR Doc. 83-15783 Filed 6-10-83; 8:45 am]

BILLING CODE 3510-22-M

Caribbean Fishery Management Council's Scientific and Statistical Committee; Public Meeting

AGENCY: National Marine Fisheries Service, Commerce.

SUMMARY: The Caribbean Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94-265, as amended), has established a Scientific and Statistical Committee (SSC), which will meet to examine and provide recommendations to the Council on specific suggested sites for area closures and on size limits for certain reef fish species in relation to the Council's Shallow-water Reef Fish Fishery Management Plan.

DATES: The meeting will convene on Wednesday, June 29, 1983, at 9:30 a.m. and will adjourn at approximately 3:00 p.m. The meeting is open to the public.

ADDRESS: The meeting will take place at the Conference Room G-59, Federal Building, Chardon Street, Hato Rey, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico 00918, telephone (809) 753-4926.

Dated: June 8, 1983.

Ann D. Terbush,

Acting Chief, Operations Coordination Group, National Marine Fisheries Service.

[FR Doc. 83-15784 Filed 6-10-83; 8:45 am]

BILLING CODE 3510-22-M

[Modification No. 2 to Permit No. 370]

Taking and Importing of Marine Mammals; Alaska Department of Fish and Game

On April 28, 1983, notice was published in the **Federal Register** (48 FR 19194) that a request to modify Permit No. 370 had been received from the Alaska Department of Fish and Game. Notice is hereby given that, pursuant to the provisions of Sections 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Permit No. 370 issued to the Alaska Department of Fish and Game, P.O. Box 3–2000, Juneau, Alaska 99802 on March 2, 1982 (47 FR 10071), as modified on June 24, 1982 (47 FR 27400) is further modified in the following manner:

Section B is modified by adding:

"10. Each of the 700 belukha whale (*Delphinapterus leucas*) authorized to be captured in Sections A.1 (a) and (b) may be injected with tetracycline in order to produce an identifiable band in bony structures as described in the modification request.

The modification became effective on June 3, 1983.

The Permit, as modified, is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802.

Dated: June 3, 1983.

Richard B. Roe,

Acting Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 83–15753 Filed 6–10–83; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Notice of Issuance of Permit No. 418

On April 20, 1983, Notice was published in the **Federal Register** (48 FR 16934) that an application had been filed with the National Marine Fisheries Service by Dr. Daniel P. Costa, Center for Coastal Marine Studies, University of California, Santa Cruz, California 95064, to take up to 70 Stellar sea lions (*Eumetopias jubatus*) for scientific research. The **Federal Register** Notice erroneously specified that the Applicant requested to paint mark 40 adults, rather than the 25 stated in the application. The request was processed for a total of 55 Stellar sea lions.

Notice is hereby given that on June 7, 1983, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Scientific Research Permit to Dr. Costa for the above taking subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: June 7, 1983.

Richard B. Roe,

Acting Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 83–15754 Filed 6–10–83; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Cost Comparison Reviews Scheduled for Commercial or Industrial Activities Performed by Government Personnel in the National Technical Information Service

Notice is hereby given that pursuant to the Office of Management and Budget (OMB) Circular A–76 and Department of Commerce Administrative Order 201–41 that the National Technical Information Service intends to conduct reviews of Government operation versus contract operation of the activities listed below.

Name of activity	Location	Review start	Estimated review completion
Information analysis.	Springfield, Virginia	6/1/83	9/30/84
Distribution services (order processing).	Springfield, Virginia	6/1/83	9/30/84
Computer processing (keyboarding).	Springfield, Virginia	9/1/83	9/30/84

Contracts may or may not result from the reviews. Results of the reviews will be made available to responding bidders or offerors and other interested parties. For further information contact Raymond D. Watson, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, phone (703) 487–4750.

Thomas P. Bold, Jr.,

Director, Office of Administrative Management, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 83–15813 Filed 6–10–83; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Soliciting Public Comment on Bilateral Textile Consultations With the Government of Hong Kong To Review Trade in Categories 442, 636, and 647

June 8, 1983.

AGENCY: Committee for the Implementation of Testile Agreements.

ACTION: On May 24 and May 26, 1983 the Government of the United States requested consultations with the Government of Hong Kong with respect to Categories 442 (wool skirts), 636 (man-made fiber dresses), and 647 (men's and boys' trousers of man-made fibers). These requests were made on the basis of the Agreement of June 23, 1982, as amended, between the Governments of the United States and Hong Kong relating to trade in cotton, wool, and man-made fiber textiles and textile products.

SUMMARY: The purpose of this notice is to advise the public that if no solution is agreed upon in consultations between the two governments, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of textile products in Categories 442, 636, and 647, produced or manufactured in Hong Kong and exported to the United States during the twelve-month period which began on January 1, 1983 and extends through December 31, 1983. The Government of the United States also reserves the right to control imports of these categories at the established limits.

Any party wishing to comment or provide data or information regarding the treatment of Categories 442, 636, and 647 under the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement with the Government of Hong Kong or on any other aspect thereof, or to comment on domestic production or availability of textile products included in these Categories, is invited to submit such comments or information in ten copies to Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade

Administration, U.S. Department of Commerce Washington, D.C. 20230. Since the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 533(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-15733 Filed 6-10-83; 8:45 am]

BILLING CODE 3510-25-M

Soliciting Public Comment on Bilateral Textile Consultations With the Government of the Republic of Korea To Review Trade in Categories 336, 442, 636, 647, and 669 pt.

June 8, 1983.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: On May 20 and 24, 1983 the Government of the United States requested consultations with the Government of the Republic of Korea with respect to Categories 336 (cotton dresses), 442 (wool skirts), 636 (man-made fiber dresses), 647 (men's and boys' man-made fiber trousers), and 669 pt. (only T.S.U.S.A. 385.5300). This request was made on the basis of the Agreement of December 14, 1982, between the Governments of the United States and the Republic of Korea relating to trade in cotton, wool, and man-made fiber textiles and textile products.

SUMMARY: The purpose of this notice is to advise the public that if no solution is agreed upon in consultations between the two governments, the Committee for the Implementation of Textile Agreements may establish limits for the entry and withdrawal from warehouse for consumption of textile products in Categories 336, 442, 636, 647, and 669 pt., produced or manufactured in Korea and exported to the United States during the twelve-month period which began on January 1, 1983 and extends through December 31, 1983.

The Government of the United States reserves the right under the agreement to invoke import controls on these categories, as defined in the Bilateral Cotton, Wool, and Man-made Fiber Textile Agreement, with the Government of the Republic of Korea.

Any party wishing to comment or provide data on information regarding the treatment of Categories 336, 442, 636, 647, and 669 pt. under the bilateral Cotton, Wool and Man-made Fiber Textile Agreement with the Government of the Republic of Korea, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in these categories, is invited to submit such comments or information in ten copies to Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Since the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 533(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-15732 Filed 6-10-83; 8:45 am]

BILLING CODE 3510-25-M

Soliciting Public Comment on Bilateral Textile Consultations With Taiwan To Review Trade in Categories 434, 612, 636, and 642

June 8, 1983.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: On May 20, 25, and May 31, 1983 the American Institute in Taiwan requested consultations with the Coordination Council for North American Affairs concerning exports from Taiwan in Categories 434 (men's and boys' other coats), 612 (other man-made fiber woven fabrics, wholly of continuous fibers), 636 (man-made fiber dresses), and 642 (man-made fiber skirts). These requests were made on the basis of the agreement of November 18, 1982, concerning trade in cotton, wool, and man-made fiber textiles and textile products from Taiwan.

SUMMARY: The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with Taiwan, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of textile products in Categories 434, 612, 636, and 642, produced or manufactured in Taiwan and exported to the United States during the twelve-month period which began on January 1, 1983 and extends through December 31, 1983.

The Committee for the Implementation of Textile Agreements reserves the right to invoke import controls on these categories, as defined in the agreement concerning cotton, wool, and man-made fiber textile products from Taiwan.

Any party wishing to comment or provide data or information regarding the treatment of Categories 434, 612, 636, and 642 under the bilateral agreement, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in these Categories is invited to submit such comments or information in ten copies to Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Since the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements

considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-15731 Filed 6-10-83; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Prepare Environmental Impact Statement

The United States Air Force, Department of Defense, will prepare an Environmental Impact Statement (EIS) on its plans for deployment and operation of the Peacekeeper (M-X) strategic weapon system which is an advanced land based intercontinental ballistic missile.

The EIS will examine the nature, range, degree and extent of impacts associated with the deployment and peacetime operation of 100 Peacekeeper missiles in 100 existing Minuteman III missile silos, including mitigation measures. The first fifty missiles are to be deployed at the 400th Strategic Missile Squadron in southeastern Wyoming; the remaining fifty missiles are to be deployed at the 319th Strategic Missile Squadron in southeastern Wyoming and western Nebraska. The main operating base will be F. E. Warren Air Force Base near Cheyenne, Wyoming.

The draft EIS is scheduled to be completed in the fall of 1983. Upon issuance of the draft statement, a public comment period and public hearings are planned to obtain comments. The final environmental statement is scheduled to be published in early 1984.

The Air Force is planning to conduct a series of meetings to determine the nature, extent, and scope of the significant environmental issues and concerns that should be addressed in the EIS. This scoping process is planned to include affected federal, regional, state and local agencies, organizations, interest groups, and the general public in the geographic areas potentially affected by the Peacekeeper missile system. During, and subsequent to the meetings, individuals, organizations and governmental agencies will be invited to submit views on issues to be included in the environmental impact statement. Notice of the time and place of the planned scoping meetings will be made available to public officials and announced in the news media in the areas where the meetings will be held.

To assure that the Air Force will have sufficient time to consider public inputs on issues which are to be included in the development of the EIS, comments should be forwarded to the addressee listed below by 18 July 1983.

For further information concerning the Peacekeeper program EIS activities, contact Major Peter Walsh, AFRCE-BMS/DEV, Norton Air Force Base, California 92409; (714) 382-4891.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 83-15819 Filed 6-10-83; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Army Advisory Panel on ROTC Affairs; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following panel meeting:

Name of Panel: Army Advisory Panel on ROTC Affairs.

Date of Meeting: 7-9 July 1983.

Place: Holiday Inn and Holidome, 530 Richards Drive, Manhattan, Kansas 66502.

Time: 0800-1700, 7-8 July and 1000-1300, 9 July.

Proposed Agenda: The meeting will consist of two general sessions (7 and 8 July) and include visits to the U.S. Army Third ROTC Region ROTC Advanced Camp at Fort Riley, Kansas (8 and 9 July). The Panel will receive an ROTC update on the scholarship program and participate in discussions concerning ROTC plans and initiatives to attract and retain students in engineering and scientific disciplines. This meeting is open to the public. Any interested person may appear before or file statements with the Panel at the time and in the manner permitted by the Panel.

John P. Prillaman,

Major General, GS, Deputy Chief of Staff for ROTC.

[FR Doc. 83-15816 Filed 6-10-83; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

[84.003P]

Office of Bilingual Education and Minority Languages Affairs; Materials Development Projects

AGENCY: Department of Education.

ACTION: Application Notice Establishing Closing Date for Transmittal of Fiscal Year 1983 Applications for New Projects and Announcement of Priority Selection.

SUMMARY: Applications are invited for new projects under the Bilingual Education Act—Materials Development Projects Program.

Authority for this program is contained in Section 721 of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978 (Pub. L. 95-561) (20 U.S.C. 3231)

This program issues awards to local educational agencies and institutions of higher education that apply jointly with one or more local educational agencies.

The purpose of the awards is to develop instructional and testing materials for use in programs of bilingual education and bilingual education training.

Closing Date for Transmittal of Applications: An application must be mailed or hand deliverd by August 15, 1983.

Applications Delivered By Mail: An application must be addressed to the Department of Education, Application Control Center, *Attention:* 84.003P, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other evidence of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a date postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Each late applicant will be notified that its application will not be considered.

Applications Delivered By Hand: Hand-delivered applications must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information: An application will be approved for a project period of one year only.

A local educational agency, applying as a sole or joint applicant, is required to hold at least one meeting, open to the public, to discuss the contents of its applications. Requirements for scheduling and holding this open meeting are contained in the Education Department General Administrative Regulations (34 CFR 75.139–75.141). The local educational agency must complete the certification form in the application package. This requirement must be met regardless of whether the local educational agency is designated as the applicant under 34 CFR 75.128.

Joint applicants must complete a special certification form in the application package.

Available Funds: It is expected that approximately $1,500,000 will be available for new grants under the Materials Development Projects Program for FY 1983.

It is estimated that these funds could support 12 projects.

The anticipated award for each new project is between $75,000 and $200,000.

However, these estimates do not bind the Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulation.

Priorities: The Education Department General Administrative Regulations (34 CFR 75.105) permit the Secretary to establish annual priorities for the selection of applications in a particular fiscal year. For fiscal year 1983, the Secretary invites submission of applications that propose to develop materials for the following language groups: Asian and Pacific language groups; Native American language groups; and Portuguese. An application that meets the invitational priority receives no competitive or absolute preference over applications that do not meet the priority.

Application Forms: Application forms and program information packages are expected to be available in early July. A copy of the application may be obtained by writing to the Office of Bilingual Education and Minority Languages Affairs, Department of Education, 400 Maryland Avenue S.W., Reporters Building, Room 421, Washington, D.C. 20202. Attention: Materials Development Projects Program.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the progam information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information packages is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed thirty (30) double-spaced pages in length. The Secretary further urges that applicants submit only information that is requested.

Applicable Regulations: Regulations applicable to this program include the following:

(a) The regulations governing the Materials Development Projects Program, 34 CFR Parts 500 and 505.

(b) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, and 78.

Further Information: For further information contact the Materials Development Projects Program Application Coordinator, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone: (202) 245–2595 or 447–9228.

(20 U.S.C. 3231)

(Catalog of Federal Domestic Assistance No. 84.003, Bilingual Education)

Dated: June 8, 1983.

Jesse M Soriano,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 83-15750 Filed 6-10-83; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 83-CERT-067]

Anchor Hocking Corp.; Application for Certification of the Use of Natural Gas To Displace Fuel Oil

Anchor Hocking Corporation (ANCHOR HOCKING), 109 North Broad Street, Lancaster, Ohio 43130, filed an application on May 5, 1983, and an amendment on May 25, 1983, with the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at five of its facilities in Maryland, Ohio and Pennsylvania, 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, ANCHOR HOCKING indicates that the volume of natural gas for which it requests certification is approximately 13,000 Mcf per day. This volume is estimated to displace the use of approximately 83,000 gallons of No. 6 fuel oil (1.0 percent sulfur) per day.

The quantities at each location are subject to variation with changes in demand, but estimated gas usage and resulting oil displacement volumes are listed below:

Facility	Estimated volume (Mcf) per day	Estimated oil (No. 6) displacement (gallons) 1.0 sulfur
Baltimore, Maryland	1,750	11,000
Lancaster, Ohio (Ewing Street)	3,000	19,000
Lancaster, Ohio (W. Fifth Avenue)	4,500	26,000
Connellsville, Pennsylvania	3,000	22,000
New Castle, Pennsylvania	750	5,000
Total	13,000	83,000

The eligible sellers are Excalibur Energy Corporation, 2106 Crestmoon Road, Nashville, Tennessee 37215; Exxon Company, U.S.A., P.O. Box 2180, Houston, Texas 77001; Delta Drilling Company, P.O. Box 2012, Tyler, Texas 75710; and Adobe Oil & Gas Company, 1100 West United Life Building, Midland, Texas 79701. The gas will be transported by Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314; and Columbia Gulf Transmission Corporation, 3805 West Alabama Avenue, P.O. Box 683, Houston, Texas 77001; and by Baltimore Gas and Electric Company, P.O. Box 1475, Baltimore, Maryland 21203; Columbia Gas of Ohio, Inc., P.O. Box 117, Columbus, Ohio 40117; and Columbia Gas of Pennsylvania, Inc., P.O. Box 117, Columbus, Ohio 40117; the three local distribution companies serving the ANCHOR HOCKING facilities.

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 request 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 ANCHOR HOCKING and any person filing comments and will be published in the **Federal Register**.

Issued in Washington, D.C., on June 2, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-15693 Filed 6-10-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-106]

Corning Glass Works; Application for Certification of the Use of Natural Gas To Displace Fuel Oil

Corning Glass Works (CORNING), Corning, New York 14831, filed an application on May 19, 1983, with the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at its State College, Pennsylvania, plant pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). More detained 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, CORNING indicates that the volume of natural gas for which it requests certification is approximately 900,000 Mcf per year. This volume is estimated to displace the use of approximately 6,475,000 of No. 2 fuel oil (0.2 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 Gulf Transmission Company, 3805 West Alabama Avenue, Houston, Texas 77027; Columbia Gas Transmission Company, 1700 MacCorkle Avenue, S.E., Charleston, West Virgina 25315; United Gas Pipeline Company, P.O. Box 1478, Houston, Texas 77001; and by Columbia Gas of Pennsylvania, Inc., 109 North Front Street, Columbus, Ohio 43214, 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 request 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 CORNING and any person filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., on June 2, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-15686 Filed 6-10-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-096]

Darling and Co.; Application for Certification of the Use of Natural Gas To Displace Fuel Oil

Darling and Company (DARLING), P.O. Box 15098, Lockland Station, Cincinatti, Ohio 45215, filed an application on May 16, 1983, with the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at its facility in Reading, 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, DARLING indicates that the volume of natural gas for which it requests certification is approximately 72,000 Mcf per year. This volume is estimated to displace the use of approximately 593,289 gallons of No. 2 fuel oil (1.0 percent sulfur) per year.

The eligible sellers are Exxon U.S.A., P.O. Box 2810, Houston, Texas 77001; Texas Gas Corporation, P.O. Box 1160, Ownesboro, Kentucky 45302; and Ohio Gas Marketing Corporation, 3933 Price Road, Newark, Ohio 43055. The gas will be transported by Columbia Gas Trasmission Corporation, P.O. Box 1273, Charleston, West Virginia 25325; Texas Gas Transmission Corporation, P.O. Box 1160, Owensboro, Kentucky 42301; and Union Light, Heat and Power Company, P.O. box 32, Covingron, Kentucky 41012; and by Cincinnati Gas and Electric Company, P.O. Box 960, Cincinnati, Ohio 45202, a local distribution company.

In order to provide the public with as much opportuntiy 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 opportuntiy 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 request 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 the ERA determines that an oral presentation is necessary, further notice will be given to DARLING and any

person filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., on June 6, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-15691 Filed 6-10-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-047]

Edison International Inc.; Application for Certification of the Use of Natural Gas To Displace Fuel Oil

Edison International, Inc., of McGraw-Edison Company (EDISON), 1701 Golf Road, Rolling Meadows, Illinois 60008, filed an application on May 2, 1983, with the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at its Worthington Division Steam Turbine Operations Plant in Wellsville, New York, 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, EDISON indicates that the volume of natural gas for which it requests certification is approximately 149,961 Mcf per year. This volume is estimated to displace the use of approximately 1,108,000 gallons of No. 2 fuel oil (0.1 percent sulfur) per year.

The eligible seller is Walchi Oil and Gas Company, 100 North Main Street, Wellsville, New York 14895. The gas will be transported by National Fuel Gas Supply Corporation of New York, 10 Lafayette Square, Buffalo, New York 14203; and by National Fuel Gas Distribution Corporation of New York, 10 Lafayette Square, Buffalo, New York 14203, 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 request 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 EDISON and any person filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., on May 25, 1983.

James W. Workman,

Director, Office of Fuels Programs Economic Regulatory Administration.

[FR Doc. 83-15694 Filed 6-10-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-102]

F. L. Emmert Co., Inc.; Application for Certification of the Use of Natural Gas to Displace Fuel Oil

The F. L. Emmert Co., Inc. (EMMERT), 2007 Dunlap St., Cincinnati, Ohio 45214, filed an application on May 18, 1983, with the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at its Cincinnati grain drying facility, 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, EMMERT indicates that the volume of natural gas for which it requests certification is approximately 41,000 Mcf per year. This volume is estimated to displace the use of approximately 295,000 gallons of No. 2 fuel oil (0.2 percent sulfur) per year.

The eligible sellers are EXXON U.S.A., P.O. Box 2810, Houston, Texas, 77001; Texas Gas Corporation, 3000 Frederick Street, P.O. Box 1160, Owensboro, Kentucky 45302; and Ohio Gas Marketing Corporation, 3933 Price Road, Newark, Ohio 43055. The gas will be transported by Texas Gas Transmission Corporation, 3800 Frederica Street, P.O. Box 1160, Owensboro, Kentucky, 45302; the Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, W. Virginia 25325, and Union Light, Heat & Power Company, P.O. Box 32, Covington, Kentucky 41012; and by Cincinnati Gas & Electric Company, P.O. Box 960, Cincinnati, Ohio 45202, local distribution companies.

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 request 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 EMMERT and any person filing comments and will be published in the **Federal Register.**

Issued In Washington, D.C., on June 2, 1983.

James W. Workman,

Director, Office of Fuels Programs Economic Regulatory Administration.

[FR Doc. 83-15690 Filed 6-10-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-104]

St. Elizabeth Medical Center, Inc.; Application for Certification of the Use of Natural Gas To Displace Fuel Oil

St. Elizabeth Medical Center, Inc., (ST. ELIZABETH), One Medical Village Dr., Edgewood, Kentucky 41017 filed an application on May 19, 1983, with the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at its Edgewood, Kentucky and Covington, Kentucky, Medical facilities, 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., Washingtion, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

In its application ST. ELIZABETH indicates that the volume of natural gas for which it requests certification is approximately 50,038 Mcf per year. This volume is estimated to displace the use of approximately 648,000 gallons of No. 2 fuel oil (.2 percent sulfur) per year.

The quantities at each location are subject to variation with changes in demand, but estimated gas usage and resulting oil displacement volumes are listed below:

Facility	Estimated Volume (Mcf) per year	Estimated oil (No. 2) displacement (gallons) 0.2 Sulfur
(1) Covington, KY (North Unit)	38	260,000
(2) Edgewood, KY (South Unit)	50,000	368,000
Total Volume/Displacement per year	50,038	648,000

The eligible sellers are Exxon U.S.A., P.O. Box 2810, Houston, Texas 77001; Texas Gas Corporation, 3800 Frederica Street, P.O. Box 1160, Owenboro, Kentucky 45302; and Ohio Gas Marketing Corporation, 3933 Price Road, Newark, Ohio 43055. The gas will be transported by Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, W. Virginia 25325; and the Cincinnati Gas and Electric Company, P.O. Box 960, Cincinnati, Ohio 45202, 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 request 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 ST. ELIZABETH and any person filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., on June 2, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-15689 Filed 6-10-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83–CERT–109]

Timet Corp.; Application for Certification of the Use of Natural Gas To Displace Fuel Oil

TIMET Corporation (TIMET), 100 Titanium Way, P.O. Box 309, Toronto, Ohio 43964, filed an application on May 23, 1983, with the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at its Toronto, Ohio, plant 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, TIMET indicates that the volume of natural gas for which it requests certification is approximately 132,000 Mcf per year. This volume is estimated to displace the use of approximately 880,440 gallons of No. 6 fuel oil (0.2 percent sulfur) per year.

The eligible seller is Exxon U.S.A. P.O. Box 2180, Houston, Texas 77001. The gas will be transported by Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, S.E., Charleston, W. Virginia 25304; Columbia Gulf Transmission Company, 3805 West Alabama Avenue, Houston, Texas 77027; and Columbia Gas of Ohio, Inc., 109 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) calender 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 request 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 proposal 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 TIMET and any person filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., on June 2, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-15686 Filed 6-10-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83–CERT–107]

Twin Towers, United Methodist Home on College Hill; Application for Certification of the Use of Natural Gas To Displace Fuel Oil

Twin Towers, United Methodist Home on College Hill (UNITED METHODIST HOME), 5343 Hamilton Avenue, Cincinnati, Ohio 45224, filed an application on May 20, 1983, with the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fule oil at its College Hill location 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, Forrestall 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, UNITED METHODIST HOME indicates that the volume of natural gas for which it requests certification is approximately 40,000 Mcf per year. This volume is estimated to displace the use of

approximately 280,000 gallons of No. 2 fuel oil (.31 percent sulfur) per year.

The eligible sellers are Exxon U.S.A., P.O. Box 2180, Houston, Texas 77001; Texas Gas Corporation, 3800 Frederica Street, P.O. Box 1160, Owensboro, Kentucky 42301; and Ohio Gas Marketing Corporation, 3933 Price Road, Newark, Ohio 43055. The gas will be transported by Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, W. Virginia 25325; and Texas Gas Transmission Corporation, 3800 Frederica Street, P.O. Box 1160, Owensboro, Kentucky 42301; and the Cincinnati Gas & Electric Company, P.O. Box 960, Cincinnati, Ohio 45202, 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 an interested person in writing within the ten (10) day comment period. The request 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 UNITED METHODIST HOME and any person filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., on June 6, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-15687 Filed 6-10-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-086]

Van Dyne-Crotty Co.; Application for Certification of the Use of Natural Gas To Displace Fuel Oil

Van Dyne-Crotty Company (VAN DYNE), 2150 Fairwood Avenue, Columbus, Ohio 43207, filed an application on May 12, 1983, with the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at two of its facilities in Columbus, 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, VAN DYNE indicates that the volume of natural gas for which it requests certification is approximately 84,000 Mcf per year. This volume is estimated to displace the use of approximately 610,000 gallons of No. 2 fuel oil (0.3 percent sulfur) per year at its Fairwood Avenue and East Main Street facilities in Columbus, Ohio.

The quantities at each location are subject to variation with changes in demand, but estimated gas usage and resulting oil displacement volumes are listed below:

Facility	Estimated volume (Mcf) per year	Estimated oil (No. 2) displacement (gallons) 0.3% sulfur
2150 Fairwood Avenue, Columbus, Ohio 43207	60,000	440,000
454 East Main Street, Columbus, Ohio 43207	24,000	170,000
Total	84,000	610,000

The eligible seller is the Scott Krauss News Agency, P. O. Box 1677, Columbus, Ohio 43216. The gas will be transported by Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25304; and by Columbia Gas of Ohio, Inc., 109 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 request 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 VAN DYNE and any person filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., on June 6, 1983

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-15692 Filed 6-10-83; 8:45 am]

BILLING CODE 6450-01-M

Dalco Petroleum Corporation and Subsidiaries and Louis Porter; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of action taken on consent order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces that it has withdrawn its agreement to the proposed Consent Order with Dalco Petroleum Corporation and its subsidiaries and Louis Porter.

FOR FURTHER INFORMATION CONTACT: John W. Sturges, Director, Tulsa Office, Economic Regulatory Administration, 440 South Houston, Room 306, Tulsa, Oklahoma 74127; (918) 581–7781.

SUPPLEMENTARY INFORMATION: On January 21, 1983, 48 FR 2822, the ERA published a notice in the **Federal Register** that it had executed a proposed Consent Order with Dalco Petroleum Corporation and its subsidiaries and Louis Porter on December 28, 1982 which would not become effective sooner than 30 days after publication of that notice. Pursuant to 10 CFR 205.199J(c), interested persons were invited to submit comments concerning the terms and conditions of the proposed Consent Order. The ERA has withdrawn its agreement to the proposed Consent Order because of unforeseen events which affect Dalco's

ability to comply with the terms of the proposed Consent Order.

Issued in Tulsa, Oklahoma the 26th day of May 1983.

John W. Sturges,

Director, Tulsa Office, Economic Regulatory Administration.

[FR Doc. 83-15780 Filed 6-10-83; 8:45 am]

BILLING CODE 6450-01-M

Erickson Refining Corporation and Holiday Stationstores, Inc.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives Notice of a Proposed Remedial Order which was issued to Erickson Refining Corporation, 1502 Augusta Drive, Houston, Texas 77057 and Holiday Stationstores, Inc., 4567 West 80th Street, Minneapolis, Minnesota 55437. This Proposed Remedial Order alleges violations in the pricing of crude oil of 10 CFR 212.183, 212.186, 210.62, and 205.202. The principal amount of the alleged violation of 10 CFR 212.186, 210.62, and 205.202 for the period October 1979 through September 1980 is $1,238,405.84. The principal amount of the alleged alternative violation of 10 CFR 212.183 for the period October 1979 through September 1980 is $762,034.00.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: U.S. Department of Energy, Economic Regulatory Administration, ATTN: Sandra K. Webb, Director, One Allen Center, Suite 610, 500 Dallas Street, Houston, Texas 77002.

Within fifteen (15) days of publication of this Notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Room 3304, Federal Building, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Houston, Texas, on the 27th day of May 1983.

Sandra K. Webb,

Director, Houston Office, Economic Regulatory Administration.

[FR Doc. 83-15781 Filed 6-10-83; 8:45 am]

BILLING CODE 6450-01-M

Mustang Fuel Corp.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of action taken on consent order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces that it has adopted a Consent Order with Mustang Fuel Corportion and its subsidiary Mustang Gas Products Company (Mustang) as a final order of the Department.

EFFECTIVE DATE: May 24, 1983.

FOR FURTHER INFORMATION CONTACT: John W. Sturges, Director, Tulsa Office, Economic Regulatory Administration, 440 South Houston, Room 306, Tulsa, Oklahoma 74127; (918) 581-7781.

SUPPLEMENTARY INFORMATION: On March 31, 1983, 48 FR 13481, the ERA published a notice in the Federal Register that it had executed a proposed Consent Order with Mustang on March 11, 1983 which would not become effective sooner than 30 days after publication of that notice. Pursuant to 10 CFR 205.199J(c), interested persons were invited to submit comments concerning the terms and conditions of the proposed Consent Order.

The Consent Order resolves Mustang's potential civil liability arising out of the Federal Petroleum Price and Allocation Regulations in connection with the firm's transactions involving the first sale of crude oil (pipeline condensate) and the resale of crude oil during the period September 1973 through January 27, 1981. The Consent Order requires Mustang to remit $800,000 to DOE within 30 days of the effective date of the Consent Order and specifies ERA will file a Petition for Implementation of Special Refund Procedures with the Office of Hearings and Appeals pursuant to 10 CFR Part 205, Subpart V for the distribution of refunds.

Six comments were received. These comments did not contest the validity of the proposed Consent Order, but addressed the question of the disposition of funds to be paid by Mustang. These comments, all from states proposed the funds be distributed to the states, for transportation improvements, energy conservation, energy reserch and development, or other energy related projects.

Since the comments addressed only the disposition of the funds, the ERA has decided to make the proposed Consent Order final without modification. The ultimate disposition of the funds will depend on several factors, such as the type of alleged violations underlying the Consent Order and the ability of the ERA to identify the persons who ultimately bore the burden of the alleged violations. The commenters' suggestions regarding the distribution of funds will be considered in determining the appropriate ultimate disposition.

The proposed Consent Order with Mustang Fuel Corporation and its subsidary Mustang Gas Products Company, therefore, was made final on May 24, 1983.

Issued in Tulsa, Oklahoma, on the 24th day of May 1983.

John W. Sturges,

Director, Tulsa Office, Economic Regulatory Administration.

[FR Doc. 83-15782 Filed 6-10-83; 8:45 am]

BILLING CODE 6450-01-M

Proposed Consent Order With World Oil Company

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) hereby gives the notice required by 10 CFR 205.199J(c) that it has signed a Consent Order with World Oil Company. The Consent Order resolves all issues of compliance with the Federal Petroleum Price and Allocation Regulations, with the exceptions noted in the Consent Order, for the period August 19, 1973 through January 27, 1981, when crude oil and petroleum products were decontrolled by Executive Order 12287, 46 FR 9909 (January 30, 1981). In executing the Consent Order, World Oil Company has agreed to make a payment of $1,100,000 to DOE and to waive claims to certain funds now held by DOE in escrow.

As required by the regulation cited above, ERA will receive comments on the Consent Order for a period of not less than 30 days following publication of this notice. ERA will consider any comments received before determining whether to make the Consent Order final.

Comments to be considered, comments must be received by 5:00 p.m. on the thirtieth day following publication of this notice. Address comments to: World Oil Company, Consent Order Comments, Economic Regulatory Administration, U.S. Department of Energy, 333 Market Street (6th Floor), San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Raymond G. Gong, Chief Counsel, Economic Regulatory Administration, U.S. Department of Energy, 333 Market Street (6th Floor), San Francisco, California 94105; (415) 974-7114.

Copies of the Consent Order may be received free of charge by request in person or by written request to: World Oil Company, Consent Order Request, Economic Regulatory Administration, U.S. Department of Energy, 333 Market Street (6th Floor), San Francisco, California 94105.

SUPPLEMENTARY INFORMATION: World Oil Company is a California based corporation which engaged in sales of refined petroleum products during the time period August 19, 1973 through January 27, 1981. It is headquartered at 1017 North La Cienega Boulevard, Los Angeles, California 90069. Prior to February 1976, World Oil Company was classified as a "reseller" and "reseller-retailer" under the Federal Petroleum Price and Allocation Regulations (the Regulations). In February of 1976, the firm acquired the Sunland Refining Corporation and began operating a refinery. It was thereafter classified as a "refiner."

ERA conducted audits of the books and records of both World Oil Company and Sunland Refining Corporation relating to their compliance with the Regulations. During the audits, several regulatory questions and issues were raised. Two Notices of Probable Violation were issued to the Sunland Refining Corporation. Except for matters specifically excluded from the Proposed Consent Order (such as obligations which may arise under a final entitlements list for January 1981), this Consent Order resolves all civil issues, whether or not previously raised in an enforcement proceeding, concerning the allocation and sale of crude oil or refined products by World, its divisions or its subsidiaries and by the Sunland Refining Corporation.

Neither ERA nor World Oil Company has retreated from the positions that they have taken previously on the issues addressed by this Consent Order, and each believes that its positions on these issues are meritorious. The parties desire, however, to resolve the issues raised without resort to complex, lengthy and expensive compliance litigation. ERA believes that the terms and conditions of this Consent Order provide a satisfactory resolution of disputed issues and an appropriate conclusion of its audits of World Oil Company and the Sunland Refining Corporation and that the Consent Order is in the public interest.

The Consent Order requires a cash refund payment of $1,100,000.00 within 10 days after the effective date of the Consent Order. It also requires a dismissal with prejudice of *World Oil Company v. Edwards*, No. 82-0914 MRP (C.D. Cal.) and a waiver of any and all claims World may have to funds now held by DOE in escrow under the *In Re EDG, Inc. Consent Order*, Case No. 930S00173. The amount of that escrow previously claimed by World is $658,281.93 including interest as of May 16, 1983.

DOE has determined that the appropriate disposition of these funds should be as follows: (a) DOE will pay $900,000 to the State of California for use in any of the five energy conservation programs specified below; and (b) DOE will hold in escrow both the remaining $200,000 paid under the Consent Order and the funds from the previously identified escrow account pending a determination concerning the appropriate disposition of these funds. The Consent Order provides that the payment to the State of California is to be used for one or more of the following energy conservation programs:

(1) The program under part A of the Energy Conservation in Existing Buildings Act of 1976, 42 U.S.C. 6861 *et seq.;*

(2) The programs under part D of Title III of the Energy Policy and Conservation Act (relating to primary and supplemental state energy conservation programs), 42 U.S.C. 6321 *et seq.;*

(3) The program under part G of Title III of the Energy Policy and Conservation Act (relating to energy conservation for schools and hospitals), 42 U.S.C. 6371 *et seq.;*

(4) Programs under the National Energy Extension Service Act, 42 U.S.C. 7001 *et seq.;* and

(5) The program under the Low Income Home Energy Assistance Act of 1981, 42 U.S.C. 8621 *et seq.*

These programs are the same ones that were enumerated in Section 155 of the Further Continuing Appropriations Act, 1983, Pub. L. No. 97-377 ("the Act") pursuant to which $200 million was distributed to the States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States on February 4, 1983. See 48 FR 5293 (February 4, 1983). Thus, the funds distributed to California pursuant to the instant Consent Order are to be spent in the same manner as the funds distributed pursuant to the Act.

ERA had determined that a distribution to the State of California for use in energy conservation programs is appropriate for several reasons. Sunland Refining Company, and subsequently World, operated a refinery in California throughout the period of price controls. The portion of the refund to be directed to the State of California, which is attributable to alleged violations of the refiner price regulations, reflects an ERA determination that such a distribution is appropriate because the ultimate burden of any alleged refiner pricing overcharges was, in all likelihood, borne by downstream end-user customers. The payment to California on behalf of such unidentifiable end-user customers is appropriate since virtually all of World's sales of general refinery products were made in that State during the months in which the alleged violations occurred.

The Consent Order also provides details concerning the conclusion of the audit, confidentiality of audit data, recordkeeping, and procedures concerning enforcement of the provisions of the Consent Order. Upon becoming final after consideration of public comments, the Order will be a final order of DOE to which World Oil Company has waived its right to an administrative or judicial appeal. The Consent Order does not constitute an admission by World Oil Company or a finding by ERA of a violation of any Federal Petroleum Price and Allocation Regulation.

Submission of Written Comments

Interested persons are invited to submit written comments concerning this Consent Order to the address noted above. All comments received by 5:00 p.m. on the thirtieth day following publication of this notice will be considered by ERA before determining whether to adopt the Consent Order as a final order. Modifications of the Consent Order that, in the opinion of ERA, significantly change the terms or impact of the Consent Order will be published for comment. If, after considering the comments it has received, DOE determines to issue the Consent Order as a final order, the Consent Order will be made final and effective by publication of a notice to that effect in the **Federal Register.**

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures of 10 CFR 205.9(f).

Issued this 26th day of May 1983, in San Francisco, California.

Raymond G. Gong,

Chief Counsel, Economic Regulatory Administration.

[FR Doc. 83-15779 Filed 6-10-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-161]

Jeannette Sheet Glass Corp.; Application for Certification of the Use of Natural Gas To Displace Fuel Oil

Jeannette Sheet Glass Corporation (Jeannette), P.O. Box 739, Jeannette, Pennsylvania 15644, filed an application on June 6, 1983, with the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at its Sheet Glass Plant in Jeannette, Pennsylvania, 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, SW., Washington, D.C. 20585, from 8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

In its application, Jeannette indicates that the volume of natural gas for which it requests certification is approximately 2,800 Mcf per day. This volume is estimated to displace the use of approximately 20,000 gallons of No. 2 fuel oil (0.34 percent sulfur) per day.

The eligible sellers are Exxon Company, U.S.A., P.O. Box 2180, Houston, Texas 77001, and Excalibur Energy Corporation, 2108 Crestmoor Road, Nashville, Tennessee 37215. The gas will be transported by Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue SE., Charleston, West Virginia 25314; Columbia Gulf Transmission Corporation, P.O. Box 683, Houston, Texas 77001; and Columbia Gas of Pennsylvania, 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, SW., 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 request 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 Jeannette and any person filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., on June 8, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-15823 Filed 6-10-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-108]

PPG Industries, Inc.; Application for Certification of the Use of Natural Gas To Displace Fuel Oil

PPG Industries, Inc. (PPG), One PPG Place, Pittsburgh, Pennsylvania 15272, file an application on May 23, 1983, with the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at its PPG Industries, Inc., Works No. 6, P.O. Box 6, Carlisle, Pennsylvania 17013, 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, PPG indicates that the volume of natural gas for which it requests certification is approximately 2,900,000 Mcf per year. This volume is estimated to displace the use of approximately 20 million gallons of No. 6 fuel oil (1.0 percent sulfur) per year.

The eligible sellers with which PPG is negotiating to purchase natural gas are: Bounty Oil and Gas, Inc., 2 East Second Street, Fenton Building, Jamestown, New York 14701; J&J Enterprises, P.O. Box 697, Indiana, Pennsylvania 15071; and Industrial Energy Services Co., Express House, Second Floor, Station Square, Pittsburgh, Pennsylvania 15219. The gas will be transported by Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314; and by UGI Corporation, Gas Utility Division, 225 Morgantown Road, Reading, Pennsylvania 19611, 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, Fuels Conversion Division, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Attention: Richard A. Ransom, within ten (10) calendar days of the date of the 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 request 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 propose 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 PPG and any person filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., on June 8, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-15821 Filed 6-10-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-103]

Roblin Industries, Inc.; Application for Certification of the Use of Natural Gas To Displace Fuel Oil

Roblin Industries, Inc. (Roblin), 241 Main St., Buffalo, N.Y. 14203, filed an application on May 18, 1983, with the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at its two Roblin Steel Company plants at 320 South Roberts Drive, Dunkirk, N.Y. 14048; and 101 East Avenue, N. Tonawanda, N.Y. 14120; 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, SW., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

In its application, Roblin indicates that the volume of natural gas for which it requests certification is approximately 1,000 Mcf per day at each plant. This volume is estimated to displace approximately 7,143 gallons of No. 2 fuel oil (0.5 percent sulfur) per day at each plant, for a total of approximately 14,286 gallons per day.

The eligible seller is Envirogas, Inc., P.O. Box 127, East Chautauqua Street, Mayville, New York 14757. The gas will be transported by the National Fuel Gas Supply Corporation, 308 Seneca Street, Oil City, Pennsylvania 16301; and by National Fuel Gas Distribution Corporation, 10 Lafayette Square, Buffalo, New York 14203, 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, SW., 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 request 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 Roblin and any person filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., on June 7, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-15820 Filed 6-10-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-160]

Union Carbide Corp.; Application for Certification of the Use of Natural Gas To Displace Fuel Oil

Union Carbide Corporation, Carbon Products Division (UCC), P.O. Box 887, Niagara Falls, New York 14302, filed an application on June 2, 1983, and amended it on June 6, 1983, with the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at two of its manufacturing facilities located in Niagara Falls, New York, 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, SW., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

In its application, UCC indicates that the volume of natural gas for which it requests certification is approximately 663,000 Mcf per year. This volume is estimated to displace the use of approximaely 3,636,000 gallons of No. 2 fuel oil (0.4 percent sulfur) and 1,146,000 gallons of No. 6 fuel oil (1.4 percent sulfur) per year.

The quantities at each location are subject to variation with changes in demand, but estimated gas usage and resulting oil displacement volumes are listed below:

Facility	Estimated gas volume [1]	Estimated oil displacement [2]			
		No. 2 oil	Sulfur content percent	No. 6 oil	Sulfur content percent
Niagara plant (National location)	233,000	1,704,000	0.4		
	43,000			300,000	1.4
Niagara plant (Republic location)	264,000	1,932,000	0.4		
	123,000			846,000	1.4
Totals	633,000	3,636,000		1,146,000	

[1] Million cubic feet per year.
[2] Gallons per year.

The eligible sellers are Envirogas Inc., One Grimsby Drive, Hamburg, New York 14075; American Penn Energy, Inc., 151 Chautauqua Road, Fredonia, New York 14063; and Keystone Energy Oil and Gas Inc., 615 Iron City Drive, Pittsburgh, Pennsylvania 15205. The gas will be transported by National Fuel Gas Supply Corporation, 308 Seneca Street, Oil City, Pennsylvania 16301; and by National Fuel Gas Distribution Corporation, 10 Lafayette Square, Buffalo, New York 14203, 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, SW., 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 request 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 UCC and any person filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., on June 8, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-15822 Filed 6-10-83; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Energy Research Advisory Board, Technical Panel on Magnetic Fusion; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Technical Panel on Magnetic Fusion of the Energy Research Advisory Board (ERAB).

Date and Time: July 7, 1983 from 9 am to 5 pm. July 8, 1983 from 9 am to 11 am.

Place: Lawrence Livermore National Laboratory, Auditorium, Building 543, Livermore, California.

Contact: Thomas J. Kuehn, U.S. Department of Energy, Office of Energy Research (ER-6), 1000 Independence Avenue, SW, Washington, DC 20585, telephone 202/252-8933.

Purpose of the Parent Board: To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Tentative Agenda:

- Magnetic Fusion Technology Program Plan
- Applied Plasma Physics Program Plan
- NAS/NCR Report on Fusion Engineering
- Status and Recent Developments in the Mirror Program
- MFAC Panel Reports
- Public comment (10 minute rule)

Public Participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Thomas J. Kuehn at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on June 7, 1983.

J. Ronald Young,

Director for Management, Office of Energy Research.

[FR Doc. 83-15824 Filed 6-10-83; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP82-119-002]

Algonquin Gas Transmission Co., Amendment

June 8, 1983.

Take notice that on May 2, 1983, Algonquin Gas Transmission Company (Applicant), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP82-119-002 an amendment to its application filed in Docket No. CP82-119-000 pursuant to Section 7(c) of the Natural Gas Act so as to reflect reduced quantities of Canadian gas to be sold and stored, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant notes that on January 27, 1983, the National Energy Board of Canada (NEB) issued a decision which, *inter alia*, authorized Pan-Alberta Gas Ltd. (Pan-Alberta) to export for sale to Applicant approximately 50,981 Mcf per day, 50 percent of the daily and annual Canadian gas volumes for which export authorization was sought and it shortened the term of exportation from the 15 years for which authorization was requested to 12 years with reduced quantities in the 10th, 11th, and 12th years. Applicant in its second amendment to modifies its amended application in Docket No. CP82-110-001 to reflect such reduced quantities for the Canadian gas sales and storage services for which Applicant seeks authorization and to reflect facilities appropriate to handle such reduced quantities of Canadian gas.

Additionally, Applicant proposes: (i) Transportation of the reduced quantities by Niagara Interstate Pipeline System (NIPS) from the United States-Canadian border to near Tamarack, Pennsylvania, in place of Trans-Niagara Pipeline; (ii) the execution of a mutually satisfactory agreement between Applicant and TransCanada PipeLines Limited (TransCanada) to provide for the delivery by TransCanada to NIPS of Applicant's Pan-Alberta volumes; (iii) transportation service by Texas Eastern Transmission Corporation (Texas Eastern) from Tamarack, Pennsylvania, to mutually agreed-upon delivery points on Applicant's pipeline system; (iv) to render Canadian gas storage service, pursuant to amended proposed Rate Schedule STC. Such storage service, to be purchased from Transco, that will include the receipt, injection, withdrawal, transportation and delivery of storage gas to Algonquin at a new point of interconnection, in New Jersey, and (v) Algonquin also proposes that the Commission grant special permission to allow Algonquin to implement those provisions of amended proposed Rate Schedules C-1 and STC: (i) Which require the reimbursement, on a current cost-of-service basis, for the cost of purchased-Canadian gas; and (ii) the tracking of changes in the charges of TransCanada, NIPS, Texas Eastern, and Transco for their related supporting services.

Applicant further states that the facilities it proposes to construct and operate to render the proposed services would include 17.9 miles of 30" mainline loop, 1.7 miles of 6" M-system loop, an additional 7,660 horsepower of compression at existing compressor stations, regulatory, measurement, and other related facilities, and would cost an estimated $50,100,000. Construction would include the establishment of a new delivery point to an existing customer, The Connecticut Light and Power Company, at Brookfield, Connecticut, it is stated.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before June 28, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-15765 Filed 6-10-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-329-000]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

June 8, 1983.

Take notice that on May 17, 1983, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP83-329-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Applicant proposes to construct and operate facilities necessary to provide additional points of delivery to existing wholesale customers under the authorization issued in Docket No. CP83-76-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes the construction and operation of facilities necessary to provide 3 additional points of delivery

to existing wholesale customers, Columbia Gas of Ohio, Inc., 1 tap, and Columbia Gas of West Virginia, 2 taps. Applicant avers that the additional volumes of gas to be provided through the new points of delivery are within Applicant's currently authorized level of sales and such volumes would not affect Applicant's peak day and annual deliveries to which the existing wholesale customer is entitled.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-15755 Filed 6-10-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI67-861-001, et al.]

Conoco Inc., et al.; Applications To Amend Certificates To Establish Entitlement to Section 109 Price [1]

June 7, 1983.

Take notice that each of the Applicants listed herein has either filed a petition to amend certificate pursuant to Section 7 of the Natural Gas Act or a notice of change in rate which is being treated as a petition to amend certificate to establish Applicant's right to collect the section 109 price consistent with the court order issued in *Tenneco Exploration Ltd v. FERC*, 649 F2d. 376, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before June 22, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 [2]	Pressure base
CI67-861-001 May 18, 1983	Conoco Inc., P.O. Box 2197, Houston, Texas 77252	Tennessee Gas Pipeline Company	[1]	
CI67-862-000 May 31, 1983	Getty Oil Company, P.O. Box 1404, Houston, Texas 77001.	do	[1]	
CI67-864-001 May 16, 1983	Cities Service Oil and Gas Corporation, P.O. Box 300, Tulsa, Oklahoma 74102.	do	[1]	
CI71-492-002 May 23, 1983	do	Consolidated Gas Supply Corporation	[1]	
CI80-345-001 May 27, 1983	Conoco Inc., P.O. Box 2197, Houston, Texas 77252	Trunkline Gas Company	[1]	

[1] Applicant's notice of change in rate filing is being construed as a petition to amend certificate to establish Applicant's entitlement to collect Section 109 price consistent with court order issued in *Tenneco Exploration, Ltd.* v. *FERC*, 649 F. 2d 376.

[2] Applicant proposes to amend certificate to establish Applicant's entitlement to collect Section 109 price consistent with court order issued in *Tenneco Exploration, Ltd.* v. *FERC*, 649 F. 2d 376.

[FR Doc. 83-15756 Filed 6-10-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST81-429-001]

Delhi Gas Pipeline Corp.; Extension Reports

June 8, 1983.

The companies listed below have filed extension reports pursuant to Section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The Commission's regulations provide that the transportation or sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. A "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

Any person desiring to be heard or to make any protest with reference to said

extension report should on or before June 30, 1983 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214).

All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding.

Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No. and transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date
ST81-429-001 Delhi Gas Pipeline Corp., Fidelity Union Tower, Dallas, TX 75201.	Texas Eastern Transmission Corp	May 9, 1983	C	Aug. 13, 1983.

NOTE.—The noticing of this filing does not constitute a determination of whether the filing complies.

[FR Doc. 83-15757 Filed 6-10-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-90-000]

GHR Energy Corp., Complainant v. Natural Gas Pipeline Co. of America, Respondent; Complaint

June 8, 1983.

Take notice that on May 24, 1983, GHR Energy Corp. (GHR) filed a complaint in Docket No. RP83-90-000 requesting that the Commission issue an order directing Natural Gas Pipeline Company of America (NGPL) to resume purchasing gas from GHR in the quantities set forth in its Gas Purchase Contract, and requests relief *pendente lite.*

GHR states that on January 26, 1983, GHR initiated bankruptcy proceedings, and has operated as a Debtor-In-Possession since that date. GHR states that the proceeds for the sale of the gas which is the subject to this complaint represents a sigificant asset in the estate of the debtor, and constitutes approximately forty percent of the current income of such estate.

In its complaint GHR states that NGPL, a corporation engaged principally in the business of operating an interstate pipeline, entered into an agreement on September 30, 1982, to purchase certain quantities of natural gas produced by GHR over a fifteen year term. GHR states that the purchase agreement provided for NGPL to purchase specified quantities of gas prior to the completion by NGPL of permanent pipeline facilities, and to price these quantities according to a calculation set forth in the agreement. GHR alleges that NGPL paid a lower price, which was not determined in the manner required by the Purchase Contract. GHR states that on March 4, 1983, NGPL informed GHR that it was terminating its purchase of all of GHR's gas for an indefinite period, and ceased taking gas on that date. GHR has commenced a civil state court action to enforce its interpretation of the Purchase Contract.

GHR requests the Commission to evaluate the impact on natural gas consumers of NGPL's decision to cease purchasing GHR gas. GHR states that it believes that NGPL purchase reduction violates provisions of the natural Gas Act, including Sections 7(b), 4(b) and 5(a).

GHR alleges that NGPL ceased to purchase GHR gas while continuing to purchase more expensive gas from other producers, includign affiliates. Further, GHR alleges that terminating purchases from GHR rather than reducing purchases pro rata from all suppliers is unjust and unreasonable, and that failure to purchase GHR's gas is an illegal abandonment of service and jurisdictional services.

Any person desiring to be heard or to protest said complaint should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before July 7, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this complaint are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-15766 Filed 6-10-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-095-000]

Gas Research Institute; Annual Application

June 7, 1983.

Take notice that on June 1, 1983, Gas Research Institute (GRI) filed herein an application requesting advance approval of its 1984–1988. Five-Year R&D Plan and 1984 R&D Program and the funding of its R&D activities for 1984 pursuant to the Natural Gas Act and the Commission's Regulations thereunder, particularly 18 CFR 154.38(d)(5).

GRI states that its application demonstrates compliance with the Commission's Regulations, the requirements of Opinion No. 149, Opinion Order Amending and Approving Gas Research Institute's 1983 Research Development Program and Related Five-Year Plan for 1983–1987, Docket No. RP82-102-000 issued September 30, 1982, and the ongoing provisions of a Stipulation and Agreement reached by the parties to the proceedings in Docket No. RM77-14 and approved by the Commission in Opinion No. 11, Opinion and Order Approving the Initial Research Development and Demonstration Program of Gas Research Institute, Docket No. RM-77-14, issued March 28, 1978. GRI's application seeks approval of its 1984 R&D program and approval for the collection of $144,595,000 through jurisdictional and non-jurisdictional rates and charges during the twelve (12) months ending December 31, 1984 to support GRI's 1984 R&D program of $149,680,000. Applicant states that its application was filed in accordance with the provision of Order No. 566 which requires "RD&D organizations" to submit, annually, a five-year program plan at least 180 days prior to the commencement of the five-year period of the plan, which is scheduled to commence on January 1, 1984.

GRI states that the proposed unit cost of GRI's 1984 R&D program is 1.37 cents per Mcf or equivalent to become effective January 1, 1984. This General R&D Funding Unit is proposed to be applied to the services included in GRI's Program Funding Service in 1984 which include jurisdictional, direct sale and intrastate volumes of GRI's members and which are estimated to be 10,549.3 Bcf. The surcharge approved last year by the Commission was 0.72 cents per Mcf.

GRI's filing was accompanied by workpapers providing detail about its application. These workpapers are available for inspection in the Commission's Office of Public Information.

The submitted GRI 1984 program budget totals $149,880,000. This includes $23,490,000 for administrative and general expenses $126,390,000 for research and development (R&D) efforts. GRI proposes to divide these R&D funds among four basic objectives in the following manner: Supply Options—$43,925,000; Efficient Utilization—$67,730,000; Enhanced Service—$8,925,000; and Crosscutting Research—$5,810,000.

The Appendix contains a list of GRI members and state regulatory commissions which were served with a copy of GRI's application on June 1, 1983. Such members and commissions are hereby permitted to participate in this proceeding as intervenors and need not file formal petitions to intervene or notices of intervention.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 20, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a comment, protest, or petition to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure under the Natural Gas Act (18 CFR 154.27). All comments or protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party to the proceedings or to participate as a party in any hearing there in other than those listed in the Appendix who are automatically entitled to participate, must file a petition to intervene in accordance with the Commission's Rules.

Additionally, take notice that a Commission Staff report on GRI's filing will be served on all parties and filed with the Commission as a public document on July 29, 1983. Additional comments by all parties may be filed concurrently with the staff report on July 29, 1983. Comments on the Staff report by all parties except GRI shall be filed by August 16, 1983 and reply comments by GRI shall be filed by August 30, 1983.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-15758 Filed 6-10-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-320-000]

The Inland Gas Company, Inc.; Application

June 8, 1983.

Take notice that on May 12, 1983, The Inland Gas Company, Inc. (Applicant), 340 17th Street, Ashland, Kentucky 41101, filed in Docket No. CP83-320-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and a point of delivery to Corbin, Ltd. (Corbin), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate approximately 0.5 mile of 4-inch diameter lateral pipeline and appurtenant measuring and regulating facilities in Boyd County, Kentucky, in order to establish a point of delivery to Corbin, a new direct sale customer. Applicant states that Corbin would use the gas for space heating and process utilities which would be supplied by a gas-fired boiler requiring 35 Mcf of gas per day.

It is stated that the proposed facilities are estimated to cost $31,100. Applicant states further that Corbin would provide the necessary right-of-way and reimburse up to $21,500 of the facility costs. In addition, it is stated that Applicant, over a five-year period, would return all or a portion of Corbin's reimbursement based upon the quantities of gas transported through the proposed facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 28, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 285.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-15767 Filed 6-10-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP81-206-001]

Michigan Wisconsin Pipe Line Co.; Amendment

June 8, 1983.

Take notice that on May 16, 1983, Michigan Wisconsin Pipe Line Company (Applicant), One Woodward Avenue, Detroit, Michigan 48226, filed in Docket No. CP81-206-001 an amendment to its pending application filed February 24, 1981, in Docket No. CP81-206-000 pursuant to Section 7(c) of the Natural Gas Act so as to reflect only the rendition of additional firm transportation service of up to 51,620 Mcf per day for Texas Gas Transmission Corporation (Texas Gas), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant states that on February 24, 1981, it filed an application in Docket No. CP81-206-000 for authorization to render firm transportation service for Texas Gas (up to 103,360 Mcf per day), Columbia Gas Transmission Corporation (up to 110,000 Mcf per day), and Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (up to 230,000 Mcf per day), through its offshore

system extending generally from an interconnection with U–T Offshore System in West Cameron Area Block 167, offshore Louisiana, to the general vicinity of Applicant's Grand Chenier compressor station in Cameron Parish, Louisiana. To provide the proposed transportation service and provide additional capacity for its own gas supplies (up to 70,000 Mcf per day), Applicant also proposed to expand the capacity of its system by 513,360 Mcf per day by construction and operation of 39 miles of 30-inch pipeline loop and 16,000 horsepower of additional compression at the Grand Chenier station. It is stated that the application was filed in conjunction with an application filed by High Island Offshore System (HIOS) in Docket No. CP80–408–000 for authorization to increase firm transportation service for its shippers.

Applicant states that HIOS has in Docket No. CP80–408–001 reduced considerably the scope of the increased transportation services it seeks authorization to provide. Consistent with HIOS's amendment, Applicant proposes to provide only an additional 51,620 Mcf per day (contract demand) transportation service for Texas Gas. Applicant avers that it would receive transportation quantities from U–T Offshore System for the account of Texas Gas and would redeliver equivalent quantities, less fuel use, to Texas Gas at an existing interconnection at Applicant's Eunice compressor station, Acadia Parish, Louisiana. Applicant states that this is all that is required to meet its own updated requirements as well as those of its shippers. Applicant further states that the reduced additional transportation service proposed for Texas Gas can be provided with existing facilities. Therefore, Applicant deletes its request to construct and operate additional facilities.

For the proposed transportation service, Applicant proposes to charge Texas Gas a monthly transportation charge equal to the contract demand multiplied by the then currently effective rate set forth in Applicant's Rate Schedule X–63.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before June 28, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-15768 Filed 6-10-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP80–22–005]

Northern Natural Gas Co., Division of InterNorth, Inc.; Petition To Amend

June 8, 1983.

Take notice that on May 27, 1983, Northern Natural Gas Company Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP80–22–005 a petition to amend further the Commission's order issued June 27, 1980, in Docket No. CP80–22–000, as amended, pursuant to Section 3 of the Natural Gas Act so as to authorize the continued importation of natural gas from Canada to the United States purchased at a reduced price, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Northern states that in the subject proceeding it is currently authorized to import natural gas at an import price of $4.94 per million Btu. Northern states that on April 11, 1983, the Government of Canada lowered its border price from $4.94 per million Btu to $4.40 per million Btu.

Accordingly, Northern requests that the order of June 27, 1980, as amended, be further amended by authorizing the importation of gas purchased from Consolidated Natural Gas Limited at an import price of $4.40 per million Btu.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before June 28, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-15760 Filed 6-10-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES83–47–000]

Northwestern Public Service Co.; Application

June 8, 1983.

Take notice that on May 31, 1983, Northwestern Public Service Company filed an application with the Federal Energy Regulatory Commission (Commission) seeking authority pursuant to Section 204 of the Federal Power Act to issue unsecured short-term promissory notes and commercial paper, such notes and commercial paper not to exceed in the aggregate $15,000,000 face value at any one time outstanding and to mature not later than July 1, 1986.

Any persons desiring to be heard or to make any protest with reference to said application should, on or before June 24, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-15759 Filed 6-10-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP82–233–003 and CP82–387–002]

Northwest Central Pipeline Corp. and Colorado Interstate Gas Co.; Amendment to Application

June 8, 1983.

Take notice that on May 4, 1983, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 25128, Oklahoma City, Oklahoma 73125, filed in Docket No. CP82–233–003 and Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP82–387–002 a joint petition to amend the order issued December 2, 1982, in Docket Nos. CP82–233–000 and CP82–387–000, respectively, pursuant to Section 7(c) of the Natural Gas Act so as to delete the Ford County, Kansas, balancing delivery point under the

exchange agreement between the Petitioners, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners state by order issued December 2, 1982, they were authorized to exchange natural gas within a specified area of interest in South Central Wyoming in accordance with the terms of a gas exchange agreement dated January 26, 1982. Petitioners state that the agreement provides for a balancing delivery point outside the area of interest where the systems of Northwest Central and Natural Gas Pipeline Company of America (Natural) interconnect in Ford County, Kansas. According to the Petitioners, Northwest Central would deliver gas to Natural for CIG's account at the Ford County delivery point. It is stated that gas has never flowed to Natural for CIG's account under the Agreement and that Petitioners no longer desire to include Ford County as a delivery point. Therefore, Petitioners request that authorization to balance gas at the Ford County delivery point be deleted.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before June 28, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-15709 Filed 6-10-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP83-31-000]

Oklahoma Corporation Commission, Section 108 NGPA Determination, Tenneco Oil Company, Yost Unit No. 1-29 Well, FERC J. D. No. 81-40649; Petition To Reopen and Vacate Final Well Category Determination and Request To Withdraw Application

Issued: June 8, 1983.

On May 9, 1983, Tenneco Oil Company (Tenneco) filed with the Federal Energy Regulatory Commission (Commission) a petition to reopen and a request to withdraw its application for a final well category determination that the Yost Unit No. 1-29 Well, located in Kingfisher County, Oklahoma, qualifies as a stripper natural gas well pursuant to section 108 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301—3432 (Supp. V, 1982). The determination made by the Oklahoma Corporation Commission (Oklahoma) became final on August 22, 1981, pursuant to NGPA section 503(d) and § 275.202(a) of the Commission's regulations (18 CFR 275.202(a)).

Tenneco requests reopening of this final determination so that it can withdraw its application for said determination. Tenneco states that as a result of an internal review, it discovered that production from the subject well, during the 90-day qualifying period used for the well, exceeded 60 Mcf per day. Tenneco further states that production of oil from the subject well was in excess of the amount allowed under § 271.803(b) of the Commission's regulations.

Will respect to the issue of refunds, the Commission hereby gives notice that the question of whether refunds, plus interest as computed under § 154.102(c), will be required is a matter which is subject to the review and final determination of the Commission.

Any person desiring to be heard or to make any protest to the requested reopening and withdrawal should file, within 30 days after this notice is published in the **Federal Register**, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of Rules 214 or 211 of the Commission's Rules of Practice and Procedure. All protests filed will be considered but will not make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-15701 Filed 6-10-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES83-46-000]

Pacific Power & Light Co.; Application

June 8, 1983.

Take notice that on May 27, 1983, Pacific Power & Light Company (Pacific) filed its application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act, seeking an order authorizing it to issue its unsecured short-term promissory notes and to borrow from commercial banks from time-to-time under the following facilities.

1. Not more than $300,000,000 in aggregate principal amount outstanding at any one time under:

(a) A Credit Agreement (Revolving Credits and Optional Term Loan Facility or Agreement) with Morgan Guaranty Trust Company of New York, as agent. Under the Revolving Credit portion of the Agreement, Pacific would borrow and reborrow from the banks up to the amounts committed for a two-year period. At the end of the two-year period and for any amounts out-standing at that time, Pacific would convert the loan to a term loan with a maturity of not more than three years.

(b) Under other borrowing arrangement over the term of the Agreement.

2. Not more than $25,000,000 in aggregate principal amount outstanding at any one time under renewable lines of credit without a termination date.

The proposed facilities are designed to replace and expand similar expiring facilities.

Any person desiring to be heard or to make any protest with reference to the application should, on or before June 23, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with 18 CFR 385.211 or 385.214, respectively.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-15702 Filed 6-10-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-315-000]

Rocky Mountain Natural Gas Co., Inc.; Application

June 8, 1983.

Take notice that on April 29, 1983, Rocky Mountain Natural Gas Company, Inc. (Applicant), 1600 Sherman Street, Denver, Colorado 80203, filed in Docket No. CP83-315-000 an application pursuant to Section 284.127 of the Commission's Regulations and Section 311(a)(2) of the Natural Gas Policy Act of 1978 for authorization to transport natural gas for Northern Natural Gas Company, a Division of InterNorth, Inc. (Northern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that pursuant to the transportation agreement, dated December 9, 1982, it would receive gas for Northern at various locations in Mesa County, Colorado, and would redeliver equivalent volumes to Northern at interconnecting points with Mountain Fuel Resources, Inc. and/or Northwest Pipeline Corporation in Rio Blanco County, Colorado. This transportation service is said to be for a 15-year period.

Applicant has indicated that the gas is originally received by Northern at the wellhead from Coors, the producer. The total estimated quantity of natural gas to be transported is 10,950,000 Mcf and the maximum daily quantity is estimated at 20,000 Mcf.

Applicant also states that the initial rate to be charged would be 19.8 cents per Mcf, that this rate was approved by the Commission in Docket No. ST81-43-001, and that it would be effective through December 31, 1984.

Applicant desires authorization to provide transportation service on a long-term basis because it has entered into a long-term agreement dated December 9, 1982, as a replacement for an existing short-term agreement.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 28, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-15770 Filed 6-10-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP75-120-009]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Application To Amend

June 8, 1983.

Take notice that on May 2, 1983, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Petitioner), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP75-120-009, a petition to amend the order issued March 7, 1977,[1] in Docket No. CP75-120 pursuant to Section 7(c) of the Natural Gas Act so as to eliminate the existing end-use restriction upon gas transported thereunder, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By order issued March 7, 1977, Petitioner was authorized to transport certain sources of natural gas on behalf of Tenneco Oil Company (TOC) from certain receipt points onshore and certain other receipt points in the Outer Continental Shelf, for ultimate delivery to TOC's Chalmette Refinery. It is asserted that under ordering paragraph (K) of that order the transported gas was to be used for feedstock or process use only. Petitioner states that an order issued March 20, 1978, in Opinion No. 10 (2 FERC ¶ 61,247), the Commission granted rehearing of Opinion No. 789 and amended the certificate in this proceeding so as to eliminate authorization for the transportation of gas from the Outer Continental Shelf, on the ground that natural gas from the offshore federal domain should be sold to interstate pipelines or local distributors for system supply. The Commission left intact previously granted authorization for onshore transportation. It is submitted that in Opinion No. 10-B issued December 23, 1982 (21 FERC ¶ 61,320), the Commission adhered to its former ruling with respect to the offshore applications before it, but denied those applications without prejudice, stating that it would apply a different policy to future applications for authorization to transport offshore supplies. Additionally, Petitioner states that the Commission stated that it was revising the former end-use policy.

Petitioner, therefore, requests elimination of the end-use restriction imposed in Docket No. CP75-120. Petitioner does not here seek any amendment of the volumes, receipt points, or other terms of the certificate as previously issued. Petitioner states granting of the instant petition would serve the public convenience and necessity by enabling TOC to make optimal use of the supplies that it has transported hereunder at its Chalmette Refinery and would be consistent with the Commission's new policy on end-use restrictions.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before June 28, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations uner the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-15771 Filed 6-10-83; 8:45 am]

BILLING CODE 6717-01-M

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

[Docket No. CP83-310-000]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Application

June 8, 1983.

Take notice that on May 3, 1983, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77002, filed in Docket No. CP83-310-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas and the allocation of pipeline capacity and capacity entitlement to Gulf Oil Exploration and Production Company, a Division of Gulf Oil Corporation (Gulf), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states the pursuant to the terms of a letter of Intent Project Sabine, dated January 17, 1983, it proposes to allocate to Gulf on a firm basis 50,000 Mcf per day of Applicant's capacity in the Project Sabin facilities [1] and 50,000 Mcf per day of Applicant's capacity entitlement in Transco's existing Southwest Louisiana Gathering System (SWLGS). Applicant further proposes to receive from Gulf up to 50,000 Mcf of natural gas per day produced in Sabine Pass Block 11, offshore Louisiana, and, using such capacity and capacity entitlement allocated to Gulf as well as interruptible capacity in Applicant's 30-

[1] The offshore portion of Project Sabine facilities is jointly owned by Applicant and Florida Gas Transmission Company (FGT). The onshore portion is jointly owned by Applicant, FGT and Transcontinental Gas Pipe Line Corporation (Transco).

inch Kinder-Sabine Line, to transport such natural gas for delivery to Texas Eastern Transmission Corporation (TETCO) in Allen Parish Louisiana. Such natural gas would be sold by Gulf to TETCO under Gulf's warranty obligation to TETCO, it is explained.

It is stated that in consideration for the grant to Gulf of capacity entitlement in the Project Sabine facilities and the capacity entitlement of the SWLGS, Gulf would pay Applicant approximately $11,306,400, an amount representing Gulf's share of the cost of the Project Sabine facilities owned by Applicant. In addition it is asserted that Gulf would pay Applicant for the onshore transportation of the gas from the point of receipt at the terminus onshore of the Project Sabine facilities in Calcasieu Parish, Louisiana, to the point of delivery to TETCO in Allen Parish, Louisiana, a volume charge equal to the product of 4.89 cents multiplied by the total volume of gas received by Gulf during the month, less 1.2 percent for Applicant's fuel and other uses. Applicant proposes to charge Gulf a minimum bill based upon the 4.89-cent per Mcf volume charge and a 66.66 percent usage of the monthly transportation quantity of 50,000 Mcf of gas per day.

Applicant submits the proposed services be beneficial to Gulf, TETCO and its customers by providing a cost efficient means to attach to TETCO's system and additional supply of gas under Gulf's warranty obligation without the construction of additional duplicative pipeline facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 28, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-15772 Filed 6-10-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-304-000]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Application

June 8, 1983.

Take notice that on May 2, 1983, Tennessee Gas Pipeline Company, a Division of Tenneco Inc., (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP83-304-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for El Paso Natural Gas Company (El Paso), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that pursuant to a gas transportation agreement dated December 31, 1980, as amended, applicant would receive and transport natural gas for El Paso from the point of interconnection between Applicant's existing pipeline facilities and Tenneco Oil Company's (TOC) platform in South Marsh Island Block 60, offshore Louisiana, and from the point of interconnection (at Subsea Valve 504A-1301) of the existing Vermilion Block 241 20-inch pipeline owned by Applicant and Michigan Wisconsin Pipe Line Company and a lateral extending from East Cameron Block 237, offshore Louisiana, to such point of interconnection. It is further stated that the gas would be delivered to El Paso at Cocodrie, Terrebonne Parish, Louisiana (Cocodrie delivery point), and at Applicant's option for deliveries not requested at the Cocodrie delivery point, at the Sabine delivery point or at an existing interconnection between El Paso and Natural Gas Pipeline Company of America (Natural) in southeastern New Mexico (Jal delivery point).

Applicant proposes to transport up to the lesser of 20,000 Mcf of gas per day or 50 percent of the daily deliverability from the South Marsh Island receipt point and up to 8,000 Mcf of gas per day from the East Cameron 237 receipt point, less volumes for fuel and use requirements.

Applicant asserts that El Paso would pay a volume charge of 16.42 cents per Mcf with provision for a minimum monthly bill.

It is explained that the proposed service would enable El Paso to take delivery of an additional supply of gas without having to construct duplicative facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 28, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-15773 Filed 6-10-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-423-001]

Texas Eastern Transmission Corp.; Amendment

June 8, 1983.

Take notice that on May 17, 1983, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP83-423-001 an amendment to its application filed in Docket No. CP82-423-000 pursuant to Section 3 of the Natural Gas Act so as to reflect a reduction in the quantities of Canadian natural gas that it would purchase from TransCanada PipeLines Limited (TransCanada) and import into the United States in order to conform the requested authorization with the National Energy Board of Canada's (NEB) decision of January 27, 1983, in its Omnibus Gas Export Proceeding, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Texas Eastern states that in its application it had requested authorization to import from Canada 100,000 Mcf of natural gas per day to be purchased from TransCanada plus daily volumes in excess thereof on a best-efforts basis not to exceed 10 percent commencing on November 1, 1985, or as soon as possible thereafter, and continuing for a period of 14 years from the date of first deliveries.

It is asserted that under the NEB decision of January 27, 1983, TransCanada has been authorized to export the following volume of natural gas:

	Daily (Mcf)	Annual (MMcf)
Nov. 1, 1985, to Oct. 31, 1994	50,000	18,300
Nov. 1, 1994, to Oct. 31, 1995	37,500	13,725
Nov. 1, 1995, to Oct. 31, 1996	25,000	9,150
Nov. 1, 1996, to Oct. 31, 1997	12,500	4,575

It is asserted that in addition to the primary term of 12 years the NEB provided for a one-year make-up period from November 1, 1997, to October 31, 1998.

Texas Eastern states that it is amending its application to conform with the volumes and schedule of deliveries reflected in the NEB's decision. Additionally, Texas Eastern requests authorization to track, on a current basis, the purchase cost of the Canadian gas and the cost of transporting that gas from the import point to its pipeline.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before June 28, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-15774 Filed 6-10-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-446-001]

Texas Eastern Transmission Corp.; Amendment

June 8, 1983.

Take notice that on May 2, 1983, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP82-446-001 an amendment to its application filed in Docket No. CP82-446-000 pursuant to Section 7(c) of the Natural Gas Act so as to reflect modifications to its proposal to construct pipeline and appurtenant facilities to receive and transport natural gas imported from Canada by Applicant and Algonquin Gas Transmission Company (Algonquin) resulting from a reduction in import quantities, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant states that on January 27, 1983, the National Energy Board of Canada (NEB) issued a decision which authorized the export of less volumes of gas than had been requested by the Canadian suppliers. Applicant states that as a result of the NEB's decision Applicant amends its application and requests authorization to: (1) Construct and operate 80.5 miles of 24-inch pipeline (the Tamarack-Perulack Expansion) and related facilities, extending from the terminus of the proposed Niagara Interstate Pipeline System (NIPS) near Tamarack, Pennsylvania, to Applicant's existing Penn-Jersey System at Perulack, Pennsylvania; (2) construct and operate 8.25 miles of 30-inch pipeline (Penn-Jersey Expansion) extending existing loop lines at four locations on Applicant's Penn-Jersey System extending from Perulack, Pennsylvania to Applicant's Compressor Station No. 28 located near Lambertville, New Jersey, and to expand Applicant's existing meter station No. 087 located at the point of interconnection between Applicant's existing Penn-Jersey System and Algonquin's existing system near Lambertville, New Jersey; and (3) transport on a firm basis the dekatherm equivalanet of up to 50,873 Mcf of natural gas per day and such additional quantities as mutually agreeable for Algonquin from the point of interconnection of the proposed NIPS pipeline with Applicant's Tamarack-Perulack pipeline to Algonquin at the existing point of interconnection between Applicant's Penn-Jersey System and Algonquin's system near Lambertville, New Jersey, or other such point of delivery as may be mutually agreed to from time to time.

Applicant estimates that the total capital cost of the proposed facilities expansion would be $87,447,000. Applicant would initially finance the cost of constructing the proposed facilities through revolving credit arrangements, short-term loans and from funds on hand with permanent financing to be undertaken as part of Applicant's overall long-term financing programs at a later date, it is submitted.

Applicant's arrangement with NIPS for Transportation services will provide Applicant with access to substantial gas supplies remote from its existing system. Accordingly, Applicant submits that it is in the public interest to permit it to track the transportation cost associated with the arrangement, and requests that the Commission authorize Applicant to track, in this proceeding, such transportation costs.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before June 28, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be

taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-15775 Filed 6-10-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-326-001]

Texas Eastern Transmission Corp.; Amendment

June 8, 1983.

Take notice that on May 17, 1983, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP82-326-001 an amendment to its application filed in Docket No. CP82-423-000 pursuant to Section 3 of the Natural Gas Act so as to reflect a reduction in the quantities of Canadian natural gas that it would purchase from ProGas Limited (ProGas) and import into the United States in order to conform the requested authorization with the National Energy Board of Canada's (NEB) decision of January 27, 1983 in its Omnibus Gas Export Proceeding, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Texas Eastern states that in its application it has requested authorization to import from Canada 100,000 Mcf of natural gas per day and daily volumes in excess thereof on a best-effort basis purchased from ProGas commencing on November 1, 1982, or as soon as possible, and continuing for a period of up to 20 years. It is asserted that under the NEB decision of January 27, 1983, ProGas has been authorized to export the following volumes of natural gas for sale to Texas Eastern:

	Daily (Mcf)	Annual (MMcf)
Nov. 1, 1984, to Oct. 31, 1993	50,126	18,297
Nov. 1, 1993, to Oct. 31, 1994	37,596	13,721
Nov. 1, 1994, to Oct. 31, 1995	25,064	9,146
Nov. 1, 1995, to Oct. 31, 1996	12,532	4,575

In addition to the primary term of 12 years the NEB provided for a one-year make-up period from November 1, 1996, to October 31, 1997, it is explained.

Texas Eastern states that it is amending its application to conform with NEB decision. Additionally, Texas Eastern requests authorization to track, on a current basis, the purchase cost of the Canadian gas and the cost of transporting that gas from the point of importation to its pipeline system.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before June 28, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-15776 Filed 6-10-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-503-001]

Transcontinental Gas Pipe Line Corp.; Amendment

June 8, 1983.

Take notice that on May 2, 1983, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP82-503-001 an amendment to its application filed August 20, 1982, in Docket No. CP82-503-000 pursuant to Section 7(c) of the Natural Gas Act so as to revise its request for authorization to establish the Transco-Niagara Storage Service to reflect a 50 percent reduction in the amount of the proposed storage service, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant states in its application that the Transco-Niagara Storage Service would provide 40,000,000 Mcf of top storage capacity and up to 600,000 Mcf per day of withdrawal capability for its customers.

Customer	Capacity	Daily demand	Days of service
Algonquin Gas	4,200,000	41,000	102
Brooklyn Union	1,005,000	15,000	67
Buford, Georgia	24,000	400	60
Elizabethtown	1,000,000	25,000	40
Lawrenceville, Georgia	20,000	1,000	20
Long Island Lighting	1,650,000	15,000	110
Penn Gas & Water	3,500,000	50,800	69
Philadelphia Gas Works	500,000	8,333	60
Public Service Electric & Gas	8,071,000	143,467	56
Public Service of N.C.	700,000	10,000	70
Sugar Hill, Georgia	6,000	100	60
Tri-Country N.G.A.	24,000	400	60
Total	[1] 20,700,000	[2] 315,500	67

[1] Converts to 20,000,000 Mcf at 1035 Btu per cubic foot.
[2] Converts to 300,000,000 Mcf at 1035 Btu per cubic foot.

Applicant states that the new storage service is made possible by two separate storage arrangements Applicant has entered into with ANR Storage Company (ANR Storage) in Michigan and Union Gas Limited (Union Gas), in Ontario. Each arrangement would provide Applicant up to 20,000,000 Mcf of top storage capacity and up to 300,000 Mcf per day of withdrawal capability, it is explained. Applicant indicates that it would purchase the gas to be placed in storage from TransCanada PipeLines Limited (TransCanada).

Applicant states in its amendment that on January 27, 1983, the National Energy Board of Canada (NEB) issued its omnibus decision concerning numerous export applications and that such decision authorized the export of lesser quantities of gas than had been requested by TransCanada which had contracted to sell gas to Applicant. Applicant states that one of the consequences of the NEB decision is to reduce by 50 percent the amount of new storage service that Applicant could render to its customers, i.e., a total of 20,000,000 cf of top storage capacity and up to 300,000 Mcf per day of withdrawal capability. Applicant also states that ANR Storage and Union Gas would each continue to provide one-half of the storage quantities. Applicant further states that a recanvassing of the market for such storage service undertaken in early 1983 reflected a reduction in the total indicated market demand for such storage approximately equivalent to the reduction in storage service occasioned as a result of the the NEB decision. Applicant, therefore, amends its application to reflect the 50 percent reduction in the amount of proposed storage service.

Applicant also amends the application to reflect a reduction in the indicated storage rates resulting from the current estimate of costs and charges. Applicant states that indicated rates for service under Rate Schedule T-NSS would be reduced as a result of reductions in the proposed charges for upstream storage

and transportation services and reduction in estimated costs related to Applicant's facilities. In that connection, the indicated rates for Rate Schedule T-NSS service would be a monthly demand charge of $12.11 per dt equivalent of contract demand, a monthly capacity charge of 3.1 cents per dt equivalent of annual capacity and injection and withdrawal charges of 9.0 cents per dt equivalent.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before June 28, 1983, file with the Federeal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-15777 Filed 6-10-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP81-75-004]

Transcontinental Gas Pipe Line Corp. and Northern Natural Gas Co., Division of InterNorth, Inc.; Petition to Amend

June 8, 1983.

Take notice that on May 10, 1983, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, and Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP81-75-004 a petition to amend the order issued September 30, 1981, in Docket No. CP81-75-000 pursuant to Section 7(c) of the Natural Gas Act so as to authorize Petitioners to delete one receipt point from the existing authorized exchange and to substitute other receipt points, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners indicate that they were authorized in Docket No. CP81-75-000 to exchange up to 50,000 Mcf per day of gas. It is stated that Transco received up to 40,000 Mcf per day attributable to Northern's interest in production at Ship Shoal Area Block 84, offshore Louisiana, and up to 10,000 Mcf per day attributable to Northern's interest in Eugene Island Area Block 108, offshore Louisiana. In return, Northern received up to 50,000 Mcf of gas per day attributable to Transco's interest in Mustang Island Area Blocks 757, 762 and 763, offshore Texas, it is stated. It is explained that pursuant to the terms of the certificate the points of receipt where Transco receives Northern's gas are: (1) The point of interconnection between the jointly-owned facilities of Northern, United Gas Pipe Line Company (United) and Southern Natural Gas Company (Southern) originating in Ship Shoal Block 84 and Transco's Southeast Louisiana Gathering System in Ship Shoal Blocks 70 and 72, offshore Louisiana, and (2) the interconnection between facilities of Northern originating in Eugene Island Block 108 and Transco's Southeast Louisiana Gathering System in or near Eugene Island Block 116, offshore Louisiana. Petitioners aver that Northern received Transco's gas in the Matagorda Island Area, offshore Texas, at points of interconnection between jointly-owned facilities of Transco, Northern, Southern and Natural Gas Pipeline Company of America and Matagorda Island Area facilities of Northern, Southern and Florida Gas Transmission Company.

Petitioners further state that by amendatory agreement dated October 7, 1982, to their exchange arrangement Transco and Northern deleted reference to exchange volumes from Eugene Island Area Block 108, inasmuch as gas ultimately was never committed to Northern from such source of supply and substituted in lieu thereof volumes from Brazos Area Block A-47, offshore Texas, and South Pelto Area Block 18, offshore Louisiana. It is proposed that Transco's points of receipt for Northern's gas as a result of such deletion and substitution would be: (1) The points in Ship Shoal Blocks 70 and 72 where the extension of Northern, United and Southern from Ship Shoal 84 connects with Transco's Southeast Louisiana Gathering System, (2) the point of interconnection between Transco's main line system and the terminus of the proposed loop expansion of Transco's Central Texas Gathering System in which Northern and others own interests, (3) the point in Ship Shoal Blocks 65 and 70 where jointly-owned facilities of Transco, Northern and Michigan Wisconsin Pipe Line Company connect South Pelto 18 to Transco's Southeast Louisiana Gathering System in South Pelto 13, and (4) other mutually agreeable points. Northern's points of receipt from Transco would remain unchanged, it is asserted.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before June 28, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-15778 Filed 6-10-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RM79-34 and ST83-268]

Transportation Certificates for Natural Gas Displacement of Fuel Oil and Panhandle Eastern Pipe Line Co., Self-Implementing Transactions

June 8, 1983.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations and Sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA). The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline pursuant to § 284.102 of the Commission's Regulations.

A "C" indicates transportation by an intrastate pipeline pursuant to § 284.122 of the Commission's Regulations. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and expiration date for the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a

petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline pursuant to § 284.142 of the Commission's Regulations and Section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.7(d) of the Commission's Regulations.

A "E" indicates an assignment by an intrastate pipeline pursuant to § 284.163 of the Commission's Regulations and Section 312 of the NGPA.

An "F" indicates a fuel oil displacement transaction implemented pursuant to § 284.202 of the Commission's Regulations. Any interested persons may file a complaint concerning such transaction pursuant to § 284.205(d) of the Commission's Regulations.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G (HT)" or "G (HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under Section 284.222 of the Commission's Regulations.

Kenneth F. Plumb,

Secretary.

Docket No.[1] and transporter/seller	Recipient	Date filed	Part 284 subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST83-268 Panhandle Eastern Pipe Line Co	Clarke-Mobile Counties Gas District	3/1/83	B		
ST83-269 Trunkline Gas Co	Cajun Natural Gas Co	3/1/83	B		
ST83-271 Transcontinental Gas Pipe Line Corp	HPI Transmission, Inc	3/1/83	B		
ST83-272 Delhi Gas Pipeline Corp	Cajun Natural Gas Co	3/2/83	C		
ST83-273 Delhi Gas Pipeline Corp	Florida Gas Transmission Co	3/1/83	D		
ST83-274 Michigan Consolidated Gas Co	Battle Creek Gas Co	3/3/83	G (HS)		
ST83-275 Trunkline Gas Co	Panhandle Eastern Pipe Line Co	3/3/83	G		
ST83-276 Transcontinental Gas Pipe Line Corp	Northern Natural Gas Co	3/7/83	G		
ST83-277 Natural Gas Pipeline Co. of America	Southern Natural Gas Co	3/7/83	G		
ST83-279 Transcontinental Gas Pipe Line Corp	Esperanza Transmission Co	3/7/83	B		
ST83-280 Northern Natural Gas Co	Delhi Gas Pipeline Corp	3/10/83	B		
ST83-281 Northern Natural Gas Co	Intratex Gas Co	3/10/83	B		
ST83-282 Northern Natural Gas Co	Cajun Natural Gas Co	3/11/83	B		
ST83-283 Cabot Corp	Connecticut Natural Gas Corp	3/11/83	G (HS)	6/8/83	81.60
ST83-284 Canyon Creek Compression Co	Tennessee Gas Pipeline Co	3/14/83	G		
ST83-285 Hydrocarbon, Ltd	Texas Eastern Transmission Corp	3/14/83	C		
ST83-286 Trunkline Gas Co	Southern Natural Gas Co	3/14/83	G		
ST83-287 Panhandle Eastern Pipe Line Co	United Gas Pipe Line Co	3/14/83	G		
ST83-288 Natural Gas Pipeline Co. of America	Tennessee Gas Pipeline Co	3/15/83	G		
ST83-289 Transcontinental Gas Pipe Line Corp	Valero Transmission Co	3/15/83	B		
ST83-290 Tennessee Gas Pipeline Co	Connecticut Natural Gas Corp	3/15/83	B		
ST83-291 Quivira Gas Co	Transcontinental Gas Pipe Line Corp	3/14/83	C	8/11/83	38.60
ST83-292 Texas Eastern Transmission Corp	Columbia Gulf Transmission Co	3/18/83	G		
ST83-293 Houston Pipe Line Co	United Gas Pipe Line Co	3/18/83	C		
ST83-294 Houston Pipe Line Co	Florida Gas Transmission Co	3/18/83	C		
ST83-295 Northwest Pipeline Corp	Mountain Fuel Resources Inc	3/21/83	G		
ST83-296 Tennessee Gas Pipeline Co	Transcontinental Gas Pipe Line Corp	3/21/83	G		
ST83-298 Houston Pipe Line Co	Natural Gas Pipeline Co. of America	3/18/83	C		
ST83-299 Northern Natural Gas Co	Southern Natural Gas Co	3/24/83	G		
ST83-300 Northern Natural Gas Co	Florida Gas Transmission Co	3/24/83	G		
ST83-301 Tennessee Gas Pipeline Co	Houston Pipe Line Co	3/24/83	B		
ST83-302 Tennessee Gas Pipeline Co	Transcontinental Gas Pipe Line Corp	3/25/83	G		
ST83-303 Tennessee Gas Pipeline Co	Natural Gas Pipeline Co. of America	3/25/83	G		
ST83-304 Trunkline Gas Co	Houston Pipe Line Co	3/28/83	B		
ST83-305 Panhandle Eastern Pipe Line Co	Battle Creek Gas Co	3/28/83	B		
ST83-306 Natural Gas Pipeline Co. of America	Tennessee Gas Pipeline Co	3/28/83	G		
ST83-307 Western Slope Gas Co	Mountain Fuel Resources Inc	3/29/83	G (HT)		
ST83-308 Valero Transmission Co	Texas Eastern Transmission Corp	3/29/83	C		
ST83-309 Tennessee Gas Pipeline Co	Northern Natural Gas Co	3/30/83	G		

[1] The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.
[2] The Intrastate Pipeline has sought Commission approval of its transportation rate pursuant to Section 284.123(B)(2) of the Commission's Regulations (18 CFR 284.123(B)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 83-15764 Filed 6-10-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ST81-222-002]

Valero Transmission Co.; Extension Reports

June 8, 1983.

The companies listed below have filed extension reports pursuant to Section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The Commission's regulations provide that the transportation or sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. A "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

Any person desiring to be heard or to make any protest with reference to said extension report should on or before June 30, 1983 file with the Federal

Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214).

All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding.

Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No. and transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date
ST81-222-002 Valero Transmission Co., P.O. Box 500, San Antonio, TX 78292	Texas Eastern Transmission Corp	4/18/83	D	7/18/83
ST81-224-001 [2] Valero Transmission Co., P.O. Box 500, San Antonio, TX 78292	El Paso Natural Gas Co	4/25/83	D	6/ 8/83
ST81-289-001 Seagull Pipeline Corp., 1100 Louisiana, Houston, TX 77002	United Gas Pipe Line Co	4/29/83	C	8/ 1/83
ST81-376-001 Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Columbia Gas Transmission Corp	4/19/83	G	7/19/83
ST81-377-001 Consumers Power Co., 212 West Michigan Ave., Jackson, MI 49201	Cajun Natural Gas Co	4/25/83	G(HT)	8/ 1/83
ST81-395-001 Michigan Gas Storage Co., 212 West Michigan Ave., Jackson, MI 49201	Consumers Power Co	4/25/83	B	8/ 1/83
ST81-400-001 Delhi Gas Pipeline Corp., Fidelity Union Tower, Dallas, TX 75201	Natural Gas Pipeline Co. of America	4/20/83	C	7/22/83
ST81-401-001 Delhi Gas Pipeline Corp., Fidelity Union Tower, Dallas, TX 75201	Texas Eastern Transmission Corp	4/25/83	D	7/23/83
ST81-410-001 [1] Texas Eastern Transmission Corp., P.O. Box 2521, Houston, TX 77252	United Gas Pipe Line Co	4/25/83	G	7/17/83
ST81-411-001 [1] Texas Eastern Transmission Corp., P.O. Box 2521, Houston, TX 77252	Southern Natural Gas Co	4/25/83	G	7/17/83
ST81-416-001 Panhandle Eastern Pipe Line Co., P.O. Box 1642, Houston, TX 77001	Delhi Gas Pipeline Corp	4/18/83	B	7/15/83

[1] These extension reportys were filed after the date specified by the Commission's Regulations, and shall be the subject of a further Commission Order.
[2] The Commission Notice of April 6, 1983 included a transportation which was erroneously reported by the company as ST79-109-002. The company has refiled here as ST81-224-001.
NOTE.—The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.

[FR Doc. 83-15763 Filed 6-10-83; 8:45 am]
BILLING CODE 6717-01-M

Office of Fossil Energy

Advisory Committee on Federal Assistance for Alternative Fuel Demonstration Facilities; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Advisory Committee on Federal Assistance for Alternative Fuel Demonstration Facilities.

Date and time: Tuesday, June, 28, 1983—2:30 p.m. to 5:30 p.m.

Place: Ramada Inn, 718 Horizon Drive, Grand Junction, Colorado 81501.

Contact: Patricia Dickinson, Office of Oil, Gas, Shale and Coal Liquids, U.S. Department of Energy, Germantown, Maryland 20545, Room D-119, Mail Stop D-107, Telephone: (301) 353-2700.

Purpose: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to the development of alternative fuels.

Tentative Agenda:

- Welcome
- Great Plains Coal Gasification Project (GPCGP) Status Review Presentation
- Union Oil Shale Project Discussion
- Advisory Committee Deliberations
- Public Commentary and Discussion (10 minute rule)
- Closing Remarks.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Mr. Keith N. Frye at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. between 8:30 a.m. and 4:00 p.m., Monday through Friday, except federal holidays.

Issued at Washington, D.C. on June 7, 1983.

Howard H. Raiken,

Deputy Advisory Committee Management Officer.

[FR Doc. 83-15684 Filed 6-10-83; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPRM-FRL 2380-4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests that have been forwarded to the Office of Management and Budget (OMB) for review. The information collection requests listed are available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: David Bowers; Office of Standards and Regulations; Information Management Section (PM-223); U.S. Environmental Protection Agency; 401 M Street, S.W.; Washington, D.C. 20460; telephone (202) 382-2742 or FTS 382-2742.

SUPPLEMENTARY INFORMATION:

Hazardous Waste Programs

- Title: Hazardous-Waste-Used-as-Fuel/Used Oil (EPA ID 1042).

Abstract: EPA proposes to survey those segments of industry handling

used oil and hazardous wastes that are used as fuel. The Agency will use this information on waste types, quantities, technologies, and economics as a basis for formulating regulations and conducting regulatory impact analyses.

Respondents: Several segments of industry, from generation of hazardous waste through processing and distribution, to end use.

• Title: Hazardous-Waste-Used-as-Fuel/Used Oil Telephone Prequalification (EPA ID 1043).

Abstract: EPA proposes to conduct a telephone survey to verify its list of firms collecting, processing, or distributing used oil or hazardous waste used as fuel. This information will enable the Agency to reduce the reporting burden on facilities outside the scope of an associated study.

Respondents: Several segments of industry, from generation of hazardous waste through processing and distribution, to end use.

• Title: Small Quantity Generator Survey Pretest (EPA ID 1044).

Abstract: EPA proposes to conduct a pretest of a survey of small quantity generators of hazardous waste. This survey is part of the development of the regulatory impact analysis.

Respondents: Hazardous waste generators.

Air Programs

• Title: NSPS for the Metallic Minerals Processing Industry (EPA ID 0982).

Abstract: Each plant subject to the New Source Performance Standards (NSPS) must maintain records to demonstrate performance of its continuous emission reduction system. These records and reports will enable EPA to determine compliance and to establish what new sources are subject to the NSPS.

Respondents: Owners/operators of plants processing metallic minerals.

• Title: Verification of Test Paramenters and Parts List (EPA ID 0167).

Abstract: These forms give motor vehicle manufacturers the opportunity to review, prior to testing, the parameters and part numbers EPA will use for emissions testing. The Agency will use this information to modify test procedures and to verify the use of correct parts.

Respondents: Manufacturers of motor vehicles.

Water Programs

Title: Survey of Pesticide Formulating/Packaging Industry (EPA ID 1028).

Abstract: EPA is surveying the industry to obtain technical information on product types, production processes, wastewater characteristics and treatment technologies, water usage, and costs. The Agency will use the information to develop effluent limitation regulations under 40 CFR Part 455.

Respondents: Pesticide formulating and packaging businesses.

Agency Forms Cleared By OMB Between May 20 and 26, 1983

EPA ID 0222, Investigations into Possible Noncompliance of Motor Vehicles with Federal Emission Standards, was cleared on May 26 (OMB #2000-0038).

EPA ID 1035, Survey of Small Businesses to Determine Regulatory Compliance Problems, was cleared on May 24 (OMB #2010-0006).

Comments on all parts of this notice should be sent to:

David Bowers, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), 401 M Street, S.W., Washington, D.C. 20460; and

Anita Ducca, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, N.W., Washington, D.C. 20503.

Dated: June 6, 1983.

John Warren,

Acting Chief, Statistical Policy Staff.

[FR Doc. 83-15563 Filed 6-10-83; 8:45 am]

BILLING CODE 6560-50-M

[W-1-FRL 2380-7]

Petitions Requesting Sole Source Aquifer Designation; Request for Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt of petitions, public comments requested.

SUMMARY: The Nantucket Planning and Economic Development Commission jointly with the Wannacomet Water Company (hereinafter, the Nantucket joint petitioners) and the Town of New Shoreham, Rhode Island, have submitted petitions under Section 1424(e) of the Safe Drinking Water Act (42 U.S.C. 300 f, 300 h-3(e), Pub. L. 93-523) requesting the U.S. Enivronmental Protection Agency to designate the aquifers underlying Nantucket Island and Block Island, respectively, as the sole or principal drinking water sources for each area. If EPA so designates the aquifers, no commitment for Federal financial assistance may be entered into for any project which EPA determines may contaminate the aquifers through a recharge zone so as to create a significant hazard to public health. EPA is hereby inviting public comment on the requested designations.

DATES: Comments on the requested designations must be received on or before July 13, 1983. If sufficient public interest is expressed, a public hearing may be scheduled for either or both of the requested designations. The Regional Administrator will give widespread notice of such a hearing.

ADDRESSES: Written comments should be sent to Charles D. Larson, Acting Chief, Water Supply Branch, U.S. EPA, Region 1, John F. Kennedy Federal Building, Boston, Massachusetts 02203, telephone (617) 223-6688.

Background information on the requested designations will be avialable for inspection by the public at the EPA Region 1 Library, Room 2100 B, John F. Kennedy Federal Building, Boston, MA 02203, telephone (617) 223-5791 and at the following locations:

For Nantucket: Nantucket Planning and Economic Development Commission, Coffin School, Winter Street, Nantucket, Massachusetts 02554, TEL: (617) 228-9625; and

For Block Island: New Shoreham Town Hall, Old Town Road, Block Island, Rhode Island 02807, TEL: (401) 466-2409.

FOR FURTHER INFORMATION CONTACT: Steven J. Koorse (telephone (617) 223-6688).

SUPPLEMENTARY INFORMATION: On December 2, 1982, EPA Region 1 received the following petition jointly from the Nantucket Planning and Economic Development Commission and the Wannacomet Water Company.

Petition To the U.S. Environmental Protection Agency for the Sole Source Aquifer Designation of the Nantucket Island Aquifer

Pursuant to Section 1424(e) of the Safe Drinking Water Act we hereby petition the Administrator of the U.S. Environmental Protection Agency to designate the Nantucket Island Aquifer as the sole source of drinking water for the Nantucket Island. Our interest in having EPA designate the Nantucket Island Aquifer as a sole source aquifer is to provide the maximum assurance that Federal financially assisted projects will not have any adverse impact on the only water supply source available to the residents of, and visitors to, Nantucket Island. It is essential that housing projects, wasterwater treatment and collection systems, other solid and liquid waste disposal systems, highway, and other projects be reviewed prior to contruction to assure that they will not have an adverse impact on the Nantucket Island Aquifer. The Nantucket Island Aquifer is the sole source of drinking water to Nantucket Island. Since groundwater contamination can be difficult or impossible to reverse, and since this

aquifer is relied on totally for drinking water purposes by the general population, contamination of the aquifer would pose a significant hazard to public health. No alternative sources of water exist. All information pertinent to the designation, described briefly below, is contained in the United States Geological Survey Report, Water Resources of Nantucket Island, Massachusetts, by Eugene H. Walker, 1980. Sheet 1 of 2 in the Report contains geographical and hydrological maps, as well as narrative descriptions.

Nantucket Island Aquifer and its Location: The fresh ground water in the porous deposits of Nantucket forms a lens-shaped body that is about 500 feet thick at the center of the island and thins toward the shores to wedge out a short distance offshore. This lens of freshwater floats upon underlying saltwater because freshwater is about one fortieth less dense than seawater. The freshwater lens is bounded by the water table on top and brackish water below.

Nantucket Island Location and Population: The Island of Nantucket, the largest (49 mi^2) of the group of islands that forms the county and town of Nantucket, lies 25 miles south of Cape Cod and 15 miles east of Martha's Vineyard. Nantucket is about 12 miles long from east to west, and 4 miles wide from north to south. The economy of the island is based largely on summer resort trade. In 1980, the year-round population was 7,000 but it is estimated that 27,000 people were on the island during the height of the summer season.

Recharge Zone and Sources of Recharge: The source of freshwater to Nantucket is precipitation as rain and snow. Average annual precipitation reported by the National Weather Service was 43.7 inches during 1941–70. On the average 24.6 inches is returned to the atmosphere by evaporation and transpiration by plants. The soils of Nantucket are prevailingly sandy, and water from rain and snowmelt sinks into the ground readily; therefore, overland runoff component is relatively small. A ground water recharge of 18.1 in/yr is estimated by subtracting from precipitation the sum of discharge by evapotranspiration and streamflow. The ground water is discharged to the ocean, to marshes, and to streams and by pumpage for public water supply.

Public Water Systems Utilizing the Aquifer: The Wannacomet Water Company supplies ground water to the village around Nantucket Harbor. Pumpage over the 3 years (1978–81) has been about 185 Mgal/yr, supplying 2,300 services. The Siasconset water system supplies ground water to this small summer colony on the east shore of Nantucket Island. Pumpage was 36 Mgal in 1976. Annual pumpage has not changed much over the last 20 years because few new residences have been built in the service area.

This petition provides EPA with sufficient information to make a determination that the Nantucket Island Aquifer is the sole source of drinking water for the population of Nantucket Island.

Submitted by: David D. Worth (Wannacomet Water Company)

Dated: December 1, 1982.

On February 18, 1983, EPA Region I received the following petition from the New Shoreham, Rhode Island, Town Council.

Block Island is located 14 miles at sea off the coast of Rhode Island. The Island is 7 miles long and about 2½ miles wide, at its widest point. Our water supply comes from rain water. If one could imagine the Island being shaped like a saucer and ground water in the bottom, that is what the ground water area would look like. If the ground water is ever contaminated, it will stay that way, for we have no running streams or rivers with which to refresh or cleanse it.

The Town Council is concerned (see enclosed clipping) because the Island had no designation and because public drinking water quality has deteriorated to the point where it is no longer potable. The Water Company is privately owned and due to economic factors cannot afford to initiate needed improvements. A map showing Fresh Pond and Sands Pond is enclosed. These locations are of prime concern because they are areas nearby the water supply used by the Water Company.

Winter population of Block Island is approximately 550, but in summer it swells from 8,000 to 12,000 depending on weekdays or weekends. Block Island has a tourist based economy and needs safe, potable water for public consumption. Development of the area where the aquifer is located is a source of worry. If this could be designated as a sole source aquifer, it may give the Town leverage in stopping over-development of a critical area. At the present time, the Water Company serves approximately thirty to thirty-five families.

Attest: Edith Littlefield Blane, C.M.C., Town Clerk, New Shoreham, Rhode Island.

Dated: February 15, 1983.

The two petitions were accompanied by supporting technical data developed by the United States Geological Survey (Water Resources of Nantucket Island, by Eugene H. Walker, 1980, and Ground Water Resources of Block Island, Rhode Island, by Arnold J. Hansen, Jr. and George R. Schiner, 1964). The reports indicate that the aquifers underlying Nantucket and Block Island are sources of drinking water for permanent and summer residents; that they supply water to both public and private wells; and that they are composed of highly permeable, unconsolidated materials and are vulnerable to contamination through infiltration.

Section 1424(e) of the Safe Drinking Water Act states:

If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register**. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

EPA intends to decide whether to make the requested designations at the earliest time consistent with a complete review of the relevant data and information and a full opportunity for public participation. In this regard, the Agency is developing full factual records and solicits comments, data, and references to sources of information relevant to the determinations.

In particular, information is sought concerning: (a) The geographical boundaries, hydrogeology, and other characteristics of the aquifers and their recharge zones, (b) the area or areas dependent upon the aquifers for drinking water, (c) the significance of current or anticipated threats to public health that might result from contamination of the aquifers, (d) the prospects that such contamination will occur as the result of current activities or events that are anticipated, (e) the significance of current or anticipated projects receiving Federal financial assistance that may result in contamination of the aquifers and (f) any other relevant information.

For purposes of the requested designations, the Nantucket Aquifer and the Block Island Aquifer are considered to be single continuous aquifers with the Atlantic Ocean forming the lateral boundaries of each aquifer. Similarly, the recharge zone for each aquifer will be regarded as coterminus with the lateral boundaries of the aquifers unless, for a specific location, a technical analysis indicates otherwise.

Regulatory Flexibility Act Compliance: The Regulatory Flexibility Act (5 U.S.C. 601–612, Pub. L. 96–534) is intended to ensure that Federal agencies analyze the effect of regulatory requirements on small businesses, small governmental jurisdictions, and small organizations (collectively referred to as "small entities"). The law requires that with certain exceptions, each proposed or final regulation be accompanied by a regulatory flexibility analysis or by a certification that no such analysis is necessary because the regulation will not have a "significant economic impact on a substantial number of small entities." EPA will address the Regulatory Flexibility Act requirements when a final decision on the requested sole source aquifer designations is

published in the Federal Register. Comments related to impacts that a sole source aquifer designation may have on small entities are hereby solicited.

Dated: May 24, 1983.

Paul G. Keough,

Acting Regional Administrator.

[FR Doc. 83-15736 Filed 6-10-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Telecommunications Industry Advisory Group Expense Accounts Subcommittee; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of date and location changes of the Telecommunications Industry Advisory Group's (TIAG) Expense Accounts Subcommittee's June 29-30, 1983, meeting. The meeting was originally scheduled for June 29-30, 1983, at the offices of the Federal Communications Commission, 2025 M Street, NW., Washington, D.C. The new dates and locations are:

Wednesday, Thursday and Friday, June 29-30, and July 1, 1983

June 29—Southern Pacific Communications Company, 1340 Old Bayshore Highway, Executive Conference Room, Burlingame, California

June 30 and July 1—Hyatt Burlingame, 1333 Old Bayshore Highway, Marquee D Room, Burlingame, California.

The meeting will begin at 9:00 a.m. on June 29 and will be open to the public. There have been no changes to the agenda.

With prior approval of Subcommittee Chairman John Howes, oral statements, while not favored or encouraged, may be allowed at the meeting if time permits and if the Chairman determines that an oral presentation is conducive to the effective attainment of Subcommittee objectives. Anyone not a member of the Subcommittee and wishing to make an oral presentation should contact Mr. Howes (212/393-4029) at least five days prior to the meeting date.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-15697 Filed 6-10-83; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-684-DR]

Illinois; Notice of Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA-684-DR), dated June 6, 1983, and related determinations.

DATE: June 6, 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:

Notice

Notice is hereby given that, in a letter of June 6, 1983, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288) as follows:

I have determined that the damage in certain areas of the State of Illinois, resulting from severe storms, tornadoes and flooding beginning on March 28, 1983, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of Illinois.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of Section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Mangement Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Robert E. Connor of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster:

I do hereby determine the following areas of the State of Illinois to have been affected adversely by this declared major disaster:

Alexander, Calhoun, Franklin, Greene, Jackson, Jersey, Macoupin, Monroe, Pulaski, Randolph and White Counties for Public Assistance.

Chaokia Village in St. Clair County and Granite City in Madison County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 83-15742 Filed 6-10-83; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-683-DR]

Mississippi; 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 Mississippi (FEMA-683-DR), dated June 1, 1983, and related determinations.

DATED: June 6, 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: .

Notice

The notice of a major disaster for the State of Mississippi dated June 1, 1983, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 1, 1983:

Warren County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dave McLoughlin,

Deputy Associate Director, State and Local Porgrams and Support, Federal Emergency Management Agency.

[FR Doc. 83-15743 Filed 6-10-83; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

[Independent Ocean Freight Forwarder License No. 639]

Robert L. Keller; Order of Revocation

On May 31, 1983, Robert L. Keller, 8685 N.W. 53 Terrace, Augusta Bldg., Suite 100, Miami, FL 33166 surrendered his Independent Ocean Freight

Forwarder License No. 639 for revocation.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), § 10.01(e) dated November 12, 1981:

It is ordered, That Independent Ocean Freight Forwarder License No. 639 issued to Robert L. Keller be revoked effective May 31, 1983, without prejudice to reapplication for a license in the future.

It is further ordered, That a copy of this Order be published in the **Federal Register** and served upon Robert L. Keller.

Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 83-15752 Filed 6-10-83; 8:45 am]

BILLING CODE 6730-01-M

Independent Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916 [75 Stat. 522 and 46 U.S.C. 841(c)].

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Commission, Washington, D.C. 20573.

Kaj V. Jensen d.b.a. Jensen Shipping Company, 2251 Highland Avenue, Birmingham, AL 35205

G & J International Corporation, 5109 S.W. 5th Street, Miami, FL 33134

Officers:

Gladys Medina, President/Director

Felix Mendez, Vice President; Director

Ruth Malinowski, Secretary/Treasurer

Miyong Stefans, 141 West Newell Avenue, Rutherford, NJ 07070

Edwin A. Stebbins d.b.a. Edwin A. Stebbins & Company, 2301 14th Street, Suite 510, Gulfport, MS 39501

Dated: June 8, 1983.

By the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 83-15751 Filed 6-10-83; 8:45 am]

BILLING CODE 6730-01-M

Notice of Agreement Filed

The Federal Maritime Commission hereby gives notice that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of the agreement and the supporting statement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10325. Interested parties may submit protests or comments on the agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in section 522.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No. 10044-9

Title: Compania Peruana de Vapores/Lykes Pooling-Equal Access Agreement

Parties: Compania Peruana de Vapores Lykes Bros. Steamship Co., Inc.

Synopsis: Amendment No. 10044-9 will provide an extension of three (3) calendar months for the parties to continue negotiations disrupted by unforeseen turmoil in Peru.

Filing agent: Mr. Raymond J. Finnan, Lykes Bros. Steamship Co., Inc., 300 Poydras Street, New Orleans, Louisiana 70130.

Dated: June 8, 1983.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 83-15700 Filed 6-10-83; 8:45 a.m.]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Acquisition of Bank Shares by Bank Holding Companies

The companies listed in this notice have 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 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 Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *United Banks of Colorado, Inc.*, Denver, Colorado; to acquire 100 percent of the voting shares or assets of United Bank of Academy Place, N.A., Colorado Springs, Colorado. Comments on this application must be received not later than June 27, 1983.

B. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *Metro Bank Corp.*, Denver, Colorado; to acquire 99 percent of the voting shares or assets of Metro National Bank—Tech Center, Denver, Colorado. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Kansas City. Comments on this application must be received not later than July 7, 1983.

Board of Governors of the Federal Reserve System, June 7, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-15699 Filed 6-10-83; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Procurement Activities; Information Collection Requirement

AGENCY: Federal Trade Commission.

ACTION: Application to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) for clearance of the Commission's procurement activities.

SUMMARY: Under the code of Federal Regulations (Title 41—Public Contracts and Property Management), the FTC is required to solicit information from the private business community regarding proposed contractural requirements. The information is supplied in response to Invitations for Bids, Request for Proposals, and Requests for Quotations. The responses generally include pricing and technical approach plans and information regarding the offeror's previous experience and related business data addressing their ability to perform the proposed work. The Commission is seeking OMB clearance for the information collection requests required in the procurement of necessary goods and services.

DATES: Comments on this application must be submitted on or before July 13, 1983.

ADDRESS: Send comments to Ms. Nell Minow, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3001, Washington, D.C. 20503. Copies of this application may be obtained from: Public Reference Branch, Room 130, Federal Trade Commission, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Robert S. Walton, III, Office of Procurement and Contracts, Federal Trade Commission, Washington, D.C. 20580; (202) 376-7916.

Dated: June 6, 1983.

John H. Carley,

General Counsel.

[FR Doc. 83-15818 Filed 6-10-83; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administratioin

Drug Abuse Clinical, Behavioral and Psychosocial Research Review Committee; Reestablishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (5 U.S.C. Appendix I), the Alcohol, Drug Abuse, and Mental Health Administration announces approval and certification by the Secretary of Health and Human Services, with the concurrence of the General Services Administration Committee Management Secretariat, of the following advisory committee:

Designation: Drug Abuse Clinical, Behavioral and Psychosocial Research Review Committee restructured as the Drug Abuse Clinical and Behavioral Research Review Committee

Purpose: The Committee shall advise the Secretary and the Director, National Institute on Drug Abuse, on the scientific and technical merit of applications for research grants, cooperative agreements and applications for individual and institutional National Research Service Awards, and research scientist awards concerned with the clinical, behavioral, pharmacological, psychiatric, and psychological aspects of narcotic addiction and drug abuse carried out in controlled laboratory and clinical environments in animal as human subjects.

Expiration Date: Authority for the Drug Abuse Clinical and Behavioral Research Review Committee will expire December 31, 1984, unless the Secretary formally determines that continuance is in the public interest.

Dated: May 25, 1983.

William Mayer, M.D.,

Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 83-15701 Filed 6-10-83; 8:45 a.m.]

BILLING CODE 4160-20-M

Office of the Secretary

Social Security Benefit Increases; Cost-of-Living Increase in Benefits Under Titles II and XVI of the Social Security Act and Income Limitations for Beneficiaries Under the Supplemental Security Income Program

I hereby determine and announce a cost-of-living increase of 3.5 percent in benefits under titles II and XVI of the Social Security Act.

Under title II, old-age, survivors, and disability insurance benefits will increase by 3.5 percent beginning with the December 1983 benefits which are payable on January 3, 1984. This increase is based on the authority contained in section 215(i) of the Social Security Act (42 U.S.C. 415(i)), as amended by section 201 of Pub. L. 95-216 enacted December 20, 1977, and as further amended by sections 111 and 112 of Pub. L. 98-21 enacted April 20, 1983.

Under title XVI, supplemental security income payment levels will increase by 3.5 percent effective for payments made for the month of January 1984 but paid on December 30, 1983. This is based on the authority contained in section 1617 of the Social Security Act (42 U.S.C. 1382f), as amended by section 182 of Pub. L. 97-248 enacted September 3, 1982, and as further amended by section 401 of Pub. L. 98-21.

Title II Benefits

Title II benefits are payable under the Federal old-age, survivors, and disability insurance program. The kinds of benefits payable to individuals entitled under this program are old-age, disability, wife's, husband's, child's, widow's, widower's, mother's, father's, and parent's insurance benefits.

In accordance with section 215(i)(4) of the Social Security Act (the Act), the primary insurance amounts and the maximum family benefits shown in columns IV and V of the revised benefit table (table 1) set forth below were obtained by increasing by 3.5 percent the corresponding amounts established by: (1) The last cost-of-living increase; and (2) the extension of the benefit table made under section 215(i)(4) and published on November 10, 1982 at 47 FR 51006. The table applies only to those persons who attained age 62, became disabled or died before January 1979 and is deemed to appear in section 215(a) of the Act. Note that this table does not apply to those individuals who become eligible (i.e., reach age 62, or become disabled) or die after 1978; their benefits will generally be determined by a benefit formula provided by the Social Security Amendments of 1977 (Pub. L. 95-216). For persons who first become eligible for benefits or who die before age 62 in the period 1979-1983, the 3.5 percent increase will apply beginning with benefits for December 1983 and will be included in checks received in January 1984; but the 3.5 percent increase will not apply for persons who first become eligible for benefits or die after 1983.

Section 215(i)(2)(D) of the Act also requires that, when the Secretary determines a cost-of-living increase in Social Security benefits, the Secretary shall publish in the **Federal Register** a revision of the range of the primary insurance amounts and corresponding maximum family benefits based on the dollar amount and other provisions described in section 215(a)(1)(C)(i). These benefits are referred to as "special minimum benefits" and are payable to certain individuals with long periods of relatively low earnings. In accordance with section 215(a)(1)(C)(i), the attached table 2 shows the revised range of primary insurance amounts and corresponding maximum family benefit amounts after the 3.5 percent benefit increase.

Section 227 of the Act as amended by section 304 Pub. L. 98-21 provides flat-rate benefits to a worker who became age 72 before 1969 and was not insured under the usual requirements, and to his or her spouse or surviving spouse. Section 228 of the Act provides similar benefits at age 72 for certain uninsured persons. The current monthly benefit amount of $125.60 for an individual under sections 227 and 228 of the Act is increased by 3.5 percent to obtain the new amount of $129.90. The present montly benefit amount of $63 for a spouse under section 227 is increased by 3.5 percent to $65.20.

Title XVI Benefits

Section 1617 of the Act provides that whenever title II benefits are increased under section 215(i), the amounts in sections 1611(a)(1)(A), 1611(a)(2)(A), 1611(b)(1) and 1611(b)(2) of the Act and in section 211(a)(1)(A) of Pub. L. 93-66 shall be increased. The new amounts

are effective for months after the month in which the title II increase is effective. The percentage increase effective January 1984 is the same as the title II benefit increase and the annual payment amount is rounded, when not a multiple of $12, to the next lower multiple of $12.

In accordance with section 1617 of the Act, as amended by section 401 of Pub. L. 98–21, Federal supplemental security income (SSI) benefit rates for the aged, blind, and disabled are increased effective with July 1983 by $20 a month for an eligible individual, by $30 a month for an eligible individual with an eligible spouse, and by $10 a month for an essential person. The Federal SSI guarantees are further increased effective January 1984 by 3.5 percent. Therefore, the new yearly Federal SSI rates of $3,651.60 for an eligible individual, $5,476.80 for an eligible individual with an eligible spouse and $1,830.00 for an essential person, which are effective July 1983, are increased, effective with January 1984, to $3,768.00 $5,664.00, and $1,884.00 respectively after rounding. The monthly payment amount is determined by dividing the yearly guarantee by 12, and subtracting monthly countable income. In the case of an eligible individual with an eligible spouse, the amount payable is further divided equally between the two spouses.

Automatic Benefit Increase Determination

Section 111 of Pub. L. 98–21 provides that the first calendar quarter of 1983 shall be a cost-of-living computation quarter for all the purposes of the Social Security Act, as amended by Pub. L. 98–21. The Secretary is therefore required to increase benefits, effective with December 1983, for individuals entitled under section 227 or 228 of the Act, to increase primary insurance amounts of all other individuals entitled under title II of the Act, and to increase maximum benefits payable to a family. The benefit increase is the percentage increase in the Consumer Price Index for Urban Wage Earners and Clercial Workers for the first quarter of 1983 over the index for the first quarter of 1982, which is the most recent cost-of-living computation quarter. Section 1617 of the Act requires that SSI benefits be increased by the same percentage increase as title II benefits, whenever title II benefits are increased under section 215(i).

Section 215(i)(1) of the Act provides that the Consumer Price Index for a cost-of-living computation quarter shall be the arithmetical mean of this index for the 3 months in that quarter. The Department of Labor's revised Consumer Price Index for Urban Wage Earners and Clerical Workers for each month in the quarter ending March 31, 1982, was: for January 1982, 282.1; for February 1982, 282.9; and for March 1982, 282.5. The arithmetical mean for this calendar quarter is 282.5. The corresponding Consumer Price Index for each month in the quarter ending March 31, 1983, was for January 1983, 292.1; for February 1983, 292.3; and for March 1983, 293.0. The arithmetical mean for this calendar quarter is 292.5. Thus, since the Consumer Price Index for the calendar quarter ending March 31, 1983 exceeds that for the calendar quarter ending March 31, 1982 by 3.5 percent, a cost-of-living benefit increase of 3.5 percent is effective for benefits under title II of the Act beginning December 1983.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802–5, and 13.807 Social Security Programs)

Dated: June 6, 1983.

Margaret M. Heckler,

Secretary of Health and Human Services.

TABLE 1.—TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1983

I (primary insurance benefit under 1939 act, as modified)—if an individual's primary insurance benefit (as determined under subsec. (d)) is—		II (primary insurance amount effective for June 1982)—or his primary insurance amount (as determined under subsec. (c)) is—	III (average monthly wage)—or his average monthly wage (as determined under subsec. (b)) is—		IV (primary insurance amount)—the amount referred to in the preceding paragraphs of this subsection shall be—	V (maximum family benefits)—and the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of his wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than—		
	16.20	182.90		76	189.30	284.00
16.21	16.84	185.80	77	78	192.30	288.40
16.85	17.60	190.20	79	80	196.80	295.20
17.61	18.40	193.50	81	81	200.20	300.60
18.41	19.24	196.90	82	83	203.70	305.80
19.25	20.00	201.10	84	85	208.10	312.40
20.01	20.64	205.00	86	87	212.10	318.20
20.65	21.28	208.10	88	89	215.30	323.10
21.29	21.88	212.30	90	90	219.70	329.60
21.89	22.28	215.90	91	92	223.40	335.30
22.29	22.68	219.40	93	94	227.00	340.60
22.69	23.08	223.00	95	96	230.80	346.30
23.09	23.44	227.00	97	97	234.90	354.50
23.45	23.76	230.80	98	99	238.80	358.30
23.77	24.20	235.30	100	101	243.50	365.30
24.21	24.60	238.50	102	102	246.80	370.40
24.61	25.00	242.50	103	104	250.90	376.40
25.01	25.48	247.00	105	106	255.60	383.50
25.49	25.92	251.10	107	107	259.80	389.90
25.93	26.40	254.90	108	109	263.80	395.70
26.41	26.94	258.90	110	113	267.90	401.90
26.95	27.46	262.50	114	118	271.60	407.60
27.47	28.00	266.50	119	122	275.80	413.70
28.01	28.68	270.70	123	127	280.10	420.30
28.69	29.25	274.70	128	132	284.30	426.40
29.26	29.68	278.40	133	136	288.10	432.30
29.69	30.36	282.20	137	141	292.00	438.20
30.37	30.92	286.30	142	146	296.30	444.40
30.93	31.36	290.60	147	150	300.70	451.10
31.37	32.00	293.90	151	155	304.10	456.30
32.01	32.60	298.20	156	160	308.60	463.00
33.21	33.68	305.90	165	169	316.60	475.00
32.61	33.20	302.20	161	164	312.70	469.10
33.89	34.50	310.10	170	174	320.90	481.50
34.51	35.00	313.90	175	178	324.80	487.30
35.01	35.80	318.10	179	183	329.20	493.80
35.81	36.40	321.80	184	188	333.00	499.60
36.41	37.08	326.00	189	193	337.40	506.30
37.09	37.60	330.00	194	197	341.50	512.40
37.61	38.20	333.90	198	202	345.50	518.40
38.21	39.12	338.30	203	207	350.10	525.10
39.13	39.68	342.10	208	211	354.00	531.20
39.69	40.33	345.20	212	216	357.20	536.00
40.34	41.12	349.60	217	221	361.80	542.80
41.13	41.76	353.60	222	225	365.90	549.00
41.77	42.44	357.90	226	230	370.40	555.70
42.45	43.20	361.80	231	235	374.40	561.90
43.21	43.76	366.20	236	239	379.00	568.60
43.77	44.44	369.60	240	244	382.50	576.30
44.45	44.88	373.20	245	249	386.20	588.30
44.89	45.60	377.90	250	253	391.10	597.90
		381.50	254	258	394.80	609.50
		384.90	259	263	398.30	621.10
		389.70	264	267	403.30	630.50
		393.20	268	272	406.90	642.50
		397.50	273	277	411.40	654.00
		401.30	278	281	415.30	663.40
		405.30	282	286	419.40	675.30
		409.60	287	291	423.90	687.30
		412.90	292	295	427.30	696.50
		417.40	296	300	432.00	708.20

TABLE 1.—TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1983—Continued

I (primary insurance benefit under 1939 act, as modified)—if an individual's primary insurance benefit (as determined under subsec. (d)) is—		II (primary insurance amount effective for June 1982)—or his primary insurance amount (as determined under subsec. (c)) is—	III (average monthly wage)—or his average monthly wage (as determined under subsec. (b)) is—		IV (primary insurance amount)—the amount referred to in the preceding paragraphs of this subsection shall be—	V (maximum family benefits)—and the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of his wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than—		
		421.30	301	305	436.00	720.30
		424.90	306	309	439.70	729.60
		429.20	310	314	444.20	741.30
		432.70	315	319	447.80	753.30
		436.70	320	323	451.90	762.60
		440.80	324	328	456.20	774.30
		444.50	329	333	460.00	786.10
		449.20	334	337	464.90	795.90
		452.30	338	342	468.10	807.40
		456.60	343	347	472.50	819.30
		460.90	348	351	477.00	828.60
		646.30	352	356	480.50	840.40
		466.90	357	361	485.30	852.30
		472.50	362	365	489.00	861.70
		476.20	366	370	492.80	873.50
		480.50	371	375	497.30	885.00
		484.50	376	379	501.40	894.80
		488.60	380	384	505.70	906.70
		492.20	385	389	509.40	918.30
		496.00	390	393	513.30	927.60
		500.40	394	398	517.90	939.70
		504.20	399	403	521.80	951.40
		508.50	404	407	526.20	960.60
		511.90	408	412	529.80	972.60
		515.50	413	417	533.50	984.20
		519.10	418	421	537.20	993.70
		523.30	422	426	541.60	1,005.60
		526.90	427	431	545.30	1,017.30
		530.10	432	436	548.60	1,029.20
		534.50	437	440	553.20	1,033.80
		537.80	441	445	556.60	1,040.00
		541.50	446	450	560.40	1,045.70
		545.40	451	454	564.40	1,050.20
		549.10	455	459	568.30	1,056.10
		552.60	460	464	571.90	1,061.80
		556.10	465	468	575.50	1,066.90
		560.50	469	473	580.10	1,072.60
		563.60	474	478	583.30	1,078.60
		567.20	479	482	587.00	1,083.40
		571.20	483	487	591.10	1,089.50
		575.00	488	492	595.10	1,095.40
		578.40	493	496	598.60	1,100.10
		582.60	497	501	602.90	1,105.70
		585.90	502	506	606.40	1,111.50
		589.50	507	510	610.10	1,116.40
		593.20	511	515	613.90	1,122.30
		597.30	516	520	618.20	1,128.50
		600.70	521	524	621.70	1,132.90
		604.20	525	529	625.30	1,138.90
		608.06	530	534	629.90	1,144.70
		611.70	535	538	633.10	1,149.40
		615.60	539	534	637.10	1,155.40
		619.30	544	548	640.90	1,161.30
		623.20	549	553	645.00	1,167.20
		626.60	554	556	648.50	1,170.60
		629.60	557	560	651.60	1,175.40
		633.10	561	563	655.20	1,179.00
		636.30	564	567	658.50	1,183.80
		640.10	568	570	662.50	1,187.10
		643.10	571	574	665.60	1,191.80
		646.30	575	577	668.90	1,195.70
		649.30	578	581	672.00	1,200.00
		652.70	582	584	675.50	1,203.80
		655.50	585	588	678.40	1,208.50
		659.50	589	591	682.50	1,211.90
		662.70	592	595	685.80	1,216.70
		665.90	596	598	689.20	1,219.90
		669.20	599	602	692.60	1,225.10
		672.40	603	605	695.90	1,228.50
		675.60	606	609	699.20	1,232.90
		679.10	610	612	702.80	1,236.80
		682.30	613	616	706.10	1,241.40
		685.50	617	620	709.40	1,246.20
		688.90	621	623	713.00	1,249.60
		691.90	624	627	716.10	1,254.50
		695.40	628	630	719.70	1,258.90
		698.60	631	634	723.00	1,265.10
		702.00	635	637	726.50	1,271.00
		705.40	638	641	730.00	1,277.10
		708.50	642	644	733.20	1,282.80
		711.80	645	648	736.70	1,288.90
		714.90	649	652	739.90	1,294.60

TABLE 1.—TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1983—Continued

I (primary insurance benefit under 1939 act, as modified)—if an individual's primary insurance benefit (as determined under subsec. (d)) is—		II (primary insurance amount effective for June 1982)—or his primary insurance amount (as determined under subsec. (c)) is—	III (average monthly wage)—or his average monthly wage (as determined under subsec. (b)) is—		IV (primary insurance amount)—the amount referred to in the preceding paragraphs of this subsection shall be—	V (maximum family benefits)—and the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of his wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than—		
		717.10	653	656	742.10	1,298.40
		719.10	657	660	744.20	1,301.90
		721.60	661	665	746.80	1,306.80
		724.10	666	670	749.40	1,311.50
		726.80	671	675	752.20	1,315.80
		729.50	676	680	755.00	1,320.60
		731.90	681	685	757.50	1,325.30
		734.80	686	690	760.50	1,329.70
		737.10	691	695	762.80	1,334.90
		739.50	696	700	765.30	1,339.30
		742.30	701	705	768.20	1,344.00
		744.90	706	710	770.90	1,348.80
		747.70	711	715	773.80	1,353.20
		750.10	716	720	776.30	1,358.10
		752.70	721	725	779.00	1,362.70
		755.40	726	730	781.80	1,367.60
		757.90	731	735	784.40	1,372.30
		760.60	736	740	787.20	1,376.80
		763.00	741	745	789.70	1,381.80
		765.30	746	750	792.00	1,386.00
		767.90	751	755	794.70	1,390.40
		770.00	756	760	797.00	1,394.10
		772.30	761	765	799.30	1,398.10
		774.10	766	770	801.10	1,402.20
		776.50	771	775	803.60	1,405.80
		778.60	776	780	805.80	1,409.70
		780.90	781	785	808.20	1,413.70
		782.80	786	790	810.10	1,417.50
		784.90	791	795	812.30	1,421.40
		787.20	796	800	814.70	1,425.40
		789.40	801	805	817.00	1,429.40
		791.60	806	810	819.30	1,433.20
		793.70	811	815	821.40	1,437.30
		795.90	816	820	823.70	1,441.00
		798.00	821	825	825.90	1,445.10
		800.20	826	830	828.20	1,448.80
		802.30	831	835	830.30	1,453.00
		804.40	836	840	832.50	1,456.60
		806.60	841	845	834.80	1,460.90
		808.60	846	850	836.90	1,464.30
		811.00	851	855	839.30	1,468.50
		813.10	856	860	841.50	1,472.30
		815.20	861	865	843.70	1,476.30
		817.50	866	870	846.10	1,480.20
		819.60	871	875	848.20	1,484.10
		821.70	876	880	850.40	1,487.90
		823.90	881	885	852.70	1,492.00
		825.90	886	890	854.80	1,495.80
		828.10	891	895	857.00	1,500.10
		830.30	896	900	859.30	1,503.50
		832.60	901	905	861.70	1,507.80
		834.70	906	910	863.90	1,511.60
		836.90	911	915	866.10	1,515.50
		839.30	916	920	868.60	1,519.10
		841.10	921	925	870.50	1,523.40
		843.10	926	930	872.60	1,527.00
		845.30	931	935	874.80	1,531.00
		847.60	936	940	877.20	1,534.90
		849.70	941	945	879.40	1,538.90
		851.80	946	950	881.60	1,542.70
		854.20	951	955	884.00	1,546.80
		856.60	956	960	886.50	1,550.70
		858.70	961	965	888.70	1,554.30
		860.30	966	970	890.40	1,558.50
		862.60	971	975	892.70	1,562.50
		864.70	976	980	894.90	1,566.10
		867.20	981	985	897.50	1,570.00
		869.10	986	990	899.50	1,574.00
		871.30	991	995	901.70	1,578.00
		873.60	996	1,000	904.10	1,581.70
		875.60	1,001	1,005	906.20	1,585.10
		877.10	1,006	1,010	907.70	1,588.80
		879.30	1,011	1,015	910.00	1,592.10
		881.40	1,016	1,020	912.20	1,596.00
		883.20	1,021	1,025	914.10	1,599.20
		884.80	1,026	1,030	915.70	1,602.90
		887.10	1,031	1,035	918.10	1,606.40
		888.90	1,036	1,040	920.00	1,609.80
		890.90	1,041	1,045	922.00	1,613.60
		893.10	1,046	1,050	924.30	1,616.90
		894.60	1,051	1,055	925.90	1,620.00
		896.60	1,056	1,060	927.90	1,624.10

TABLE 1.—TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1983—Continued

I (primary insurance benefit under 1939 act, as modified)—if an individual's primary insurance benefit (as determined under subsec. (d)) is—		II (primary insurance amount effective for June 1982)—or his primary insurance amount (as determined under subsec. (c)) is—	III (average monthly wage)—or his average monthly wage (as determined under subsec. (b)) is—		IV (primary insurance amount)—the amount referred to in the preceding paragraphs of this subsection shall be—	V (maximum family benefits)—and the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of his wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than—		
		896.80	1,061	1,065	930.20	1,627.40
		900.70	1,066	1,070	932.20	1,631.00
		902.60	1,071	1,075	934.10	1,634.60
		904.50	1,076	1,080	936.10	1,638.00
		906.60	1,081	1,085	938.30	1,641.50
		908.30	1,086	1,090	940.00	1,645.00
		910.40	1,091	1,095	942.20	1,648.60
		912.50	1,096	1,100	944.40	1,652.30
		914.10	1,101	1,105	946.00	1,655.50
		916.20	1,106	1,110	948.20	1,659.20
		918.20	1,111	1,115	950.30	1,662.50
		920.00	1,116	1,120	952.20	1,666.30
		922.10	1,121	1,125	954.30	1,669.60
		923.90	1,126	1,130	956.20	1,673.20
		925.80	1,131	1,135	958.20	1,676.50
		927.90	1,136	1,140	960.30	1,680.40
		930.00	1,141	1,145	962.50	1,683.90
		931.90	1,146	1,150	964.50	1,687.30
		933.50	1,151	1,155	966.10	1,690.60
		935.70	1,156	1,160	968.40	1,694.20
		937.70	1,161	1,165	970.50	1,697.90
		939.60	1,166	1,170	972.40	1,701.50
		941.60	1,171	1,175	974.50	1,705.00
		943.40	1,176	1,180	976.40	1,708.50
		945.10	1,181	1,185	978.10	1,711.50
		947.00	1,186	1,190	980.10	1,714.70
		948.60	1,191	1,195	981.80	1,718.20
		950.50	1,196	1,200	983.70	1,721.50
		952.40	1,201	1,205	985.70	1,724.60
		954.20	1,206	1,210	987.50	1,728.10
		955.90	1,211	1,215	989.30	1,731.20
		957.70	1,216	1,220	991.20	1,734.40
		959.60	1,221	1,225	993.10	1,737.50
		961.50	1,226	1,230	995.10	1,741.00
		963.10	1,231	1,235	996.80	1,744.10
		964.80	1,236	1,240	998.50	1,747.50
		966.80	1,241	1,245	1,000.60	1,750.90
		968.60	1,246	1,250	1,002.50	1,754.10
		970.30	1,251	1,255	1,004.20	1,757.20
		972.10	1,256	1,260	1,006.10	1,760.60
		974.10	1,261	1,265	1,008.10	1,763.90
		975.80	1,266	1,270	1,009.90	1,767.10
		977.40	1,271	1,275	1,011.60	1,770.10
		979.30	1,276	1,280	1,013.50	1,773.60
		980.80	1,281	1,285	1,015.10	1,776.50
		982.70	1,286	1,290	1,017.00	1,779.60
		984.50	1,291	1,295	1,018.90	1,782.60
		986.00	1,296	1,300	1,020.50	1,785.70
		987.70	1,301	1,305	1,022.20	1,788.70
		989.30	1,306	1,310	1,023.90	1,791.80
		991.10	1,311	1,315	1,025.70	1,794.80
		993.00	1,316	1,320	1,027.70	1,798.10
		994.50	1,321	1,325	1,029.30	1,800.90
		996.30	1,326	1,330	1,031.10	1,804.30
		997.80	1,331	1,335	1,032.70	1,807.30
		999.60	1,336	1,340	1,034.50	1,810.40
		1,001.30	1,341	1,345	1,036.30	1,813.40
		1,002.90	1,346	1,350	1,038.00	1,816.40
		1,004.70	1,351	1,355	1,039.80	1,819.40
		1,006.30	1,356	1,360	1,041.50	1,822.50
		1,008.20	1,361	1,365	1,043.40	1,825.50
		1,009.60	1,366	1,370	1,044.90	1,828.60
		1,011.40	1,371	1,375	1,046.70	1,631.60
		1,013.20	1,376	1,380	1,048.60	1,834.70
		1,014.60	1,381	1,385	1,050.10	1,837.50
		1,016.30	1,386	1,390	1,051.80	1,840.50
		1,017.80	1,391	1,395	1,053.40	1,843.40
		1,019.30	1,396	1,400	1,054.90	1,846.30
		1,021.00	1,401	1,405	1,056.70	1,849.00
		1,022.50	1,406	1,410	1,058.20	1,852.00
		1,024.10	1,411	1,415	1,059.90	1,854.90
		1,025.70	1,416	1,420	1,061.50	1,857.90
		1,027.30	1,421	1,425	1,063.20	1,860.80
		1,028.80	1,426	1,430	1,064.80	1,863.70
		1,030.70	1,431	1,435	1,066.70	1,866.50
		1,032.30	1,436	1,440	1,068.40	1,869.40
		1,033.80	1,441	1,445	1,069.90	1,872.20
		1,035.50	1,446	1,450	1,071.70	1,875.40
		1,037.00	1,451	1,455	1,073.20	1,878.10
		1,038.50	1,456	1,460	1,074.80	1,881.10
		1,040.20	1,461	1,465	1,076.60	1,883.90
		1,041.70	1,466	1,470	1,078.10	1,886.80

TABLE 1.—TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1983—Continued

I (primary insurance benefit under 1939 act, as modified)—if an individual's primary insurance benefit (as determined under subsec. (d)) is—		II (primary insurance amount effective for June 1982)—or his primary insurance amount (as determined under subsec. (c)) is—	III (average monthly wage)—or his average monthly wage (as determined under subsec. (b)) is—		IV (primary insurance amount)—the amount referred to in the preceding paragraphs of this subsection shall be—	V (maximum family benefits)—and the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of his wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than—		
		1,043.30	1,471	1,475	1,079.80	1,889.70
		1,044.80	1,476	1,480	1,081.30	1,892.30
		1,046.50	1,481	1,485	1,083.10	1,895.20
		1,047.90	1,486	1,490	1,084.50	1,897.70
		1,049.50	1,491	1,495	1,086.20	1,900.60
		1,050.90	1,496	1,500	1,087.60	1,903.30
		1,052.40	1,501	1,505	1,089.20	1,906.20
		1,053.90	1,506	1,510	1,090.70	1,908.60
		1,055.40	1,511	1,515	1,092.30	1,911.40
		1,057.00	1,516	1,520	1,093.90	1,914.20
		1,058.40	1,521	1,525	1,095.40	1,917.10
		1,059.90	1,526	1,530	1,096.90	1,919.50
		1,061.40	1,531	1,535	1,098.50	1,922.30
		1,062.90	1,536	1,540	1,100.10	1,925.10
		1,064.40	1,541	1,545	1,101.60	1,927.80
		1,065.90	1,546	1,550	1,103.20	1,930.40
		1,067.50	1,551	1,555	1,104.80	1,933.20
		1,068.90	1,556	1,560	1,106.30	1,935.90
		1,070.40	1,561	1,565	1,107.80	1,938.70
		1,071.90	1,566	1,570	1,109.40	1,941.20
		1,073.40	1,571	1,575	1,110.90	1,944.10
		1,074.80	1,576	1,580	1,112.40	1,946.80
		1,076.40	1,581	1,585	1,114.00	1,949.50
		1,077.90	1,586	1,590	1,115.60	1,952.10
		1,079.40	1,591	1,595	1,117.10	1,955.00
		1,080.90	1,596	1,600	1,118.70	1,957.70
		1,082.40	1,601	1,605	1,120.20	1,960.40
		1,083.90	1,606	1,610	1,212.80	1,962.90
		1,085.30	1,611	1,615	1,123.20	1,965.80
		1,086.90	1,616	1,620	1,124.90	1,968.50
		1,088.40	1,621	1,625	1,126.40	1,971.30
		1,090.00	1,626	1,630	1,128.10	1,973.90
		1,091.50	1,631	1,635	1,129.70	1,976.80
		1,092.90	1,636	1,640	1,131.10	1,979.30
		1,094.50	1,641	1,645	1,132.60	1,982.20
		1,096.00	1,646	1,650	1,134.30	1,984.80
		1,097.50	1,651	1,655	1,135.90	1,987.60
		1,099.00	1,656	1,660	1,137.40	1,990.20
		1,100.40	1,661	1,665	1,138.90	1,992.90
		1,102.00	1,666	1,670	1,140.50	1,995.60
		1,103.40	1,671	1,675	1,142.00	1,998.40
		1,105.00	1,676	1,680	1,143.60	2,001.10
		1,106.50	1,681	1,685	1,145.20	2,003.90
		1,108.00	1,686	1,690	1,146.70	2,006.50
		1,109.50	1,691	1,695	1,148.30	2,009.30
		1,110.80	1,696	1,700	1,149.60	2,012.00
		1,112.40	1,701	1,705	1,151.30	2,014.80
		1,113.80	1,706	1,710	1,152.70	2,017.40
		1,115.30	1,711	1,715	1,154.30	2020.10
		1,116.80	1,716	1,720	1,155.80	2022.80
		1,118.30	1,721	1,725	1,157.40	2025.70
		1,119.90	1,726	1,730	1,159.00	2,028.20
		1,121.30	1,731	1,735	1,160.50	2031.00
		1,122.90	1,736	1,740	1,162.20	2033.60
		1,124.30	1,741	1,745	1,163.60	2036.50
		1,125.80	1,746	1,750	1,165.20	2039.10
		1,127.30	1,751	1,755	1,166.70	2041.90
		1,128.80	1,756	1,760	1,168.30	2044.80
		1,130.40	1,761	1,765	1,169.90	2,047.50
		1,131.80	1,766	1,770	1,171.40	2,049.90
		1,133.30	1,771	1,775	1,172.90	2,052.70
		1,134.80	1,776	1,780	1,174.50	2,055.50
		1,136.30	1,781	1,785	1,176.00	2,058.40
		1,137.90	1,786	1,790	1,177.70	2,060.70
		1,139.40	1,791	1,795	1,179.20	2,063.50
		1,140.90	1,796	1,800	1,180.80	2,066.30
		1,142.40	1,801	1,805	1,182.30	2,069.10
		1,143.90	1,806	1,810	1,183.90	2,071.70
		1,145.40	1,811	1,815	1,185.40	2,074.50
		1,146.90	1,816	1,820	1,187.00	2,077.20
		1,148.30	1,821	1,825	1,188.40	2,080.00
		1,149.90	1,826	1,830	1,190.10	2,082.50
		1,151.40	1,831	1,835	1,191.60	2,085.40
		1,152.90	1,836	1,840	1,193.20	2,088.20
		1,154.40	1,841	1,845	1,194.80	2,091.00
		1,155.60	1,846	1,850	1,196.20	2,093.30
		1,157.40	1,851	1,855	1,197.90	2,096.20
		1,158.80	1,856	1,860	1,199.30	2,098.90
		1,160.40	1,861	1,865	1,201.00	2,101.70
		1,161.90	1,866	1,870	1,202.50	2,104.20
		1,163.30	1,871	1,875	1,204.00	2,107.10
		1,164.90	1,876	1,880	1,205.60	2,109.80

TABLE 1.—TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1983—Continued

I (primary insurance benefit under 1939 act, as modified)—if an individual's primary insurance benefit (as determined under subsec. (d)) is—		II (primary insurance amount effective for June 1982)—or his primary insurance amount (as determined under subsec. (c)) is—	III (average monthly wage)—or his average monthly wage (as determined under subsec. (b)) is—		IV (primary insurance amount)—the amount referred to in the preceding paragraphs of this subsection shall be—	V (maximum family benefits)—and the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of his wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than—		
		1,166.30	1,881	1,885	1,207.10	2,112.60
		1,167.90	1,886	1,890	1,208.70	2,115.20
		1,169.30	1,891	1,895	1,210.20	2,118.10
		1,170.90	1,896	1,900	1,211.80	2,120.70
		1,172.40	1,901	1,905	1,213.40	2,123.50
		1,173.80	1,906	1,910	1,214.80	2,126.00
		1,175.30	1,911	1,915	1,216.40	2,128.60
		1,176.60	1,916	1,920	1,217.70	2,131.20
		1,177.90	1,921	1,925	1,219.10	2,133.60
		1,179.30	1,926	1,930	1,220.50	2,136.20
		1,180.70	1,931	1,935	1,222.00	2,138.50
		1,182.10	1,936	1,940	1,223.40	2,141.20
		1,183.40	1,941	1,945	1,224.80	2,143.50
		1,184.90	1,946	1,950	1,226.30	2,146.00
		1,186.20	1,951	1,955	1,227.70	2,148.40
		1,187.50	1,956	1,960	1,229.00	2,151.10
		1,188.90	1,961	1,965	1,230.50	2,153.40
		1,190.30	1,966	1,970	1,231.90	2,156.00
		1,191.70	1,971	1,975	1,233.40	2,158.20
		1,192.90	1,976	1,980	1,234.60	2,160.80
		1,194.50	1,981	1,985	1,236.30	2,163.30
		1,195.70	1,986	1,990	1,237.50	2,165.80
		1,197.00	1,991	1,995	1,238.80	2,168.20
		1,198.40	1,996	2,000	1,240.30	2,170.80
		1,199.80	2,001	2,005	1,241.70	2,173.10
		1,201.20	2,006	2,010	1,243.20	2,175.70
		1,202.50	2,011	2,015	1,244.50	2,178.10
		1,204.00	2,016	2,020	1,246.10	2,180.60
		1,205.30	2,021	2,025	1,247.40	2,183.10
		1,206.60	2,026	2,030	1,248.80	2,185.70
		1,208.00	2,031	2,035	1,250.20	2,187.90
		1,209.40	2,036	2,040	1,245.70	2,290.50
		1,210.80	2,041	2,045	1,253.10	2,192.80
		1,212.10	2,046	2,050	1,254.50	2,295.50
		1,213.60	2,051	2,055	1,256.00	2,197.90
		1,214.90	2,056	2,060	1,257.40	2,200.40
		1,216.10	2,061	2,065	1,258.60	2,202.70
		1,217.50	2,066	2,070	1,260.10	2,205.40
		1,218.90	2,071	2,075	1,261.50	2,207.70
		1,220.30	2,076	2,080	1,263.00	2,210.30
		1,221.60	2,081	2,085	1,264.30	2,212.70
		1,223.00	2,086	2,090	1,265.80	2,215.30
		1,224.40	2,091	2,095	1,267.20	2,217.60
		1,225.70	2,096	2,100	1,268.50	2,220.20
		1,227.10	2,101	2,105	1,270.00	2,222.50
		1,228.50	2,106	2,110	1,271.40	2,225.20
		1,229.90	2,111	2,115	1,272.90	2,227.50
		1,231.20	2,116	2,120	1,274.20	2,230.10
		1,232.60	2,121	2,125	1,275.70	2,232.40
		1,234.00	2,126	2,130	1,277.10	2,235.00
		1,235.40	2,131	2,135	1,278.60	2,237.40
		1,236.70	2,136	2,140	1,279.90	2,240.00
		1,237.90	2,141	2,145	1,281.20	2,242.30
		1,239.50	2,146	2,150	1,282.80	2,245.00
		1,240.70	2,151	2,155	1,284.10	2,247.30
		1,242.10	2,156	2,160	1,285.50	2,249.80
		1,243.40	2,161	2,165	1,286.90	2,252.10
		1,244.60	2,166	2,170	1,288.10	2,254.20
		1,245.80	2,171	2,175	1,289.40	2,256.50
		1,247.00	2,176	2,180	1,290.60	2,258.50
		1,248.20	2,181	2,185	1,291.80	2,260.80
		1,249.30	2,186	2,190	1,293.00	2,262.90
		1,250.50	2,191	2,195	1,294.20	2,265.00
		1,251.70	2,196	2,200	1,295.50	2,267.20
		1,252.90	2,201	2,205	1,296.70	2,269.40
		1,254.20	2,206	2,210	1,298.00	2,271.60
		1,255.30	2,211	2,215	1,299.20	2,273.70
		1,256.50	2,216	2,220	1,300.40	2,275.90
		1,257.70	2,221	2,225	1,301.70	2,278.10
		1,258.90	2,226	2,230	1,302.90	2,280.30
		1,260.10	2,231	2,235	1,304.20	2,282.40
		1,261.30	2,236	2,240	1,305.40	2,284.40
		1,262.40	2,241	2,245	1,306.50	2,286.70
		1,263.70	2,246	2,250	1,307.90	2,288.70
		1,264.90	2,251	2,255	1,309.10	2,291.00
		1,266.10	2,256	2,260	1,310.40	2,293.10
		1,267.30	2,261	2,265	1,311.60	2,295.40
		1,268.50	2,266	2,270	1,312.80	2,297.40
		1,269.60	2,271	2,275	1,314.00	2,299.60
		1,270.80	2,276	2,280	1,315.20	2,301.80
		1,272.00	2,281	2,285	1,316.50	2,304.00
		1,273.30	2,286	2,290	1,317.80	2,306.10

TABLE 1.—TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1983—Continued

I (primary insurance benefit under 1939 act, as modified)—if an individual's primary insurance benefit (as determined under subsec. (d)) is—		II (primary insurance amount effective for June 1982)—or his primary insurance amount (as determined under subsec. (c)) is—	III (average monthly wage)—or his average monthly wage (as determined under subsec. (b)) is—		IV (primary insurance amount)—the amount referred to in the preceding paragraphs of this subsection shall be—	V (maximum family benefits)—and the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of his wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than—		
		1,274.50	2,291	2,295	1,319.10	2,308.30
		1,275.60	2,296	2,300	1,320.20	2,310.50
		1,276.80	2,301	2,305	1,321.40	2,312.70
		1,278.00	2,306	2,310	1,322.70	2,314.80
		1,279.20	2,311	2,315	1,323.90	2,317.00
		1,280.40	2,316	2,320	1,325.20	2,319.10
		1,281.60	2,321	2,325	1,326.40	2,321.40
		1,2282.70	2,326	2,330	1,327.50	2,323.40
		1,284.00	2,331	2,335	1,328.90	2,325.70
		1,285.20	2,336	2,340	1,330.10	2,327.80
		1,286.40	2,341	2,345	1,331.40	2,330.00
		1,287.60	2,346	2,350	1,332.60	2,332.10
		1,288.80	2,351	2,355	1,333.90	2,334.40
		1,289.90	2,356	2,360	1,335.00	2,336.50
		1,291.10	2,361	2,365	1,336.20	2,338.60
		1,292.30	2,366	2,370	1,337.50	2,340.70
		1,293.60	2,371	2,375	1,338.80	2,342.90
		1,294.80	2,376	2,380	1,340.10	2,345.10
		1,295.90	2,381	2,385	1,341.20	2,347.20
		1,297.10	2,386	2,390	1,342.40	2,349.40
		1,298.30	2,391	2,395	1,343.70	2,351.60
		1,299.50	2,396	2,400	1,344.90	2,353.60
		1,300.70	2,401	2,405	1,346.20	2,355.90
		1,301.90	2,406	2,410	1,347.40	2,358.09
		1,303.10	2,411	2,415	1,348.70	2,360.30
		1,304.30	2,416	2,420	1,349.90	2,362.38
		1,305.50	2,421	2,425	1,351.10	2,364.60
		1,306.70	2,426	2,430	1,352.40	2,366.70
		1,307.90	2,431	2,435	1,353.60	2,369.00
		1,309.00	2,436	2,440	1,354.80	2,371.00
		1,310.20	2,441	2,445	1,356.00	2,373.20
		1,311.40	2,446	2,450	1,357.20	2,375.40
		1,312.60	2,451	2,455	1,358.50	2,377.60
		1,313.90	2,456	2,460	1,359.80	2,379.70
		1,315.10	2,461	2,465	1,361.10	2,381.90
		1,316.20	2,466	2,470	1,362.20	2,384.10
		1,317.40	2,471	2,475	1,363.50	2,386.20
		1,318.50	2,476	2,480	1,364.60	2,388.10
		1,319.60	2,481	2,485	1,365.70	2,390.20
		1,320.60	2,486	2,490	1,366.80	2,392.00
		1,321.70	2,491	2,495	1,367.90	2,394.00
		1,322.80	2,496	2,500	1,369.00	2,396.00
		1,323.90	2,501	2,505	1,370.20	2,397.90
		1,324.90	2,506	2,510	1,371.20	2,399.80
		1,326.00	2,511	2,515	1,372.40	2,401.80
		1,327.10	2,516	2,520	1,373.50	2,403.70
		1,328.20	2,521	2,525	1,374.60	2,405.70
		1,329.20	2,526	2,530	1,375.70	2,407.60
		1,330.30	2,531	2,535	1,376.80	2,409.60
		1,331.40	2,536	2,540	1,377.90	2,411.50
		1,332.50	2,541	2,545	1,379.10	2,413.50
		1,333.50	2,546	2,550	1,380.10	2,415.40
		1,334.60	2,551	2,555	1,381.30	2,417.40
		1,335.70	2,556	2,560	1,382.40	2,419.30
		1,336.80	2,561	2,565	1,383.50	2,421.20
		1,337.80	2,566	2,570	1,384.60	2,423.20
		1,338.90	2,571	2,575	1,385.70	2,425.20
		1,340.00	2,576	2,580	1,386.90	2,427.00
		1,341.10	2,581	2,585	1,388.00	2,429.10
		1,342.10	2,586	2,590	1,389.00	2,431.00
		1,343.20	2,591	2,595	1,390.20	2,432.90
		1,344.30	2,596	2,600	1,391.30	2,434.80
		1,345.30	2,601	2,605	1,392.30	2,436.90
		1,346.40	2,606	2,610	1,393.50	2,438.70
		1,347.50	2,611	2,615	1,394.60	2,440.70
		1,348.60	2,616	2,620	1,395.80	2,442.70
		1,349.60	2,621	2,625	1,396.80	2,444.60
		1,350.70	2,626	2,630	1,397.90	2,446.50
		1,351.80	2,631	2,635	1,399.10	2,448.60
		1,352.90	2,636	2,640	1,400.20	2,450.40
		1,353.90	2,641	2,645	1,401.20	2,452.40
		1,355.00	2,646	2,650	1,402.40	2,454.20
		1,356.10	2,651	2,655	1,403.50	2,456.30
		1,357.20	2,656	2,660	1,404.70	2,458.20
		1,358.20	2,661	2,665	1,405.70	2,460.10
		1,359.30	2,666	2,670	1,406.80	2,462.10
		1,360.40	2,671	2,675	1,408.00	2,464.10
		1,361.50	2,676	2,680	1,409.10	2,465.90
		1,362.50	2,681	2,685	1,410.10	2,468.00
		1,363.60	2,686	2,690	1,411.30	2,469.90
		1,364.70	2,691	2,695	1,412.40	2,471.80
		1,365.80	2,696	2,700	1,413.60	2,473.70

TABLE 1.—TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS BEGINNING DECEMBER 1983—Continued

I (primary insurance benefit under 1939 act, as modified)—if an individual's primary insurance benefit (as determined under subsec. (d)) is—		II (primary insurance amount effective for June 1982)—or his primary insurance amount (as determined under subsec. (c)) is—	III (average monthly wage)—or his average monthly wage (as determined under subsec. (b)) is—		IV (primary insurance amount)—the amount referred to in the preceding paragraphs of this subsection shall be—	V (maximum family benefits)—and the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of his wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than—		
		1,366.80	2,701	2,705	1,414.60	2,475.60
		1,367.80	2,706	2,710	1,415.60	2,477.30
		1,368.80	2,711	2,715	1,416.70	2,479.20
		1,369.80	2,716	2,720	1,417.70	2,480.90
		1,370.80	2,721	2,725	1,418.70	2,482.80
		1,371.80	2,726	2,730	1,419.80	2,484.60
		1,372.80	2,731	2,735	1,420.80	2,486.40
		1,373.80	2,736	2,740	1,421.80	2,488.20
		1,374.80	2,741	2,745	1,422.90	2,490.10
		1,375.80	2,746	2,750	1,423.90	2,491.80
		1,376.80	2,751	2,755	1,424.90	2,493.70
		1,377.80	2,756	2,760	1,426.00	2,495.40
		1,378.80	2,761	2,765	1,427.00	2,497.30
		1,379.80	2,766	2,770	1,428.00	2,499.10
		1,380.80	2,771	2,775	1,429.10	2,500.90
		1,381.80	2,776	2,780	1,430.10	2,502.70
		1,382.80	2,781	2,785	1,431.10	2,504.50
		1,383.80	2,786	2,790	1,432.20	2,506.30
		1,384.80	2,791	2,795	1,433.20	2,508.20
		1,385.80	2,796	2,800	1,434.30	2,509.90
		1,386.80	2,801	2,805	1,435.30	2,511.80
		1,387.80	2,806	2,810	1,436.30	2,513.60
		1,388.80	2,811	2,815	1,437.40	2,515.40
		1,389.80	2,816	2,820	1,438.40	2,517.20
		1,390.80	2,821	2,825	1,439.40	2,519.00
		1,391.80	2,826	2,830	1,440.50	2,520.80
		1,392.80	2,831	2,835	1,441.50	2,522.70
		1,393.80	2,836	2,840	1,442.50	2,524.40
		1,394.80	2,841	2,845	1,443.60	2,526.30
		1,395.80	2,846	2,850	1,444.60	2,528.00
		1,396.80	2,851	2,855	1,445.60	2,529.90
		1,397.80	2,856	2,860	1,446.70	2,531.70
		1,398.80	2,861	2,865	1,454.70	2,533.50
		1,399.80	2,866	2,870	1,448.70	2,535.30
		1,400.80	2,871	2,875	1,449.80	2,537.10
		1,401.80	2,876	2,880	1,450.80	2,538.90
		1,402.80	2,881	2,885	1,451.80	2,540.80
		1,403.80	2,886	2,890	1,452.90	2,542.50
		1,404.80	2,891	2,895	1,453.90	2,544.40
		1,405.80	2,896	2,900	1,455.00	2,546.20
		1,406.80	2,901	2,905	1,456.00	2,548.00
		1,407.80	2,906	2,910	1,457.00	2,549.80
		1,408.80	2,911	2,915	1,458.10	2,551.60
		1,409.80	2,916	2,920	1,459.10	2,553.40
		1,410.80	2,921	2,925	1,460.10	2,555.30
		1,411.80	2,926	2,930	1,461.20	2,557.00
		1,412.80	2,931	2,935	1,462.20	2,558.90
		1,413.80	2,936	2,940	1,463.20	2,560.60
		1,414.80	2,941	2,945	1,464.30	2,562.50
		1,415.80	2,946	2,950	1,465.30	2,564.30
		1,416.80	2,951	2,955	1,466.30	2,566.10
		1,417.80	2,956	2,960	1,467.40	2,567.90
		1,418.80	2,961	2,961	1,468.40	2,569.80
		1,419.80	2,966	2,970	1,469.40	2,571.50
		1,420.80	2,971	2,975	1,470.50	2,573.40

TABLE 2.—SPECIAL MINIMUM PRIMARY INSURANCE AMOUNTS AND MAXIMUM FAMILY BENEFITS

Special minumum primary insurance amount payable for June 1982	No. of years required minimum earnings level	Special minumum primary insurance amount payable for Dec. 1982	Special maximum family benefit payable for Dec. 1983
17.50	11	18.10	27.20
34.60	12	35.80	53.80
51.90	13	53.70	80.70
69.10	14	71.50	107.40
86.30	15	89.30	134.10
103.70	16	107.30	161.00
120.90	17	125.10	187.60
138.20	18	143.00	214.50
155.40	19	160.80	241.20
172.50	20	178.50	267.90
189.90	21	196.50	294.90

TABLE 2.—SPECIAL MINIMUM PRIMARY INSURANCE AMOUNTS AND MAXIMUM FAMILY BENEFITS—Continued

Special minumum primary insurance amount payable for June 1982	No. of years required minimum earnings level	Special minumum primary insurance amount payable for Dec. 1982	Special maximum family benefit payable for Dec. 1983
207.10	22	214.30	321.60
224.50	23	232.30	348.60
241.70	24	250.10	375.20
258.90	25	267.90	401.90
276.30	26	285.90	429.00
293.50	27	303.70	455.70
310.70	28	321.50	482.40
327.90	29	339.30	509.10
345.10	30	357.10	535.80

[FR Doc. 83-15740 Filed 6-10-83; 8:45 am]
BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-83-1254]

Order of Suspension

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

ACTION: Order of suspension.

SUMMARY: The Department is issuing an Order of Suspension to each developer listed on the attached Appendix. These developers have failed to either file amendments to their registrations or file documentation establishing that no such amendments were necessary. The Order of Suspension is issued pursuant to the Interstate Land Sales Full Disclosure Act.

EFFECTIVE DATE: June 13, 1983.

FOR FURTHER INFORMATION CONTACT: Christopher Peterson, Director, Land Sales Enforcement Division, Department of Housing and Urban Development, Room 4116, Washington, D.C. 20410. Telephone: (202) 755-5989. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Office of Interstate Land Sales Registration gives public notice of its attempt to serve upon certain persons at their last known address a notice requiring revisions to their Statement of Record. Although service of notice by certified mail was attempted in accordance with 24 CFR 1720.170, it was not possible. Consequently, on October 4, 1982, the Department of Housing and Urban Development, pursuant to 44 U.S.C. 1508, published in the **Federal Register** a Notice of Proceedings and Opportunity for Hearing (47 FR 43793) effecting constructive notice on certain Developer respondents. The Notice informed these persons of omissions of material provisions required by law in their Statement of Record and Property Report, and advised them on their rights to request a hearing within 15 days of publication of the Notice. More than 15 days have now elapsed since the publication of the Notice and the persons listed in the attached Appendix and referred to in the Order of Suspension as "Developer" have not requested a hearing; therefore, the Department is required to issue this Order of Suspension.

Order of Suspension

1. The Developer being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. L. 90–448) (15 U.S.C. 1701 et seq.) and the Rules and Regulations lawfully promulgated thereto pursuant to 15 U.S.C. 1718, has filed its Statement of Record and Property Report covering its subdivision which became effective pursuant to 24 CFR 1710.21 of the Interstate Land Sales Regulations. Said Statement is still in effect.

2. Pursuant to lawful delegation, as authorized by 15 U.S.C. 1715, the authority and responsibility for administration of the Interstate Land Sales Full Disclosure Act has been vested in the Secretary or designee.

3. Pursuant to 15 U.S.C. 1706(d) and 24 CFR 1710.45(b)(1), if it appears to the Secretary or designee at any time that a Statement of Record, which is in effect, includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statement therein not misleading, the Secretary or designee may, after notice, and after an opportunity for a hearing requested within 15 days of receipt of such notice, issue an order suspending the Statement of Record.

4. A Notice of Proceedings and Opportunity for Hearing was published in the **Federal Register** on October 4, 1982 informing the Developer of information obtained by the Office of Interstate Land Sales Registration stating an untrue statement of a material fact or an omission of a material fact required to be stated therein or necessary to make the statements therein not misleading in the Developer's Statement of Record. The Developer was constructively notified of its right to request a hearing and that if it failed to request a hearing it would be deemed in default and proceedings would be determined against it, the allegations of which would be determined to be true. The Developer has failed to answer or to request a hearing pursuant to 24 CFR 1720.220 within 15 days of publication of said Notice of Proceedings and Opportunity for Hearing.

Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1710.45(b)(1) the Statement of Record filed by the Developer covering its subdivision is hereby suspended, effective as of June 13, 1983. This Order of Suspension shall remain in full force and effect until the Statement of Record has been properly amended as required by the Interstate Land Sales Full Disclosure Act and the implementing Regulations.

Pursuant to 44 U.S.C. 1508, service of this Order upon the Respondent is constructively noticed by publication of this Order in the **Federal Register.**

Unless otherwise exempt any sales or offers to sell made by the Developer or its agents, successors, or assigns while this Order of Suspension is in effect will be in violation of the provisions of said Act.

Dated: June 6, 1983.

Philip Abrams,

Assistant Secretary for Housing—Federal Housing Commissioner.

Appendix

The captioned matters in this Appendix are listed alphabetically by subdivision in each State. The list contains the name of the subdivision, developer, representative and title, OILSR number and Land Sales Enforcement Division Docket number.

Arkansas

Beaver Shores, Beaver Shores, Inc., W. C. Case, President; OILSR No. 0–00164–03–6, 80–36–IS.

Hidden Valley Estates, Great American Development Corporation, Wilbur Ramsey; OILSR No. 0–00280–03–8, 81–149–IS.

California

Rancho Santo Rosa, Tract #2104–1, Rancho Santa Rosa, C. A. Brown, President; OILSR No. 0–02096–04–426, 81–114–IS.

Florida

Brevard Properties, Brevard Investment Properties, Frederick T. Hyman, President; OILSR No. 0–00149–09–43, 81–258–IS.

Central Lake Estates, Atgar Development Corporation, Guy B. Bailey, President; OILSR No. 0–01420–09–403, 82–38–IS.

South Lake Wales, Atgar Development Corporation, Jack Klear, President; OILSR No. 0–01824–09–539, 81–241–IS.

Georgia

Montego Point, Montego Point, Inc., Daniel P. Matheny, President; OILSR No. 0–04167–10–98, 82–227–IS.

Indiana

Normandy Farms, Normandy Farms Development Company, John Kleinops, General Partner; OILSR No. 0–04797–15–12, 81–280–IS.

Massachusetts

Greenwood, Greenwood Development Corporation, Anthony P. Gargiulo, President; OILSR No. 0–03702–25–41, 81–287–IS.

Mississippi

Hidden Valley Lakes, Hidden Valley Lake, Inc., Jack Lacy, President; OILSR No. 0–01787–28–28–34(A), 81–252–IS.

Marsh Island Parts 1–4, et al, Marsh Land, Inc., Templeton Fowlkes, President; OILSR No. 0–05462–28–101, 81–170–IS.

Retreat Village Subdivision, Biloxi River Retreat Village, Inc., James C. Smith, Nicholas Elliot, and Robert Zang, Directors; OILSR No. 0–04092–28–79, 81–54–IS.

North Carolina

Carolina Forest, Russwood, Inc., Silas H. Russell, President; OILSR No. 0–01941–38–65, 82–54–IS.

Woodrun Russwood, Inc., Silas H. Russell, President; OILSR No. 0–01940–38–64, & (A), 82–17–IS.

Oklahoma

Kirkwood Forest Island, Phase I, Greater Grand Lake Development Company, Inc., Frank M. Kirk, President; OILSR No. 0–04000–42–70, 81–232–IS.

Texas

Point Aquarius, The Bonanza Corporation, Jerry Thames, President; OILSR No. 0–02311–49–143(A), 81–205–IS.

Goose Island Lake Estates, South Crest Development Corporation, Joseph J. Gonlin, Jr., President; OILSR No. 0–04580–49–733, 81–275–IS.

Virginia

Bull Run Mountain, Bull Run Development Corporation, Coleman C. Gore, Secretary-Treasurer; OILSR No. 0–00231–54–10, 81–305–IS.

Royal View Estates, Loma Sales Company, Inc., Joseph S. Magnone, President; OILSR No. 0–01203–54–46, 81–314–IS.

Washington

Lake Trask Timber Trails, Timber Trails, Inc., Raymond Kittleson, President; OILSR No. 0–04586–56–154.

British Honduras

Perto Maya, Metroplex Properties, Inc., John Love, President and Director; OILSR No. 0–03618–60–122, 82–49–IS.

Canada

Parish of St. Hubert, City and District Development, Nick Brindalos, President; OILSR No. 0–02708–60–93, 81–285–IS.

Mexico

Sabalo Country Club, Sabalo Country Club, S.A., Juan Morquenchjo Cazares, President; OILSR No. 0–03932–60–133, 82–51–IS.

West Indies

Saline Point Golf Hill Ridge Becune, St. Lucia Limited—Cap Estates, Harry E. Nichols, Attorney; OILSR No. 0–03419–60–110, 81–177–IS.

Philippines

B. F. Homes, F. B. Homes, Inc., Tomas B. Aquirre, Chairman of the Board; OILSR No. 0–05190–60–150, 82–33–IS.

[FR Doc. 83–15729 Filed 6–10–83; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. D-83-701]

Redelegation of Authority; Director of the Office of Manufactured Housing and Construction Standards

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

ACTION: Redelegation of authority.

SUMMARY: The Assistant Secretary for Housing—Federal Housing Commissioner is issuing an updated redelegation of authority setting forth the responsibilities of the Director of the Office of Manufactured Housing and Construction Standards for certain housing programs and functions. This revision reflects recent changes in program responsibility within the Office of the Assistant Secretary for Housing—Federal Housing Commissioner.

EFFECTIVE DATE: June 13, 1983.

FOR FURTHER INFORMATION CONTACT: Mildred E. Moore, Management Analysis and Services Division, Office of Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410; (202) 755-8694. This is not a toll-free telephone number.

SUPPLEMENTARY INFORMATION: This redelegation of authority to the Director and Deputy Director, Office of Manufactured Housing and Construction Standards, supersedes all previously published redelegations of authority for HUD Headquarters relating to the programs specified below. This new redelegation revises and updates the previous redelegation to reflect organizational changes and the resulting realignment of program responsibility. Accordingly, The Assistant Secretary for Housing—Federal Housing Commissioner hereby redelegates authority as follows:

Redelegation of Authority.

Section A. Director and Deputy Director, Office of Manufactured Housing and Construction Standards. To the Director and the Deputy Director, Office of Manufactured Housing and Construction Standards, there is redelegated the following authority:

1. To prescribe standards for the design, construction, and alteration of structures for programs prescribed under the National Housing Act (12 U.S.C. 1701-1749aaa-5) and the United States Housing Act of 1937 (42 U.S.C. 1437-1437n);

2. To approve or disapprove variances from the design or construction standards for all programs under the National Housing Act (12 U.S.C. 1701-1749aaa-5) and the United States Housing Act of 1937 (42 U.S.C. 1437-1437n);

3. To exercise the authority of the Assistant Secretary for Housing—Federal Housing Commissioner with respect to all matters and requirements of the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157) (the "Act") applicable to the Department of Housing and Urban Development, including the following authority:

(a) To prescribe standards for the design, construction, and alteration of buildings which are residential structures subject to the Act to insure, whenever possible, that physically handicapped persons will have ready access to, and use of, such buildings;

(b) To modify or waive any such standard, on a case-by-case basis, upon a determination that such modification or waiver is clearly necessary;

4. To evaluate and determine the technical suitability of housing products and materials under Section 521 of the National Housing Act (12 U.S.C. 1735e) and to issue engineering and technical bulletins governing the acceptability of housing system components, materials, and methods of construction; and

5. To exercise the authority of the Assistant Secretary for Housing—Federal Housing Commissioner with respect to all matters and requirements of the National Manufactured Housing Construction and Safety Standards Act of 1974, Title VI, Housing and Community Development Act of 1974 (42 U.S.C. 5401-5426).

Section B. Authority Excepted. There is excepted from the authority redelegated under Section A the power to issue rules and regulations.

Section C. Exercise of Redelegated Authority. Redelegations of Authority made under Section A shall not be construed to modify or otherwise affect the outstanding authorities redelegated to the Regional and Field Offices.

(Sec. 7(d), Department of Housing and Urban Development Act; 42 U.S.C. 3535(d); Secretary's authority to redelegate published at 36 FR 5005 (1971); 36 FR 5007 (1971); 41 FR 32635 (1976); 41 FR 24755 (1976); 46 FR 57348 (1981))

Dated: June 6, 1983.

Philip Abrams,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 83-15793 Filed 6-10-83; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Classification of Danby Lake Known Sodium Leasing Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Classification.

SUMMARY: Notice is hereby given that the bureau of Land Management has classified the area listing in Supplementary Information as subject to the competitive sodium leasing provisions of the Mineral Leasing Act of 1920 (30 U.S.C. 262), as amended.

EFFECTIVE DATE: May 20, 1983.

FOR FURTHER INFORMATION CONTACT: California Desert District, 1695 Spruce Street, Riverside, California 92507, telephone (714) 351-6386.

SUPPLEMENTARY INFORMATION: The Danby Lake Known Sodium Leasing Area is located on Danby Lake, San Bernardino County, California, and comprizes approximately 27,992 acres.

Pursuant to authority contained in the Act of March 3, 1879 (43 U.S.C. 31), as supplemented by Reorganization Plan No. 3 of 1950 (43 U.S.C. 1451, note); 220 DM 2; Secretarial Order Nos. 3071 and 3087; and, BLM Instruction Memorandum 83-384, the following Federal lands have been classified as subject to the competitive sodium leasing provisions of the Mineral Leasing Act of February 25, 1920 (30 U.S.C. 262), as amended:

T. 2 N., R. 17 E., SBM.
Sec. 7, NE¼SE¼, S½SE¼;
Sec. 8, S½NE¼, SE¼NW¼, S½;
Sec. 9, SW¼NW¼, S½;
Sec. 10, S½SW¼, SW¼SE¼;
Sec. 13, SW¼NE¼, S½NW¼, S½;
Secs. 14-to 17, inclusive;
Sec. 18, NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 19, N½NE¼, SE¼NE¼;
Sec. 20, NE¼, NW¼, N½SW¼, SE¼SW¼, SE¼;
Secs. 21 to 26, inclusive;
Sec. 27, NE¼, NW¼, N½SW¼, SE¼;
Sec. 28, NE¼, NW¼, NE¼SW¼, N½SE¼;
Sec. 29, N½NE¼, SE¼NE¼;
Sec. 35, N½NE¼, SE¼NE¼, NE¼NW¼;
Sec. 36, NE¼, NW¼, N½SW¼, N½SE¼, SE¼SE¼.
T. 2 N., R. 18 E., SBM.
Sec. 17, S½SW¼, SW¼SE¼;
Sec. 18, S½;
Secs. 19 and 20, inclusive;
Sec. 21, SW¼NE¼, NW¼NW¼, S½NW¼, S½;
Sec. 27, NW¼, SW¼, NW¼SE¼, S½ SE¼;
Secs. 28 to 34, inclusive;
Sec. 35, S½NE¼, NW¼, SW¼, SE¼;
Sec. 36, SW¼NW¼, SW¼.
T. 1 N., R. 18 E., SBM.
Sec. 1, NW¼, SW¼, W½SE¼;

Secs. 2 to 4, inclusive;
Sec. 5, NE¼, N½ NW¼, N½SE¼, SE¼SE¼;
Sec. 6, N½NE¼, N½NW¼;
Sec. 9, NE¼, N½NW¼, SE¼NW¼, E½SW¼, SE¼;
Secs. 10 and 11 inclusive;
Sec. 12, NW¼NE¼, S½NE¼, NW¼, SW¼, SE¼;
Secs. 13 to 15, inclusive;
Sec. 16, NE¼, E½SE¼;
Sec. 22, NE¼, NW¼NW¼, E½NW¼, N½SE¼, SE¼SE¼;
Sec. 23, all;
Sec. 24, W½NE¼, NW¼, SW¼, NE¼SE¼;
Sec. 25, NW¼NW¼;
Sec. 26, N½NE, N½NW¼.

A map of the known leasing area is available from the above address.

Dated: June 6, 1983.

Gerald E. Hillier,

District Manager.

[FR Doc. 83-15815 Filed 6-10-83; 8:45 am]

BILLING CODE 4310-84-M

[U-47393]

Iron County, Utah; Issuance of Land Sale Conveyance Document

The United States issued a land sale conveyance document to Clark Livestock Corporation on June 2, 1983, Patent No. 43-83-0008 for the following described lands pursuant to Section 203 of the Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713):

Salt Lake Meridian, Utah

T. 37 S., R. 10 W.,
Sec. 13, lots 1, 2, 3, W½NW¼, N½SW¼;
Sec. 14, SE¼NE¼.

Containing 325.43 acres.

The lands conveyed were an isolated tract of public lands and were sold through modified competitive bidding. The public interest was well served through completion of this sale.

The value of the Federal land was appraised at $49,100.00 and payment was received for this amount to the United States.

Dated: June 6, 1983.

Darrell C. Barnes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 83-15812 Filed 6-10-83; 8:45 am]

BILLING CODE 4310-84-M

[U-43470]

Exchange of Public and Private Lands in Tooele County, Utah; Issuance of Land Exchange Conveyance Document

The United States issued an exchange conveyance document to the Estate of Chloe M. Parrish, Patent Number 43-83-0007, on June 1, 1983, for the following described lands pursuant to Section 206 of the Act of October 21, 1976 (90 Stat. 2756, 43 U.S.C 1716):

Salt Lake Meridian, Utah

T.10 S., R. 19 W.,
Sec. 9, S½SW¼, W½NW¼SW¼SE¼, SW¼SW¼SE¼

Containing 95 acres.

In exchange for these lands, the United States acquired the following described lands from Estate of Chloe M. Parrish:

Salt Lake Meridian, Utah

T. 10 S., R. 19 W.,
Sec. 12, S½SW¼, SW¼SE¼,

Containing 120 acres.

The purpose of this exchange was to acquire the non-Federal lands to help the management of an approved habitat management plan, the public interest was well served through completion of this exchange.

The values of Federal public land and the non-Federal land in the exchange were appraised at ($11,875.00) and ($12,000.00) respectively. The patentee waived the minimal difference in the values.

Dated: June 6, 1983.

Darrell C. Barnes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 83-15814 Filed 6-10-83; 8:45 am]

BILLING CODE 4310-84-M

[ES 32297, ES 32298, ES 32299, ES 32300]

Minnesota; Realty Action; Modified Competitive Sale of Public Land in Minnesota

The following described land has been examined and identified as suitable for disposal by sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, U.S.C. 1713), at no less than the fair market value:

Parcel	County	Legal description	Acreage	Designated bidder
A	Crow Wing	Fourth Principal Meridian; T. 44 N., R. 31 W., Sec. 27, Lot 3.	4.04	Wayne and Shirley Thiesse.
B	Kittson	Fifth Principal Meridian; T. 162 N., R. 50 W., Sec. 32, Lot 6.	13.90	John C. and Mae Youngren.
C	Lake of the Woods.	Fifth Principal Meridian; T. 162 N., R. 32 W., Sec.31, NE¼, SE¼SW¼, and W½SE¼.	280.00	Frederick W. and Betty E. Frohreich.
D	Wright	Fifth Principal Meridian; T. 119 N., R. 24 W., Sec. 6, Lot 1.	.43	Joseph W. and Louise K. Jung.

The land will be sold by modified competitive bidding. The individuals named above, who own land adjoining the sale parcels, will have a preference right to purchase the subject parcels. Those parcels not sold pursuant to this notice shall remain available for sale for two(2) years from the date of this notice.

The land has not been used for, and is not required for any Federal purpose. The location and physical characteristics of the parcels make it difficult and uneconomical to manage as public land. Disposal would best serve the public interest. The sale is consistent with the Bureau's planning system for the land involved. The land will not be offered for sale until at least 60 days after the date of this notice.

The patents for the land, when issued, will be subject to the condition that all minerals will be reserved to the United States in accordance with Section 209(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719. Additional restrictions which constitute covenants running with individual parcels are as follows:

1. Parcel A will be subject to agricultural lease ES-30491 which expires on May 31, 1984.

2. Parcel B, all of which is situated within a floodplain, is subject to any use restriction as set forth in Federal, State, county, or local laws or regulations relating to floodplain and wetland development. This is pursuant to the authority in Section 3(d) of Executive Order 11988 of May 24, 1977; Section 4 of Executive Order 11990 of May 24, 1977 and Section 208 of the Federal Land Policy and Management Act of 1976.

3. Parcel C will be subject to agricultural lease ES-22415 which expires on May 31, 1984.

Bidding Information and Instructions:

Bidding Qualifications: The Federal Land Policy and Management Act of 1976 requires that bidders must be citizens of the United States, 18 years of age or over, or, in the case of a corporation, be subject to the laws of any State of the United States. Bids may be made by a principal (the one desiring to purchase the land) or his qualified agent.

Bid Standards: No bid will be accepted for less than the appraised fair market value. Bids must be for all of the land in a specified parcel.

Method of Bidding: Bids may be made by mail and will be considered only if received at the Milwaukee District Office, Bureau of land Management, 310 W.Wisconsin Avenue, Suite 220, Milwaukee, Wisconsin 53203. Such bids will be considered only if received at the above address after 7:30 a.m., August 19, 1983, and Prior to 4:00 p.m. on September 15, 1983.

Bids will be opened at 1:00 p.m., September 16, 1983, in the Milwaukee District Office. Bids sent by mail must be in sealed envelopes accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Bureau of Land Management for not less than one-fifth of the amount of the bid. All sealed envelopes must be marked in the lower left-hand corner, "Sealed Bid, Parcel——, Public Land Sale, Minnesota". If the designated high bid consists of two or more valid sealed bids of the same dollar amount, the determination of the highest bid will be by a drawing. The drawing, if required, shall be held immediately following the opening of the bids. The highest qualifying sealed bid shall then be announced.

Modified Bidding: for a period of 30 days following the date of the sale, the designated bidders will have a preference right to purchase the land by meeting the highest bid. If they meet the highest bid, the land will be sold to them and the other low bids will be returned. Refusal or failure by the designated bidder to meet the highest bid shall constitute a loss of preference rights, and the land will be sold to the highest bidder.

Final Details: Once a high bid is accepted, the successful bidder shall submit the balance of the full bid price within thirty (30) days after receipt of the Decision in accepting the highest bid. Failure to submit the required balance will result in cancellation of the sale and the bid deposit will be forfeit. If the high bid is accepted, the full price is paid, and the required citizenship or corporate qualifications are met, title to the lands will be conveyed by a patent. Publication of this Notice will segregate the lands from all appropriations under the public land laws, but not the mineral leasing law. This segregation will terminate upon the issuance of a patent, or 2 years from the date of this Notice, or upon publication of a notice of termination.

Further Information: Detailed information concerning the sale can be obtained by contacting Mr. Richard D. Harms, Duluth Field Office, 125 Federal Building, Duluth, Minnesota 55082, (218) 727-6692. For a period of 45 days from the date of this Notice, interested parties may submit comments to the Eastern States Director, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304. Any adverse comments will be evaluated by the Eastern States Director, who may vacate or modify this Notice of Realty Action and issue a final determiation. In the absence of any action by the Eastern States Director, ths realty action will become the final determination of the Department of the Interior.

G. Curtis Jones, Jr.,

Eastern States Director.

[FR Doc. 83-15720 Filed 6-10-83; 8:45 am]

BILLING CODE 4310-84-M

Office of the Secretary

Federal-State Task Force on the Hawaiian Homes Commission Act; Meeting

AGENCY: Federal-State Task Force on the Hawaiian Homes Commission Act.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Federal-State Task Force on the Hawaiian Homes Commission Act. This meeting will be open to the public. Attendance by the public will be limited to space available. Only written comments will be accepted from the public at this meeting, to insure the maximum amount of time for Task Force discussion.

DATES: June 27, 28, and 29, 1983, at 9:00 a.m.

ADDRESS: Conference Room 1, Third Floor, Old Federal Building, 335 Merchant Street, Honolulu, Hawaii, 96813.

FOR FURTHER INFORMATION CONTACT: Executive Assistant to the Secretary Stephen P. Shipley, U.S. Department of the Interior, 18th and C Street, NW., Washington, D.C. 20240; (202) 343-7351.

Dated: June 2, 1983.

Stephen P. Shipley,

Executive Assistant to the Secretary of the Interior.

[FR Doc. 83-15682 Filed 6-10-83; 8:45 am]

BILLING CODE 4310-10-M

INTERSTATE COMMERCE COMMISSION

[OP1-FC-211]

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.

By the Commission, Review Board. Members Parker, Krock, and Williams.

Agatha L. Mergenovich,

Secretary.

Please direct status inquires to Team 1, (202) 275-7992.

MC-FC-81148. By decision of June 7, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, the Review Board approved the transfer to MONROE CONTRACTORS EQUIPMENT, INC., Fishers, NY, of Permit No. MC-134653 (Sub-Nos. 2 and 7), issued January 31, 1978, and January 18, 1980, respectively, and Certificate No. MC-134653 (Sub-No. 8), issued December 10, 1981, to M.C.E. TRANSPORTATION CO., INC. Fishers, NY, authorizing the transportation of (1) pre-cast, pre-stressed structural concrete

products, from Pittsfield, MA, to points in NY, NJ, RI, CT, MA, VT, NH, and ME, under continuing contract(s) with Unistress Corporation, of Pittsfield, MA, (2)(A) pre-cast and pre-stressed concrete products (except commodities in bulk), from Schenectady, NY, to points in CT, ME, MA, NJ, NY, NH, RI, and VT, and (b) pre-cast and pre-stressed concrete products, and materials, equipment and supplies used in manufacture of pre-cast pre-stressed concrete products (except commodities in bulk and except cement), between points in CT, MA, NH, NJ, NY, PA, RI, and VT, restricted against the transportation of shipments from points in Lancaster County, PA, to points in NJ and NY, under continuing contract(s) in (2) (a) and (b) with Schenectady Concrete Products Company, Inc., or Spancrete Northeast, Inc., and (3) those commodities which because of their size or weight require the use of special handling or equipment, metal products, and building and contractors' materials, between points in NY. Transferee is a carrier holding authority under No. MC-144710. A directly-related gateway elimination application has been filed in No. MC-144710 (Sub-No. 11). Representative: S. Michael Richards, 919 Ridge Rd., P.O. Box 225, Webster, NY 14580 (716) 671-1021.

[FR Doc. 83-15711 Filed 6-10-83; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. OP4-347]

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Decided June 6, 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 November 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 $10.00.

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, 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 Members Carleton, Fortier and Krock.

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 inquires to Team 4, (202) 275-7669.

MC 29957 (Sub-102), filed May 25, 1983. Applicant: TRAILWAYS SOUTHERN LINES, INC., 327 Gayoso St., Memphis, TN 38103. Representative: George W. Hanthorn, 1500 Jackson St., Dallas, TX 75207 (214) 655-7937. Applicant seeks authority in intrastate commerce to conduct service at all intermediate points on route in MC-29957 (Sub-No. 98), between Memphis, TN and St. Louis, MO, over Interstate Hwy 55.

[FR Doc. 83-15712 Filed 6-10-83; 8:45]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

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 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 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.

Please direct status inquiries to Team Four at (202) 275-7669.

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."

Volume No. OP4-346

Decided: June 6, 1983.

By the Commission, Review Board Members Carleton, Fortier, and Krock.

MC 167977, filed May 12, 1983. Applicant: PAUL H. COMTOIS d.b.a. BLUE FOX ENTERPRISES, 711-B Scott St., Charleston, SC 29405. Representative: Paul H. Comtois (Same address as applicant) (803) 744-6242. Transporting (1) for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), (2) *used household goods* for the account of the United States Government incidental to the performance of a pack-and-crate service on behalf of the Department of Defense, between points in the U.S. and (3) As a *broker of general commodities* (except household goods), between points in the U.S.

MC 168256, filed May 24, 1983. Applicant: HARRY E. MORRISON, d.b.a. MORRISON'S BUS SERVICE, 3631 Johns St., Norfolk, VA 23513. Representative: Frank L. Willard, Suite #1001, First & Merchants National Bank Bldg., Norfolk, VA 23510 (804) 627-0070. Transporting *passengers*, in special and charter operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 168257, filed May 23, 1983. Applicant: PATHMARK TRANSPORTATION MARKETING CO., 755 Crossover Lane, Suite 155, Memphis, TN 38117. Representative: Edward G. Grogan, 2000 First Tennessee Bldg., Memphis, TN 38103 (901) 526-2000. As a broker of *general commodities* (except household goods), between points in the U.S.

For the following, please direct status calls to Team 1 at 202-275-7992.

Volume No. OP1-208

Decided: June 6, 1983.

By the Commission, Review Board Members Dowell, Joyce, and Fortier.

MC 125591 (Sub-1), filed May 23, 1983. Applicant: LAWSON TRANSPORTATION CORPORATION, P.O. Box 258, Warsaw, VA 22572. Representative: John M. Ballenger, 123 S. Royal St., Alexandria, VA 22314 (703) 683-6304. 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 142601, (Sub-11), filed May 25, 1983. Applicant: CECO TRANSPORT, INC., 1400 Kensington Rd., Oak Brook, IL 60521. Representative: Daniel C. Sullivan, 180 N. Michigan Ave., Suite 1700 Chicago, IL 60601 (312) 263-1600. As a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 168221, filed May 23, 1983. Applicant: COM-TRANS SALES, INC., 401 East Second Ave., Derry, PA 15627. Representative: John A. Pillar, 1500 Bank Tower 307 Fourth Ave. Pittsburgh, PA 1522 (412) 471-3300. As a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 168241, filed May 23, 1983. Applicant: UNITED BROKERS OF AMERICA, INC., P.O. Box 100022, 33 Cleveland Ave., Nashville, TN 37210. Representative: Stephen L. Edwards, 806 Nashville City Bank Bldg., 315 Union St., Nashville, TN 37201 (615) 255-9911. As a *broker* of *general commodities* (except household goods), between points in the U.S.

MC 168300, filed May 25, 1983. Applicant: MILWAUKEE COMMERCIAL STORAGE, INC., 4001 West Green Tree Rd. Milwaukee, WI 53209. Representative: Richard A. Westley 4506 Regent St., Suite 100, P.O. Box 5086, Madison, WI 53705-0086 (608) 238-3119. As a *broker* of *general commodities* (except household goods), between points in the U.S.

[FR Doc. 83-15717 Filed 6-10-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

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 interstate 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 reqirements 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.

Please direct status inquiries to Team 4 at 202-275-7669.

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 interstate commerce over regular routes as a motor common carrier of passengers are duly noted.

Volume No. OP4-345

Decided: June 6, 1983.

By the Commission, Review Board Members Carleton, Fortier, and Krock.

MC 153547 (Sub-2), filed May 31, 1983. Applicant: RONALD C. MENCHHOFER, 208 Spruce St., Sandusky, OH 44870. Representative: Lewis S. Witherspoon, 2455 N. Star Rd., Columbus, OH 43221 (614) 486-0448. Transporting *food and related products*, between points in the U.S. (except AK and HI).

MC 154907 (Sub-10), filed May 24, 1983. Applicant: THE BUCK COMPANY, 631 W. Cherry St., Wayland, MI 49348. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503 (616) 459-6121. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between points in MI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 160707 (Sub-1), filed May 25, 1983. Applicant: MORTENSON TRUCKING, INC., 3299 Midway Ave., Grants Pass, OR 97526. Representative: C. Jack Pearce, 1000 Connecticut Ave., NW, Suite 1200, Washington, DC 20036 (202) 785-0048. Transporting (1) *iron and steel articles*, (2) *metal products*, (3) *plastic products*, (4) *building materials*, and (5) *commodities* which by reason of size or weight require the use of special equipment, between points in the U.S. (except AK and HI).

MC 163706 (Sub-2), filed May 27, 1983. Applicant: BIG WHEEL TRANSPORT, INC., 711 S. Jackson St., Hawkinsville, GA 31036. Representative: F. Lee Champion, III, P.O. Box 2525, Columbus, GA 31902 (404) 324-4477. Transporting *food and related products*, between points in the U.S. (except AK and HI).

MC 164887, filed May 24, 1983. Applicant: COUNTRY LINES, INC., P.O. Box 1717, Salisbury, MD 21801. Representative: James H. Sweeney, P.O. Box 9023, Lester, PA 19113 (215) 365-5141. Transporting *petroleum and petroleum products, and chemicals and related products*, between points in CT, DE, MA, MD, NJ, NY, NC, PA, RI, VA, WV and DC.

MC 167766, filed May 12, 1983. Applicant: BOB'S AUTO SERVICE, INC., 4300 S. Federal Blvd., Englewood, CO 80110. Representative: James A. Beckwith Suite 228, 770 Grant St., Denver, CO 80203 (303) 861-4273. Transporting *transportation equipment*, between those points in the U.S. in and west of MN, IA, MO, AR, and LA.

MC 168147, filed May 25, 1983. Applicant: H & H TRUCKING CORP., North Elm, St., P.O. Box 38, Brunsville, IA 51008. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501 (402) 475-6761. Transporting *wrecked, disabled, and replacement vehicles*, between points in the U.S. (except AK and HI).

MC 168176, filed May 18, 1983. Applicant: ADAMS EXPRESS, INC., 990 Edgewood Ave., NE, Atlanta, GA 30307. Representative: Charles L. Redel, 212 Exchange Bldg., La Crosse, WI 54601 (608) 784-5860. 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 Borden Chemical Company, a Divison of Borden, Inc., of Griffin, GA, and United Freight, Inc., of Morrow, GA, and its affiliates, Peninsular Warehouse Company, of Jacksonville, FL, Transtop Corporation, of Boston, MA, Southern States Warehouse Company, of Memphis, TN, and Nationwide Freight Company, of Los Angeles, CA.

For the following, please direct status calls to Team 1 at 202-275-7992.

Volume No. OP1-209

Decided: June 6, 1983.

By the Commission, Review Board Members Dowell, Joyce, and Fortier.

MC 159970 (Sub-1), filed May 23, 1983. Applicant: CONTRACT SERVICE, INC., 10051 Beech, P.O. Box 784, Fontana, CA 92335. Representative: Charlie Sanders

(same address as applicant) (714) 350–8681. Transporting *chemicals and related products,* between points in the U.S. (except AK and HI), under continuing contract(s) with S. L. Abbot Co., of Los Angeles, CA.

MC 168171, filed May 23, 1983. Applicant: TOM JOY & SON, INC., R.R. 3, Pound, WI 54161. Representative: Michael S. Varda, 121 South Pinckney St., Madison, WI 53703, (608) 225–8891. Transporting *general commodities* (except classes A and B explosives, and household goods), between points in WI, and the Upper Peninsula of MI, on the one hand, and, on the other, points in the U.S. (except AK and HI.)

MC 168220, filed May 23, 1983. Applicant: DUANE D. STONER, d.b.a. STONER TRUCKING COMPANY, P.O. Box 97, Holland, IA 50642. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309, (515) 244–2329. Transporting *food and related products,* between points in Tama County, IA, on the one hand, and, on the other, points in the U.S. (except AK and HI.)

MC 168250, filed May 23, 1983. Applicant: LOYOLA TRUCKING, INC., P.O. Box 45563, Los Angeles, CA 90045. Representative: Milton W. Flack, 8484 Wilshire Blvd., #840, Beverly Hills, CA 90211 (213) 655–3573. Transporting *general commodities* (except classes A and B explosives, household good, and commodities in bulk) between points in AZ, CA, CO, ID, MT, NV, NM, OR, TX, UT, WA, and WY.

Volume No. OP1–212

Decided: June 7, 1983.

By the Commission, Review Board Members Parker, Krock, and Williams.

MC 144710 (Sub-11), filed January 4, 1983. Applicant: MONROE CONTRACTORS EQUIPMENT, INC., 749 Phillips Rd., P.O. Box F, Fishers, NY 14453. Representative: S. Michael Richards, P.O. Box 225, Webster, NY 14580, (716) 671–1021. Transporting *those commodities which because of their size or weight require the use of special handling or equipment, metal products, and building and contractors' materials,* between points in NY, on the one hand, and, on the other, points in the U.S. (except AK and HI.)

Note.—The purpose of this application is to eliminate the gateway of those points in NY on and west of Interstate Hwy 81. This application is directly-related to MC–FC–81148, publish in the same **Federal Register** issue.

[FR Doc. 83–15718 Filed 6–10–83; 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 been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equiment it will make available for use in connection with the service contemplataed by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

The following applications were filed in Region 3. Send protests to: ICC, Regional Authority Center, Room 300, 1776 Peachtree Street, NE., Atlanta, GA 30309.

MC 2934 (Sub-3–78TA), filed June 1,. 1983. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 North Michigan Road, Carmel, Indiana 46032. Representative: W. G. Lowry (same as above). *Contract:* Irregular; *Household goods,* between points in the U.S. (excluding AK and HI), under continuing contracts with Federal Mogul Corporation, 26555 Northwestern Highway, Southfield, MI 48034. Supporting shipper: Federal Mogul Corporation, 26555 Northwestern Highway, Southfield, MI 48034.

MC 160931 (Sub-3–2TA), filed June 1, 1983. Applicant: MID-CON TRUCKING CO., INC., 174 Distribution Drive, Birmingham, AL 35209. Representative: John R. Frawley, Jr., 7960 Crestwood Blvd., Rooms 7–8, Irondale, AL 35210. *General Commodities (except used household goods, classes A and B explosives, commodities in bulk and hazaradous wastes);* between Birmingham, AL on the one hand, and, on the other, all points in the U.S. (except AK and HI). Supporting shipper(s): Rainaire Products of Alabama, Inc., 161–167 Distribution Drive, Birmingham, AL 35209; Plastic Clad Corporation, 120 Cleage Drive, Birmingham, AL 35215; Alloy & Metal Processors, Inc., 623 33rd Place North, Birmingham, AL 35222.

MC 2900 (Sub-3–45TA), filed June 1, 1983. Applicant: RYDER TRUCK LINES, INC., P.O. Box 2408, Jacksonville, FL 32203. Representative: S. E. Somers, Jr. (same address as above). *Contract carrier:* irregular: *General Commodities (except Classes A and B explosives, household goods as defined by the Commission, and commodities in bulk)* between points in the U.S. (except AK and HI) under continuing contract(s) with Federated Department Stores, Inc. Supporting shipper: Federated Department Stores, Inc., 7 W. 7th St., Cincinnati, OH 45202.

MC 2900 (Sub-3–44TA), filed June 1, 1983. Applicant: RYDER TRUCK LINES, INC., P.O. Box 2408, Jacksonville, FL 32203, Representative: S. E. Somers, Jr. (same address as above). *Contract carrier:* irregular: *General Commodities (except Classes A and B explosives, household goods as defined by the Commission, and commodities in bulk)* between Oakland, CA, Mapleton, IL and Janesville, WI, on the one hand, and, on the other, all points in the U.S. (except AK & HI) under continuing contract(s) with Sherex Chemical Company, Inc. Supporting shipper: Sherex Chemical Company, Inc., 5777 Frantz Road, Dublin, OH 43017.

MC 163510 (Sub-3–2TA), filed May 27, 1983. Applicant: CHARLIE C. MOORE, JR., d.b.a. MOORE'S EXPRESS, 4043A West Blvd. (P.O. Box 19088), Charlotte, N.C. 28219. Representative: Stanley J. Fridlund (same address as applicant). Contract, irregular. *General Commodities (except Clases A and B explosives, commodities in bulk)* having a prior to subsequent move by ocean, between the facilities of Schenkers International Forwarders and Sea Cargo International located at Charlotte, NC and points in NC, GA, SC, TN and VA. Supportng shipper: Schenkers

International Forwarders and/or Sea Cargo International, 4043A West Blvd., Charlotte, NC., 28219.

MC 167967 (Sub-3–1TA), filed May 26, 1983. Applicant: J.R. WOODRUFF TRUCKING COMPANY, 1275 N. Oak Street, P.O. Box 983, Thomasville, GA 31792. Representative: Jack C. Sanford, 507 N. Broad Street, P.O. Box 2385, Thomasville, GA 31792.*Contract Carrier,* Irregular routes, *boxes or crates, wood and wire combined. Wire, iron or steel.* Between Thomasville, GA on the one hand, and, on the other hand, all points in FL, under continuing contract or contracts with Georgia Crate and Basket Co., Inc. Supporting shipper: Georgia Crate and Basket Co., Inc., P.O. Box 46, Thomasville, GA 31799.

MC 151380 (Sub-3–3TA), filed May 19, 1983. Applicant: RICLYN ENTERPRISES, INC., Room 201, Amman Building, Port Everglades, Ft. Lauderdale, FL 33335. Representative: Gerard J. Donovan, 4791 S. W. 82nd Ave., Davie, FL 33328. *General Commodities (Except Classes A and B Explosives, Household Goods, Commodities in Bulk, Hazardous Materials),* Between Tampa, FL and points and places in the States of AL, DE, GA, KY, NJ, NY, NC, OH, PA, SC, TN, VA and WI. Supporting shipper: Strachan Shipping Company, P.O. Box 2441, Tampa, FL 33601.

MC 146377 (Sub-3–4TA), filed June 3, 1983. Applicant: EDWARD MCGILL, INC., 3 General Avenue, Rome, GA 30161. Representative: J. L. Fant, P.O. Box 577, Jonesboro, GA 30237. *Contract carrier:* irregular: *Meat and Packinghouse Products and Machinery,* between points in GA, on the one hand, and points in the United States (except AK and HI), on the other, under continuing contract with Cagle's, Inc., Atlanta, GA. Supporting shipper: Cagle's, Inc., 1155 Hammond Drive, NE., Atlanta, Georgia 30328.

MC 146944 (Sub-3–3TA), filed June 1, 1983. Applicant: LYKES TRANSPORT, INC., P.O. Box 97, Dade City, FL 33525. Representative: Ansley Watson, Jr., P.O. Box 1531, Tampa, FL 33601. *Foodstuffs,* between Birmingham, AL, on the one hand and, on the other, points in AL, FL, GA, SC and TN, restricted to shipments having a prior or subsequent movement by rail in interstate commerce. Supporting shipper: Burlington Northern Railroad Company, 176 E. Fifth St., St. Paul, MN 55101

Note.—Applicant intends to interline with other carriers at Birmingham, AL.

MC 2900 (Sub-3–46TA), filed June 1, 1983. Applicant: RYDER TRUCK LINES, INC., P.O. Box 2408, Jacksonville, FL 32203. Representative: S. E. Somers, Jr. (Same address as above). *Contract carrier:* irregular: *General Commodities (except Classes A and B explosives, household goods as defined by the Commission, and commodities in bulk)* between points in the U.S. (except AK and HI) under continuing contract(s) with General Mills, Inc. and its wholly owned subsidiaries. Supporting shippr: General Mills, Inc., 9200 Wayzata Blvd., P.O. Box 1113, Minneapolis, MN 55440.

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 168325 (Sub-6–1TA), filed May 27, 1983. Applicant: ROBERT BARCAGLIA TRUCKING, INC., 7036 Hwy. 99 South, Suite 'A', Redding, CA 96001. Representative: Judy Burgess (same as applicant). *Cement,* in bulk and bags, from Fernley, NV to points in CA, for 270 days. Supporting shippers: Nevada Cement Co., P.O. Box 892, Fernley, NV, 89408; Basalite, Division of Pacific Coast Bldg. Products, Inc., Redding, CA 96001; Mathews Ready Mix, P.O. Box 386, Gridley, CA 95948.

MC 158096 (Sub-6–2TA), filed May 27, 1983. Applicant: BEST WAYS EXXPRESS, INC. 129 176th St. S., Suite 6, Spanaway, WA 98387. Representative: Kenneth R. Mitchell, 2320A Milwaukee Way, Tacoma, WA 98421. *General commodities (except Classes A and B explosives, commodities in bulk and used household goods),* (1) from McClellan AFB, CA to Hill AFB, UT; Tinker AFB, OK; Kelly AFB, TX and Robins AFB, GA and (2) from Hill AFB, UT to Tinker AFB, UT; Kelly AFB, TX and Robins AFB, GA, for 270 days. An underlying ETA seeks 120 day authority. Supporting shipper: Department of Defense, US Army, 5611 Columbia Pike, Falls Church, VA 22041.

MC 263 (Sub-6–10TA), filed June 3, 1983. Applicant: GARRETT FREIGHTLINES, INC., P.O.B. 4048, POCATELLO, ID 83201. Representative: Bruce A. Bullock, One Woodward Ave., 26th Fl., Detroit, MI 48226. *Contract;* irregular, *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), for 270 days. Supporting shipper: General Mills, Inc. and its subsidiaries, 9200 Wayzata Blvd., P.O.B. 1113, Minneapolis, MN 55440.

MC 41098 (Sub-6–31TA), filed June 2, 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, *general commodities (except commodities in bulk and classes A and B explosives)* between points in the U.S. (except AK and HI) for 270 days. Supporting shippers: ITOFCA, Inc. and ITOFCA Consolidators, Inc., 1011 W. 31st Street, Downers Grove, IL 60515.

MC 41098 (Sub-6–32TA), filed June 2, 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, *general commodities* (except Class A and B explosives and commodities in bulk) between points in the U.S. (except AK and HI), for 270 days. Supporting shipper: Minnesota Mining and Manufacturing Co., 3M Center, St. Paul, MN 55144.

MC 146740 (Sub-6–2TA), filed June 1, 1983. Applicant: EARL HANSON TRUCKING CO., 2517 Riverbend Road, Mount Vernon, WA. Representative: James D. Hanson (same as applicant). *Machinery and Related Equipment, Building Materials, Metal Products, Lumber and Wood Products, Those Commodities which Because of their Size or Weight require the Use of Special Handling or Equipment,* from ports of entry on the International Boundary line between the U.S. and British Columbia located in WA, ID, MT and between points in WA, ID, MT, OR, CA, for 270 days. An ETA seeks 120 days authority. Supporting shippers: Marine Construction and Dredging, Inc., 1579 Dunbar Rd., Mount Vernon, WA 98273; Mount Vernon Terminal Railway, Inc., P.O.B. 216, Clear Lake, WA 98235.

MC 168341 (Sub-6–1TA), filed May 27, 1983. Applicant: HYDRA TRUCKING, INC., 30120 Ahern St., Union City, CA 94587. Representative: Lawrence V. Smart, Jr., 419 N W 23rd Ave., Portland, OR 97210. *Contract carrier:* irregular routes: *Paper and paper articles and materials and supplies* used in the manufacture and distribution of paper and paper articles, between points in OR, WA and CA for 270 days. Supporting shipper: Superior Transportation Systems, Inc., 25200 S W Parkway, Wilsonville, OR 97070.

MC 153602 (Sub-6–1TA), filed May 31, 1983. Applicant: Bert Hartwell, d.b.a., J & T TRUCK SERVICE, P.O. Box 892, Monteview, ID 83435. Representative: Bert Hartwell (same as applicant). *Fertilizer* from Salt Lake City, UT to Monteview, ID for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Wood Farm Supply, Monteview, ID 83435.

MC 44605 (Sub-6–1TA), filed June 2, 1983. Applicant: MILNE TRUCK LINES, INC., 2500 West California Ave., Salt Lake City, UT 84104. Representative: Harry J. Jordan, 1090 Vermont Ave. NW, Suite 200 Washington, DC 20005. *Contract*, irregular, *general commodities, except Class and B explosives, household goods, and commodities in bulk*, between points in the U.S. (except AK and HI), under contract with General Mills, Inc., and its following subsidiaries and divisions: Pioneer Products, Inc., Saluto Foods Products Corp., Eddie Bauer, Inc., The Donruss Division, The Gorton Division, O-Cel-O, Sperry, Yoplait, David Cyrstal, Danco/Izod, Empire Textiles, Foot Joy, Lark Luggage, Monet, Ship'n Shore, Casa Gallardo, Creative Dining, Good Earth, Red Lobster, Sigmacon, York Steak House, Dunbar, Kittinger, LeeWards, Pennsylvania House, The Talbots, Wallpapers To Go, Wild West, Fundimensions, Kenner Products, and Parker Brothers, for 270 days. Supporting shipper: General Mills, Inc., 9200 Wayzata Blvd, Minneapolis, MN 55440.

MC 168427 (Sub-6–1TA), filed June 3, 1983. Applicant: ONC CORPORATION, 830–29th St., No., Lewiston, ID 83501. Representative: Donald Piontek, 5735 No. & So. Hwy., Lewiston, ID 83501. *General commodities* between WA, ID, OR, MT, CA, NV, UT, CO and WY for 270 days. Supporting shippers: There are 7 shippers. Their statements may be examined in the office listed.

MC 730 (Sub-6–25TA), filed June 1, 1983. Applicant: PACIFIC INTERMOUNTAIN EXPRESS CO., P.O. Box 8004, Walnut Creek, CA 94596. Representative: Robert Radford (same address as above). *Contract carrier:* irregular: *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 Federated Department Stores, Inc., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Federated Department Stores, Inc., 7 W. 7th St., Cincinnati, OH 45202.

MC 168267 (Sub-6–1 TA), filed June 2, 1982. Applicant: SANDPOINT SPOKANE AIRPORT COMMUTER SERVICE, INC., 117 S. 2nd Ave., Sandpoint, ID 83864. Representative: S.B.R. Dimit (same as applicant). *Passengers* in special and charter operations between Spokane, WA and points in ID for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Easyway Travel Center, 217 Cedar St., Sandpoint, ID 83864.

MC 167395 (Sub-6–2 TA), filed May 31, 1983. Applicant: P. SAWCHUK TRUCKING, LTD, 12345–90 St., Edmonton, Alberta T5B 3Z6. Representative Annette Sawchuk (same as applicant). *Contract Carrier* Irregular (1) *BUILDING PRODUCTS* between Port of Entry on U.S., CD border in ID, MT on the one hand and the other points in CA, WA, OR, NV, ID, AZ, UT for the account of Building Products of Canada Ltd., (2) *REFLECTIVE GLASS SPHERES* between Port of Entry on U.S., CD border in ID, MT, on the one hand and the other points in CA, WA, OR, ID, NV, AZ for the account of Canasphere Industries (Alta) Ltd.; (3) *PRECUT LUMBER* between Port of Entry on U.S., CD border in ID, MT, on the one hand and the other points in CA, WA, OR, NV, ID, AZ for the Account of Spruceland Millworks Ltd.; and (4) *TRUCK & TRAILER PARTS & COMPONENTS* between Port of Entry of U.S., CD border in ID, MT on the one hand and the other points in CA, UT, NM, OR, ID, AZ, NV, WA for the Account of McCoy Bros. Group for 270 days. Supporting shippers: Building Products of Canada Ltd., 3703–101 Ave., Edmonton, Alberta; Canasphere Industries (Alta) Ltd., 3344–58 Ave. S.E., Calgary, Alberta; Spruceland Millworks Ltd., 130 Westglen Crescent, Spruce Grove, Alberta; McCoy Bros. Group, 14820–112 Ave., Edmonton, Alberta T5M 2V2.

MC 168385 (Sub-6–1TA), filed June 1, 1983. Applicant: JACK E. STOEWE, 3341 E. Swiss Rd., Flagstaff, AZ 86001. Representative: (same as applicant) *Malt beverages and Wines* related supplies and equipment from CA, WA and CO to Flagstaff, Holbrook and Prescott, AZ for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: Young Distributing Company, Inc., P.O. Box 699, Holbrook, AZ 86028, Northland Coors, Inc., 308 Enterprise Rd., Flagstaff, AZ 86001.

MC 158288 (Sub-6–2 TA), filed June 2, 1983. Applicant: TOMAHAWK TRANSPORTATION, A DIVISION OF TOMAHAWK SERVICES, INC., 5400 Laurel Rd., Billings, MT 59101. Representative: William E. Seliski, 2 Commerce Street, POB 8255 Missoula, MT 59807. *Contract*, irregular *General Commodities*, (except classes A and B explosives and household goods) between points in the U.S. (except AK and HI) for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: WYO-BEN INC., POB 1979, Billings, MT 59103.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-15716 Filed 6-10-83; 8:45 am]

BILLING CODE 7035-01-25-M

Motor Carriers; Proposed Exemptions

AGENCY: Interstate Commerce Commission.

ACTION: Notices of proposed exemptions.

SUMMARY: The motor carriers shown below seek exemptions 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*, 367 ICC 113 (1982), 47 FR 53303 (November 24, 1982).

DATE: Comments must be received within 30 days after the date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Warren C. Wood (202) 275–7977.

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.

By the Commission, Richard Lewis, Acting Director, Office Proceedings.

Agatha L. Mergenovich,

Secretary.

Volume No. OP3–254

Decided: June 6, 1983.

MC–F–15276. Applicant: STERLING TRANSPORT, INC.—LEASE (PORTION) EXEMPTION—COOPER—JARRETT, INC. Sterling Transport, Inc. seeks an exemption from the requirement under section 11343 of prior regulatory approval for it to lease that portion of the operating rights of Cooper—Jarrett, Inc. set forth in Certificate No. MC–35334 (Sub-No. 94). Addresses: Send pleadings to: (1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, D.C. 20423 and (2) Petitioner's representative, A. David Millner, Esq., Bowes, Millner, & Rodgers, P.O. Box Y, 7 Becker Farm Road, Roseland, NJ 06058.

Volume No. OP1–210

Decided: June 7, 1983.

MC-F-15268. Applicant: SECURITY VAN LINES, INC.—CONTINUANCE IN CONTROL—(EXEMPTION) QUALITY MOVING & STORAGE, INC. Security Van Lines, Inc., (Security) (No. MC-8768) and, in turn, Donald Goldwasser and Charles Wolchansky, who control Security, seek an exemption from the requirement of prior regulatory approval for their continuance in control of Quality Moving Storage, Inc. (No. MC-162950). Send comments to: (1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, D.C. 20423 and (2) Petitioner's representative: Marshall Kragen, 1919 Pennsylvania Ave NW., Suite 300, Washington, D.C. 20006. Comments should refer to No. MC-F-15268.

[FR Doc. 83-15713 Filed 6-10-83; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-18 (Sub-46)]

Rail Carriers; Chesapeake & Ohio Railway Co.; Abandonment and Discontinuance of Trackage Rights in Isabella County, MI; Findings

The Commission has issued a certificate authorizing the Chesapeake and Ohio Railway Company: (1) To abandon its 2.25 mile rail line between Valuation Station 655+45 and Valuation Station 774+10.7 at or near Mt. Pleasant, MI, and (2) to discontinue trackage rights over a line of the Ann Arbor Railroad, owned by the State of Michigan, between Valuation Station 8653+83 at Mt. Pleasant, and Valuation Station 9466+75 at or near Clare, MI, over .32 mile of connecting track at Mt. Pleasant, and over .59 mile of connecting track at Clare, a distance of 16.31 miles, all in Isabella County, MI. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and seved concurrently on the applicant, with copies to Mr. Louis E. Gitomer, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice. Any offer previously made must be remade within this 10 day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-15715 Filed 6-10-83; 8:45 am]

BILLING CODE 7035-01-M

[I.C.C. Order No. P-55]

Rail Carriers; Passenger Train Operation

To: Central Vermont Railway, Inc., Green Mountain Railroad Corporation, Vermont Railway, Inc. It appearing, that the National Railroad Passenger Corporation (Amtrak) has established through passenger train service between Washington, D.C. and Montreal, Canada. The operation of these trains requires the use of the tracks and other facilities of Boston and Maine Corporation (BM). A portion of the BM tracks at Windsor, Vermont, are temporarily out of service because of a derailment. An alternate route is available via the Green Mountain Railroad Corporation, Vermont Railway, Inc., and Central Vermont Railway, Inc., between Bellows Falls, Vermont and Essex Junction, Vermont.

It is the opinion of the Commission that the use of such alternate route is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

(a) Pursuant to the authority vested in me by order of the Commission decided October 30, 1981, and of the authority vested in the Commission by Section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), Green Mountain Railroad Corporation (GMRC), Vermont Railway, Inc. (VTR), and Central Vermont Railway, Inc. (CV), are directed to operate trains of the National Railroad Passenger Corporation (Amtrak) between a connection with Boston and Maine Corporation (BM) at Bellows Falls, Vermont and Essex Junction, Vermont.

(b) In executing the provisions of this order, the common carriers involved shall proceed even though no agreements or arrangements now exist between them with reference to the compensation terms and conditions applicable to said transportation. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of the said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign commerce.

(d) *Effective date.* This order shall become effective at 8:00 p.m., May 28, 1983.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., May 29, 1983, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon Central Vermont Railway, Inc., Green Mountain Railroad Corporation, Vermont Railway, Inc., and upon the National Railroad Passenger Corporation (Amtrak), and a copy of this order shall be filed with the Director, Office of the Federal Register

Interstate Commerce Commission.

Bernard Gaillard,

Agent.

[FR Doc. 83-15714 Filed 6-10-83; 8:45 am]

BILLING CODE 7035-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report; Section 208 Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of Section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued the periodic report to Congress on abnormal occurrences (NUREG-0090, Vol. 5, No. 4).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event which the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC has made a determination, based on critieria published in the **Federal Register** (42 FR 10950) on February 24, 1977, that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and byproduct materials are abnormal occurrences.

This report to Congress is for the fourth calendar quarter of 1982. The report identifies the occurrences or events that the Commission determined

to be significant and reportable; the remedial actions that were undertaken are also described. During the report period, there was one abnormal occurrence at the NRC licensees. The event involved the containment spray system being inoperable at one of the nuclear power plants licensed to operate. The Agreement States reported no abnormal occurrences to the NRC.

The report also contains information updating some previously reported abnormal occurrences.

Interested persons may review the report at the NRC's Public Document Room 1717 H Street, NW., Washington D.C., or at any of the nuclear power plant Local Public Document Rooms throughout the country. Single copies of the report, designated NUREG–0090, Vol. 5, No. 4, may be purchased from the National Technical Information Service, Springfield, Virginia 22161.

A year's subscription to the NUREG–0090 series publication, which consists of four issues, is available from the NRC/GPO Sales Program, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Microfiche of single copies of the publication are also available from this source.

Dated at Washington, D.C., this 2d day of June 1983.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 83-15722 Filed 6-10-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–409–OL; ASLBP No. 78–368–05–OL]

Dairyland Power Coop. (LaCrosse Boiling Water Reactor); Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721, the Atomic Safety and Licensing Board for *Dairyland Power Cooperative* (LaCrosse Boiling Water Reactor), Docket No. 50–409–OL, is hereby reconstituted by appointing Administrative Judge Hugh C. Paxton in place of Administrative Judge Ralph S. Decker, who has resigned from the Panel.

As reconstituted, the Board is comprised of the following Administrative Judges:

Charles Bechhoefer, Chairman
Dr. George C. Anderson
Dr. Hugh C. Paxton

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Judge Hugh C. Paxton, 1229 41st Street, Los Alamos, New Mexico 87544.

Dated at Bethesda, Maryland, this 3rd day of June 1983.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 83-15723 Filed 6-10-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70–25; ASLBP No. 83–488–01–ML]

Rockwell International; Appointment of Presiding Officer To Conduct Informal Proceeding

Pursuant to the Commission's Order dated June 2, 1983 (CLI–83–15) and Part 70, 10 CFR 70.1 *et seq.* (1983), a single presiding officer is hereby appointed to conduct an informal proceeding to consider and decide, in accordance with the Commission's Order, all issues related to the application to renew a nuclear materials license by: Energy Systems Group of Rockwell International, Nuclear Materials License No. SNM–21.

The name and address of the Presiding Officer is: Dr. Robert M. Lazo, Administrative Judge, Atomic Safety and Licensing Board, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Issued at Bethesda, Maryland, this 6th day of June 1983.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 83-15724 Filed 6-10-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–369 and 50–370]

Duke Power Co.; Consideration of Issuance of Amendment To Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License No. NPF–9 and Facility Operating License No. NPF–17, issued to Duke Power Company (the licensee), for operation of the McGuire Nuclear Station, Units 1 and 2 located in Mecklenburg County, North Carolina.

The licensee is required to demonstrate by periodic calculation that the reactor coolant flow rate and the nuclear enthalpy rise hot channel factors are within the acceptable operating region set forth in the Technical Specifications. For determining reactor coolant flow rate, the licensee currently uses calculations based on elbow tap flow measurements. This method requires that an uncertainty of 3.5% be applied to the measured values. Based on these results a restriction on the power level to less than full power is required.

The proposed amendments would change the method of computation of reactor coolant flow rate from elbow tap measurements to one based on a periodic heat balance across the steam generators. The 1.7% measurement uncertainty associated with the proposed method is lower than the method based on elbow taps.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendments involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of standards of no significant hazard determination by providing certain examples (48 FR 14870). One of the examples of actions likely to involve no significant hazards considerations relates to a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. A review of the licensee's submittal, dated June 2, 1983, in accordance with the Standards of 10 CFR 50.92, indicates that the greater accuracy in measurements used to calculate RCS flow by heat balance methods points to a reduction in the uncertainty values without any significant change in the intended safety margins. The proposed amendments, therefore, fall within the category of the cited example and do not involve a significant hazards consideration, because it involves no

significant increase in the probability or consequences of a previously-analyzed accident, does not significantly reduce a safety margin, and the results of the change are clearly within all acceptable criteria with respect to systems or components specified in the Standard Review Plan.

The Commission is seeking public comments on the proposed determination. Because power level must continue to be restricted to less than full power until these amendmetns are approved, the Commission does not intend to publish its usual Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing which provides 30 days for public comment on the Commission's proposed no significant hazards determination. Therefore, comments on the Proposed No Significant Hazards Consideration should be provided to the Commission as soon as practicable. The Commission will not normally make final determination on significant hazards unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

In addition, by June 29, 1983, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

Comments provided on the staff's proposed no significant hazards determination do not constitute a request for hearing or petition for leave to intervene. Any such request for hearing or petition for leave to intervene should be identified as such.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the final determination is that the request for amendments involves no significant hazards consideration, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W. Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of the **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Mr. Albert Carr, Duke Power Company, Post Office Box 33189, 422 South Church Street, Charlotte, North Carolina 28242, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2-714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 23, 1982, and the supplemental letters, dated March 14, March 28, April 26, April 27, and June 2, 1983, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Atkins Library, University of North Carolina-Charlotte, UNCC Station, North Carolina 28223.

Dated at Bethesda, Maryland, this 8th day of June 1983.

For the Nuclear Regulatory Commission.

Kahtan Jabbour,

Acting Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 83-15834 Filed 6-10-83; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2092]

Mississippi; Declaration of Disaster Loan Area

Hinds, Madison and Rankin Counties in the State of Mississippi constitute a disaster area as a result of damage caused by severe storms, tornadoes and flooding beginning on or about May 18, 1983. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business of August 1, 1983, and for economic injury until the close of business on March 1, 1984, at the address listed below: U.S. Small Business Administration, 100 West Capitol Street, Suite 322, Federal Building, Jackson, Mississippi 39269, or other locally announced locations.

Interest rates for applicants filing for assistance under this declaration are as follows:

	Percent
Homeowners with credit available elsewhere	11.125
Homeowners without credit available elsewhere	5.625
Businesses with credit available elsewhere	10.500
Businesses without credit available elsewhere	8.000
Businesses (EIDL) without credit available elsewhere	8.000
Other (non-profit organizations including charitable and religious organizations)	11.375

It should be noted that assistance for agricultural enterprises is the primary responsibility of the Farmers Home Administration as specified in Pub. L. 96-302.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: June 6, 1983.

James C. Sanders,

Administrator.

[FR Doc. 83-15811 Filed 6-10-83; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2091]

Texas; Declaration of Disaster Loan Area

Montgomery County and the adjacent Counties of Grimes, Waller, Harris, Liberty and San Jacinto in the State of Texas constitute a disaster area as a result of damage caused by tornadoes and flooding which occurred on May 19 and 20, 1983. Eligible persons, firms and organizations may file applications for physical damage until close of business on August 1, 1983, and for economic injury until the close of business on March 1, 1984, at the address listed below: U.S. Small Business Administration, 2525 Murworth, Suite 112, Houston, Texas 77054, or other locally announced locations.

Interest rates for applicants filing for assistance under this declaration are as follows:

	Percent
Homeowners with credit available elsewhere	11.1250
Homeowners without credit available elsewhere	5.6250
Businesses with credit available elsewhere	10.5000
Businesses without credit available elsewhere	8.0000
Businesses (EIDL) without credit available elsewhere	8.0000
Other (non-profit organization including charitable and religious organizations)	11.3750

It should be noted that assistance for agriculture enterprises is the primary responsibility of the Farmers Home Administration as specified in Pub. L. 96-302.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: June 1, 1983.

James C. Sanders,

Administrator.

[FR Doc. 83-15810 Filed 6-10-83; 8:45 am]

BILLING CODE 8025-01-M

[License No. 04/04-0091]

Falcon Capital Corp.; Filing of Application for Transfer of Ownership and Control

Notice is hereby given that an application has been filed with the Small Business Administration (SBA), pursuant to Section 107.701 of the Regulations governing small business investment companies (13 CFR 107.701 (1983)) for transfer of ownership and control of Falcon Capital Corporation (Falcon), 100 Broad Street, Charleston, South Carolina 29401, a Federal Licensee under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*). The proposed transfer of ownership and control of Falcon which was licensed April 14, 1964, is subject to the prior written approval of SBA.

Prior to the transfer of ownership Falcon will be wholly owned by Mona G. Sokol.

Pursuant to an agreement of intent between Mona G. Sokol, sole shareholder of Falcon, and Ponnapula S. Prasad new ownership and control of Falcon is expected to be as follows:

Name and address	Title	Percent of ownership
Ponnapula S. Prasad, Route 9, Box 485, Greenville, N.C. 27834.	President and Director	100
Gary A. Herring, 24 Summerhill Terrance, Kinston, NC. 28501.	Manager, Secretary, Treasurer and Director.	
James L. Bullock, Route 8, Box 410, Greenville, N.C. 27834.	Director	

Falcon is expected to be relocated at 311 Evans Street Mall, Greenville, North Carolina 27834.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed new management, and the probabilility of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Act and Regulations.

Notice is given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed transfer of ownership and control to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in Charleston, South Carolina and Greenville, North Carolina.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 7, 1983.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 83-15807 Filed 6-10-83; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2090]

Louisiana; Declaration of Disaster Loan Area

Caldwell Parish and the adjacent Parishes of Catahoula, Franklin, LaSalle and Winn in the State of Louisiana constitute a disaster area as a result of damage caused by tornadoes and flooding which occurred on May 19 and 20, 1983. Eligible persons, firms and organizations may file applications for

physical damage until close of business on August 1, 1983, and for economic injury until the close of business on March 1, 1984, at the address listed below: U.S. Small Business Administration, Ford-Fisk Building, 1661 Canal Street, 2nd Floor, New Orleans, Louisiana 70112, or other locally announced locations.

Interest rates for applicants filing for assistance under this declaration are as follows:

	Percent
Homeowners with credit available elsewhere	11.1250
Homeowners without credit available elsewhere	5.6250
Businesses with credit available elsewhere	10.5000
Businesses without credit available elsewhere	8.0000
Businesses (EIDL) without credit available elsewhere	8.0000
Other (non-profit organization including charitable and religious organizations)	11.3750

It should be noted that assistance for agriculture enterprises is the primary responsibility of the Farmers Home Administration as specified in Public Law 96–302.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: June 1, 1983.

James C. Sanders,

Administrator

[FR Doc. 83-15809 Filed 6-10-83; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area 2089]

Pennsylvania; Declaration of Disaster Loan Area

Westmoreland County and the adjacent Counties of Alleghany and Indiana in the State of Pennsylvania constitute a disaster area as a result of damage caused by tornadoes which occurred on May 22, 1983. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on July 28, 1983, and for economic injury until the close of business on February 27, 1984, at the address listed below: U.S. Small Business Administration, 960 Pennsylvania Avenue, 5th Floor, Pittsburgh, Pennsylvania 15222 or other locally announced locations.

Interest rates for applicants filing for assistance under this declaration are as follows:

	Percent
Homeowners with credit available elsewhere	11.1250
Homeowners without credit available elsewhere	5.6250
Businesses with credit available elsewhere	10.5000
Businesses without credit available elsewhere	8.0000
Businesses (EIDL) without credit available elsewhere	8.0000
Other (non-profit organizations including charitable and religious organizations)	11.3750

It should be noted that assistance for agricultural enterprises is the primary responsibility of the Farmers Home Administration as specified in Public Law 96–302.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: May 27, 1983.

Robert A. Turnbull,

Acting Administrator.

[FR Doc. 83-15808 Filed 6-10-83; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Environment Assessment; Pal-Waukee Airport, Wheeling / Prospect Heights, Illinois

AGENCY: Federal Aviation Administration (FAA); DOT.

ACTION: Notice of Intent.

SUMMARY: The FAA is issuing this notice to advise the public that an Environmental Assessment will be prepared and considered for development planned for the next five year time period at Pal-Waukee Airport. To ensure that all significant issues related to the proposed action are identified, a scoping meeting will be held at the FAA offices at 2300 East Devon Avenue, Des Plaines, Illinois on Wednesday, June 29, 1983, at 10:00 a.m. for Federal agencies.

FOR FURTHER INFORMATION CONTACT: Jerry Mork, Airports Planner, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, Telephone (312) 694–7522.

SUPPLEMENTARY INFORMATION: The FAA, in cooperation with the Division of Aeronautics, Illinois Department of Transportation, will prepare an Environmental Assessment (EA) for development scheduled to occur at Pal-Waukee airport over the next five years. This development involves the following airfield facilities which will be evaluated in the EA:

- Public acquisition of Pal-Waukee Airport
- Acquisition of additional land for approach protection, obstruction removal, aircraft parking, relocation of navigational aids, installation of an approach lighting system and relocation of a drainage ditch.

To insure that full range of issues related to these proposed projects are addressed and all significant issues identified, comments and suggestions are invited from interested Federal agencies.

Issued in Des Plaines, Illinois, on May 27, 1983.

John Gerdotti,

Acting Manager, Chicago Airport District Office, FAA, Great Lakes Region.

[FR Doc. 83-15786 Filed 6-10-83; 8:45 am]

BILLING CODE 4910-13-M

Flight Recorder and Cockpit Voice Recorder Underwater Locating Devices; Issuance of Advisory Circular

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Issuance of advisory circular 21–10A, flight recorder and cockpit voice recorder underwater locating devices.

SUMMARY: This advisory circular suggests an acceptable means of showing compliance with the underwater locating device (ULD) requirements of the Federal Aviation Regulations (FAR) for recorder ULD's. Like all advisory circular material, it is not mandatory and does not constitute a regulation. It is for guidance purposes and to provide an example of a compliance method which has been found acceptable.

DATE: The advisory circular was issued by the Part 25 Transport Airplane Certification Directorate in Seattle, Washington, on April 19, 1983.

How to obtain copies: A copy of the advisory circular may be obtained by writing to the U.S. Department of Transportation, Publications Section, M–443.1, Washington, D.C. 20590.

Issued in Seattle, Washington, June 2, 1983.

D. L. Riggin,

Manager, Regulations and Policy Office, ANM–110, Northwest Mountain Region.

[FR Doc. 83-15787 Filed 6-10-83; 8:45 am]

BILLING CODE 4910-13-M

National Airspace Review; Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1) notice is hereby given of a meeting of Task Group 3–1 of the Federal Aviation Administration (FAA) National Airspace Review Advisory Committee. The agenda for this meeting is as follows: The Notice to Airman System will be reviewed. The area of flight data dissemination will be studied to determine adequacy and priority.

DATE: Beginning July 5, 1983, at 11 a.m., continuing daily, except Saturdays,

Sundays, and holidays, not to exceed three weeks.

ADDRESS: The meeting will be held at the Federal Aviation Administration, conference room 7 A/B, 800 Independence Avenue, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: National Airspace Review Program Management Staff, Room 1005, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591; (202) 426-3560. Attendance is open to the interested public, but limited to the space available. To insure consideration, persons desiring to make statements at the meeting should submit them in writing to the Executive Director, National Airspace Review Advisory Committee, Air Traffic Service, AAT-1, 800 Independence Avenue, S.W., Washington, D.C. 20591, by June 28, 1983. Time permitting and subject to the approval of the chairman, these individuals may make oral presentations of their previously submitted statements.

Issued in Washington, D.C. on June 6, 1983.

Karl D. Trautmann,

Manager, Special Projects Staff, Air Traffic Service.

[FR Doc. 83-15785 Filed 6-10-83; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Executive Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Executive Committee to be held on July 15, 1983, in RTCA Conference Room, 1425 K Street, N.W., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Approval of Minutes of Meeting Held on May 13, 1983; (2) Chairman's Report on RTCA Administration and Activities; (3) Special Committee Activities Report for May and June, 1983; (4) Report of Ad Hoc Study Group on Airborne Thunderstorm Detection Equipment; (5) Consideration of Establishing New Special Committees; and (6) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1425 K Street, N.W., Suite 500, Washington, D.C. 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on June 3, 1983.

Karl F. Bierach,

Designated Officer.

[FR Doc. 83-15788 Filed 6-10-83; 8:45 am]

BILLING CODE 4910-13-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 114
Monday, June 13, 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).

Contents

1

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 2 p.m., Thursday, June 16, 1983.

CHANGES IN THE MEETING: Meeting has been changed to Thursday, June 30, 1983 at 2 p.m.

[S-836-83 Filed 6-9-83; 10:43 am]

BILLING CODE 6351-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10 a.m., Wednesday, June 15, 1983.

LOCATION: Third Floor Hearing Room, 1111 18th Street NW., Washington, D.C.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Upholstered Furniture; Evaluation of Technology*
The Staff will brief the Commission on investigations of new materials and techniques for improving the cigarette resistance of upholstered furniture and industry's plans for incorporating the most promising of these into production furniture.

STATUS: Closed to the public:

2. *Enforcement Matter OS# 5455*
The staff will brief the Commission on enforcement matter OS# 5455.

For a recorded message containing the latest agenda information: Call 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207; 301-492-6800.

[S-838-83 Filed 6-9-83; 1:28 pm]

BILLING CODE 6355-01-M

3

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10 a.m., Thursday , June 16, 1983.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED:

Compliance Status Report
The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information: call 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207; 301-492-6800.

[S-839-83 Filed 6-9-83; 1:28 pm]

BILLING CODE 6355-01-M

4

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Tuesday, June 14, 1983, 9:30 a.m. (eastern time).

PLACE: Commission Conference Room No. 200, 2nd floor, Columbia Plaza Office Building, 2401 E Street NW., Washington, DC 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Ratification of Notation Vote/s.
2. A Report on Commission Operations (Optional).
3. Freedom of Information Act Appeal No. 83-4-FOIA-13-PX, concerning a request for a copy of a Title VII file.
4. Freedom of Information Act Appeal No. 83-03-FOIA-51-PA, concerning a request for records in an EPA charge file.
5. Freedom of Information Act Appeal No. 83-2-FOIA-4-LA, concerning a request for personnel records.
6. Exemption from Executive Order 12372; Publication in **Federal Register.**
7. Proposed section 624, Reproductive and Fetal Hazards, Volume II of the Compliance Manual.
8. Amendment to Commission Regulations 29 CFR 1601.75, Certification of Designated 706 Agencies.

Closed:

1. Litigation Authorization; General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides recorded announcements a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Treva McCall, Executive Secretary to the Commission at (202) 634-6748.

This Notice Issued June 7, 1983.

[S-835-83 Filed 6-9-83; 10:29 am]

BILLING CODE 6750-06-M

5

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 48 FR 26582, Wednesday, June 8, 1983.

PLACE: Board room, sixth floor, 1700 G Street NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202-377-6970).

CHANGES IN THE MEETING: The Bank Board meeting previously scheduled for Thursday, June 9, 1983, at 10 a.m., has been changed to 2 p.m.

[No. 43, June 9, 1983]

[S-837-83 Filed 6-9-83; 10:45 am]

BILLING CODE 6720-01-M

6

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

June 8, 1983.

TIME AND DATE: 10 a.m., Wednesday, June 15, 1983.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:.

1. United States Steel Corporation, Docket Nos. West 80-366-RM, WEST 81-58-M, WEST 80-160-M. (Issues include whether the

judge erred in concluding that the operator violated 30 CFR 55.12–14, a safety standard dealing with movement of power cables.)

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5632.

[S-840-83 Filed 6-9-83; 2:21 pm]

BILLING CODE 6735-01-M

7

FEDERAL RESERVE SYSTEM

Board of Governors

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 48 FR 25047, Friday, June 3, 1983.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Wednesday, June 8, 1983.

CHANGES IN THE MEETING: One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such closed item(s) was added:

Federal Reserve Bank and Branch director appointments. (This item was previously announced for a meeting on June 6, 1983.)

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board (202) 452–3204.

Dated: June 8, 1983.

James McAfee,

Associate Secretary of the Board.

[S-834-83 Filed 6-9-83; 10:28 am]

BILLING CODE 6210-01-M

8

NUCLEAR REGULATORY COMMISSION

DATE: Thursday, June 9, 1983 (revised), Friday, June 10, 1983 (revised) and Week of June 13, 1983.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE DISCUSSED: *Thursday, June 9:*

2:00 p.m.:
Discussion of Possible Courses of Action on Indian Point (Closed—Exemption 5) (New Item)

3:30 p.m.:
Discussion and Vote on Indian Point (Public Meeting) (Time Change)

Friday, June 10:

9:00 a.m.:
Discussion/Possible Vote on Full Power Operating License for St. Lucie-2 (Public Meeting) (New Item)

Wednesday, June 15:

10:00 a.m.:
Briefing on Status of Staff Certification in TMI–1 Restart Proceeding (Public Meeting)

Thursday, June 16:

10:00 a.m.:
Discussion of TMI–1 Restart (Open/Closed to be determined)

2:00 p.m.:
Discussion of Management-Organization and Internal Personnel Matters (Closed—Exemption 2 and 6)

Friday, June 17:

2:30 p.m.:
Discussion of Regulatory Reform Task Force—Administrative Proposals—Backfit Rule (Public Meeting)

ADDITIONAL INFORMATION: On May 31, 1983 the Commission voted 3–0 (Chairman Palladino and Commissioner Gilinsky not present) to hold Affirmation of Hearing Requests for Renewal of Special Nuclear Materials License of Rockwell International's Energy Systems Group, held that day.

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.

June 8, 1983.

Walter Magee,

Office of the Secretary.

[S-842-83 Filed 6-9-83; 3:52 pm]

BILLING CODE 7590-01-M

9

PAROLE COMMISSION

[OP0401]

TIME AND DATE: 10:30 a.m.–3:30 p.m., Monday, June 13, 1983.

PLACE: Room 420–F, One North Park Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

CHANGES IN THE MEETING: On June 6, 1983, the Commission determined that the above meeting be started at 9 a.m., for consideration of case referrals. The above change is being announced at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Chief Case Analyst, National Appeals Board, U.S. Parole Commission (301) 492–5968.

[S-841-83 Filed 6-9-83; 3:39 p.m.]

BILLING CODE 4410-01-M

federal register

Monday
June 13, 1983

Part II

Federal Communications Commission

Selection From Among Certain Competing Applications Using Random Selection or Lotteries Instead of Comparative Hearings; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 22, 73, 81, 87, 90, and 94

[Gen. Docket No. 81-768; FCC 83-114]

Selection From Among Certain Competing Applications Using Random Selection or Lotteries Instead of Comparative Hearings

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopts final rules that will permit the use of a random selection system or lotteries to select initial licensees where there is more than one applicant for a communications facility. The lottery selection system will apply to certain Mass Media, Common Carrier and Private Radio Services. These rules are being promulgated to implement a new statutory provision contained in the Communications Amendments Act of 1982. The use of lotteries to select licensees will reduce the cost and delay associated with traditional comparative hearings and speed new service to the public.

DATES: These rules are effective July 13, 1983 except for Form 346 which is under review for approval at the Office of Management and Budget. Form 346 will not become effective until OMB approval has been obtained.

FOR FURTHER INFORMATION: General Information—Randy W. Thomas, 202-632-6990; Mass Media Information—Barbara Kreisman, 202-632-3894; Common Carrier Information—Michael Menius, 202-632-6450, Private Radio Information—John B. Richards, 202-634-2443.

List of Subjects

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 22

Mobile radio service.

47 CFR Part 73

Radio broadcasting.

47 CFR Part 81

Coast stations, Radio.

47 CFR Part 87

Aeronautical stations, General aviation, Radio.

47 CFR Part 90

Industrial radio services, Land transportation radio services, Public safety radio services, Radio.

47 CFR Part 94

Operational-fixed microwave, Radio.

Second Report and Order

In the matter of amendment of the Commission's rules to allow the selection from among certain competing applications using random selection or lotteries instead of comparative hearings; Gen. Docket No. 81-768.

Adopted: March 31, 1983.
Released: May 27, 1983.

By the Commission. Chairman Fowler issuing a separate statement; Commissioner Jones concurring and issuing a statement; Commissioner Dawson concurring and issuing a statement; Commissioner Rivera dissenting in part and issuing a statement; Commissioner Sharp concurring in the result.

I. Introduction and Overview

1. *Introduction.* In this proceeding, the Commission is adopting rules to implement a system of random selection or lotteries to choose licensees from among certain competing applicants. The Commission released a *Second Notice of Proposed Rule Making* ("*Notice*") in this matter on October 7, 1982. 47 FR 45046, (October 13, 1982). Numerous comments and reply comments have been received in response to our proposals.[1] We have carefully analyzed the lottery statue, the accompanying *Conference Report*,[2] the *Notice* and the comments (initial and reply). It is our view that the best interest of the public will be served by adopting regulations to implement a lottery system for issuing licenses in certain enumerated services. The specific framework for implementing the lottery authority is set forth below. Particular emphasis is given to the Low Power Television and Television Translator Service ("LPTV") because of the complexity involved in using a lottery in that Mass Media service.[3]

2. In the *Notice*, the Commission proposed to use a lottery to select licensees in LPTV, as well as certain private radio and common carrier services. The proposed lottery rules for LPTV differed significantly from the proposals for the other services due to the statutory mandate that "significant preferences" be incorporated into any mass media lottery selection system. In addition to the low power service, a lottery will also be available for use in Private Land Mobile, Operational Fixed Microwave, Aviation and Maritime Services in the Private Radio Bureau and in the Public Land Mobile Service (except cellular) in the Common Carrier Bureau.

3. Lotteries will be used across the board in LPTV and in the public land mobile services. In the Private Radio area, however, lotteries will be used on a case-by-case basis. This result is warranted in Private Radio because in some cases expedition does not outweigh consideration of other public interest factors, *e.g.*, public safety and more efficient uses of the spectrum.

4. *LPTV Issues.* The new lottery statute requires that minority and diversity preferences be given to certain mass media applicants. The preference scheme adopted herein is essentially the same as described in the *Conference Report* and the *Notice*. Preferences will be available for:

(a) Applicants more than 50% controlled by minorities (a 2:1 preference);

(b) Applicants whose owners control no other media of mass communications (a 2:1 preference); and

(c) Applicants whose owners control 1, 2 or 3 other media of mass communications (a 1.5:1 preference).

5. The latter two preferences, termed the "diversity" preference, reflect the applicant's other ownership interests in any media of mass communications. Applicants may qualify for both the minority and diversity preference.

6. *LPTV Pre-Hearing Lottery Procedure.* Acceptability for filing and cut-off procedures will basically operate as they do now in LPTV. A strict multiple application rule is adopted that bars the filing of any LPTV application that would be directly mutually exclusive with any pending application filed by the same applicant or by any applicant where there is *any* direct or indirect interest of one per cent or more.

7. A two-track approach for filing Petitions to Deny is adopted for use in LPTV. The first approach will require that Petitions to Deny be filed after a "tentative selectee" is chosen. The second approach requires a two-step process. First, a preliminary notice of Petition to Deny will be filed prior to conductng a specific lottery. Then, after a successful applicant is chosen, those parties that preserved their objections may file formal Petitions to Deny; other parties may participate in the formal post-lottery petition process only if good

[1] *See* Appendix A for a list of participants in this proceeding. A brief summary of the comments filed in this proceeding is included in the text; a more thorough comment summary appears in Appendix B.

[2] H.R. Rep. No. 765, 97th Cong., 2d Sess. (1982).

[3] All references to "LPTV" or "low power" include television translators except when otherwise stated.

cause is shown. Conversely, in the Common Carrier and the Private Radio Services, Petitions to Deny, where they properly lie, will be filed prior to the lottery and will be considered post-lottery only with respect to the "tentative selectee." [4]

8. After consideration of any Petitions to Deny and staff examination of the application, the Commission will determine whether a grant can be made or whether a hearing is required.

9. Hearings ordinarily will be conducted on paper before the Commission. In those cases where a paper proceeding cannot resolve certain questions of fact, oral testimony will be heard by an Administrative Law Judge ("ALJ") who will issue an Initial Decision. Exceptions to the Initial Decision may be filed with the Commission. Ordinarily, Bureau counsel will participate only where the Commission refers an issue to an ALJ. Following a paper hearing, the Bureau staff will prepare an Order for Commission approval. In the case of an oral hearing, this action will be taken by the Adjudication Division of the Office of General Counsel. If the "tentative selectee" is found unqualified, a second applicant from the same pool will be selected.

II. Background and Statutory Authority

10. For several years, the Commission has considered in different contexts the possibility of using lotteries as a means of allocating licenses to use the electromagnetic spectrum. *Notice of Proposed Rule Making (LPTV)*, BC Docket No. 78–253, 82 FCC 2d 47 (1980); *Notice of Inquiry and Proposed Rule Making*, CC Docket No. 80–116 45 FR 29335 (May 2, 1980); *Alexander S. Klein, Jr.*, FCC 79–401 (released August 3, 1979). In none of these cases did the Commission make a legal conclusion that it, in fact, possessed adequate legal authority to use lotteries in lieu of a comparative process.

11. The Commission first received explicit statutory authority to use a lottery in Public Law No. 97–35, the Omnibus Budget Reconciliation Act of 1981, 95 Stat. 736–37, which added section 309(i) to the Communications Act of 1934, 47 U.S.C. 309(i). On November 17, 1981, we issued a first *Notice of Proposed Rule Making* requesting comments on a proposed implementation plan for the lottery statute 46 FR 58110, November 30, 1981. 88 FCC 2d 476 (1981). In our first *Report and Order* in this proceeding we declined to implement our authority to establish a lottery system because of our inability to structure a workable lottery system within the constraints of the statute. 89 FCC 2d 257 (1982). New lottery legislation was subsequently enacted in the second session of the 97th Congress.

12. The revised lottery statute provides:

(1) If there is more than one application for any initial license or construction permit which will involve any use of the electromagnetic spectrum, then the Commission, after determining that each such application is acceptable for filing, shall have authority to grant such license or permit to a qualified applicant through the use of a system of random selection.

(2) No license or construction permit shall be granted to an applicant selected pursuant to paragraph (1) Unless the Commission determines the qualifications of such applicant pursuant to subsection (a) and section 308(b). When substantial and material questions of fact exist concerning such qualifications, the Commission shall conduct a hearing in order to make such determinations. For the purpose of making such determinations, the Commission may, by rule, and notwithstanding any other provision of law—

(A) adopt procedures for the submission of all or part of the evidence in written form;

(B) delegate the function of presiding at the taking of written evidence to Commission employees other than administrative law judges; and

(C) omit the determination required by subsection (a) with respect to any application other than the one selected pursuant to paragraph (1).

(3)(A) The Commission shall establish rules and procedures to ensure that, in the administration of any system of random selection under this subsection used for granting licenses or construction permits for any media of mass communications, significant preferences will be granted to applicants or groups of applicants, the grant to which of the license or permit would increase the diversification of ownership of the media of mass communications. To further diversify the ownership of the media of mass communications, an additional significant preference shall be granted to any applicant controlled by a member or members of a minority group.

(3)(B) The Commission shall have authority to require each qualified applicant seeking a significant preference under subparagraph (A) to submit to the Commission such information as may be necessary to enable the Commission to make a determination regarding whether such applicant shall be granted such preference. Such information shall be submitted in such form, at such times, and in accordance with such procedures, as the Commission may require.

(C) For purposes of this paragraph:

(i) The term "media of mass communications" includes television, radio, cable television, multipoint distribution service, direct broadcast satellite service, and other services, the licensed facilities of which may be substantially devoted toward providing programming or other information services within the editorial control of the licensee.

(ii) The term "minority group" includes Blacks, Hispanics, American Indians, Alaska Natives, Asians, and Pacific Islanders.

(4)(A) The Commission, not later than 180 days after the date of the enactment of the Communications Technical Amendments Act of 1982, shall, after notice and opportunity for hearing, prescribe rules establishing a system of random selection for use by the Commission under this subsection in any instance in which the Commission, in its discretion, determines that such use is appropriate for the granting of any license or permit in accordance with paragraph (1).

(4)(B) The Commission shall have authority to amend such rules from time to time to the extent necessary to carry out the provisions of this subsection. Any such amendment shall be made after notice and opportunity for hearing.

(47 U.S.C. 309(i))

13. The Commission's new lottery authority contains four significant provisions. First, the Commission is expressly empowered to use a lottery to grant initial construction permits or licenses among competing applicants if the public interest would thereby be served. Next the Commission's administrative burden in conducting the lottery is reduced because it is only required to determine that the applications are acceptable for filing prior to the lottery. A full qualifications check of *only* the successful applicant need be made *after* the lottery is conducted. Third, when lotteries are used for allocating "mass media" licenses, *i.e.*, those broadcast-type services where the licensee retains editorial control over the medium, the lottery must be weighted with "significant preferences" allocated to minority group applicants and those who own few or no other media of mass communications. In non-mass media services, however, the lottery will be conducted strictly on a random basis. Finally, the Commission is authorized to use lotteries "in any instance," in its discretion, where it is determined appropriate after promulgating rules in a formal rule making proceeding.

III. Mass Media Comments

14. In the *Second Notice*, the Commission proposed that as to services within the jurisdiction of the Mass Media Bureau, lotteries be used in contested cases in the low power television and television translator service (hereinafter "LPTV") and in other services on an *ad hoc* basis when the parties' qualifications are such that no material difference between their ability to serve the public interest can

[4] In many PRB services, Petitions to Deny are not authorized; the Bureau considers oppositions to applications as informal complaints.

be distinguished. The *Notice* proposed a comprehensive scheme for the conduct of lotteries, including the use of preferences designed to increase minority ownership and enhance ownership diversity generally.

15. Comments received in response to the *Second Notice* cover such matters as whether use of lotteries is consistent with the Commission's public interest obligations, whether the preferences proposed are large enought to be "significant," as the statute requires, and how various ownership interests, such as limited partnerships, will be treated in the preference scheme. A complete summary of the comments is found in Appendix B.

IV. Mass Media Discussion

16. *Decisional Criteria for Employing Lotteries.* The *Conference Report* accompanying the new legislation sets forth a number of factors Congress suggests that the Commission consider in determining whether the public interest would be served by utilization of lotteries in particular services or instances. These include:

> [W]hether there is a large number of licenses available in the particular service under consideration; whether there is a large number of mutually exclusive applications for each license, for example, when a new service is initiated; whether there is a significant backlog of applications; whether employing a lottery would significantly speed up the process of getting service to the public; and whether selection of the licensee will significantly improve the level [of] diversity of information available in the community versus the use of the traditional comparative hearing process.
>
> (*Conference Report* at 37)

The *Report* emphasizes that the commission must, having considered all relevant factors, find that a significant public interest benefit would flow from use of lotteries in the specified circumstances. To do otherwise, the Conferees state, would "disserve the Commission's ultimate statutory goal of obtaining the best practicable information service from diverse sources." *Id.*, at 38. Moreover, the Conferees also state that the factors described above are not to be applied mechanically or without regard to other relevant considerations. *Id.*

17. The *Conference Report* concludes that under the criteria suggested, the Commission would be justified in using, and is in fact encouraged to use, a lottery system in LPTV licensing. LPTV is described by the Conferees as:

> [T]he ideal service for which to use a lottery, given the large number of licenses available, the large number of mutually exclusive applications for each license, the substantial backlog of applications on file with the Commission, the likelihood that use of lottery is essential to expediting the process of getting low power television service to the public, and the likelihood that bringing low power television service to the public quickly, through the use of a lottery, will result in a significant increase in the diversity of information sources available in many communities throughout the country.
>
> (*Conference Report* at 38–39)

18. Thus, it is clear that Congress amended the Communications Act to permit lotteries based on the belief that in certain circumstances the public interest is best served by the rapid commencement of new station operations which a lottery makes possible. Those commenters who claim that any Commission implementation of licensing by lottery would violate our public interest obligations under the Act fail to confront this fact. The Commission concurs in the Conferees' judgment that in the Mass Media services, LPTV is a particularly appropriate candidate for utilization of lotteries in the initial licensing process. Using lotteries is virtually the only method by which the Commission can process expeditiously the 12,000 LPTV applications currently on file, and the thousands more that will be submitted as pending applications are placed on "cut-off" lists. Without lottery processing, initiation of this new broadcast service will be delayed for many years, precluding the expansion of the diversity of broadcast voices that introduction of LPTV can achieve.

19. In the LPTV *Report and Order*, at para. 80, the Commission concluded after a thorough review of the issues that the only traditional comparative criteria to be considered in the LPTV context would be diversity and minority ownership. We found that the other criteria normally considered in full service comparative hearings were not relevant to the initial licensing process in this new, minimally-regulated secondary service. Finally, we viewed use of the comparative process as the "second best" option, to be engaged in only until a system of random selection could be instituted.[5]

20. The factors that the Commission had determined were relevant in comparative considerations in LPTV—diversity and minority ownership—also have been designated by Congress as deserving of special preferences in licensing proceedings conducted by lottery. Commenters Henry Geller and Donna Lampert ("Geller/Lampert") suggest that the public interest would be best served by adoption of a "middle ground" approach to LPTV licensing. Under this approach, the Commission, applying standards similar to traditional comparative criteria, would "take an initial 'hard look' " at mutually exclusive applications and see whether it is possible and desirable to make an immediate public interest judgment on them—for example, to grant one and deny the others, or to exclude from the lottery one or several and then to hold the lottery among the remaining applicants. A similar scheme is suggested by Community Television Network, Inc. ("CTN"). It argues that the Commission should use a paper hearing process adopted in the LPTV *Report and Order* to separate proceedings in which there is a "clear winner" under traditional comparative criteria from those situations in which there is "considerable doubt" as to the ultimate winner. We have rejected these alternatives. The minimal public interest benefit that might be obtained from use of the Geller/Lampert approach or the CTN scheme does not outweigh the substantial detriment inherent in use of either option. Both plans involve devoting the resources of the Commission and the parties to consideration of issues that we and the Congress have found to to be largely extraneous to the LPTV licensing process. The result would be additional delay in introduction of service, and additional cost to the parties, without a meaningful public interest gain.

21. Therefore, after full consideration of the analytic factors identified in the *Conference Report*, and having considered the record developed herein, the Commission finds that the public interest would be served by implementation of a random selection system for initial LPTV licensing. However, we acknowledge that at some future time circumstances may have so changed that use of a lottery to process low power applications would no longer be appropriate.

22. *Lotteries as Tiebreakers in Mass Media Comparative Proceedings.* In the *Notice*, the Commission proposed to use basis in those instances where the lotteries in mass media services other than LPTV "on and *ad hoc* qualifications of competing applicants are so close that no material difference between the parties' ability to serve the public interest can be distinguished." Numerous commenters opposed this proposal, contending that inadequate legal authority exists to conduct *ad hoc* lotteries; the *Conference Report* discourages such use; lotteries were intended to be a substitute, not a

[5] *Low Power Television Broadcasting*, 47 FR 21468 (May 18, 1982), at paras. 21–22.

supplement, for comparative hearings; and sufficient guidance regarding services and standards was not provided. We have analyzed the arguments that have been raised and conclude that the language of both the statute and the *Conference Report* permits the use of *ad hoc* lotteries in "tied" cases. It does appear, however, that the process by which we might identify such instances, and the particulars of the procedure we would utilize in such cases deserve greater consideration than was given in or generated in response to our *Notice* proposal. We have therefore decided not to implement that proposal at this time.

23. *LPTV Applications Subject to Lottery.* Some parties assert that LPTV licensing proceedings cannot be conducted by lottery as to applications already pending because of inadequate notice to applicants as to procedures and preferences. These claims are without merit. We observed in the LPTV *NPRM*, at 78, that we would not process mutually exclusive applications through to grant until comparative criteria and procedures were finally established. *Low Power Television Broadcasting*, 82 FCC 2d 47, 78 (1980). Any grants made during the conduct of that rule making proceeding, including permits to construct conventional translators, were conditioned on its outcome.[6] Additionally, we proposed in the LPTV *NPRM*, at 75, that if a winning applicant could not be selected through paper hearing on the basis of proposed comparative preferences, "the case would be referred for lottery," with each party to have an equal chance of receiving the authorization. Thus, it has been clear since the commencement of the LPTV rule making proceeding that lotteries might be implemented in LPTV licensing, and that applicants proceeded at their own risk as to the criteria by which their applications might finally be processed.

24. While we did not implement the lottery authority as initially enacted in the Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97–35, we made clear in the LPTV *Report and Order*, at para. 65, that "it remains our intention to utilize a random selection process when and if that becomes practicable." Applicants were placed on notice that "their applications, if mutually exclusive with other applications, may be subject to revised processing procedures, standards and qualifications in connection with implementation of a system of random selection." *Id.* Because a number of timely-filed petitions for reconsideration of the LPTV *Report and Order* were subsequently submitted, applicants have been on notice that the rules and processes adopted in the *Report and Order* remain subject to modification by the Commission if proper cause is found.

25. In Pub. L. No. 97–259, Congress amended the lottery authority it earlier granted. Subsequently, the Commission issued the *Notice* presently under consideration. Although the diversity and minority preferences adopted by Congress for lottery use will differ somewhat in application from the preferences we had initially contemplated using in LPTV comparative hearings, they reflect similar concerns and are directed to similar objectives. Further, since no cases have been designated for hearing under the procedures initally adopted in the LPTV *Report and Order*, all applicants in contested LPTV cases will be judged by exactly the same standards, regardless of their filing date. In light of all these factors, we do not believe that any LPTV applicant can fairly claim to have been harmed by our determination to apply the lottery scheme adopted herein to pending LPTV applications.

26 *LPTV Processing Framework.* In the *Notice*, we proposed a comprehensive processing blueprint for mass media applications subject to lottery, contemplating that these procedures would initially be applied in LPTV. Under the initial filing procedures, described in para. 16 of the *Notice*, after an application is tendered and found acceptable for filing, it will be listed in a Public Notice (the "A" list) inviting competing applications until the specified cut-off date approximately thirty to sixty days later.[7] Applications filed after that date will not be eligible for consideration or grant as part of that particular proceeding.[7A] All competing applications found acceptable for filing will be included in a subsequent Public Notice (the "B" cut-off list), which will also announce the date on which the lottery will be conducted. Additionally, that list will show the preferences for which the applicants have certified that they are eligible, and their selection probabilities. Applicants will be obliged to bring any clerical or mathematical errors in the selection probabilities to the Commission's attention immediately. The lottery will then be conducted and the "tentative selectee" named in a Public Notice providing an opportunity for filing of Petitions to Deny.

27. The proposed use of "A" and "B" cut-off lists described above is similar to present practices in the Mass Media services.[8] This aspect of our proposal was essentially noncontroversial, but for an expression of concern by NLMC that the cut-off period "be long enough to permit a reasonable opportunity for resubmission of applications rejected by FCC staff." The Commission notes that § 73.3572(c) of the Rules presently sets the time for filing of mutually exclusive applications at a date "not less than 30 days" after release of the "A" list Public Notice. Our experience is that the thirty-day period allows sufficient time for the filing of competing applications.

28. We believe that the system we have described, utilizing "A" and "B" lists, will be a satisfactory method by which to commence processing of applications, and will adopt that procedure, with one minor modification. We observe that our initial proposal did not specify what notice, if any, would be given of changes in selection probabilities necessitated by corrections submitted in response to the "B" list. We conclude that a corrected "B" list should issue, indicating both the changes in selection probabilities and any change in the lottery date.[9] [10]

---

[6] In *Interim Processing Procedures*, 45 FR 62004, (September 17, 1980), we reaffirmed this action.

[7] Under the procedures being adopted, all pending mutually exclusive applications will be named in the "A" list, and will be served with copies of that list.

[7A] Prior to the adoption of the June 17, 1982, LPTV Rules, engineering judgment was used to prescreen applications for cut-off lists. Since promulgation of the new rules a contour overlap standard has been used in screening applications for such cut-off lists. As a result of using the engineering judgment method, some applicants previously cut-off are mutually exclusive with those that have been assigned later cut-off dates. In order to avoid prejudice to any applicant because of changes in the screening process, all mutually exclusive applications filed prior to the later cut-off date will be considered in a consolidated lottery.

[8] *See* Section 73.3572 of the Commission's Rules.

[9] No lottery will be held less than thirty days following release of a "B" list. This period will permit negotiation of settlement agreements. Additionally, parties who may have erroneously been omitted from the "B" list will have the opportunity to so inform the Commission during that period. Later appeals on this issue will not be entertained. Applications which are not mutually exclusive with others will not appear on a "B" list, but only on a proposed grant list which will provide for filing of Petitions to Deny within a fifteen day period.

[10] Placement of the name of an applicant on an "A" list will require the filing by the cut-off date of the applications of those who wish their applications to be considered with that application or with any other application on file by the cut-off date which involves a conflict necessitating being joined in a lottery with that application (or any other application on the list). This is similar to the practice followed in AM and noncommerical FM broadcasting, which are also services in which licensing is done on a noninterference demand basis. *See Kittyhawk Broadcasting Corp.*, 7 FCC 2d 153 (1967), *recon. denied*, 10 FCC 2d 160 (1967), *appeal dismissed, Cook, Inc. v. United States*, 394 F.2d 84 (7th Cir. 1968). *But see*, as to full service television and commercial FM, *Sterling Recreation*

29. We will also adopt the process we had initially set forth in para. 21 of the *Notice* for actual lottery selection. Applicants will be assigned a portion of the numerical spectrum between .000 and .999 in accordance with their selection probabilities. Although we contemplate that, for ease and consistency of processing, numerical spectrum will normally be allocated in the order in which applications joined in a given lottery group were accepted and given a file number, no applicant has anything in the nature of a "right" to any part of the numerical spectrum. The portion of numerical spectrum allocated to each applicant will be announced at the time the lottery is to be conducted.

30. A random number in the range of .000 to .999 will be generated in a lottery selection session. It is our expectation that mass media lotteries will be conducted on a limited number of specified dates each month. As we proposed in the *Notice*, at para. 22, Public Notice of all drawings will be given no less than seven days in advance. This Notice will normally be given on the "B" list, but may be modified if necessary.[11]

31. *Petitions to Deny.* In the first *Report and Order* in this proceeding, 89 F.C.C. 2d 257 (1982), we observed, at 277–79, that a fundamental difficulty inherent in our Section 309(i) lottery authority as initially enacted was the requirement that the qualifications of all applicants under Section 308(b) and Section 309(a) be determined prior to lottery selection. Our amended lottery authority provides that determinations under Section 308(b) and 309(a) need be made only as to the applicant who has been selected by lottery. The Conferees note that "[i]t is only at this latter, post-lottery stage that Petitions to Deny the application need be considered and that the right to a hearing may arise."

32. We continue to believe that in the LPTV context, where expedition is an overriding public interest factor, the public interest will best be served if we consider Petitions to Deny only against the "tentative selectee". However, we are also sympathetic to the concerns of those commenters who believe that allowing the filing of post-lottery petitions may encourage submission of essentially frivolous pleadings which would not be the case if pre-lottery filing were required. Thus, we are adopting two alternative petition processes. As to any given lottery group, the method to be used will be announced no later than the "B" list release date. Experience should indicate which system will best advance our purposes.

33. One petition approach, as proposed in the *Notice*, will be to invite Petitions to Deny after a "tentative selectee" is chosen by lottery. The second method will require a notice of Petition to Deny to be filed no more than 30 days after publication of the "B" list. Under this second approach, ordinarily only those parties who preserved their rights by filing a notice of Petition to Deny will be allowed to participate in the formal post-lottery Petition to Deny process. Additionally, however, the Commission will consider for good cause shown [12] Petitions to Deny by other parties who did not file the preliminary notice of Petition to Deny. *See* paras. 40–42 *infra*.

34. The law firm of Daly, Joyce and Borsari ("DJB") contends that by allowing petitions to be filed only against the "tentative selectee," the Commission is essentially nullifying the petition rights provided by Section 309(d)(1). That section allows the submission of petitions designed to show that grant of a license or permit to a particular applicant would be inconsistent with the public interest requirements of Section 309(a). However, Section 309(i) states that in a lottery situation those findings only need be made with regard to the "tentative selectee." Therefore, consideration of petitions against other applicants would have no purpose.

35. It shall be our practice to issue a post-lottery Public Notice identifying the "tentative selectee." A period of fifteen days from issuance of the Public Notice will be provided for the filing of Petitions to Deny. Notice of proposed grant will also be given, and fifteen days provided for filing petitions, with regard to those uncontested applications not subject to lottery.[13] If no petitions are filed against the "tentative selectee," the staff will review the application to determine whether the applicant is fully qualified. If so, a construction permit will be granted. If not, a hearing designation order will issue.

36. We believe it appropriate to provide the "tentative selectee" fifteen days from the date on which petitions are due for the filing of an opposition. Replies by petitioners will not be allowed. Although we had initially proposed twenty day periods for oppositions and replies, the limited number and scope of issues involved indicate that shorter periods will provide adequate time for preparation and submission of the relevant pleadings and that replies are unnecessary.

37. *Two Step Petition to Deny Process.* There will be a two-page limit on the notice of Petition to Deny. The Notice will be filed with the Commission and served upon the applicant against which it is directed within 30 days after publication of the "B" list. Responses to the notice will not be entertained. The notice will make specific allegations that concisely state and explain with particularity the reasons why the applicant lacks qualifications or why a grant of the application would *prima facie* be inconsistent with the public interest. *See, e.g.*, Fed. R. Civ. P. 8. The purpose of the notice is to inform applicants and the Commission of petitioner's contentions; subsequent post-lottery procedures will allow full ventilation of the issues.

38. It is expected that only legitimate and truthful issues will be raised in the notice of Petition process. The notice will be subscribed to and certified by

---

Organization Co., 80 FCC 2d 319 (1980), *recon. denied*, 86 FCC 2d 804 (1981). This process may in some cases require that those interested in securing construction permits for Tier II of Tier III locations file against Tier I applications on "A" lists or against other applications filed in response to or otherwise in conflict with those applications. Those interested in applying for stations in Tiers II or III should be aware that they may be precluded from doing so if they do not stay alert to ongoing processing and submit competing applications within prescribed time periods.

[11] The system for selecting the random numbers will be available for public review and inspection. Additional details regarding the mechanics of the lottery selection process will be included in a "lottery processing manual" which we expect to release prior to the date of the first lottery. In Appendix B of the *Notice*, we proposed in Section 1.1623(a) to compute probabilities to three significant digits. Having reviewed this matter, we now believe that use of three significant digits will be sufficient in lotteries with no more than twenty applicants. However, four significant digits should be used with larger lottery groups in order to provide a sufficient degree of precision with respect to probabilities. To accommodate this procedure, the rule as adopted will require computation to "no less than" three significant digits. Probabilities will be truncated to the number of significant digits used in a particular lottery. For example, a probability of .2347 in a three digit lottery would be truncated to .234. This approach will not substantially disadvantage any applicant and will prevent the occurrence of the problem related to use of a rounding procedure, in which the sum of all applicant probabilities might be greater than 1.000.

[12] "Good cause" includes newly discovered evidence, evidence that could not be discovered before the diligence, and fraud or suppression of evidence by the "tentative selectee." The Commission will adopt a strict standard with regard to "good cause" Petitions to Deny.

[13] We reject the proposal of the National Latino Media Coalition ("NLMC") that the "tentative selectee" be required to publish local notice of its status. We believe that the notice that an application has been filed, which is required, is sufficient to inform interested persons in the community of the applicant's activities before the Commission. This is the same process that is followed with regard to regular broadcast applications. We see no need to impose heavier burdens on applicants in this secondary service.

the petitioner and signed by his representative, if any.[14] Moreover, untruthful statements or intentional misrepresentations in one proceeding could be the subject of inquiry in other proceedings as well.[15]

39. In the two-step approach, the formal Petition to Deny process will begin after a "tentative selectee" is chosen by lottery. When the Public Notice announcing the "tentative selectee" is issued, petitioners will have the opportunity to detail their objections to the apparent winner's qualifications in a formal Petition to Deny. Only those parties that preserved their right to object by filing a notice of Petition to Deny may participate in the post lottery proceedings, absent a good cause showing. *See* n. 10, *supra*. The formal Petition to Deny will be limited strictly to only those issues raised in the initial notice of Petition to Deny. Petitioners will have fifteen days after the Public Notice announcing the "tentative selectee" to present their case in chief. The "tentative selectee" will have fifteen days to respond.

40. In providing alternative approaches for handling Petitions to Deny in low power television lottery proceedings, we are taking a different approach than that to be applied to similar filings in the Common Carrier and Private Radio Services that will be subject to lotteries. As explained in paras. 103–105 and 126 *infra*, in the latter services Petitions to Deny and other objections must be filed before the actual lottery. Prelottery filing of Petitions to Deny in these services will result in the most efficient conduct of these proceedings. With regard to the low power television lotteries, however, other considerations not material to the non-mass media lotteries recommend the advisability of the alternative two-step Petition to Deny process. Specifically, the sheer number of applications involved as well as the nature of the issues that could be raised in low power proceedings, including those arising from the preference system, suggests that it would economize the efforts of interested parties to defer the preparation and filing of full Petitions to Deny until after the lottery. In this regard, we are particularly aware that participation by individuals, informal citizens' groups, and nonprofit organizations is likely to be much more common in low power lottery proceedings than in Common Carrier or Private Radio proceedings. Deferred filing of full Petitions to Deny will enable such individuals and groups to utilize their limited resources more efficiently and effectively. We will, of course, closely monitor the workings of the mass media and non-mass media Petition to Deny procedures. Should it become apparent that the public interest would be better served by revisiting any of the procedures adopted herein, we will not hesitate to make the necessary changes.

41. *Qualifications of "Tentative Selectee."* We note that we will only consider the merits of petitions that concern the qualifications of the "tentative selectee." We have considered the comments of such parties as Spanish International Network ("SIN") and CTN arguing that challenges to the preference claims of all applicants must be considered before a lottery is conducted. We have determined that we will not consider such issues pre-lottery, and that they will generally only be in order against the "tentative selectee" post-lottery. To consider all such claims against applicants other than the "tentative selectee" potentially could mire lotteries in pleadings equal in volume and complexity of disposition to those associated with traditional comparative hearings, with no corollary public interest benefit. In most instances, improper preference claims would affect the selection probabilities of all other applicants proportionately.

42. However, we have determined that in cases in which the provision of the Rules (§ 1.1623) requiring computation of a minimum forty per cent diversity preference is used, all other applicants are not equally disadvantaged by an improper diversity claim. Therefore, to make certain that all applicants are treated equitably, we will entertain post-lottery challenges to the diversity status of applicants benefiting from the minimum diversity preference provision. We will announce, at the time of release of a "B" list, whether the minimum diversity preference was applied. The post-lottery filing deadlines for "objections to diversity claim", and objections thereto, will be the same as those adopted for Petitions to Deny. No other claims regarding preferences will be considered as to any applicant other than the "tentative selectee."[16]

43. All applicants should be aware that improper preference claims violate Federal law. 18 U.S.C. 1001. Additionally, evidence of such claims could place in jeopardy all Commission authorizations then held by the wrongdoer, as well as adversely affecting the grant of any further authorizations.

44. *Hearing Procedures: Paper and Oral.* As observed in the *Notice*, we believe that we may be able to abbreviate the time consumed by the administrative process through the use of a modified paper proceeding directly adminstered by the Commission. In paper proceedings, the Commission *en banc* or one or more Commissioners will receive the evidence and issue the decision awarding construction permits to applicants.[16A] The Mass Media Bureau will serve as advisor to the Commission in the paper proceeding process.[17] As such, the Bureau will be responsible for reviewing and analyzing pleadings, and preparing a draft to the decision.[18]

---

[14] A suggested certification form follows:

STATE OF

COUNTY OF

Jane Z. Doe hereby certifies and states that she resides at ———; that she is the petitioner herein; and that she has read the foregoing petition and knows the contents thereof and that the same are true of her personal knowledge.

/s/

Jane Z. Doe

[15] Frivolous, fraudulent or false allegations will be viewed with extreme disfavor. Intentional and material misstatements could lead to prosecution by the Justice Department under 18 U.S.C. 1001 which provides:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, or fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

[16] Due to the early difficulties experienced by the Commission in establishing its LPTV recordkeeping system, we are concerned that some Petitions and informal objections previously submitted may not have been associated with the correct applications file. Additionally, many of the matters raised in pending Petitions have been rendered moot by actions taken in this *Report and Order* and in the *LPTV Reconsideration Order*, FCC 83–129, also adopted this date. Therefore, we have determined that in order to provide equitable and expeditious treatment to all parties, all Petitions to Deny and informal objections now on file against LPTV applicants will be considered dismissed. Parties may wish to refile Petitions and file notices in accordance with the procedures outlined herein.

[16A] The flexibility for an individual Commissioner or panels of Commissioners to rule on such matters is provided in Section 5(d)(1) of the Communications Act and Section 556(b) of the Administrative Procedure Act. We will in future actions determine the circumstances under which such decisionmaking will be delegated.

[17] In the event that the Mass Media Bureau may be required to perform any investigative or prosecutorial functions prior to designation in a particular proceeding, such tasks shall be conducted by separated Bureau personnel who will not include or be subject to the direct supervision of the Bureau personnel who advise the Commission in the adjudication of proceedings. *See* 5 U.S.C. 554. In addition, Bureau personnel who authorize, directly supervise or direct investigative or prosecutorial functions will not participate or advise in the Commission's adjudicative decisions. The taking of oral evidence will not be delegated to Commission employees other than Administrative Law Judges.

[18] Of course, the Bureau personnel who participate as a party through a separated trial staff

45. The Commission will issue a *Memorandum Opinion and Order* disposing of any allegations presented in Petitions to Deny which do not raise substantial and material questions of fact. This document will also specify any remaining issues for either a paper or oral hearing. If Petitions to Deny do not raise new or novel issues, action upon them may be taken by delegated authority, and similiarly, Designation Orders may be issued by delegated authority. The Designation Order will specify the procedures for a paper hearing, set forth the pleading schedule to be followed by the parties, specify the party with the burden of proceeding and order any petitioner who directly raises an issue specified in the order to participate as a party.

46. In the case of a paper hearing, the Designation Order will direct the applicant or the party with the burden of proceeding to submit its direct case in writing on or before the date set in the order. This will be approximately 30 days from the date of the Order. The direct written case must set forth all the facts and circumstances related to the issues in the Designation Order. Documentary evidence upon which the applicant or the party relies must be attached in exhibit form. Each exhibit must be numbered, paginated and accompanied by a certification by a person with personal knowledge of the facts therein. The Designation Order will also specify that the other parties may submit a written rebuttal case within twenty days after the direct case is due. As with the direct case, documentary evidence submitted with the rebuttal case must be placed in a numbered exhibit and accompanined by an appropriate certification by a person or persons with personal knowledge of the facts recited therein.

47. Within ten days after the rebuttal case is due, any party to a paper proceeding also may submit a request for oral hearings and cross-examination, stating the subject matter of the desired oral presentation or cross-examination and the basis for it. Included therein shall be the evidence to be presented, the reason why the evidence is material to the outcome of the proceeding, the reason why an oral presentation or cross-examination is necessary to bring out this evidence, and the evidence in the record which would be contradicted by the cross-examination or oral presentation. In sum, the moving party must demonstrate that an oral hearing is required for a full and true disclosure of the facts in issue. Finally, the Designation Order will specify a date for the submission of proposed findings of fact and conclusions of law that conform with § 1.264 of our Rules, requests for the admission of facts and genuineness of documents in accordance with § 1.264, written objections to the admission of proffered evidence and requests for deposition allowed by Section 409(h) of the Communications Act. In paper proceedings, the Commission *en banc* or one or more Commissioners will issue subpoenas, rule upon questions of evidence, require the filing of memoranda of law upon any issue which the Commission is required to rule upon during the course of the hearing, dispose of routine procedural requests, act on motions to enlarge or modify issues, and take actions and enter procedural orders in conformance with the Administrative Procedure Act.

48. The Commission intends to dispose of as many post-lottery hearings as possible pursuant to the paper procedures described above. When reviewing each case, the Commission also will consider any requests for oral hearings.[19] However, as we had determined in the LPTV *Report and Order, supra,* at para. 71, we will order oral hearings only in limited circumstances, *i.e.,* where it is shown that the party will be prejudiced by a paper proceeding without oral testimony, where a substantial and material question of fact which would affect the outcome cannot be resolved without oral testimony or where oral testimony would otherwise be required by the public interest. If the Commission makes a decision on the basis of the written affirmative and rebuttal cases and any other authorized pleadings, the request for oral testimony will be deemed denied, but reasons for the action will be articulated.[20]

49. *Disposition of Competing Applications.* Due to the virtually simultaneous filing of thousands of LPTV applications, we are in some cases faced with the need to process "daisy chains" consisting of numerous applications interconnected by their mutual exclusivity. We will not take further action on other applications in the chain until the status of the "tentative selectee" is finalized. Thus, a Petition to Deny the grant to the "tentative selectee" would freeze the status of all other applications in that lottery group. If the "tentative selectee" is found qualified, remaining applications will be processed as appropriate. That is, those applications which are no longer mutually exclusive with others will be placed on a proposed grant list allowing for filing of Petitions to Deny, groups of mutually exclusive applicants will be designated for lottery, and applications which are not grantable due to their mutual exclusivity with the selectee will be dismissed. If the "tentative selectee" is found unqualified, all remaining applicants will participate in a lottery, unless the elimination of the application of the "tentative selectee" has broken the mutual exclusivity of the applicants. In that case, the applications shall be broken into groups, and the lotteries conducted. In either situation, the process will be repeated until all applications have been disposed of.

50. *Acceptability Standard for LPTV Applications.* We reaffirm our decision in the LPTV *Report and Order,* at para. 51, that an LPTV application must be "complete and sufficient" in order to be acceptable for filing. The Conference Report calls for use of the "substantially complete" acceptance standard set forth in *James River Broadcasting Corp.* v. *FCC,* 399 F.2d 581 (D.C. Cir. 1968), unless another standard has been established by rule. The LPTV standard has been so established. It differs from the "substantially complete" requirement in that applications which are incomplete or have blatant defects are summarily returned.[21]

---

will not advise the Commission regarding any aspect of that case.

[19] However, as we have noted in Paragraph 45, the Commission may in the first instance on its own motion designate a matter for oral rather than paper hearing.

[20] If the Commission concludes that an oral proceeding is necessary, it will issue a Designation Order or an interlocutory order referring the proceeding to the Chief Administrative Law Judge for hearing on the unresolved issue or issues. The Chief Administrative Law Judge will assign an Administrative Law Judge to preside over the hearing and set a prehearing conference to establish a discovery and trial schedule. The Mass Media Bureau will be made a party to the proceeding. The Presiding Judge may request proposed findings of fact and conclusions of law to be filed within thirty days after the record is closed. The Presiding Judge shall conduct the hearing, make all evidentiary rulings, and issue an Initial Decision. *See* § 1.201 *et seq.* and, particularly, § 1.243. All appeals, taken by exceptions to the Initial Decision, will go directly to the Commission. The Adjudication Division of the General Counsel's Office will serve as an advisor to the Commission in such appeals. Our action herein constitutes the determination required under § 0.365 of the Rules that Initial Decisions will not be appealed to the Review Board. The Commission, after consideration of a written appeal, and oral argument if necessary, shall determine whether the "tentative selectee" is qualified. If so, a grant shall issue. If not, another lottery shall be held from among the remaining applicants in the initial lottery group. If the Initial Decision is not appealed, either a grant will issue or a new lottery will be held subsequent to this action.

[21] Applications which are later refiled will be treated in accordance with the practices described in the *LPTV Report and Order,* para. 51.

51. *LPTV Application Form.* The preference system being adopted in this *Report and Order* requires the submission of additional information on ownership characteristics and various other certifications by those who have already filed LPTV applications. Form 346, the application for LPTV construction permits, is being amended to reflect the new information requirements. *See* Appendix D. When an application now on file is placed on an "A" cut-off list, the applicant will be permitted to amend to provide only the newly required information, as requested on the new Form 346, until the "A" cut-off date.[22] New mutually exclusive applications filed in response to the "A" list will be required to comply with all rules and policies in effect, as reflected in the new form.[23] In those instances where an "A" list has already been issued, mutually exclusive applications have been filed in response, and the cut-off date has passed prior to the effective date of this *Report and Order,* the Commission will release a "B" list, allow all applicants on that list thirty days to amend with the additional information, and then issue a corrected "B" list indicating preferences to be applied and setting a lottery date.

52. The Commission's application forms currently require the submission of information that, in the ordinary case, is sufficient for the Commission to be able to determine that an applicant is qualified under Section 308(b). The Commission previously has found that it is in the public interest to acquire much of this type of information by certification.[24] The Commission staff has had, and retains, the ability to inquire of applicants if additional information is necessary to resolve matters at issue. To require that all applicants submit the specific factual information underlying their certifications, as proposed by such parties as Youth News, would impose a mammoth paperwork burden upon applicants and the Commission, without balancing public interest benefit. Applicants who submit false information will, as we have indicated above with regard to preference claims, be subject to substantial penalties.

53. *Multiple Applications.* We concur in the views of such parties as Local Power Television, Inc. ("LPTI") and International Broadcasting Network ("IBN") regarding the need for Commission clarification of the manner in which multiple applications for the same facilities by applicants with some common interests will be treated. It appears that some applicants have filed identical or substantially identical multiple applications, perhaps for the purpose of improving the chances of winning in a specific lottery. Permitting such "stuffing of the ballot box" would seriously jeopardize the integrity of the Commission's processes. Additionally, allowing such actions might effectively nullify the program of diversity and minority preferences mandated by Congress.

54. We are therefore adopting a strict multiple application rule, that bars the filing of any application for a new station, or for major changes in an existing station, that would be "directly mutually exclusive" with any pending application filed by the same applicant or by any applicant in which any party common to both applications is an officer, director, or has any interest, direct or indirect.[25] The phrase "directly mutually exclusive" takes into account the possibilities inherent in a "daisy chain," a long or otherwise complex series of applications that are connected by their mutual exclusivity for a particular lottery or lotteries. For example, an applicant may file several applications specifying the same channel but different, non-overlapping, though geographically nearby, coverage areas. While these applications may be involved in the same lottery because each is mutually exclusive with other applications that link them together, they would not be "directly mutually exclusive" because the facilities that each specifies do not conflict with one another. Theoretically, each could be granted. Conversely, those applications filed by the same applicant specifying facilities which, by themselves, would be mutually exclusive with each other, are barred.[26] Those who have filed applications that violate this rule should withdraw such applications no later than thirty days following the effective date of this *Report and Order.*[27] Our revised LPTV construction permit application includes a certification of compliance with this requirement. Existing applicants will be obliged to make this certification at the time relevant applications are covered by an "A" cut off list or when they are otherwise notified of the need to amend.

55. *Real Party in Interest Certification.* In the *Notice,* at para. 30, the Commission proposed (consistent with the *Conference Report,* at 45–46), that all applicants in the Mass Media services certify, as part of their application for any service in which random selection may be used, "that the applicant is the real party in interest and that no agreement, either explicit or implicit, has been made to transfer or assign the license at a later date to any other party." [28] We suggested that this certification be added to Form 346 for LPTV applicants, and that it be appended to applications in other relevant services. At this time, we shall adopt this noncontroversial proposal for the LPTV service only. As to existing LPTV applicants, we shall require that they complete this certification at the time they are covered by an "A" cut off list or otherwise notified of the need to amend.

56. *License Holding Period.* NLMC asserts that the certification only will be sufficient to inhibit abuse of the minority and diversity preferences in LPTV if the recently-abolished three year anti-trafficking rule is applied to LPTV proceedings. However, we continue to be of the view, as we observed in para. 31 of the *Notice,* that application of a one year holding period, as adopted in the LPTV *Report and Order,* will be sufficient to preclude the "rapid re-assignment or transfer of stations, construction permits, or

[22] Applications which are not amended with the requisite information will be dismissed. In the future, we will further revise the format of Form 346 to facilitate computerized processing.

[23] In some situations, the filing of new applications against the "A" list will cause additional pending applications to be joined in mutually exclusive status. The Commission will notify those applicants of this occurrence and they will be given thirty days to amend with the newly required information, prior to release of the "B" list for their lottery group.

[24] *See, e.g., Revision of Application for Construction Permit for Commercial Broadcast Station (FCC Form 301),* 50 R.R. 2d 381 (1981).

[25] However, the proposed 1% benchmark for cognizable ownership interests will apply.

[26] Two low power television or television translator construction permit applications will be considered mutually exclusive whenever the facilities associated with one of the applications would cause interference within the protected signal contour of the other as defined in the low power television rules (47 CFR 74.707). Applicants that are unsuccessful in the lottery and whose facilities would not cause interference to those of other co-pending applications, including those of the lottery winner, may also receive a construction permit. Such permits will be accompanied by a notification that the permittee may expect to receive interference from the facilities of the lottery winners. If permittees deem such interference intolerable, the construction permit shall be surrendered to the Commission within 30 days of the grant date.

[27] Should such applications not be withdrawn, it is the Commission's intent, in the course of proceeding, to retain the application filed first in time and dismiss all other applications conflicting with this rule.

[28] Although the *Conference Report,* at 46, mandates that this certification only be required from the new permit grantee, we proposed that it be included in all applications and completed when filed. No comments contrary to this approach appear to have been received. We believe that both to safeguard the Commission's processes, and to facilitate applications processing, it would be appropriate to adopt the proposal as made.

licenses granted by lottery" that the Conferees believe would undermine the intent of the preference scheme. In the *Report and Order* deleting the "three-year rule" and the underlying "trafficking" policy, we adopted a one year holding period in situations in which the permit to construct a new facility resulted from a hearing grant made on the basis of comparative criteria.[29] Both the holding period adopted in the *LPTV Report and Order* and the period established in our proceeding eliminating the "three-year rule" apply only in cases where the construction permit was awarded by virtue of a comparative preference. We believe that continuing this procedure in the lottery context is consistent with the intent of Congress that a holding period be imposed to protect the integrity of the lottery preference scheme. Thus, the one year post-lottery holding period will apply only when the permit holder was the beneficiary of a diversity or minority preference. The one year period begins with initiation of on-air operation. The rules will be amended to reflect this decision.

57. *Changes in Preference Eligibility.* We also shall adopt the proposal in para. 32 of the *Notice* requiring that an applicant inform the Commission of changes in preference status within seven days of the completion of any such changes, up until publication of a "B" list on which the applicant appears, or, as to unopposed applications, the proposed grant list. Changes in diversity status for subsequent lotteries would be reported after the construction permit is granted. This treatment in some cases may result in an applicant receiving an extra diversity preference in a lottery held subsequent to a tentative selection which has not been processed through to grant. However, we are of the view that it is a reasonable method by which to modify the status of LPTV applicants while limiting the delay entailed by such a requirement.

58. Thus, if an applicant is a "tentative selectee" and a petition has been filed against the grant of the application, the "tentative selectee" status will not affect the diversity preference to which that applicant may be entitled in a subsequent proceeding. However, any subsequent grant will be conditioned on the outcome of the first proceeding. Further, the grant in the second proceeding, and all further grants, will be included for purposes of adjusting the diversity preference in subsequent proceedings. We believe this process represents an equitable compromise. While applicants remain under a continuing obligation to make certain that the information on file is correct, amendments will not improve the preference standing of any applicant once that applicant appears on the "B" cut-off list.

59. *Preference Framework for Mass Media Services.* As we have indicated, substantial attention was drawn to the preference scheme that the Commission proposed at paras. 35–44 of the *Notice*, and the related rule proposals set forth as Sections 1.1621–1.1623 in Appendix B of the *Notice*. The proposals made track the *Conference Report* accompanying the amendatory language of the statue. Having fully considered all of the comments submitted regarding the various aspects of the preference scheme, we adopt the preference generally as proposed, but with a number of clarifying and perfecting modifications.

60. Initially, we find that the minority preferences enacted by Congress are constitutional under the holdings of the Supreme Court in *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978) and *Fullilove v. Klutznick*, 448 U.S. 448 (1980). As we observed in the first Notice in this proceeding, 88 F.C.C. 2d at 491, those cases make clear that the award of special preference to remedy the effects of past discrimination does not offend the equal protection component or the due process clause of the Fifth Amendment.[30] We noted that although a remedial preference scheme "may result in grants of licenses of minority applicants which might otherwise have gone to others," under *Fullilove* that result is an appropriate consequence of the remedial preference. We remarked that the medical school admissions program overturned in *Bakke* set aside a specific number of places for minorities, utilized a different admissions standard for minorities than for whites, and did not involve any finding of past discrimination by an appropriate governmental body.

61. The program adopted herein does not share the attributes of the scheme rejected in *Bakke*, and comports with the teachings of *Fullilove*. The Conferees have, at 43–44 of the *Report*, found that past discrimination has resulted in severe underrepresentation of minorities in media ownership. They have therefore established a program in which race is one of two factors to be awarded fixed relative preferences.[31] As SIN correctly points out, a 2:1 fixed relative preference does not guarantee that minorities will receive double the number of licenses as would non-minority applicants. Further, the Conferees have instructed that we report annually on the effect of the preference system and whether it is serving the purposes intended. Congress will be able to further tailor the program based on that information, and may eliminate the preferences when appropriate. All of these factors lead to the conclusion that the preference system as adopted passes constitutional muster.[32]

62. The proposed rules contained in Appendix B of the *Notice* represent the preference scheme described in the *Conference Report*. The Conferees stated, at 44, that the minority ownership preference "must be no less than a fixed relative preference of 2:1." Members of different minority groups are to "be allowed to aggregate their ownership interests to achieve a majority interest in any given application." The contention of a number of parties that a 2:1 fixed relative preference is not "significant" within the meaning of the statute is contradicted by the findings of the Conferees that such a preference fulfills the "significance" test. Further, the alternative preferences proposed by Frontier Broadcasting Companies ("Frontier") and others are so exclusionary in nature as to be constitutionally suspect. If the "dilution effect" complained of by some parties appears with experience to be detrimental to achieving the result intended, the Congress or the Commission may wish to revisit this area. We believe, however, that the minority preference designated in the *Conference Report* should first be applied for a reasonable period.

63. The diversity preferences in the proposed rules of the *Notice's* Appendix "B" reflect the *Conference Report's* multilevel approach to the diversity issue. There is proposed a 2:1 fixed

[29] *Amendment of § 73.3597 of the Commission's Rules [Applications for Voluntary Assignments or Transfers of Control]*, 47 FR 55924 (December 14, 1982).

[30] The process of analysis under the equal protection component of the due process clause of the Fifth Amendment, applicable to the Federal government, is essentially the same as that conducted under the equal protection clause of the Fourteenth Amendment.

[31] In fact, the diversity preference has an intermediate "floor" for each lottery that is not applied to the minority preference.

[32] This conclusion is buttressed by the recent judicial action rejecting a challenge of Commission use of minority ownership status as one of the acceptance criteria for applications to use frequencies made available by our clear channel rule making proceedings. *Bunkfeldt Broadcasting Corporation v. FCC*, No. 82-1212 (D.C. Cir. January 6, 1983). Our action resolving the clear channel proceeding was affirmed in *Loyola University v. FCC*, 670 F. 2d 1222 (D.C. Cir. 1982).

relative preference for those with no other mass media ownership interests, a 1.5:1 preference for those holding interests in one, two or three properties, no preference for those with more than three interests, and no preference for those with media properties that essentially would be co-located with the proposed new station. A number of commenters object to this scheme because it does not take account of the details of media ownership, failing, for example, to distinguish between a major market VHF station and a low power station. Upon review of the *Conference Report* and the comments of the parties, we have determined to reject the modifications suggested by the commenting parties.

64. In taking this action, we agree with the view expressed by SIN that "should the Commission have to expend substantial resources to investigate and resolve such subjective issues . . . it might as well hold a traditional comparative hearing." SIN correctly notes that the premise of the lottery proposal is that in the secondary, basically unregulated LPTV service, "most distinctions between applicants are not significant enough to warrant detailed Commission inquiry." [33]

65. An important aspect of the preference system is the manner in which various ownership interests are defined. The *Conference Report* states, at 45, that with respect to both the diversity and minority preferences, "the Conferees expect that the Commission shall evaluate ownership in terms of the beneficial owners of the corporation, or the partners in the case of a partnership. Similarly, trusts will be evaluated in terms of the identity of the beneficiary.

66. In light of our further review of the *Conference Report*, and having reflected upon the comments of the parties, we will adopt our initial proposal that both general and limited partnership interests be considered in determining the ownership of a partnership. We believe that the *Conference Report's* focus on "individuals who are participants in a . . . partnership," at 44, coupled with its intention that we consider "the partners," commends this result. Additionally, the emphasis on beneficial ownership interests in other entities suggests the similar inclusion of limited partners.

67. There is no doubt of the Conferees' intent that "a majority interest" be held in order for a minority preference to be awarded. Including limited partnership interests in this computation should increase the frequency with which such ownership can be achieved.[34] We believe that profit shares should be determinant of ownership of partnership interests. Thus, a five percent share of annual profits will be viewed as a five percent partnership interest. Use of this single measure will facilitate our ability to process applications with ease, and is consistent with the Conferees' emphasis on beneficial ownership. We will adopt the apparently noncontroversial proposal in para. 38 of the *Notice*, that in computing diversity preference eligibility the media holdings of the partnership itself be considered together with the combined cognizable holdings of the partners. In considering ownership interests, we will utilize the proposed 1% benchmark for cognizable ownership interests. This action will eliminate any *de minimis* ownership interests from consideration while remaining true to the intent of the Conferees.[35]

68. In the *Notice*, we proposed that non-stock corporations and unincorporated associations be treated "in a manner similar to partnerships in which each member holds an equal share." We agree with IBN and the Corporation for Public Broadcasting ("CPB") that nonstock corporations, as well as licensees operated by commissions, boards, or other governmental bodies should be judged as to minority status on the basis of the composition of the board. We believe this treatment also should apply, for diversity purposes, to the holdings of board members. The same treatment should be afforded both nonprofit and for-profit nonstock corporations. We do not concur, however, with CPB's opposition to our consideration of the membership of nonprofit corporations or unincorporated associations when such entities are membership organizations. Action consistent with the thrust of the *Conference Report* suggests consideration of the composition of the membership as to minority and diversity preferences. In order to minimize costs, we will authorize appropriate recognized sampling methods to be used in organizations with more than fifty members.

69. Upon further consideration of our *Notice* proposal, at paras. 39–40, regarding treatment of trusts, we believe that as to the minority ownership preference, the percentage each beneficiary derives as a portion of the whole should be considered, with more than fifty percent total minority share being required in order for preference to be awarded. This is consistent with the qualitative manner in which partnership interests are being treated, and appears more appropriate than our initial proposal to base this computation on mere numbers of minority beneficiaries. We will adopt as proposed our plan for the treatment of trusts for diversity purposes. Thus, if either the trust or its beneficiaries, or the trust and beneficiaries combined hold more than fifty percent of any medium of mass communications, these interests will be attributed to the trust applicant. An exclusion of interests of beneficiaries receiving less than 1% of trust income will be applied.

70. We also will adopt the *Notice* proposals regarding treatment of corporate ownership interests, as presented at paras. 41–42 of that document. The corporate applicant, by its officers, will be required to certify both as to the minority status of the holders of beneficial interest in a majority of the corporation's voting stock, if claiming such a preference, and as to any diversity preference claims. To derive this data, corporations with more than fifty shareholders will be permitted to use appropriate sampling procedures, if necessary. Such sampling methods are presently used in ascertaining alien ownership interests. A one per cent attribution benchmark will be applied in the diversity context, as proposed.[36]

---

[33] Given the absense of any local programming obligations, we do not find Press' proposal for an "undeserved communities" preference to be in the public interest. Further, it appears that utilizing preferences other than those specified in the statute and *Conference Report* would be contrary to law. Press' proposal that "Tier III" applications for such communities be processed at an early date might have an unfair impact upon other applicants, and would, due to the interrelated mutually exclusive status of many applications, also require us to process numerous applications that do not have "underrepresented" status out of normal order. We do not believe this proposal should be adopted.

[34] Conversely, however, considering the ownership interests of limited partners may have a negative impact on the ability of minority entrepreneurs to benefit from the diversity preference.

[35] The rule tracks, but is not identical to, the Commission's current "attribution" rules. Its function is to exclude minor interests from consideration in calculating eligibility for lottery diversity preferences. Revision of this rule may be undertaken consistent with the outcome of our determinations in MM Docket No. 83-46, *Corporate Ownership Reporting and Disclosure by Broadcasting Licensees*, 48 FR 10082 (March 10, 1983).

[36] As to spousal ownership interests, we will, in computing the lottery diversity preference, treat such holdings in the same fashion as other family relationships. That is, spousal relationship, standing alone, will not be presumed to create common control over a mass media entity in which one spouse has an interest. Thus, we will, in the lottery context, look for diversity purposes to the general view of family relationships found in such cases as *KTRB Broadcasting Co., Inc.*, 46 FCC 2d 605, 607 (1974), and not to the presumption regarding spousal ownership interests stated in cases such as *Lady Sarah McKinney-Smith*, 59 FCC 2d 398, 401–402

71. *Definition of Mass Media.* In the *Notice,* we proposed to include daily newspapers in the definition of "media of mass communications" for calculating the diversity preference. American Newspaper Publishers Association ("ANPA") asserts in its comments, however, that it would be erroneous to consider newspapers as media in the lottery context since print media is not mentioned in the statutory definition. Although newspapers are not included in the open-ended statutory definition, the Conference Report, at 43, indicates that newspapers should be so included.[37] Moreover, we believe that newspapers should be included in the definition to further the Commission's long-recognized public interest goal of promoting diversity of viewpoints. *See, e.g., FCC v. National Citizens Comm. for Broadcasting,* 436 U.S. 775, 795 (1978); *Associated Press v. United States,* 326 U.S. 1, 20 (1945).

72. By including daily newspapers[38] in the statutory definition of mass media, we are not precluding newspapers from applying for LPTV licenses. The effect of our action, which is meant to increase the diversity of voices, is to make a newspaper owner applicant ineligible for an LPTV diversity preference in the community in which it publishes. Thus, all other things being equal, it is more likely that a non-media owning applicant will be more successful in a LPTV lottery than an applicant who owns no other print or electronic media.

73. We concur in Microband's view that Congress did not intend MDS to be considered as a mass communications medium so long as it is regulated as a Common Carrier Service in which the MDS licensee lacks direct editorial control over the programming. The statutory language includes in the "media of mass communications" MDS "and other services, the licensed facilities of which may be substantially devoted toward providing programming or other information services within the editorial control of the licensee." The *Conference Report* adds clarity to this definition by observing that in services such as MDS, "which may be neither clearly common carrier nor broadcast entities," preferences need be used in lotteries when licensees have the ability to exercise direct editorial control over a substantial proportion of the programming or information services offered. It appears appropriate to treat MDS ownership in the same manner when MDS permittees or licensees participate in lotteries in other services, such as LPTV. Thus, present MDS licensees will be eligible for diversity preferences in LPTV without regard to their MDS holdings. However, this matter will be revisited if MDS is at some future time treated as a broadcast type service.

74. *Translators as Mass Media.* We do not agree with Comments to the effect that translators should not be considered mass communications media. Under section 74.732(e) of the Commission's Rules, an existing translator station immediately may commence low power operation upon notification to the Commission. It would raise serious questions regarding the legitimacy of the Commission's processes were we to award diversity preferences to translator operators who subsequently could convert their operations to LPTV status by letter.

75. *Local Ownership and the Diversity Preference.* The *Conference Report* states, at 43, that "the avoidance of local ownership concentration should continue to be a factor of major significance in promoting diversity in the licensing process." The Conferees observe that when a lottery applicant for a mass media license or permit has more than 50 percent interest "in any other medium of mass communications which would be co-located with the licensed facility sought, it would not promote the public interest to give such applicant a preferred status relative to other applicants." Thus, in any mass media lottery, no diversity preference will be awarded to an applicant whose owners, when aggregated, have controlling interest (over 50 percent) in any medium of mass communications in the community for which the grant is sought The *Conference Report* states that the Commission should require certification as to whether an applicant holds such an interest "a prerequisite for an acceptable application."

76. In the *Notice,* at para. 44, the Commission proposed to "make ineligible for a diversity preference, those applicants the owners of which essentially own more than 50% of a local medium of mass communications." We further proposed to require applicants to certify that they did not hold a controlling interest in media of mass communications serving "the community wherein the license or permit is sought." It is clear that the essence of the concerns evidenced in the *Conference Report* and reflected in our *Notice,* is that no diversity preference be provided those applicants who already control a medium of mass communications in the same locality in which the new facility is sought. Difficulty in implementation arises, however, when attempting to equate "locality" with the term of art "community of license." The notion of a "community of license" is not particularly relevant in this context, because LPTV licensees are not required to serve a given "community" as such.[39] Therefore, in order to implement the proposed restriction with appropriate regard to concerns about local media concentration, we will, in LPTV, adopt contour encompassment standards modeled on our "one to a market" restrictions. Diversity preferences will not be awarded to applicants whose owners, when aggregated, have a controlling interest in stations whose stated contours wholly encompass or are encompassed by the protected predicted contour of the LPTV station for which the license or permit is sought. Similar restrictions will be applied to co-located cable television systems and daily newpapers. Certification as to this status will be included in the revised LPTV application. Existing applicants must complete the certification at the time their applications appear on an "A" cut off list or when they are otherwise notified of the need to amend.[40]

(1976), and *Alexander S. Klein,* 86 FCC 2d 423, 426 (1981). The action taken here is consistent with the *Conference Report's* view, at 45, that women, which it states to be "significantly underrepresented" in telecommunications ownership, should "substantially benefit" from the lottery preference scheme.

[37] A statutory definition that specifies "include" is a term of enlargement and not of limitation. *Highway & City Freight Drivers v. Gordon Transports, Inc.,* 576 F. 2d 1285, 1289 (8th Cir. 1978).

[38] A daily newspaper is one that is published four or more days per week in the English language and is circulated generally in the community of publication. A college newspaper is not considered as being generally circulated.

[39] *See* LPTV *Report and Order, supra,* at paras. 14–15, 62. However, in order to effectuate the Conferees' intent that no diversity preference be given to those owning other media of mass communications in the same locality, it will be necessary to take cognizance of those service areas known as the cable television system's "franchise area" and the daily newspaper's "community of publication," and to utilize these as the areas to which the contour of the proposed LPTV station is related.

[40] The standards to be applied in LPTV will provide that no diversity preference be granted to any applicant whose owners, when aggregated, have a controlling interest in the following media of mass communications, if the service area of those media as described herein wholly encompass or are encompassed by the protected predicted contour, computed in accordance with Section 74.707(a), of the low power TV or TV translator station for which the license or permit is sought:

(a) AM broadcast station—predicted or measured 2 mV/m groundwave contour, computed in accordance with §§ 73.183 or 73.186;

(b) FM broadcast station—predicted 1 mV/m contour, computed in accordance with § 73.313;

(c) TV broadcast station—Grade A contour, computed in accordance with § 73.684;

(d) Low power TV or TV translator station—protected predicted contour, computed in accordance with § 74.707(a);

77. *Ex Parte Rules.* Low power television proceedings will become "restricted" for *ex parte* purposes from the time that a "B" list is published. Under the current *ex parte* rules, adjudicative proceedings generally become restricted at the time that a hearing designation order is issued. Adjudicative proceedings can become restricted, however, prior to issuance of the hearing designation order, for example, where public notice is given or actual notice is obtained that mutually exclusive applications have been filed. *See* 47 CFR 1.1203(b)(2). However, this rule goes beyond the requirements of the Administrative Procedure Act, which requires the imposition of *ex parte* restrictions no later than "the time at which a proceeding is noticed (*i.e.*, designated) for hearing" unless actual notice is acquired beforehand. 5 U.S.C. 557(d)(1)(E). Thus, to comply with our *ex parte* rules, LPTV proceedings will become restricted when the "B" cut off list is published or actual knowledge of mutual exclusivity is acquired, whichever occurs first. This result is justified due to the unusual circumstances of LPTV, *viz.*, the voluminous number of applications and the fact that it is practically impossible to determine, with precision, which applications are mutually exclusive prior to issuance of the "B" list.

78. *Major Changes.* A subidiary area raised in the *Section Notice* was the treatment of "major change" applications under a lottery system. We are persuaded that the proposal to subject "major change" applications in the traditional broadcast services to processing by lottery should not be adopted now. No basis has been established in this proceeding upon which to apply lottery processing to traditional service "major change" applications separate and apart from the treatment of all other applications in those services.

79. As to "major change" requests in LPTV, we continue to believe that the processing of such applications as initial filings is justified. "Major change" status does not, as CTN erroneously contends, open up the underlying authorization of an existing licensee to competitive challenge. However, the modifications that are treated as "major changes" are considered to be so significant that it would be inequitable to confer any protected status upon them. In our *LPTV Reconsideration Order*, FCC 83-129, adopted separately this date, we are adopting a proposal that modifications of facilities that would not increase the signal range of the station in any horizontal direction be treated as "minor." We believe this will facilitate maintenance-type facilities changes without creating new interference or preclusion. For the reasons stated in the LPTV document, additional adjustment in the handling of major technical changes does appear appropriate at this time.

80. Pending applications for new facilities and for "major changes" in existing facilities are assigned a new file number when they are amended in such manner that the amendments themselves constitute a "major change." When "major change" amendments are filed after the initial application appears on a cut off list, the application is no longer considered a part of that cut off group, and loses the protection the cut-off list affords. We do not concur in SIN's view that amendments reflecting site changes and similar matters should be treated as "minor," whether or not that would otherwise be the case, prior to issuance of a "B" cut-off list.[41] We observe that the standard for acceptance of LPTV applications is that they be "complete and sufficient." Additionally, under Section 1.65 of the Commission's Rules, applicants are under a continuing obligation to inform the Commission of significant changes in the information they have provided. Thus, all the information on file with the Commission should be current and complete. Allowing amendment of applications as is requested by SIN would add a substantial burden to the already Herculean processing task that the Commission faces in LPTV. It is the responsibility of the applicant to keep the necessary information on file with the Commission so that its rights are not jeopardized.[42]

81. *Channels 70-83 Issue.* We have also determined not to grant KIRO's request that translators wishing to move from channels 70 through 83 be exempt from consideration as "major change" applicants subject to lottery. Channels 70 through 83 were reallocated from broadcast to land mobile use in 1970.[43] Shortly thereafter, we concluded that translators operating on those channels would be afforded protection from the land mobile services only for the balance of their existing license terms, "after which renewals would be granted only on a secondary basis." We noted that while licensees on those channels were not being required to move, "they should be aware of the secondary nature of their authorizations and the possibility of changes to lower channels becoming necessary."[44] More than 800 television translators were in operation on channels 70 through 83 at the time of reallocation. Roughly 600 stations remain in operation on those frequencies today.[45] Applications from such licensees seeking a channel change are exempt from the LPTV applications freeze.[46] However, it may well be that in a number of cases, such applications will be mutually exclusive with others and will not be granted.[47] We believe the Commission's proper concern in such situations is that service is provided to the public. The nature of this service should be responsive to market demands. It is not the Commission's role to maintain an existing service in perpetuity. Thus, while we will not protect channel 70-83 operators from other applicants for lower channels, we will grant special temporary authority (STA) to such licensees, if a lower channel is available and a move is immediately required by land mobile interference problems.[48]

(e) Cable television system franchise area;

(f) Daily newspaper community of publication.

Additionally, the diversity preference will not be available to applicants whose proposed transmitter site is located within the franchise area of a cable system owned by the applicant and/or its owners or the community of publication of a daily newspaper owned by the applicant and/or its owners. Failure to consider the location of the transmitter site in the community of publication or the franchise area could easily lead to the diversity preference being awarded to existing media owners in a manner contrary to the Conferees' intent. Given this focus on localism, it is clear that the Conferees did not intent that we consider direct broadcast satellite ("DBS") operators as owners of "local" media for purposes of this restriction. See *Conference Report*, at 43.

[41] As we have noted above, under our newly revised definition of "major change," a site change is in fact treated as "minor" so long as there is no corresponding change in coverage area.

[42] Applicants should note that in the LPTV *Reconsideration*, we are revising our procedures and will henceforth treat LPTV transfers of control as "major changes" in the same circumstances in which this would ordinarily be the case in the broadcast services. Individuals interested in the LPTV applications process should read the *Reconsideration* document.

[43] *Spectrum Space for Land Mobile Services*, 19 RR 2d 1663 (1970).

[44] *Amendment of Part 74, Subpart G (Television Broadcast Translator Stations)*, 23 RR 2d 1504, 1509 (1971). Our policy regarding the secondary status of low power stations on channels 70-83 currently is codified as Section 74.702(a)(3) of the rules.

[45] *Improvements to UHF Television Reception*, 90 FCC 2d 1121, 1127 (1982). We determined in the UHF proceeding that new television sets no longer need to be equipped to receive channels 70-83. This will make it possible to manufacture sets which perform better on the remaining UHF channels. Manufacturers are not, however, precluded from producing sets which receive channels 70-83.

[46] *LPTV Report and Order, supra*, Appendix E, para. 3.

[47] Only approximately 40 channel change applications are now pending. We expect this level to increase in the near future, as Cellular Land Mobile Communications Systems are licensed to operate on the spectrum in question.

[48] Section 309(f) of the Communications Act requires a party to have pending an application for

However, these licensees must compete equally with all other applicants for regular low power or translator service on that lower channel and they will be required to cease their STA operation if another party is assigned the channel and is prepared to commence operation. This resolution will maintain the level of service to a community, while removing the Commission from considerations regarding the content of that service. For similar reasons, we will grant STA to translators forced to move by the start of operations of full service stations.

V. Private Radio Comment Summary

82. Most of those commenting on our proposals to use lotteries in the Private Radio Services addressed the appropriateness of lotteries in the Private Land Mobile Radio Services ("PLMRS"). Only a few commenters addressed the use of lotteries in the Aviation, Maritime and Private Operational-Fixed Services.

83. Many commenters maintained that lotteries would be inappropriate in any Private Land Mobile Service because the qualifications of competing applicants could always differ. Some commenters recognized, however, that lotteries could expedite the licensing process and be beneficial in certain cases, particularly when the licenses would be used strictly for entrepreneurial commercial purposes.

84. Some commenters were concerned that the use of lotteries in the PLMRS might jeopardize the frequency coordination process. Another argument advanced by several commenters was that the use of lotteries in the Private Land Mobile Services would be contrary to the spectrum management principles set forth in revised Section 331(a) of the Act. 47 U.S.C. § 331(a). Finally, others raised concerns about public safety, spectrum "trafficking" and the need for expert licensees.

VI. Private Radio Services Discussion

85. *Proposals.* In the *Notice*, we recognized that licensees do not receive exclusive use of frequencies in most of the Private Radio Services. Indeed, most frequencies are shared, and the need for comparative hearings or lotteries usually does not arise. The *Notice* did, however, set forth several proposals for implementing lotteries in certain Private Radio Services. In summary, we proposed to use lotteries in the Aviation, Maritime, Private Land Mobile and Private Operational-Fixed Microwave Radio Services. In essence, we proposed to have the option of utilizing the random selection technique in any Private Radio Service where mutually exclusive applications could be filed or where more applications for initial licenses might be received than could be accommodated on available frequencies. Additionally, we requested comments on whether selection by lottery should apply to applications in all the different classes of Private Land Mobile Services.

86. We explained that our overriding concern in making these proposals was to ensure that the public received the benefits of private radio service in the most expeditious manner possible, at the least cost to applicants, with no significant reduction in the qualifications of licensees. Our proposals were based on the premise that in any particular private radio lottery the qualifications of competing applicants to serve the public interest would be without substantial material differences. Under these circumstances, comparative hearings would serve no useful purpose and in large part would result in artificial distinctions without significant differences in licensees' qualifications to serve the public.

87. In the *Notice*, we recognized that under the Communications Act and our Rules, Petitions to Deny may not be filed against applications for Private Land Mobile licenses. We noted, therefore, that formal filings involving oppositions and replies would not be entertained in these services. In the other Private Radio Services where we proposed to select licensees by lottery (e.g. Aviation, Maritime, and Operational-Fixed Services), Petitions to Deny could be filed under our proposed rules in accordance with statutory requirements. 47 U.S.C. § 309. We proposed to streamline the lottery in these services, however, by requiring that Petitions to Deny be filed against applicants before the lottery and only those that were filed against the tentative selectees would be reviewed after the lottery. We noted that this would enable us to eliminate the necessity of a second time-consuming Public Notice inviting Petitions to Deny. Also, because the Private Radio Services do not currently involve "media of mass communications," we proposed to conduct all Private Radio Bureau lotteries without awarding significant preferences to any applicants. We believed that these proposals would ensure that lotteries were "extremely simple" in the Private Radio Services, as Congress had prescribed. *Conference Report* at 46.

88. *Lotteries in Private Land Mobile Radio Services.* Many of those commenting in response to the *Notice* took issue with these proposals. In particular, they questioned our proposal to use lotteries to select licensees in the Private Land Mobile Radio Services (Part 90). Some commenters referred to Section 120 of the Communications Amendments Act of 1982, the same legislation that authorizes the Commission to use lotteries to select licensees. That section establishes guidelines for the Commission's management of the Private Land Mobile spectrum. It directs the Commission to consider certain principles such as public safety, spectrum efficiency, competitive markets and interservice sharing. 47 U.S.C. 331.

89. Some commenters argued that our proposed use of lotteries in these services was inconsistent with these new statutory guidelines, particularly those relating to public safety. They stated that there are significant differences in the abilities of many applicants to serve the public interest. They pointed to the legislative history of the new private land mobile legislation, which stresses the Commission's obligation to promote the private land mobile spectrum needs of police departments and other public agencies using the spectrum to protect the American public. This concern was also expressed by some of those commenting in regard to the use of lotteries in the Operational Fixed Microwave Service (Part 94), where eligibility is based on Part 90 of the Rules (Private Land Mobile Services).

90. Many of these commenters were concerned about the use of lotteries in particular cases. For instance, the American Association of State Highway and Transportation Officials (AASHTO) opposed the use of lotteries in the Highway Maintenance Radio Service. Forest Industries Telecommunications (FIT) opposed lotteries in the Forest Products Radio Service. The Association of Public Safety Communications Officers, Inc. (APCO) and the Los Angeles County Sheriff's Department were against lotteries for public safety frequencies. UTC, the Utilities Communications Council, opposed the use of lotteries in the Power Radio Service and Operational Fixed Service. In essence, these parties and others argued that the Commission should rely on comparative hearing procedures to select the "better qualified" licensee. They also emphasized the importance of frequency coordination in accommodating the maximum number of

authorization of service before the Commission is permitted to grant STA. Thus, a translator licensee seeking STA must first apply for regular authority to broadcast on the channel in question.

licensees in a limited amount of spectrum.

91. We are convinced, however, that the new statutory guidelines for managing the Private Land Mobile spectrum—promoting safety, improving spectrum efficiency, reducing regulatory burdens, encouraging competition, providing services to large numbers of users, and increasing interservice sharing opportunities—are consistent with our proposal to use lotteries in the Private Land Mobile Services. The *Conference Report* makes it clear that these guiding principles, all of which were recognized as important goals, were *not* intended to be exclusive and that the Commission may consider any other relevant factors in the public interest. Moreover, not all of these guidelines need be considered by the Commission in each individual case. *Conference Report* at 52.

92. The *Conference Report*, we believe, encourages us to use lotteries in these services if it is done in a manner consistent with these new statutory guidelines. The *Conference Report* discourages the use of "auctions or similar economic methods" to assign this portion of the spectrum, but does state that this should *"not be construed to limit the ability of the Commission to use lottery procedures for purposes of granting private land mobile licenses. . . ." Conference Report* at 53, (emphasis added). This makes it apparent that Congress did not exclude private land mobile applications from the range of possible candidates for a lottery.

93. In certain areas of the country, we expect lotteries to be absolutely essential in some Private Land Mobile Radio Services. In particular, as some of the commenters noted, applications for base station licenses in the Commercial or SMRS pool of frequencies at 800 MHz are prime candidates for selection by lottery.[48] As a result of our recent decision in Docket No. 79-191, 250 new private land mobile channels in the 800 MHz band were released, with eighty channels earmarked for the SMRS pool. *Amendment of Part 90*, 90 FCC 2d 1281, 1299 (1982). Unlike the other pools, SMRS base station licensees were authorized to provide a communications service to eligibles for profit. We have already received far more applications for SMRS frequencies in some geographic areas than can be accommodated in the available spectrum. *See* FCC Public Notice, 2459, February 17, 1983. For instance, in the SMRS pool in the Los Angeles area alone, we have received approximately 250 applications requesting 1200 frequencies. Only 80 frequencies are available for assignment in that pool and in all likelihood only 16 applications will be granted. A comparative hearing of this scope, even a "paper" proceeding, would be unworkable for all practical purposes unless coupled with a lottery. We believe that traditional comparative hearings in these circumstances would undoubtedly delay service to the public and would not result in the selection of significantly more qualified licensees. This would clearly be inconsistent with our public interest responsibilities and the new statutory guidelines. Other major urban areas are faced with similar demand for these frequencies.

94. This is precisely the type of situation described in the *Conference Report* as appropriate for selection by lottery. There are large numbers of licenses available; there are large numbers of applications because new frequencies have been made available; there would be a significant backlog of applications without a lottery; and a lottery would speed up the process of getting service to the public. *Conference Report* at 37.

95. *Case-by-Case Use of Lotteries.* We interpret the *Conference Report* as encouraging the Commission to utilize lotteries in the Private Land Mobile Services, where necessary, on a case-by-case basis consistent with the new statutory guidelines for managing these services. In the *Conference Report*, Congress made it clear that the lottery authority was discretionary in nature and that a service should not be subject to a lottery if the traditional comparative process would provide a superior means of diversifying media ownership in particular instances. *Id.* at 37-38. It is apparent that Congress' main concern in preserving comparative hearings in these circumstances and in developing a significant preference scheme in the lottery procedure was to ensure diversification in the Mass Media Services. These concerns are not relevant at this time in the Private Radio Services, where licensees do not engage in mass media programming or the distribution of video entertainment to the public.[50]

96. We do not intend to apply the lottery selection process automatically or mechanically in these services. As some commenters suggested, expedited hearing proceedings may be used initially to apply comparative criteria in specified radio services to determine which applications will be granted, denied or subject to random selection. This will ensure that in any particular Private Land Mobile lottery there will be no substantial material differences in the applicants' abilities to serve the public interest.[51] Lotteries will not be utilized if the proposed uses of the spectrum would serve the public in materially differently ways. We would not, for example, utilize the same lottery to select between applicants proposing to use the spectrum for public safety purposes and those proposing non-public safety use. We expect this to minimize the concerns expressed by APCO, UTC, the Los Angeles County Sheriff's Department and others about the use of lotteries to select from among competing applicants proposing signifcantly different uses of the spectrum.

97. Some commenters have expressed their concerns that the use of a lottery will somehow adversely affect the frequency coordination process used so effectively in these services. They reference the new legislation, which specifically authorizes the Commission to accept the services of non-Federal Government advisory committees in coordinating the assignment of these frequencies.[52] They are concerned that lotteries will prevent the coordinators from using good engineering practices to arrive at solutions to difficult assignment problems.

98. We do not expect any lottery in these services to affect the coordinators adversely. We have not proposed in this proceeding any changes in the rules regarding frequency recommendations by coordinators, nor have we intended to create the impression that assignments will not be based upon good engineering practices. We will continue to utilize the services of the coordinating committees, as authorized in the new legislation, and we will continue to follow the guidelines delineated in the new legislation for managing these services, including efficient spectrum utilization and good engineering practices.

[48] FIT, SIRSA, and AAR suggested that lotteries would be appropriate for SMRS licenses.

[50] Parallel Communications Corp., the AAR and SIRSA recommended that lotteries be used to select from among competing applicants in the Private Operational Fixed Microwave Service who filed for the use of multi-directional systems as a result of Docket No. 19671, *First Report and Order*, 86 FCC 2d 299 (1981), *reconsideration pending*. As stated in the *Notice*, we will grant appropriate significant preferences if any applications involving mass distribution of video entertainment are processed in the future by lottery.

[51] The comparative criteria to be applied to particular groups of applications to determine if they should be subject to a lottery will be established in subsequent service-specific proceedings. *See, e.g., Amendment of Part 90*, 90 FCC 2d 1281 (1982).

[52] 47 U.S.C. 331(b).

99. Questions have also been raised concerning the applicability of the Commission's "anti-trafficking" rules to lotteries in the Private Land Mobile Services in light of current loading and construction requirements. *See, e.g.*, 47 CFR 90.358, 90.609. We wish to make it clear that we have not altered the transfer and assignment rules in these services, nor have we seen any reason in the record of this proceeding to change the loading and construction requirements in any way as a result of a lottery.

100. *Aviation, Maritime and OFS Services.* We received few comments on our proposals to use lotteries in the Aviation Services (Part 87), the Maritime Services (Part 81) and the Operational-Fixed Microwave Radio Service (Part 94). Some commenters claimed that lotteries were inappropriate in these services because some types of these stations are expensive to construct and the qualifications of competing applicants could differ greatly. Others argued that lotteries would be beneficial in these services.

101. In light of these comments, we will use comparative hearing procedures in these services when it appears upon initial analysis that there are significant differences in the abilities of competing applicants to serve the public. On the other hand, when it appears upon initial analysis that there are no substantial material differences in the qualifications of competing applicants, we will select licensees by lottery. In this way, lotteries will be used to resolve "tied cases" when comparative hearings would serve no useful purpose. In making this public interest determination whether applications in these services should be subject to a comparative hearing or lottery, we may consider such factors as public safety, service coverage area, operator experience and spectrum efficiency. Other relevant factors may also be taken into account. Our reasons for using lotteries or comparative hearings will be specified in public documents in each individual case. By using lotteries selectively in these services, we expect to expedite service to the public in appropriate cases while ensuring that licensees always remain fully qualified. This is one of the four factors specifically referenced in the *Conference Report* for our consideration in determining whether to utilize our lottery authority. In any instance where we select licensees by lottery in these services, we will make the affirmative finding, required by the Conferees, that the public interest will be significantly benefited. *Id.* at 37–38.

102. In the Private Radio Services, therefore, we are adopting the rules essentially as proposed. We will utilize lotteries only when it appears that there are no substantial and material differences in the qualifications of competing applicants to serve the public interest. Prior to the lottery, applications will be reviewed to determine that they are acceptable for filing and comparative criteria may be applied. This will ensure that lotteries will occur in these services only when comparative hearings would serve no useful purpose. Only qualified applicants will receive license grants. If it is determined that an initial tentative selectee is not qualified to receive the license grant, another tentative selectee chosen from among the same applicant pool during the same random selection will be designated until a qualified applicant is selected. It will not be necessary to conduct a separate second lottery in the Private Radio Services.[53] The selective use of lotteries will allow us to address the concerns of the commenters on a case-by-case basis and, we feel, will result in significant public interest benefits. It will enable us to ensure that the public receives private radio service in the quickest way possible, at the least cost to applicants, with no significant reduction in the qualifications of licensees. Based on our review of the *Conference Report*, we are convinced that Congress expected us to maintain the option of utilizing lotteries under these circumstances.

103. We are persuaded, in light of the comments favoring the use of comparative criteria in the Private Land Mobile Radio Services (Part 90), that licensees should be selected by lottery in these services only after expedited paper proceedings have shown that the qualifications of the competing applicants are without substantial and material differences. As a procedural matter, Petitions to Deny are not authorized in these services (47 U.S.C. 309; 47 CFR 1.962). Prior to the lottery, therefore, we will review informal complaints against applicants and will use "paper" hearing procedures to apply comparative criteria developed in separate proceedings (*e.g.*, Docket 79–191, *supra*). After the paper proceeding, and in light of the number of frequencies available for assignment, those applications that are clearly superior will be granted. Those that are clearly inferior will be denied. Those that are without substantial and material differences will be designated for random selection if frequencies remain available for assignment.

104. After the random selection, having already determined through the paper proceeding that the applicants are qualified to become licensees, any new allegations that the applicants are not qualified to be licensees will be handled through the Petition for Reconsideration process or through license revocation proceedings under 47 U.S.C. 312.

105. In the other Private Radio Services where licensee may be selected by lottery (Maritime, Aviation and Operational Fixed Microwave Radio Services; Parts 81, 87, and 94), Petitions to Deny may be filed against applicants. The paper proceeding, if any is necessary, will therefore occur after the lottery selection process has been completed. It will be based upon the Petitions to Deny that were filed against the tentative selectee prior to the lottery.

106. In short, the paper proceedings in the Private Land Mobile Services will occur before the lottery and will be used to ensure that only those applications without substantial and material differences are designated for lottery selection. On the other hand, in those Private Radio Services where Petitions to Deny are authorized, we will require that the Petitions be filed before the lottery and only those that have been filed against the tentative selectee will be reviewed after the lottery is conducted. Paper proceedings, if necessary in light of the Petitions to Deny, will be held at that point. In both situations, only qualified applicants will receive license grants. In the Private Land Mobile Services, this will be determined by paper proceedings held before the lottery. In the other Private Radio Services, it will be guaranteed by the Petition to Deny process.

107. Any paper proceeding in the Private Radio Services will be administered by the Commission. The Commission will receive the evidence and issue the final decision awarding licenses to applicants and/or designating applications for random selection. The Private Radio Bureau will serve as advisor to the Commission and will be responsible for reviewing pleadings and preparing a draft of the final decision. The Bureau will not appear as a party unless the Commission orders it to do so in a particular case. If the Bureau participates as a party, it will do so through separated counsel.

108. A public notice will start the paper proceedings. The notice will identify the applications involved and

[53] The *Conference Report* indicates that a second lottery is necessary only after an initial tentative selectee has been determined to be unqualified in the mass media services because selection probabilities in those cases will have to be recomputed. *Conference Report* at 39–40.

will include the hearing designation order, the issues, and the pleading schedule and procedures to be followed by the parties in the paper proceedings. Because of the Private Radio Bureau's role as advisor to the Commission regarding these applications, the Chief, Private Radio Bureau and his staff will be considered to be decision-making Commission personnel for purposes of *ex parte* contacts regarding any hearing conducted pursuant to these procedures. However, should any of his staff be designated as separated counsel for the purpose of participation as a party in any hearing, they will be non-decision-making personnel.

109. If the Commission concludes that an oral proceeding is necessary, it will issue an interlocutory order directing an Administrative Law Judge to hear a particular issue or issues. The order will specify the issue or issues and will establish the procedures to be followed.

110. At the conclusion of the paper proceedings for Private Land Mobile licenses, applications will be granted, denied or designated for random selection. In the other Private Radio Services, at the conclusion of the paper proceeding tentative selectee will receive license grants or will be determined to be unqualified. If it is determined that a tentative selectee in any of the Private Radio Services is unqualified after a lottery has been conducted, the license will be awarded to the next tentative selectee selected from the same lottery.

111. As stated in the *Conference Report* at 46, we expect the lottery procedures for these non-media services to be "extremely simple." Public Notices will specify the date, time, location of, and additional procedures for lotteries in the Private Radio Services.

VII. Common Carrier Comments

112. All of the comments addressing the issue of lotteries in the Cellular Radio Service supported the exclusion of cellular service from lottery procedures. Many parties opposed using lotteries in the rural radio and offshore radio services. Some parties also suggested that some or all of the public land mobile services be excluded, particularly in cases where an applicant proposes to expand an existing system, either by adding a frequency or by proposing a wide-area system. Some parties questioned whether a lottery would expedite application processing and suggested higher threshold financial and technical standards. Concerns were raised by some commenters regarding trafficking and spectrum warehousing. One party requested that preferences be awarded for local ownership and non-profit cooperatives. Finally, one party opposed lotteries on the grounds that they may be inconsistent with State certification procedures.

VIII. Common Carrier Services Discussion

113. *Lotteries in the Public Mobile Service.* In the *Notice*, we proposed to conduct lotteries for mutually exclusive applications in all of the public mobile land services except for the Cellular Radio Service.[54] In our discussion, we referred to new allocations for 35 MHz paging (CC Docket No. 80–189) and 900 MHz paging (Gen. Docket No. 80–183) and to the extremely large number of applications which were expected for these new frequencies. Thus far we have received nearly 6,500 applications for the frequencies. A substantial number of these applications involve mutually exclusive ("MX") situations. We also expressed our skepticism that existing criteria will provide a meaningful mechanism for selecting among MX applicants and cited the overwhelming administrative burden of comparative proceedings for all the anticipated MX applications.

114. Some of the comments suggest that a lottery is inappropriate in the public land mobile services and that, in making its common carrier proposal, the Commission failed to consider the four factors listed in the *Conference Report*. We discuss these factors and findings related to them at this point. First, there is a large number of licenses available (including licenses for systems operating on previously allocated frequencies). Second, there is a potentially large number of mutually exclusive applications.[55] Third, there is a significant back-log which a lottery will reduce. The fourth criterion, diversity of information sources, does not apply to these services. Our decision to apply a lottery to the public land mobile services is based instead on the strong applicability of the other three tests.[56] We conclude, therefore, that a lottery is appropriate for the public land mobile service.

115. Some of the comments (Telocator's, for example), while not objecting to the use of a lottery in these services, oppose its application to all frequency bands. The comments suggest that the Commission distinguish between the newly allocated frequencies (for which, in limited cases, they support a lottery) and the rest of the land mobile frequencies (for which the comments oppose a lottery). The parties refer to the following language in the *Conference Report:* "Relevant factors for the Commission's consideration . . . include . . . whether there is a large number of mutually exclusive applications for each license, for example, *when a new service is initiated." Conference Report* at 37 (emphasis added).

116. In our view, the above position is based on a confusion of the term "newly allocated frequency band" and the term "new service". While the *Conference Report* uses "new service," it did so only as an example of a situation where a back-log of applications might occur. The pertinent legislation was written in the context of, but was not confined to, the initiation of low-power television, which clearly is a new service. The allocation of additional frequencies for public land mobile service is not, strictly speaking, the initiation of a new service. Therefore, in implementing a lottery, we seek not simply to expedite low band and 900 MHz applications, but all public land mobile applications. While the bulk of our back-log of applications will be for newly allocated frequencies, all applications are processed similarly and are of equal priority. All land mobile applications will therefore be expedited by a lottery, not just those for newly allocated frequencies.

117. *New and Existing Systems.* Telocator further opposes the use of a lottery in cases where an applicant requests an additional frequency to develop a wide-area system or to relieve congestion on a trunked mobile telephone system. Initially, we note that paging systems do not use trunking, so the argument as to congestion relief is of limited applicability to this discussion. The newly-allocated frequencies are for paging. The bulk of the anticipated back-log is related to these new frequencies, and not to situations where existing licensees seek additional two-way frequencies to relieve congestion on mobile telephone systems. The Commission is nevertheless mindful of the competing interests of new applicants seeking a first channel and established carriers who seek to enhance their existing systems. In our view, the solution to this problem is to make additional frequencies available, so that all parties, whether new entrants or established carriers, may have access to frequencies. Our recent allocation for

---

[54] The public mobile services include paging, two-way land mobile telephone service, two-way air-ground service, offshore telecommunications service, rural radio service, and cellular radio service. The cellular radio service is not included in this proposal for implementing lottery rules.

[55] The precise number of mutually exclusive applications will not be determined until the 900 MHz applications are loaded into the automated data base and analyzed.

[56] See below, however, our discussion of the rural radio and offshore services.

cellular radio has responded to this problem, as have the low-band and 900 MHz allocations for paging. The lottery, on the other hand, is not designed to relieve frequency shortages but rather to expedite the licensing process, so that all applicants, whether new entrants or existing carriers seeking another frequency, may have their applications expedited. We also note that, even under the present rules, established carriers receive no preference over new entrants in a comparative proceeding, so a lottery does not place established carriers in a less advantageous position *vis a vis* new entrants.

118. The Commission is also aware of the desire of carriers to obtain additional frequencies to provide wide-area service. In the 900 MHz allocation, we recognized the need for wide-area public mobile service and specified frequencies for network and regional paging systems. *First Report and Order*, 89 FCC 2d 1337 (1982). In describing how these applications would be processed, the Commission stressed that its purpose was to employ the most expeditious way to equitably process applications and make assignments. *Id.* at para. 49. To accommodate these applicants interested in establishing wide-area systems, we would apply a liberal assignment and transfer policy when licensees wish to trade their 900 MHz frequencies. For example, applicant "A" wishes to construct a wide-area system operating on frequency "1". If in one site, however, applicant "B" obtains frequency "1", and "A" proposes to purchase the constructed facilities from "B" in order to provide service on frequency "1" throughout the entire area, the Commission would give liberal consideration to the assignment application. We propose a similar approach in the case of the lottery procedure, thereby remaining consistent with the Commission's goal of expediting the licensing process while also taking into account the interests of those carriers providing wide-area service.[57]

119. *State Certification and Other Concerns.* In its comments NARUC opposes the lottery on the ground that it may undermine the state certification process for radio common carriers. We reject this view, however, since § 22.13 will remain in effect, requiring all licensees to comply with all applicable state certification requirements. 47 CFR 22.13.

120. TDS expresses the concern that lottery winners will engage in trafficking and thus frustrate the lottery's purpose of expediting service to the public. TDS requests that a two-year anti-trafficking provision be applied to lottery winners in the public mobile services. We reject this suggestion. The language discussing the trafficking issue in the *Conference Report* (pp. 45–46) is confined to the mass communications media service and is clearly related to the Conferees' concerns as to preferences awarded in lotteries and the diversity of ownership in those services. No preferences are awarded in the public mobile services and diversity of ownership is not at issue in lotteries involving these carriers. The trafficking issue as it affects the public mobile services is discussed in detail in CC Docket No. 80–57, 47 FR 43842, and goes beyond the scope of the lottery proceeding.

121. TDS requests that proposed rule § 22.32(g) be amended to explicitly state that no preferences will be awarded in lotteries involving these services. This request is consistent with the intent of the Act (*see Conference Report*, p. 41), and we will revise the rule accordingly.

122. *Offshore and Rural Radio Services.* In the *Notice*, the Commission proposed to include the offshore telecommunications service and the rural radio service in the common carrier lottery. This proposal was widely opposed in the comments, basically on the ground that, using the four factors listed in the *Conference Report*, neither service is appropriate for a lottery. Upon consideration of the four factors, the language in the statute, and the comments, we have concluded that these two services should not presently be included in the lottery proceeding. Neither service involves a large number of licensees or mutually exclusive applications, and neither service has a significant back-log. Moreover, we can perceive no other "salient consideration" that would compel us to use lotteries in these services. *See Conference Report* at 38. We reserve, however, the option of reexaming the applicability of a lottery to either of these services if, in the future, any of the above factors should significantly change. We note in particular that the Commission has recently proposed to allocate additional frequencies in the Offshore telecommunications service. *See Notice of Proposed Rule Making*, Gen. Docket No. 83–45, FCC 83–35, released February 22, 1983. If in the future, the number of mutually exclusive applications in this service should increase substantially, we may at that point propose to implement a lottery to more expeditiously process the applications.

123. *Telephone Cooperatives.* The Bledsoe Telephone Cooperative, Inc., ("Bledsoe") opposes a lottery in common carrier services on the grounds that the procedure would be counterproductive to the provision of quality service needed in rural areas. Bledsoe suggests that preferences be awarded for local ownership and non-profit cooperatives. The Commission is cognizant of the high quality of service provided by non-profit cooperatives, particularly in rural areas where high quality service may not otherwise be available. We have decided above not to use lotteries in the Rural Radio Service; accordingly, our decision implementing lotteries is not likely to affect telephone cooperatives at all.

124. *Pre-Lottery Screening.* Tymnet, Inc., urges the commission to screen applicants carefully prior to the lottery. We will not engage in such comparative consideration at the pre-lottery stage, nor will we attempt to distinquish between superior and marginally qualified applicants in these common carrier services, as Tymnet suggests. In our many years of regulating these services, we have found the overwhelming majority of carriers to be fully qualified in all respects. Even when a marginal operator is licensed, there is little potential for harm to the public interest because there are many operators in most markets from which customers may choose. Furthermore, most states regulate the market entry or rates, or both, of the radio common carriers and telephone companies providing mobile services. This serves as an additional, important check on their qualifications. Accordingly, we will not adopt the Tymnet proposal because it would impose time and resource burdens on Bureau staff without achieving significant public interest benefits in the common carrier area.

125. *Common Carrier Procedures.* The Appendix includes rules in Part I and Part 22 outlining procedures to be used for lotteries in the Common Carrier Bureau in general and in the Public Land Mobile Service in particular. Other common carrier services which may in the future use lotteries will be added to the list, after appropriate proceedings, in § 1.821 ("Scope").[58]

[57] The Commission's 900 MHz proceeding makes provision for nationwide paging systems, a technological advance with which the Commission has not had previous experience. Although in this *Second Report and Order* we implement lottery proceedings for 900 MHz applications in general, we reserve the option to decide in the 900 MHz proceeding whether lotteries are appropriate for applicants proposing network paging systems. *See First Report and Order*, Gen. Docket No. 80–183, 89 FCC 2d 1337 (1982).

[58] As we noted above, we have reserved the option of deciding in the 900 MHz proceeding (Gen. Docket No. 80–183), whether to include network paging applications in the lottery proceeding.

126. Under the common carrier lottery, the same procedures currently set forth in our rules will be followed as to application filing, acceptance or dismissal, public notice, and as to filing of petitions to deny.[59] Where it is determined that properly filed applications are mutually exclusive, a lottery will be held under the direction of the Bureau Chief. No preference will be awarded to common carrier lottery participants, consistent with the language in the Conference Report (p. 41). Pleadings filed against mutually exclusive applications will not be reviewed prior to conducting the lottery. The Commission will hold the lottery and then will review only the pleadings filed against the tentative selectee. This approach conserves staff time ordinarily spent reviewing pleadings filed against non-selected mutually exclusive applications. We believe the filing of Petitions to Deny prelottery, although at variance with that to be applied to low power television applications, best suits the individual demands of the common carrier processing function. Compare our discussion at para. 31 *et seq., supra.*

127. The staff will review the selectee's application and related pleadings. If the applicant is qualified, the staff will grant the application. If, however, a substantial and material question of fact remains, the application will be designated for hearing. We retain the option of sending the case to an Administrative Law Judge or to the Commission *en banc* or one or more Commissioners, and our rules reflect that option. Whether the proceedings are conducted by the ALJs or the Commission, they will be based primarily on written submissions. We intend to reduce the expense and delay associated with unlimited discovery, extensive cross-examination and motions to enlarge, and we will specify how those limitations are to apply in each designation order. In those cases referred to ALJs, all appeals taken by exception to the Initial Decision will go directly to the Commission and will not be subject to intermediate review by the Review Board. *See* note 20, *supra.* If the selectee's application is denied, the Commission will proceed to review the application of, and any pleadings filed against, a second selectee. In the public mobile radio services, the lottery will not only identify a tentative selectee but will also rank the applicants so that, if the first selectee is ultimately disqualified, the second (and third, and so on) selectee will have already been identified.

[59] In general, our rules for conducting a common carrier lottery are inserted in the Part 1 and other applicable rules parts. General rules for processing applications have been retained and will apply to all situations except those in which a lottery is conducted.

VIII. Conclusion

128. We believe that the actions we have taken in this proceeding represent a prudent exercise of our administrative discretion. We have attempted to implement the lottery statute in a manner that best serves the public interest. This is the Commission's first experience with lotteries; we plan to use our random selection authority cautiously.

129. Lottery processing may be used in those services enumerated above where the lead application was filed on or after August 14, 1981 (the effective date of the first lottery statute). In addition, all pending applications in the low power television and television translator service will be subject to a lottery, including those filed prior to August 14, 1981. *See* paras. 23–25 *supra.*

130. Some of the rules as initially proposed in the *Notice* have been modified after careful consideration of the statute, legislative history and numerous comments. Further rule makings may be necessary to fully develop the Commission's lottery program.

131. Although this Commission is always chary of imposing new regulations on the communications industry, we believe in this case that the benefits of the lottery regulations far outweigh their costs. Lotteries will help speed provision of service to the public by eliminating the costly and time consuming comparative hearings while still maintaining some relative advantage for minorities and others underrepresented in the ownership of mass media facilities. The Commission holds great hope for lotteries, particularly in implementing new services such as LPTV and 800 MHz.

132. *Paperwork Reduction Act.* In accordance with 44 U.S.C. 3501 *et seq.* and Executive Order No. 12291, the Commission submitted a copy of the *Notice* to OMB for review and comment. OMB's comments were necessary because the NPRM postulated that the rule making could result in additional paper work requirements on applicants for communications licenses. OMB expressed general support for the lottery proposal and made no specific objection to the proposal for applicant certification of preference eligibility. OMB did, however, request the Commission to submit for review any additional information requirements such as new or revised forms that may result from this proceeding. In accordance with that request, we will seek OMB comment on revised FCC Form 346.

X. Regulatory Flexibility Act—Final Analysis

133. *Need for and Purpose of Rules.* The Commission proposed the subject lottery rules to implement its recently amended random selection authority. The use of lotteries to select licensees from among competing applicants, it is expected, will serve the public interest by significantly decreasing the cost and delay of traditional comparative hearings. Moreover, safeguards are built into the random selection system so that only fully-qualified applicants receive licenses through the lottery process.

134. *Comments.* Apparently, no comments were received that directly addressed the initial regulatory flexibility analysis.

135. *Alternatives Considered.* As noted in our initial flexibility analysis, there are two alternatives to the lottery proposal. One is to retain traditional comparative hearings; the other is to employ auction techniques. In view of the Congressional direction to implement a licensing lottery, we concluded that there was no practical alternative to establishing lottery procedures.

XI. Other Matters.

136. In view of the foregoing and pursuant to Sections 1, 3, 4(i) and (j), 303, 309 and 403 of the Communications Act of 1934, as amended (47 U.S.C. 151–609), it is hereby ordered that the action taken herein is effective July 13, 1983.

137. It is further ordered that revised FCC Form 346 is amended, as set forth in Appendix D, effective upon receipt of approval from the Office of Management and Budget.

138. It is further ordered that all Petitions to Deny and informal objections pending against any application in the low power television and television translator service are hereby dismissed.

139. It is further ordered, that all applicants who have filed multiple applications inconsistent with Section 73.3521, adopted herein, shall withdraw such applications as are necessary to remedy the conflict no later than thirty days following the effective date of the action taken herein.

140. For general information regarding this proceeding contact Randy Thomas, Office of General Counsel (202) 632–6990. For specific information relating to the use of lotteries in the Common Carrier Service contact Michael Menius (202) 632–6450; Mass Media Service

contact Barbara Kreisman (202) 632-3894; or Private Radio Service contact John Richards (202) 634-2443.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendices A, B, and C

Note.—Appendices A and B (Commenters and Comments) and the full text of Appendix D of this document are filed as a part of the original document and will not be printed herein due to the continuing effort to minimize publishing costs. However, copies of this document in its entirety are available from the Downtown Copy Center, 1413 K Street, N.W., Washington, D.C. 20005; Telephone: (202) 289-4140. In addition, a copy is available for public inspection in the FCC Dockets Branch, Rm. 239 and the FCC Library, Rm. 639, both located at 1919 M St., N.W., Washington, D.C. 20554. A summary of Appendix D is set forth herein.

Appendix C—New Rules

PART 1—PRACTICE AND PROCEDURE

Subpart A—General Rules of Practice and Procedure

1. Section 1.65 is revised to read as follows:

§ 1.65 Substantial and significant changes in information furnished by applicants to the Commission.

(a) Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application or in Commission proceedings involving a pending application. Except where paragraph (b) of this section applies, whenever the information furnished in the pending application is no longer substantially accurate and complete in all significant respects, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, amend or request the amendment of his application so as to furnish such additional or corrected information as may be appropriate. Except where paragraph (b) of this section applies, whenever there has been a substantial change as to any other matter which may be of decisional significance in a Commission proceeding involving the pending application, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, submit a statement furnishing such additional or corrected information as may be appropriate, which shall be served upon parties of record in accordance with § 1.47. Where the matter is before any court for review, statements and requests to amend shall in addition be served upon the Commission's General Counsel. For the purposes of this section, an application is "pending" before the Commission from the time it is accepted for filing by the Commission until a Commission grant or denial of the application is no longer subject to reconsideration by the Commission or to review by any court.

(b) Changes in information relating to § 1.1622, lottery preferences, must be furnished to the Commission no more than 7 days after the changes occur until (1) in the case of a non-mutually exclusive application, the Commission releases the Public Notice proposing the application for grant; or (2) in the case of a mutually exclusive application, the Commission releases the final Public Notice announcing the acceptance of the last-filed mutually exclusive application.

2. Section 1.227 (a)(2), (b)(1), (b)(3) and (b)(4) is revised to read as follows:

§ 1.227 Consolidations.

(a) * * *

(2) Any applications which present conflicting claims, except where a random selection process is used.

(b)(1) In broadcast cases, except as provided in subparagraph (5) of this paragraph, and except as otherwise provided in § 1.1601, *et seq.*, no application will be consolidated for hearing with a previously filed application or applications unless such application, or such application as amended, if amended so as to require a new file number, is substantially complete and tendered for filing by the close of business on the day preceding the day designated by Public Notice published in the **Federal Register** as the day any one of the previously filed applications is available and ready for processing.

* * * * *

(3) Common carrier cases: (i) General rule. Where an application is mutually exclusive with a previously filed application, the second application will be entitled to comparative consideration with the first or entitled to be included in a random selection process, only if the second has been properly filed at least one day before the Commission takes action on the first application. Specifically, the later filed application must have been received by the Commission, in a condition acceptable for filing, before the close of business on the day prior to the grant date or designation date of the earlier filed application.

(ii) Domestic public fixed and public mobile. See Rule §§ 21.31 and 22.31 for the requirements as to mutually exclusive applications. See also Rule §§ 21.23 and 22.23 for the requirements as to amendments of applications.

(iii) Public coast stations (Maritime mobile service). See paragraph (b)(4) of this section.

(4) In cases of applications filed in the Private Radio Services, except as otherwise provided in § 1.972, any application that is mutually exclusive with another application or applications will be consolidated for hearing with such other application or applications only if the later application in question is substantially complete and tendered for filing by whichever date is earlier: (i) Not later than the close of business 1 business day before the Commission adopted an order which first designated for hearing the prior application or applications with which such application is in conflict; or (ii) within 60 days after the date of public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing. An application which is substantially amended by a major change (*i.e.*, substantial change as defined by § 1.962(c)) will, for the purpose of this section, be considered to be a newly filed application.

* * * * *

3. In Part 1, § 1.821 is added to read as follows:

§ 1.821 Scope.

Where action on applications is permitted by the Chief, Common Carrier Bureau, under delegated authority, the provisions of this section, and the provisions referenced herein, shall apply to applications for initial licenses for stations in the Public Land Mobile Service (See Subpart G, Part 22).

4. In Part 1, § 1.822 is added to read as follows:

§ 1.822 Grants by random selection.

(a) Applications in the common carrier services specified in § 1.821 ("Scope") shall be filed, accepted or dismissed, place on public notice, and subject to Petitions to Deny according to the rules established for the specific service.

(b) If there are mutually exclusive applications for an initial license, the Commission may use a random selection process. Each such random selection shall be conducted under the direction of the Chief of the Common Carrier Bureau. The random selection shall pick a tentative selectee and then repeat the random selection process with the remaining applicants, so that, in the event that the tentative selectee's application is denied, the other applicants will be ranked in order as

alternative selectees. Pleadings filed against these applications will not be reviewed prior to conducting the random selection. No preferences shall be awarded to participants. Following the random selection, the Commission shall announce the tentative selectee and determine whether this applicant is qualified to receive the license. Petitions to Deny and other pleadings properly filed against the selectee's application will be reviewed. If the Commission determines that the tentative selectee is qualified, it shall grant the application. Parties shall not file petitions for reconsideration, motions to stay or applications for review at the time that a tentative selectee is announced. Instead, such pleadings may be submitted at the time when the Commission grants or denies the application. The filing periods specified in the rules shall apply for such pleadings.

5. In Part 1, § 1.823 is added to read as follows:

§ 1.823 Post-selection hearings.

(a) If, after reviewing the selectee's application and pleadings properly filed against it, the Commission determines that a substantial and material question of fact exists, it shall designate the qualifying issue(s) for an expedited hearing.

(b) Expedited hearing procedures. (1) Hearings may be conducted by the Commission or an Administrative Law Judge. In the case of a question which requires oral testimony for its resolution, the hearing will be conducted by an Administrative Law Judge.

(2) Parties have ten (10) days from publication in the **Federal Register** of the hearing designation order to file notices of appearance.

(3) When the Commission, under § 1.221, issues an order stating the time, place, and nature of the hearing, this order shall instruct the applicant to submit its direct case in writing within thirty (30) days from the order's release date, or as otherwise specified in the order. The direct written case must set forth all those facts and circumstances related to the issues in the designation order. Documentary evidence upon which the applicant relies must be attached. Each exhibit must be numbered and must be accompanied by an affidavit from someone who has personal knowledge of the facts in the submission and who attests to the truth of the submission.

(4) The order will also specify those petitioners that directly raised an issue which was designated and will inform these parties of their opportunity to submit a written rebuttal case within twenty (20) days after the direct case is due. The procedures in paragraph (b)(3) of this section will apply as to documentary evidence, exhibits, and affidavits.

(5) Appeal of initial decisions rendered by an Administrative Law Judge shall lie with the Commission.

Subpart F—Private Radio Services Applications and Proceedings

6. In § 1.918, a new paragraph (d) is added, and present paragraph (d) is redesignated as (e), to read as follows:

§ 1.918 Amendment of applications.

* * * * *

(d) A request to amend an application after it has been designated for random selection pursuant to § 1.972 will be considered only upon written petition addressed to the Chief, Private Radio Bureau and will be granted only for good cause shown. A petition which requests a substantial change in the application or which affects the lottery probabilities of other applicants must be accompanied by a signed statement of a person with knowledge of the relevant facts and must specify with particularity why such change is necessary and whether or not consideration has been promised to or received by the petitioner, directly or indirectly, in connection with the filing of such petition for amendment. If consideration has been promised or received, the statement shall set forth all the relevant facts with sufficient detail to enable the Chief, Private Radio Bureau to determine whether and to what extent, if any, the consideration represents only the reasonable costs of prosecuting the petitioner's application.

(e) * * *

7. In § 1.953, paragraph (a) is revised to read as follows:

§ 1.953 How applications are processed.

(a) Applications are processed in sequence according to date of filing, or pursuant to the system of random selection prescribed in § 1.972 of this part. Applications which are in accordance with the provisions of this chapter and established policies of the Commission may be processed to completion in accordance with the applicable delegations of authority as set forth in Part 0 of this chapter.

* * * * *

8. A new § 1.972 is added to read as follows:

§ 1.972 Grants by random selection.

(a) The provisions of this section, including provisions incorporated by reference, may apply to applications for initial licenses:

(1) For stations in the following Private Radio Services:

Part 81—Stations on Land in the Maritime Services
Part 87—Aviation Services
Part 90—Private Land Mobile Services
Part 94—Private Operational-Fixed Microwave Service.

(2) In any other proceedings in the Private Radio Services in which the Commission determines that there is no material difference in competing applicants' abilities to serve the public interest.

(b) Applications in the services specified above shall be tendered, filed, accepted or dismissed, publicly noted, and subject to Petitions to Deny in accordance with § 1.962 and the rules and policies established for each respective service.

(c) If there are mutually exclusive applications for an initial license for stations subject to Part 81 or Part 87, or if there are more applications for initial licenses in Part 90 or Part 94 than can be accommodated on available frequencies, the Commission may process the applications pursuant to a system of random selection.

Expedited hearing proceedings may be used to apply comparative criteria in specified radio services to determine which applications will be granted, denied or subject to the random selection. Each such random selection shall be conducted under the direction of the Chief of the Private Radio Bureau. The selection percentages, preferences, and probability calculations prescribed in § 1.1621 *et seq.* of this part shall not be applicable to any system of random selection conducted in the Private Radio Bureau. Following the random selection, the Commission shall announce the tentative selectee and determine whether the tentative selectee is qualified to receive the license under the rules applicable to the respective service. Where authorized under § 1.962, Petitions to Deny which have been filed against the tentative selectee before the random selection will be reviewed and processed prior to grant, in accordance with § 1.962 and those rules applicable to each respective service. If the Commission determines that the tentative selectee has satisfied all requirements, it shall grant the application. If it is determined that an initial tentative selectee is not qualified to receive the license grant, another tentative selectee chosen from among the same applicant pool during the same random selection will be designated until a qualified applicant is selected. If the Commission determines that a substantial and material question of fact

exists, it shall designate the question for hearing. Hearings may be conducted by the Commission or the Chief of the Private Radio Bureau, or, in the case of a question which requires oral testimony for its resolution, an Administrative Law Judge.

9. Section 1.973 is revised to read as follows:

§ 1.973 Designation for hearing.

(a) If the Commission is unable to make the findings prescribed in § 1.971(a) and does not utilize the system of random selection prescribed in § 1.972 of this part, it will formally designate the application for hearing on the grounds or reasons then obtaining and will notify the applicant and all other known parties in interest of such action.

(b) Orders designating applications for hearing will specify with particularity the matters in issue.

(c) Parties in interest, if any, who are not notified by the Commission of its action in designating a particular application for hearing may acquire the status of a party to the proceeding by filing a petition for intervention showing the basis of their interest not more than 30 days after publication in the **Federal Register** of the hearing issues or any substantial amendment thereto.

(d) The applicant and all other parties in interest shall be permitted to participate in any hearing subsequently held upon such applications. Hearings may be conducted by the Commission or by the Chief of the Private Radio Bureau, or, in the case of a question which requires oral testimony for its resolution, an Administrative Law Judge. The burden of proceeding with the introduction of evidence and burden of proof shall be upon the applicant, except that with respect to any issue presented by a Petition to Deny or a petition to enlarge the issues, such burdens shall be as determined by the Commission or the Chief of the Private Radio Bureau.

* * * * *

10. Subpart L is added to 47 CFR Part 1 to read as follows:

Subpart L—Random Selection Procedures for Mass Media Services

General Procedures

Sec.

Authority. 47 U.S.C. 309(i).

General Procedures

§ 1.1601 Scope.

The provisions of this subpart, and the provisions referenced herein, shall apply to applications for initial licenses or construction permits or for major changes in the facilities of authorized stations in the following services:

(a) Low Power Television and Television Translator Broadcasting.

§ 1.1602 Designation for random selection.

Applications in the services specified in Section 1.1601 shall be tendered, accepted or dismissed, filed, publicly noted and subject to random selection and hearing in accordance with any relevant rules. Competing applications for an initial license or construction permit shall be designated for random selection and hearing in accordance with the procedures set forth in §§ 1.1603 through 1.1623 and 73.3572 of this chapter.

§ 1.1603 Conduct of random selection.

(a) Each random selection shall be conducted under the direction of the Chief of the Mass Media Bureau, or his designee.

(b) The random selection probabilities will be calculated in accordance with the formula set out in rules §§ 1.1621 through 1.1623.

§ 1.1604 Post-selection hearings.

(a) Following the random selection, the Commission shall announce the "tentative selectee" and, where permitted by § 73.3584 invite Petitions to Deny its application. Following the responsive pleadings thereto, the Commission shall:

(1) In the case of low power television stations, take action pursuant to either § 73.3591, 73.3592 or 73.3593.

(b) If, after such hearing as may be necessary, the Commission determines that the "tentative selectee" has met the requirements of § 73.3591(a) it will make the appropriate grant. If the Commission is unable to make such a determination, it shall order that another random selection be conducted from among the remaining mutually exclusive applicants, in accordance with the provisions of this subpart.

(c) If, on the basis of the papers before it, the Commission determines that a substantial and material question of fact exists, it shall designate that question for hearing. Hearings may be conducted by the Commission or, in the case of a matter which requires oral testimony for its resolution, an Administrative Law Judge.

§ 1.1621 Definitions.

(a) Medium of mass communications means

(1) A daily newspaper; and a license or construction permit for

(2) A television (including low power TV or TV translator) station,

(3) A standard (AM) radio station,

(4) An FM radio station,

(5) A direct broadcast satellite transponder under the editorial control of the licensee, and

(6) A cable television system.

(b) Minority group means

(1) Blacks,

(2) Hispanics

(3) American Indians,

(4) Alaska Natives,

(5) Asians, and

(6) Pacific Islanders.

(c) Owner means the applicant and any individual, partnership, trust, unincorporated association, or corporation which

(1) If the applicant is a proprietorship, is the proprietor,

(2) If the applicant is a partnership, holds any partnership interest,

(3) If the applicant is a trust, is the beneficiary thereof,

(4) If the applicant is an unincorporated association or non-stock corporation, is a member, or, in the case of a nonmembership association or corporation, a director,

(5) If the applicant is a stock corporation, is the beneficial owner of voting shares.

Note 1.—For purposes of applying the diversity preference to such entities only the other ownership interests of those with a 1% or more beneficial interest in the entity will be cognizable.

Note 2.—For the purposes of this section, a daily newspaper is one which is published four or more days per week, which is in the English language, and which is circulated generally in the community of publication. A college newspaper is not considered as being circulated generally.

Note 3.—For the purposes of applying the diversity preference, the ownership interests of the spouse of an applicant's principal will not presumptively be attributed to the applicant.

§ 1.1622 Preferences.

(a) Any applicant desiring a perference in the random selection shall so indicate as part of its application. Such an applicant shall list any owner who owns all or part of a medium of mass communications or who is a member of a minority group, together with a precise identification of the ownership interest held in such medium of mass communications or name of the minority group, respectively. Such an applicant shall also state whether more

than 50% of the ownership interests in it are held by members of minority groups and the number of media of mass communications more than 50% of whose ownership interests are held by the applicant and/or its owners.

(b) Preference factors as incorporated in the percentage calculations in § 1.1623, shall be granted as follows:

(1) Applicants, more than 50% of whose ownership interests are held by members of minority groups—2:1.

(2) Applicants whose owners in the aggregate hold more than 50% of the ownership interests in no other media of mass communications—2:1.

(3) Applicants whose owners in the aggregate hold more than 50% of the ownership interest in one, two or three other media of mass communications—1.5:1.

(c) Applicants may receive preferences pursuant to § 1.1622(b)(1) and either § 1.1622 (b)(2) or (b)(3).

(d) Preferences will be determined on the basis of ownership interests as of the date of release of the latest Public Notice announcing the acceptance of the last-filed mutually exclusive application.

(e) No preferences pursuant to § 1.1622 (b)(2) or (b)(3) shall be granted to any LPTV applicant whose owners, when aggregated, have an ownership interest of more than 50 percent in the following media of mass communications, if the service areas of those media as described herein wholly encompass or are encompassed by the protected predicted contour, computed in accordance with § 74.707(a), of the low power TV or TV translator station for which the license or permit is sought:

(1) AM broadcast station—predicted or measured 2 mV/m groundwave contour, computed in accordance with §§ 73.183 or 73.186;

(2) FM broadcast station—predicted 1 mV/m contour, computed in accordance with § 73.313;

(3) TV broadcast station—Grade A contour, computed in accordance with § 73.684;

(4) Low power TV or TV translator station—protected predicted contour, computed in accordance with § 74.707(a);

(5) Cable television system franchise area, nor will the diversity preference be available to applicants whose proposed transmitter site is located within the franchise area of a cable system in which its owners, in the aggregate, have an ownership interest of more than 50 percent.

(6) Daily newspaper community of publication, nor will the diversity preference be available to applicants whose proposed transmitter site is located within the community of publication of a daily newspaper in which its owners, in the aggregate, have an ownership interest of more than 50 percent.

§ 1.1623 Probability calculation.

(a) All calculations shall be computed to no less than three significant digits. Probabilities will be truncated to the number of significant digits used in a particular lottery.

(b) Divide the total number of applicants into 1.00 to determine pre-preference probabilities.

(c) Multiply each applicant's pre-preference probability by the applicable preference from § 1.1622 (b)(2) or (b)(3).

(d) Divide each applicant's probability pursuant to paragraph (c) of this section by the sum of such probabilities to determine intermediate probabilities.

(e) Add the intermediate probabilities of all applicants who received a preference pursuant to § 1.1622 (b)(2) or (b)(3).

(f)(1) If the sum pursuant to paragraph (e) of this section is .40 or greater, proceed to paragraph (g) of this section.

(2) If the sum pursuant to paragraph (e) of this section is less than .40, then multiply each such intermediate probability by the ratio of .40 to such sum. Divide .60 by the number of applicants who did not receive a preference pursuant to § 1.1622 (b)(2) or (b)(3) to determine their new intermediate probabilities.

(g) Multiply each applicant's probability pursuant to paragraph (f) of this section by the applicable preference ratio from § 1.1622(b)(1).

(h) Divide each applicant's probability pursuant to paragraph (g) of this section by the sum of such probabilities to determine the final selection percentage.

PART 22—PUBLIC MOBILE RADIO SERVICES

Subpart B—Applications and Licenses

Common Carrier Mobile Service Rules

11. In § 22.23, paragraphs (a) and (b) are revised to read as follows:

§ 22.23 Amendment of applications.

(a) *Amendments as of right.* A pending application may be amended as a matter of right within 90 days from the filing date of the application, provided that:

(1) Amendments shall comply with § 22.29, as applicable; and

(2) No amendment to an application will be permitted after a Petition to Deny has been filed unless the amendment responds to all objections raised in all petitions such that any petitions may be dismissed.

(b) The Commission or the presiding officer may grant requests to amend an application designated for hearing or selected under the random selection process only if a written petition demonstrating good cause is submitted and properly served upon the parties of record.

* * * * *

12. In § 22.28, paragraphs (a), (b) introductory text; (b) (1) and (2), and (c) are revised to read as follows:

§ 22.28 Dismissal and return of applications.

(a) Except as provided under § 22.29, any application may be dismissed without prejudice as a matter of right if the applicant requests its dismissal prior to designation for hearing. An applicant's request for the return of his application after it has been accepted for filing will be considered to be a request for dismissal without prejudice. Requests for dismissal shall comply with the provisions of § 22.29 as appropriate.

(b) A request to dismiss an application without prejudice will be considered after designation for hearing only if:

(1) A written petition is submitted to the Commission and is properly served upon all parties of record, and

(2) The petition complies with the provisions of § 22.29 (whenever applicable) and demonstrates good cause.

* * * * *

(c) The Commission will dismiss an application for failure to prosecute or for failure to respond substantially within a specified time period to official correspondence or requests for additional information. Dismissal shall be without prejudice if made prior to designation for hearing or prior to selection under the random selection process, but dismissal may be made with prejudice for unsatisfactory compliance with § 22.29 or after designation for hearing or after selection under the random selection process.

13. In § 22.31, paragraphs (b) introductory text, (c), (e)(1) and (e)(4) are revised to read as follows:

§ 22.31 Mutually exclusive applications.

* * * * *

(b) An application will be entitled to comparative consideration with one or more conflicting applications (and, in specified services in this Rules Part, included in a random selection process) only if:

* * * * *

(c) Whenever three or more applications are mutually exclusive, but not uniformly so, the earliest filed

application establishes the date prescribed in paragraph (b)(2) of this section, regardless of whether or not subsequently filed applications are directly mutually exclusive with the first filed application. (For example, applications A, B and C are filed in that order. A and B are directly mutually exclusive, B and C are directly mutually exclusive. In order to be considered comparatively with B (or, where applicable, included in the random selection process), C must be filed within the "cut-off" period established by A even though C is not directly mutually exclusive with A.)

* * * * *

(e) * * *

(1) The application has been designated for hearing under the random selection process, or for comparative hearing, or for comparative evaluation pursuant to § 22.35, and the Commission or the presiding officer accepts the amendment pursuant to § 22.23(b);

* * * * *

(4) The amendment reflects only a change in ownership or control which results from an agreement under § 22.29 whereby two or more applicants entitled to participate in a random selection process join in one or more of the existing applications and request dismissal of their other application(s) to avoid the random selection process.

* * * * *

14. In § 22.32, paragraphs (b) (1) and (2), (e) introductory text, (e) (1) and (2), (f) and (g) introductory text are revised to read as follows:

§ 22.32 Consideration of applications.

* * * * *

(b) The grant shall be without a formal hearing if, upon consideration of the application, any pleadings or objections filed, or other matters which may be officially noticed, the Commission finds that:

(1) The application is acceptable for filing, and is in accordance with the Commission's rules, regulations, and other requirements;

(2) The application is not subject to a post-random selection hearing or to comparative consideration pursuant to § 22.31 with another application(s), except where the competing applicants have chosen the comparative evaluation procedure of § 22.35 and a grant may be made under that procedure;

* * * * *

(e) The Commission will designate an application for a formal hearing, specifying with particularity the matters and things in issue, if, upon consideration of the aplication, any pleadings or objections filed, or other matters which may be officially noticed, the Commission determines that:

(1) A substantial and material question of fact is presented;

(2) The Commission is unable for any reason to make the findings specified in paragraph (a) of this section and the application is acceptable for filing, complete, and in accordance with the Commission's rules, regulations, and other requirements.

* * * * *

(f) The Commission may grant, deny or take other action with respect to an application designated for a formal hearing pursuant to paragraph (e) or Part I of this chapter.

(g) Whenever the public interest would be served, the Commission may grant one or more mutually exclusive applications expressly conditioned upon final action on the applications, and then either conduct a random selection process (in specified services under this Rules Part), or designate all mutually exclusive applications for a formal evidentiary hearing or (whenever so requested) follow the comparative evaluation procedures of § 22.35, as appropriate, if it appears:

* * * * *

15. In Part 22, § 22.33 is added to read as follows:

§ 22.33 Grants by random selection.

If a properly filed application for an initial license in the Public Land Mobile Service is mutually exclusive with another such application, the applicants shall be included in the random selection process set forth in Part I, § 1.821 *et seq.* No preferences shall be awarded. Renewal applications shall not be included in a random selection process.

16. In § 22.35, paragraph (a) introductory text is revised to read as follows:

§ 22.35 Comparative evaluation of mutually exclusive applications.

(a) In order to expedite action on mutually exclusive applications, in services under this Rules Part where the random selection process does not apply, the applicants may request the Commission to consider their applications without a formal hearing in accordance with the summary procedure outline in paragraph (b) of this section, if:

* * * * *

PART 73—RADIO BROADCAST SERVICES

Subpart H—Rules Applicable in Common to Broadcast Stations

17. Part 73 is amended by adding a new § 73.3521 to read as follows:

§ 73.3521 Mutually exclusive applications for low power television and television translator stations.

When there is a pending application for a new low power television or television translator stations, or for major changes in an existing station, no other application which would be directly mutually exclusive with the pending application may be filed by the same applicant or by any applicant in which any individual in common with the pending application has any interest, direct or indirect, except that interests of less than 1% will not be considered.

18. In § 73.3522, paragraph (a) is revised to read as follows:

§ 73.3522 Amendment of applications.

(a) Predesignation amendment. (1) Subject to the provisions of §§ 73.3525, 73.3571, 73.3572, 73.3573, and 73.3580, and except as provided in (2) of this paragraph, any application, other than an application for a low power TV or TV translator station, may be amended as a matter of right prior to the adoption date of an order designating such applications for hearing, merely by filing the appropriate number of copies of the amendments in question duly executed in accordance with § 73.3513. If a petition to deny (or to designate for hearing) has been filed, the amendment shall be served on the petitioner.

(2) Subject to the provisions of §§ 73.3525, 73.3571, 73.3572, 73.3573, and 73.3580, and except for applications for low power TV or TV translator stations, mutually exclusive broadcast applications may be amended as a matter of right by the date specified (not less than 90 days after publication) in FCC's public notice announcing the acceptance for filing of the last-filed mutually exclusive application. Subsequent applications prior to designation of the proceeding for hearing will be considered only upon a showing of good cause for late filing or pursuant to §§ 1.65 or 73.3514. Unauthorized or untimely amendments are subject to return by the FCC's staff without consideration.

(3) Subject to the provisions of §§ 74.3525, 73.3572, and 73.3580, and except as provided in (4) of this paragraph, any application for low power TV and TV translators may be amended at any time.

(4) No applicant for low power TV and TV translator station which is mutually exclusive can improve its status with respect to § 1.1622 by amendment of its application subsequent to the release of the initial Public Notice announcing the public lottery that will resolve the applicant's mutual exclusivity pursuant to § 1.1601 *et seq.*, notwithstanding the requirements of § 1.65.

(5) Paragraph (b) and (c) of this section are not applicable to applications for low power TV and TV translator stations.

* * * * *

19. In § 73.3564, paragraph (c) is revised to read as follows:

§ 73.3564 Acceptance of applications.

* * * * *

(c) At regular intervals the FCC will issue a Public Notice listing all applications and major amendments thereto which have been accepted for filing. Pursuant to § 73.3571(c), 73.3572(c), and 73.3573(d), such notice shall establish a cut-off date (not less than 30 days from the date of issuance) for the filing of mutually exclusive applications and, except in the case of low power TV and TV translator applications, Petitions to Deny. However, no application will be accepted for filing until a statement establishing compliance with the local notice requirements of § 73.3580 has been received by the FCC.

20. In §73.3572, paragraph (c), (d) and (e) are revised and a new (f) is added to read as follows:

§ 73.3572 Processing of TV broadcast, low power TV, and TV translator station applications.

* * * * *

(c) Applications for TV stations, other than low power TV and TV translator stations, will be processed as nearly as possible in the order in which they are filed. Such application will be placed in the processing line in numerical sequence, and will be drawn by the staff for study, the lowest file number first. In order that those applications which are entitled to be grouped for processing may be fixed prior to the time processing of the earliest filed application is begun, the FCC will periodically release a Public Notice listing applications which have been accepted for filing and announcing a date (not less than 30 days after publication) on which the listed applications will be considered available and ready for processing and by which all mutually exclusive applications and petitions to deny the listed applications must be filed.

(d) Except for applications for low power TV and TV translator stations, regardless of the number of applications filed for channels in a city or the number of assignments available in that city, those applications which are mutually exclusive, *i.e.*, which request the same channel, will be designated for hearing. All other applications for channels will, if the applicants are duly qualified, receive grants. For example, if channels 6, 13, 47 and 53 have been assigned to City X and there are pending two applications for Channel 6 and one application for each of the remaining channels, the latter three applications will be considered grants without hearing and the two mutually exclusive applications requesting Channel 6 will be designated for hearing. If there are two pending applications for Channel 6 and two applications for Channel 13, separate hearings will be held.

(e) Where applications, other than applications for low power TV and TV translators stations, are mutually exclusive because the distance between the respective proposed transmitter sites is contrary to the station separation requirements set forth in § 73.610, such applications will be processed and designated for hearing at the time the application with the lower file number is reached for processing. In order to be considered mutually exclusive with a lower file number application, the higher file number application must have been accepted for filing at least one day before the lower file number application has been acted upon by the FCC.

(f) Processing of applications for low power TV and TV translator stations.

(1) Applications for low power TV and TV translator stations will be processed as nearly as possible in the order in which they are filed. Such applications will be placed in the processing line in numerical sequence, and will be drawn by the staff for study, the lowest file number first. In order that those applications which are entitled to be grouped for processing may be fixed prior to the time processing of the earliest filed application is begun, the FCC will periodically release a Public Notice listing applications which have been accepted for filing and announcing a date (not less than 30 days after publication) on which the listed applications will be considered available and ready for processing and by which all mutually exclusive applications must be filed.

(2) Subsequently, the FCC will release a Public Notice: (i) Establishing a date, time, and place for a public lottery; (ii) accepting for filing previously unaccepted applications which are mutually exclusive with those applications accepted on the previous Public Notice; (iii) designating the listed mutually exclusive applications for public lottery pursuant to the procedures set forth in § 1.1601 *et seq.*; and (iv) describing each applicant's certified preferences and selection probabilities and assigning to each applicant a number block. (It will be the applicant's responsibility to notify the Commission, within 30 days of the release of the Public Notice, of any omissions of applications or clerical or mathematical errors in preferences or probabilities. The Commission will not entertain appeals involving these matters if timely notification to the Commission has not been made.) If necessary, the FCC will release subsequent (not less than 30 days after the release of the Public Notice initially announcing the lottery) Public Notices correcting any clerical or mathematical errors and including any previously omitted mutually exclusive applications. The public lottery pursuant to the procedures set forth in § 1.1601 *et seq.*, will be held no less than 30 days subsequent to the last released Public Notice, whether initial or corrected, announcing the lottery. Subsequent to the lottery, the FCC will release a Public Notice announcing the selection of a tentative selectee resulting from the lottery and providing an opportunity for the filing of Petitions to Deny pursuant to the requirements of § 73.3584(c). If, upon examination, the FCC finds that the public interest, convenience and necessity will be served by the granting of a tentative selectee's application, the same will be granted. Those applications which, due to the lottery, are no longer mutually exclusive with other applications will be announced in a Public Notice proposing the grant of those applications and providing an opportunity for the filing of Petitions to Deny pursuant to § 73.3584(c). Groups of mutually exclusive applicants remaining after a lottery will be designated for lottery. Applications which are not grantable due to mutual exclusivity with the permittee selected by lottery will be dismissed.

(3) If, upon examination, the FCC is unable to find that the public interest, convenience and necessity will be served by the granting of a lottery tentative selectee's applications, and it appears that a hearing may be required, the procedure set forth in § 73.3593 will be followed. No further action will be taken with reference to the other applications in the lottery group from which the tentative selectee was selected until the tentative selectee's qualifications to be a permittee are resolved. If the tentative selectee is

ultimately found to be unqualified to be a permittee, the procedure set forth in paragraph (f)(2) of this section will be followed.

(4) The FCC will periodically release a Public Notice proposing for grant those applications which have previously appeared on a Public Notice, but which are not mutually exclusive with any other application, and providing an opportunity for the filing of Petitions to Deny pursuant to § 73.3584.

Note 1.—Notwithstanding paragraph (f)(1) and § 73.3522(a)(3), applications for low power TV and TV translator stations will be processed within the tiered processing framework as set forth in *Notice on Interim Processing*, 45 FR 82004 (published September 17, 1980), *Order Imposing Freeze*, 46 FR 26062 (published May 11, 1981), and *Report and Order in the Matter of Inquiry Into the Future Role of Low Power Television Broadcasting and Television Translators in the National Telecommunications System*, 47 FR 21468 (published May 18, 1982).

Note 2.—Pursuant to § 73.3584(c), the Commission may announce, by the Public Notice designating the applications for public lottery, that a Notice of Petition to Deny will be required to be filed no later than 30 days after issuance of the Public Notice.

21. Section 73.3584 is revised to read as follows:

§ 73.3584 Petitions to deny.

(a) Except in the case of applications for new low power TV or TV translator stations or for major changes in the existing facilities of such stations, any party in interest may file with the Commission a Petition to Deny any application (whether as originally filed or if amended so as to require a new file number pursuant to § 73.3571(j), 73.3572(b), 73.3573(b), 73.3574(b) or 73.3578) for which local notice pursuant to § 73.3580 is required, provided such petitions are filed prior to the day such applications are granted or designated for hearing; but where the FCC issues a public notice pursuant to the provisions of § 73.3571(c), 73.3572(c) or § 73.3573(d), establishing a "cut-off" date such petitions must be filed by the date specified. In the case of applications for transfers and assignments of construction permits or station licenses, Petitions to Deny must be filed not later than 30 days after issuance of a public notice of the acceptance for filing of the applications. In the case of applications for renewal of license, Petitions to Deny may be filed at any time up to the last day for filing mutually exclusive applications under § 73.3516(e). Requests for extension of time to file Petitions to Deny applications for new broadcast stations or major change in the facilities of existing stations or applications for renewal of license will not be granted unless all parties concerned, including the applicant, consent to such requests, or unless a compelling showing can be made that unusual circumstances make the filing of a timely petition impossible and the granting of an extension warranted.

(b) Except in the case of applications for new low power TV or TV translator stations, or for major changes in the existing facilities of such stations, the applicant may file an opposition to any Petition to Deny, and the petitioner a reply to such opposition in which allegations of fact or denials thereof shall be supported by affidavit of a person or person with personal knowledge thereof. The times for filing such oppositions and replies shall be those provided in § 1.45 except that as to a Petition to Deny an application for renewal of license, an opposition thereto may be filed within 30 days after the Petition to Deny is filed, and the party that filed the Petition to Deny may reply to the opposition within 20 days after opposition is filed, whichever is longer. The failure to file an oppositon or a reply will not necessarily be construed as an admisssion of any fact or argument contained in a pleading.

(c) In the case of applications for new low power TV or TV translator stations, or for major changes in the existing facilities of such stations, any party in interest may file with the Commission a Petition to Deny any application (whether as originally filed or if amended so as to require a new file number pursuant to § 73.3572(b)) for which local notice pursuant to § 73.3580 is required, provided such petitions are filed within 15 days of the FCC Public Notice proposing the applicants for grant (applicants may file oppositions within 15 days after the Petition to Deny is filed); but where the Commission selects a tentative permittee pursuant to § 1.1601 *et seq.*, Petitions to Deny shall be accepted only if directed against the tentative selectee and filed after issuance of and within fifteen days of FCC Public Notice announcing the tentative selectee. The applicant may file an opposition within 15 days after the Petition to Deny is filed. In cases in which the minimum diversity preference provided for in § 1.1623(f)(1) has been applied, an "objection to diversity claim," and oppositions thereto, may be filed against any applicant receiving a diversity preference, within the same time period provided herein for Petitions and oppositions. In all pleadings, allegations of fact or denials thereof shall be support by appropriate certification. However, the Commission may announce, by the Public Notice announcing the acceptance of the last-filed mutually exclusive application, that a notice of Petition to Deny will be required to be filed no later than 30 days after issuance of the Public Notice.

(1) If so announced, a Petition to Deny filed against an applicant will not be accepted if filed by a party which failed to timely file a notice of petition, and make service of the notice of petition pursuant to § 1.47, unless good cause is shown for the failure to file the notice. Good cause includes allegations based on facts that could not previously be discovered with diligence, and fraud or suppression of evidence by the tentative selectee.

(2) The notice of Petition to Deny shall be limited to two pages. The notice shall include specific allegations that concisely state the reasons why the applicant lacks the qualifications to be a licensee or why a grant of the application would be inconsistent with the public interest. The notice shall be supported by certification made by a person or persons having personal knowledge thereof.

(d) Untimely Petitions to Deny, as well as other pleadings in the nature of a Petition to Deny, and any other pleadings or supplements which do not lie as a matter of law or are otherwise procedurally defective, are subject to return by the FCC's staff without consideration.

22. In § 73.3591, paragraph (b) is revised to read as follows:

§ 73.3591 Action on applications.

* * * * *

(b) In making its determinations pursuant to the provisions of paragraph (a) of this section, the FCC will not consider any other application, or any application if amended so as to require a new file number, as being mutually exclusive or in conflict with the application under consideration unless such other application was substantially complete, or, in the case of low power TV and TV translator stations, complete and sufficient, and tendered for filing by:

(1) The close of business on the day preceding the day designated by Public Notice as the day the listed application is to be available and ready for processing; or

(2) The date prescribed in § 73.3516(e) in the case of applications which are mutually exclusive with applications for renewal of license of broadcast stations.

* * * * *

23. In § 73.3597, paragraphs (a)(1) and (a)(2), (b)(1) and (c)(1) are revised to read as follows:

§ 73.3597 Procedures on transfer and assignment applications.

(a) * * *

(1) The permit or license was not authorized after a comparative hearing or, in the case of low power TV and TV translator stations, the permit or license was not authorized after a lottery in which the permittee for licensee benefited from minority or diversity preferences;

(2) The application involves an FM translator station or FM booster station only;

* * * * *

(b)(1) The commencement date of the one-year period set forth in paragraph (a) of this section shall be the date on which the station initiated program tests in accordance with § 73.1620 or § 74.14.

* * * * *

(c)(1) As used in paragraphs (c) and (d) of this section:

(i) "Unbuilt station" refers to an AM, FM, or TV broadcast station or a low power TV or TV translator station for which a construction permit is outstanding, and, regardless of the stage of physical completion, as to which program tests have not commenced or, if required, been authorized.

* * * * *

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES

24. In Part 81, a new § 81.51 is added to read as follows:

§ 81.51 Grants by random selection.

If there are mutually exclusive applications for an initial license under this part, the Commission may grant the applications pursuant to the system of random selection prescribed in § 1.972 of this chapter.

PART 87—AVIATION SERVICES

25. In Part 87, a new § 87.48 is added to read as follows:

§ 87.48 Grants by random selection.

If there are mutually exclusive applications for an initial license under this part, the Commission may grant the application pursuant to the system of random selection prescribed in § 1.972 of this chapter.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

26. In § 90.143, a new paragraph (b) is added and former paragraph (b) is redesignated as (c), to read as follows:

§ 90.143 Grants of applications.

* * * * *

(b) All applications in pending status will be processed in the order in which the application acceptable for filing was received by the Commission; provided, however, that if there are more applications than can be accommodated on available frequencies, the Commission may grant the applications pursuant to the system of random selection prescribed in § 1.972 of this chapter.

(c) * * *

PART 94—PRIVATE OPERATIONAL-FIXED MICROWAVE SERVICES

27. In § 94.37, a new paragraph (c) is added to read as follows:

§ 94.37 Grant of application without hearing.

* * * * *

(c) All applications in pending status will be processed in the order in which the application acceptable for filing was received by the Commission; provided, however, that if there are more applications than can be accommodated on available frequencies, the Commission may grant the applications pursuant to the system of random selection prescribed in § 1.972 of this chapter.

* * * * *

Appendix D—Modifications to Application for Authority To Construct or Make Changes in a Low Power TV, TV Translator or FM Translator Station (FCC Form 346)

The winner from among mutually exclusive low power television and television translator applicants will be selected by a lottery. In conducting a lottery, the law requires that certain preferences be awarded to encourage diversity in the owership of mass communications media and minority ownership. Thus, new Section V requires certification if applicable by an applicant that it is entitled to and seeks to claim a minority preference: that it and/or its owners have no interest, in the aggregate, exceeding 50 percent in any media of mass communications, or that it and/or its owners have more than three mass communications media facilities; and that it and/or its owners have no interest in the aggregate, exceeding 50 percent in a media of mass communications in the same area to be served by the proposed low power television or television translator station.

Section II, Legal Qualifications, is amended to require "Real Party In Interest" and "Multiple Applications" certifications. The applicant is required to certify that there is no other application pending that would be directly mutually exclusive with the application in which the applicant has an interest of one percent or more or in which any party to the application is an officer, director or has an interest of one percent or more, direct or indirect. The applicant is also required to certify that no agreement, either explicit or implicit, has been entered into for the purposes of transferring or assigning to another party, any station construction permit or license or interest therein that is awarded as a result of a random selection or lottery. Certain questions in Section II relating to other media interests and minority ownership have been eliminated, as they are now incorporated in new Section V, discussed above.

Technical modifications include the following additional requirements: (1) In Section I: That the applicant indicate whether the application is for a LPTV STV (FCC approved technical system), submit a plot comparing the existing and proposed predicted signal contours (protected contour) with applications for minor changes in existing stations; certify compliance with applicable station identification rules. (2) In Engineering Data Section: That applicant tabulate the transmitting antenna pattern (if directional) at every ten degrees and all maxima and minima submit a composite radiation pattern in cases where multiple transmitting antennas are proposed.

Separate Statement of Chairman Mark S. Fowler

Re: Lottery Procedures March 31, 1983.

I applaud the effort of Congress to empower the Commission to employ a lottery to alleviate the Commission's processing and adjudication burdens and the accompanying delay that selecting among many competing applicants for broadcast or other licenses engenders. A lottery method of selection can assist in the inauguration of new telecommunications services that might otherwise be subject to interminable delay. I would have desired, however, that the lottery system authorized by Congress have offered all qualified license applicants an equal opportunity for success. A nondiscriminatory lottery is not only vastly easier to administer than the skewed lottery architected by Congress, but also reflects a paramount aspiration of this Nation: equal justice or opportunity for all persons under the law. I unequivocally oppose relying on the color of a person's skin to determine whether special preferences should be awarded in seeking communications licenses through a lottery system. The tragic history of race relations in the United States naturally elicits enormous sympathy for those who in the past have suffered grievously on account of race. But this sympathy should not blind us to the constitutional questions raised by the minority preference system and to the unhappy policy implications of enshrining racial preferences into law.

The decisions in *University of California Regents* v. *Bakke* [1] and *Fullilove* v. *Klutznick* [2] established standards by which to test the constitutional validity of a lottery that prefers minority applicants. First, findings must have been made that discrimination existed in a particular industry. Second, a remedial program must be narrowly tailored to remedy the effects of that past discrimination without excluding other innocent groups from the opportunity to participate in the relevant field. Third, the program must be subject to continuing

[1] 438 U.S. 265 (1978).

[2] 448 U.S. 448 (1980).

oversight to assure that it will cause the least possible harm to innocent third parties.

Bakke established the proposition that preferences for minorities may be used only where there have been "judicial, legislative, or administrative findings of specific instances of discrimination in the field in issue. [3] "Without such findings . . . it cannot be said that the government has any greater interest in helping one individual than in refraining from harming another," [4] for there could be no showing of a compelling justification for inflicting competitive disadvantages on innocent individuals.

In *Fullilove*, the Court approved a preferential program for public works contracting but only because Congress had made findings on the basis of "abundant evidence . . . that minority businesses have been denied effective participation in public contracting opportunities . . . ." [5] The absence of any similar findings with respect to the broadcast industry is arguably fatal to the Commission's preferential program. It is clear from the *Bakke* decision that evidence of past discrimination in society at large is insufficient to justify the imposition of an affirmative action program. [6]

There have been no Congressional findings of illegal discrimination in the communications field. In the Conference Report accompanying the Communications Amendments Act of 1982, the Conference Committee made findings that minority groups were "significantly underrepresented in the ownership of telecommunications facilities." [7] Congress, however, omitted any findings that attributed this underrepresentation to illegal discrimination by either governmental or private parties. Underrepresentation in an industry or profession, *simpliciter*, cannot justify racial preferences. *See Bakke* at p. 302

Even if there had been findings that illegal discrimination in the communications industry had handicapped some minorities in competing for broadcast licenses, the remedy created by the Congress would still be of questionable legitimacy. Central to the Court's holding in *Fullilove* was the doctrine that the preference accorded to minorities must be equivalent to the extent of the past discrimination. Congress, however, has awarded minorities a 2 to 1 lottery preference without findings that this degree of preference accurately reflects the amount of the handicap that might be attributed to putative past discrimination. The preferences awarded extend to all minority applicants, whether or not the applicant has substantial resources or enjoyed the same or better educational or other opportunities compared to a non-preferred applicant.

An affirmative action remedy must be tailored to correspond to the extent of injury traceable to past illegal discrimination, and must be subject to continuing oversight to ensure that it will do the least possible harm to innocent persons disadvantaged thereby. [8] The statute upheld in *Fullilove*, for example, a goal of devoting 10% of each public works grant to minority businesses, but provided that bids from minorities above ordinary competitive levels need only be entertained to the extent they reflect "costs inflated by the present effects of prior disadvantage and discrimination." [9] With regard to the "continuing oversight requirements," the Communications Amendments Act of 1982 is silent. [10] The program challenged in *Fullilove* was a one-time program, and there was consequently no need for continuing oversight. The lottery preferences, in contrast, can be employed indefinitely, and some type of meaningful oversight would seem to be required to justify a racial classification.

Because the preferential program adopted today impinges on the civil rights of innocent individuals on account of race, I believe it to be constitutionally unsound. I believe that whenever the courts, Congress, or this Commission diverge from a norm of color-blindness, there must be a compelling reason, for, as Justice Stevens has noted, "classifications based on race are potentially so harmful to the entire body politic." [11] No compelling reason animated Congress to etch racial preferences into the lottery system. [12] Too often in our history, policymakers and the courts have caused adverse social repercussions by making ill-advised decisions in matters of race. [13] Indeed, as Justice Stevens further observed, "the very attempt to define with precision a beneficiary's qualifying racial characteristics is repugnant to our constitutional ideals." [14]

The victims of the minority preference system are innocent non-preferred persons who are denied equal opportunity to compete for a Commission license. It seems to me that history has demonstrated that when race, class or caste are officially sanctioned as reasons for denying equal opportunity, then a principle has been established that threatens to deny equal opportuntiy for everyone. As Justice Jackson so eloquently put it in *Korematsu* v. *U.S.*, [15] the principle lies around like a loaded weapon read to be used by persons who claim an urgent need.

To diverge from a norm of color blindness is to foster racial antagonism [16] and to denigrate individual liberty. While some commentors have suggested that to get beyond racism, the country must employ racist means, [17] I believe that viewpoint is utterly irreconciliable with American ideals of equal civil rights. Four score and seven years ago, Justice Harlan urged a constitutional norm of color-blindness that history had applauded: "In respect to civil rights, common to all citizens, the Constitution of the United States does not, I think, permit any public authority to know the race of those entitled to be protected in the enjoyment of such rights. . . . I deny that any legislative body or judicial tribunal may have regard to the race of citizens when the civil rights of those citizens are involved." [18] Events at home and abroad since Justice Harlan delivered his memorable words substantiate their ageless wisdom.

I wish to make it clear that these views should not be interpreted as a weakening of my commitment to increasing the participation of minorities in broadcasting through nondiscriminatory means. [19]

I also disagree with another aspect of the lottery order: namely, the Commission's determination to bar newspapers from eligibility for a diversity preference. The statutory provision relating to lotteries requires that certain preferences be accorded when a lottery is used to grant licenses for any medium of mass communication. One of the preferences to be awarded is a diversity preference, meant to encourage divergent sources of programming and information. The preference applies to applicants who control less than four other media of mass communications. The statute provides that the "term 'media of mass communication' includes television, radio, cable television, multipoint distribution service, direct broadcast satellite service, and other services, *the licensed facilities of which* may be substantially devoted toward providing programming . . ." [20] Because newspapers are not licensed, it is clear that the Congress did not intend that they be deemed a medium of mass communications. In addition, the other media listed differ in type from newspapers in that they utilize the electromagnetic spectrum.

My fellow commissioners rely on language in the Conference Report [21] to support their view that newspapers are to be included within the definition of mass media. The fact that the Conference Report mentions newspapers when the statute is silent with respect to them argues in favor of a contrary conclusion, for it makes clear that consideration went into the question of whether newspapers should be included within the definition of mass media, and that Congress did not vote affirmatively in favor of inclusion. The use of a Conference Report to supercede the meaning of an unambiguous statute is inappropriate, [22] for it is a

---

[3] *Bakke, supra*, at p. 307.

[4] *Ibid.* at p. 309.

[5] *Fullilove, supra*, at p. 477.

[6] *Ibid.* at p. 307.

[7] H. Rep. No. 97-765, 97th Cong. 2nd Sess. (1982) ("Conference Report") at p. 45.

[8] *Bakke, supra*, at pp. 308-309.

[9] *Fullilove, supra*, at p. 481.

[10] A statement in the Conference Report directs the Commission to furnish annual reports on the effect of § 309(i)(3) (Conference Report at p. 45). The minority preferences, however, do not terminate even if underrepresentation by minorities in broadcasting is overcome.

[11] *Fullilove, supra*, at p. 534 (Stevens, J. dissent).

[12] Congress seemingly assumed that diversity of broadcast programming would be advanced by increasing broadcast ownership by minorities. There is not a scintilla of evidence based on experience or otherwise to support this assumption.

[13] *See Dred Scott* v. *Sandford*, 60 U.S. (19 How) 393 (1857); the *Civil Rights Cases*, 109 U.S. 3 (1883); *Plessy* v. *Ferguson*, 163 U.S. 537 (1896).

[14] *Fullilove, supra*, at p. 534 n. 4 (Stevens, J. dissent).

[15] 323 U.S. 214, 246 (1944) (Jackson, J. dissent).

[16] *Anderson* v. *Martin*, 375 U.S. 399 (1964).

[17] *Bakke, supra*, at p. 407 (Blackmun, J. dissent).

[18] *Plessy* v. *Ferguson*, 163 U.S. 537, 554 (Harlan, J. dissent) (1896).

[19] I also believe it is my duty to administer faithfully the lottery statute enacted by Congress despite my doubts as to its constitutionality.

[20] 47 U.S.C § 309(i)(3)(c)(i) (emphasis supplied).

[21] Conference Report at p. 41.

[22] *Caminetti* v. *U.S.*, 242 U.S. 470, 490 (1917).

fundamental canon in matters of statutory construction that "legislative purpose is expressed by the ordinary meaning of the words used." [23]

As a matter of policy, I also believe it to be unsound to prevent newspapers from obtaining a diversity preference in obtaining an LPTV license. Newspapers can be an invaluable source of equity capital and management talent, as was demonstrated in the early history of radio and television stations, where newspapers played a substantial role in underwriting local television stations. It is also in the national interest to allow newspapers to diversify their financial investments. Congress acknowledged the importance of preserving newspapers as viable means of communication in the Newspaper Preservation Act [24] and to prejudice their ability to communicate through the medium of LPTV is antithetical to the motives that spurred the passage of that Act.

The argument advanced in support of the Commission's position—that diversity in mass media will be furthered by the Commission's yolking newspapers within the ambit of mass media—is twice flawed. First, it means that the diversity demerit would be imposed on a newspaper in San Francisco if it applied for an LPTV station in Omaha. Such a combination would clearly not impair diversity, because San Francisco newspapers do not penetrate the Omaha market, and an Omaha LPTV station would not compete in the San Francisco market. Secondly, the diversity of views championed by the First Amendment and public interest considerations has both a quantitative and qualitative aspect. A reasonable number of varying views are required to stimulate edifying political or other discourse. But such discourse will be impoverished without concern for the quality of viewpoints expressed. As Alexander Meiklejohn observed,[25] it is more important that everything worth saying shall be said than that everyone shall speak. To allow newspapers to own LPTV stations would increase the quality and richness of views received by the audience and thereby further diversity concerns. A rigid insistence on maximizing the gross number of different viewpoints at the expense of all other First Amendment values is contrary to the public interest.

March 31, 1983.

Concurring Statement of Commissioner Anne P. Jones

In Re: Second Report and Order in General Docket No. 81-768: Use of Lotteries to Select Certain Initial Radio Licensees

Since the rules and procedures established by this Report and Order are intended to speed authorization of service and may have that effect, I concur. I do so, however, with substantial reservations of which I will mention only a few.

First, it seems to me these rules and procedures could and should be simpler, shorter, and better designed for their intended purpose. For example, I believe Commissioner Rivera is correct that the preference scheme adopted out of deference to the Conference Report may not in all circumstances result in the "significant preferences" for under-represented persons and groups mandated by the statute. If experience demonstrates that a different scheme is needed to achieve the statutory purpose, I hope the Commission will adopt it on the premise that the statute and not the Conference Report is the law of the land.

Second, I believe the flood of applications being received in the cellular mobile radio service is demonstrating that the Commission may have erred in excluding that service from this proceeding. If we are to avoid a licensing debacle in cellular comparable to that which already exists in low power television, we should promptly move toward use of the lottery mechanism to choose from among competing qualified cellular applicants.

Third, I am distressed that the Commission did not give serious consideration in this proceeding to the possibility of granting "significant preferences" to women. On this point, I note that the evidence cited by Commissioner Dawson clearly indicates that women are "applicants . . . the grant to which of [a mass media] license or permit would increase the diversification of ownership of the media of mass communications." Hence they should be granted a preference and may well also qualify for the "additional significant preference" which under the statute "shall be granted to any applicant controlled by a member or members of a minority group."

With these reservations and some others, I concur in issuance of this Report and Order in the hope that it will be only the first step in establishment of a fair, efficient, and simple mechanism for speeding authorization of needed telecommunications service by choosing by random from among competing qualified applicants for radio licenses. I look forward to the next step.

Re: Second Report and Order in General Docket 81-768

Concurring Statement of Commissioner Mimi Weyforth Dawson

To the extent preferences have been enacted into law and to the extent those preferences appear to be based on under-representation in broadcast ownership, I believe that a preference for female ownership should also be given in cases involving lotteries.

First, it seems clear that the preferences awarded by the lottery statute are based on traditional underrepresentation in broadcast ownership. As the legislative history of the lottery statute says, preferences are awarded because the

Conferees find that the effects of past inequities stemming from racial and ethnic discrimination have resulted in a severe underrepresentation of minorities in the media of mass communications, as it has adversely affected their participation in other sectors of the economy as well.

Conference Report at 43.

In addition, it seems obvious that women are seriously underrepresented in the ownership of broadcast stations. A May 1982 study prepared for the Commission by ELRA Group, Inc. estimates that only 2.8 per cent of television stations, 8.6 per cent of AM stations and 9 per cent of FM stations are owned [1] by women. And 50 per cent of the female owners of AM stations, 43 per cent for FM stations and 27 per cent for TV stations are the wives of other owners. Since women comprise more than 51 per cent of the population, it is clear that they are significantly underrepresented in the ownership of broadcast stations, and, in fact, the legislative history of the lottery statute notes that women are "significantly underrepresented in the ownership of telecommunications facilities." *Conference Report* at 44-45.[2]

I understand that the statute and its legislative history are not entirely clear on the inclusion of women in the preference scheme. For example, the statute itself states that the minorities for whom preferences are designed "include" certain enumerated groups. *See Conference Report* at 10. Thus, the language does not appear to preclude additions to the enumerated groups.[3] Moreover, the legislative history states that underrepresented groups such as women would, of course, be eligible for both media ownership and minority ownership preferences if they meet the eligibility guidelines. The Conferees expect that such groups will also substantially benefit from this lottery preference scheme, and, consequently, the American public will benefit by having access to a wider diversity of information sources.

Conference Report at 45. To me, this suggests that the Commission could include a preference for female ownership if it chose to to do.

However, because of the apparent confusion in the statute and its legislative history, I welcome the notice seeking comment on the Commission's authority to extend the minority preference to include

---

[23] *Richards* v. *U.S.*, 369 U.S. 1, 9 (1962).

The Representatives and Senators who voted on the lottery statute were entitled to rely on the text of the statute and not the Conference Report in determining how to vote. Similarly, when the President deliberated as to whether to sign the bill, he could assume that the unambiguous statutory language controlled.

[24] 15 U.S.C. 1801.

[25] Meiklejohn: Political Freedom, 26 (1948), quoted in *CBS* v. *Democratic Nat'l. Committee* 412 U.S. 94, 122 (1973).

[1] The study uses majority ownership (i.e., 50 per cent or more) as the bench mark for "ownership."

[2] In apparent recognition of this the Commission has begun to include in comparative cases some preference, if not a well-defined one, for female ownership. *E.g.*, Waters Broadcasting Corp., ——— F.C.C. 2d ———, 52 Rad. Reg. 2d (P&F) 1063, 1069 (1982) ("substantial enhancement for minority and female ownership").

[3] For example, the United States Court of Appeals for the Eighth Circuit has construed similar language in a bankruptcy statute. There, the court found that the statute at issue used the word "includes" when setting out the types of organizations that come within the definition rather than the word "means." When a statute is phrased in this manner, the fact that the statute does not specifically mention a particular entity (in this case labor unions) does not imply that the entity falls outside of the definition.

Highway & City Freight Drivers v. *Gordon Transports, Inc.*, 567 F.2d 1285, 1289 (8th Cir. 1978) (footnote omitted).

women as well as the letter to Congress noting this confusion. I will look forward to the early issuance of these documents as well as the documents in the notice proceeding.

Statement of Commissioner Henry M. Rivera Dissenting in Part

Re: Use of Lotteries to Select Certain Initial Licensees

I dissent from the majority's decision to grant a diversity preference to those who own a full power television station (and no more than three media outlets) in all cases except when the LPTV station applied for is encompassed by or encompasses the Grade A contour of the full service station.[1] That approach defies Congress' intent to foreclose applicants who own a medium of mass communications in the same market as the facility being applied for from obtaining a diversity preference. Congress' wishes on this point are strong and quite specific:

The Conferees strongly believe that the avoidance of local ownership concentration should continue to be a factor of major significance in promoting diversity in the licensing process. Where an applicant for a license or permit has controlling interest (over 50 percent) in any other medium of mass communications which would be co-located with the licensed facility sought, it would not promote diversity to give such an applicant a preferred status relative to other applicants.[2]

Congress precluded local media owners from obtaining a diversity preference to promote the spirit of our existing duopoly, one-to-a-market and other crossownership rules; while not limiting a media owner's right to apply for, or obtain, a low power television license in its community of license, it is quite clear that Congress did intent to prevent such applicants from being preferred in any lottery.

The majority quite simply ignored this congressional purpose by adopting a Grade A encompassment standard for full power television stations. Under this standard, the owner of an urban full power television station seeking an LPTV station in its suburban service area will now be eligible for a diversity preference (so long as that owner does not own more than three media outlets). And, under the congressionally imposed multiplier scheme, such an applicant's chances of winning can be further increased if the forty percent collective minimum diversity advantage has not been achieved. The net effect of the Grade A encompassment standard adopted will be to undermine, not promote, the goal of local diversification, directly contrary to congressional intent. The majority should have used the Grade B contour duopoly standard now embodied in the rules [3] to govern the preference eligibility of television station owners applying for nearby LPTV stations.

Apart from this issue, I would also note two problems I hope the Congress will remedy during its first annual review of this legislation.

I am extremely troubled by the fact that the preference scheme we have adopted, while faithful to the narrow directives of the legislative history of Section 309(i) as amended, will not in practical effect accord with the statutory mandate to award a "significant preference" to applications that are minority-owned or controlled. The procedures we have fashioned here give new meaning to the word "significant" as far as prefereces for minority ownership are concerned. Unlike the diversity preference, the statistical advantage given for minority ownership is a relative one. Thus, the larger the pool of applicants in a given lottery, the smaller the preference to minority eligibles. Indeed, because of the high number of applications that will be involved in most LPTV lotteries, *de minimus* "preferences" will be the rule rather than the exception as far as minority ownership is concerned. This situation not only flies in the face of the *Report and Order* authorizing LPTV,[4] which set advancement of minority ownership as a primary goal, but the plain language of Section 309(i)(3)(A) as well. Congressional review of this condition is, therefore, imperative.

I also hope that Congress sees fit to alter its standard governing limited partnerships, which is at variance with FCC treatment of limited partnerships in the tax certificate context.[5] Both the tax certificate policy and the lottery legislation are designed to promote minority ownership of telecommunications facilities; I can think of no reason standards applicable to limited partnerships should differ between the two programs.

[FR Doc. 83-15395 Filed 6-10-83; 8:45 am]
BILLING CODE 6712-01-M

---

[1] *See Second Report and order* para. 77 n. 34.

[2] H.R. Rep. No. 765, 97th Cong., 2d Sess. 43 (1982).

[3] See 47 CFR 73.636(a)(1).

[4] *See Report and Order Authorizing Low Power Television Service*, 47 Fed. Reg. 21468 (released May 18, 1982).

[5] *See Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting*, FCC 82-523 (released December 13, 1982).

federal register

Monday
June 13, 1983

Part III

General Services Administration

Changes to Federal Travel Regulations and Addendum to the Report to Congress on the Cost of Operation of Privately Owned Vehicles

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR A-40, Supp. 5]

Federal Travel Regulations

AGENCY: Office of Federal Supply and Services, General Services Administration (GSA).

ACTION: Changes to Federal Travel Regulations.

SUMMARY: GSA has issued GSA Bulletin FPMR A-40, Supplement 5, transmitting changed pages to amend the Federal Travel Regulations (FTR), FPMR 101-7, to implement changes to certain travel allowance provisions for Federal employees performing official travel such as those requiring the use of Amtrak rail service, the use of Government-furnished transportation, etc.

EFFECTIVE DATES: The revised provisions of this supplement are effective as follows:

a. *Chapter 1. Travel Allowances.* The revised provisions of chapter 1 are effective for travel performed on or after June 19, 1983.

b. *Chapter 2. Relocation Allowances.* The revised provisions of chapter 2 are effective for employees whose effective date of transfer (date the employee reports for duty at the new official station) is on or after October 1, 1982. These revisions reflect the change in the household goods temporary storage entitlement period from 60 to 90 days which was initially implemented in page changes transmitted by GSA Bulletin FPMR A-40, Supplement 4, effective October 1, 1982. Changes to paragraphs 2-7.4 and 2-8.6c were inadvertently omitted from Supplement 4.

FOR FURTHER INFORMATION CONTACT: Ms. Doris Jones, Travel Regulations Branch (703) 557-1253.

SUPPLEMENTARY INFORMATION: 1. 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.

2. A notice to Federal agencies will be published in GSA Bulletin FPMR A-40, Supplement 5, to emphasize potential employee liabilities for disregard of the provisions of the "Fly America Act" (49 U.S.C. 1517 as amended by Pub. L. 96-192). The notice is stated essentially as follows: The Fly America Act requires that Government-financed commercial foreign air transportation be performed by U.S. flag air carriers (certificated), where their services are reasonably available. Under guidelines issued by the Comptroller General of the United States and reflected in the FTR, if a U.S. flag air carrier is considered unavailable, a foreign air carrier may be used only in certain circumstances. However, if a foreign air carrier is used, the Federal traveler or agency is required to furnish a statement justifying the necessity therefor. Otherwise, expenditures for use of commercial foreign air transportation will be disallowed in the absence of a justification statement and will be the responsibility of the traveler. The traveler has a duty to comply with the Fly America Act, and the fact that he/she was unaware of the requirements of the Act does not relieve the traveler of liability for the cost of unjustified use of a foreign air carrier (Comp. Gen. B-192522, April 22, 1981). Agencies are urged to ensure that all employees are aware of the provisions of the Fly America Act.

Explanation of Changes

1. Paragraph 1-1.3c(4) is revised to include "obtained for short-term use" in the definition of a "Government-contract rental automobile" based on new policy for rental of motor vehicles by Government employees on official travel. Paragraph 1-1.3c(5) is amended to include "Government-contract rental" transportation as an exception to the definition of "Special conveyance."

2. Paragraph 1-2.2b-1 is added to specify travelers' cost liability when the authorized method of transportation is not used.

3. Paragraph 1-2.2c(1)(b) is revised to provided guidance in selecting the most advantageous method of common carrier transportation. Paragraphs 1-2.2c(1) (c), (d), and (e) are deleted; certain provisions which formerly appeared in these paragraphs are incorporated in paragraph 1-2.2c(1)(b). Provisions that mandated the use of Amtrak Metroliner coach service in the Northeast corridor have been deleted.

4. Paragraph 1-2.2c(2) is revised by adding subparagraphs (a), (b), and (c), and paragraphs 1-2.2c (3) and (4) are revised to reflect new policy that a Government-contract rental automobile shall be used as a first resource for short-term rental of automobiles by Federal employees on official TDY travel.

5. Paragraph 1-2.6c regarding the availability of a Government-furnished vehicle is revised for minor editorial changes.

6. Paragraph 1-3.3b(3) is revised and paragraph 1-3.3b(4) is deleted to conform with changes explained in paragraph 3, above. The provisions pertaining to cash payment for purchase of Amtrak tickets are incorporated in paragraph 1-10.2b(2).

7. Paragraphs 1-3.4b(1)(b) and 1-3.4c are revised to cite the current regulation governing the use of contract air carriers. Paragraph 1-3.4c is also revised to cross reference new paragraph 1-2.2b-1.

8. Paragraphs 1-3.5a and 1-3.5b are revised, and new paragraph 1-3.5a is added to expand provisions governing agencies and travelers' responsibilities in connection with refunds owed the U.S. Government for unused passenger transportation services.

9. Paragraphs 1-5.1b and 1-5.2 are revised for clarity.

10. Paragraph 1-7.3f is added to reference regulations issued by the Office of Personnel Management (OPM) (part 410.603 of Title 5, Code of Federal Travel Regulations) governing subsistence payments for extended training assignments. Agencies are advised that the OPM regulations shall be used when authorizing subsistence payments for training assignments over 30 calendar days.

11. Paragraph 1-8.1c(2) is revised to add new guidelines regarding the authorization or approval of travel under the actual subsistence expense basis of reimbursement due to unusual circumstances of the travel assignment.

12. Paragraphs 1-8.1c(3) (e) and (f) are added to provide agencies with additional criteria under which they have discretionary authority to authorize or approve actual expense reimbursement due to unusual circumstances of the travel assignment.

13. Paragraph 1-8.1f is added to conform with the change explained in paragraph 10 above.

14. Paragraph 1-10.2b(2) is revised as explained in paragraph 6 above.

15. Paragraph 1-11.3c is revised to increase the dollar amount above which receipts are required to support reimbursement claims for cash expenditures.

16. Paragraphs 2-7.4 and 2-8.6c are revised to reflect the new household goods temporary storage period which was inadvertently omitted when

changes to the relocation allowances were implemented in Supplement 4.

Accordingly, the Federal Travel Regulations, are amended as follows:

Chapter 1—Travel Allowances

Part 1—Applicability and General Rules

1. Paragraphs 1–1.3c(4) and 1–1.3c(5) are revised to read as follows:

1–1.3. General rules.

* * * * *

c. *Definitions*

(4) *Government-contract rental automobile.* A "Government-contract rental automobile" is an automobile obtained for short-term use from a commercial firm under the provisions of an appropriate General Services Administration (GSA) Federal Supply Schedule contract.

(5) *Special conveyance.* "Special conveyance" is any method of transportation other than common carrier, Government-furnished, Government-contract rental, or privately owned, which requires specific authorization or approval for the use thereof. Such transportation generally includes conveyances obtained through commercial rental means for less than 30 calendar days.

* * * * *

Part 2—Transportation Allowable

2. Paragraph 1–2.2 is amended by adding new paragraph 1–2.2b–1 to read as follows:

1–2.2. Methods of transportation.

b–1. *Traveler's cost liability when selected method is not used.* The traveler shall use the method of transportation administratively authorized or approved by the agency as most advantageous to the Government. (See 1–2.2b.) Any additional cost resulting from use of a method of transportation other than that specifically authorized, approved, or required by regulation, e.g., contract air service (see 1–2.2c(1)(i), below), shall be the traveler's responsibility.

* * * * *

3. Paragraph 1–2.2 is further amended by deleting paragraphs 1–2.2c(1) (c), (d), and (e), and by revising paragraph 1–2.2c(1)(b) to read as follows:

1–2.2. Methods of transportation.

* * * * *

(b) *Selecting the most advantageous method of common carrier transportation.*

(i) *Contract air service.* The use of discount fares offered by contract air carriers between certain cities (city-pairs) is considered advantageous to the Government and is mandatory for authorized air travel between those city-pairs. See 1–3.4b(1)(b) and FPMR Temporary Regulation A–22, Use of contract airline service between selected city-pairs, for policy and specific guidelines and exceptions.

(ii) *Noncontract air service.* The use of noncontract air service may be authorized only when justified under the conditions provided in FPMR Temporary Regulation A–22. Advance authorization and the justification for the use of noncontract air service shall be shown on the travel order, or other form of travel authorization, before the actual travel begins unless extenuating circumstances or emergency situations make advance authorization impossible. In this event, the employee shall obtain written approval from the appropriate agency official at the earliest possible time after completing the travel. The approval and justification therefor shall be stated on or attached to the travel voucher.

(iii) *Rail or bus service.* Rail or bus service may be used when determined by the agency to be advantageous to the Government, cost, energy, and other factors considered and when compatible with the requirements of the official travel. The use of discount fares offered to the Government by rail or bus carriers between selected cities (city-pairs) is considered advantageous. Whenever these discount fares are offered and the accompanying service will fulfill mission requirements, they should be used to the maximum extent possible. (See 1–3.3b and 1–3.4b for authorized service and accommodations and reduced fares.)

* * * * *

4. Paragraph 1–2.2c(2) is revised to read as follows:

* * * * *

(2) *Government-contract rental or Government-furnished Automobiles.* When it is determined that an automobile is required for official travel, a Government-contract or a Government-furnished automobile shall be used as follows:

(a) A Government-contract rental automobile is the first resource for short-term rental of an automobile by an employee on temporary duty (TDY) travel. This applies to employees who travel to their destination by common carrier, such as airplane, train, or bus and would customarily rent a Government-furnished vehicle for local transportation in the destination area. For travel under this subparagraph (a) an employee may also use a Government-furnished automobile if a Government-contract rental automobile is unavailable or if use of a Government-furnished automobile is practicable. Government-furnished automobiles will continue to be available for use in isolated areas where commercial rental contractors are not available.

(b) A Government-furnished automobile is the first resource when an automobile is required for official travel performed locally or within commuting distance of an employee's designated post of duty. If a Government-furnished automobile is unavailable, a Government-contract rental automobile may be used.

(c) If cost considerations are used in determining whether a Government-contract rental or a Government-furnished automobile should be authorized under this policy, the overall cost shall include any administrative costs as well as any costs associated with picking up and returning the automobile.

* * * * *

5. Paragraph 1–2.2c(3) is revised to read as follows:

* * * * *

(3) *Privately owned conveyance.* The use of a privately owned conveyance shall be authorized only when its use is advantageous to the Government, except as provided in 1–2.2d. A determination that the use of a privately owned conveyance would be advantageous to the Government shall be preceded by a determiantion that transportation by common carrier, a Government-contract rental automobile, or Government-furnished transportation is not available or would not be advantageous to the Government. To the maximum extent possible, these determinations and the authorization to use a privately owned conveyance shall be made before the performance of travel.

6. Paragraph 1–2.2c(4) is revised to read as follows:

* * * * *

(4) *Special conveyance.* Commercially rented vehicles, other than those under contract, and other special conveyances shall be used only when it is determined that use of other methods of transportation discussed in 1–2.2c would not be more advantageous to the Government. In the selection of commercially rented vehicles, first consideration shall be given to Government-contract rental vehicles available under an appropriate GSA Federal Supply Schedule contract.

* * * * *

7. Paragraph 1–2.6c is revised to read as follows:

1–2.6. Use of Government-furnished vehicles.

* * * * *

c. *Vehicle not available.* If a Government-furnished vehicle is not available when required as a first resource, a Government-contract rental or other commercially rented vehicle may be used provided such use is consistent with the provisions of 1–2.2c and the regulations and authorizations of the employee's agency.

* * * * *

Part 3—Use of Commercial Transportation

8. Paragraph 1–3.3b(3) is revised to read as follows:

1–3.3. Travel policy and class of service authorized.

* * * * *

b. * * *

(3) *Extra-fare trains.* Travel by extra-fare trains may be authorized or approved whenever their use is administratively determined to be more advantageous to the Government or is required for reasons of security. The use of National Railroad Passenger Corporation (Amtrak) Metroliner coach service is considered to be advantageous to the Government. (Note.—Metroliner Club service is considered to be first-class service.)

* * * * *

9. Paragraph 1–3.4b(1)(b) is revised to read as follows:

1–3.4. Special fares.

* * * * *

b. * * *

(1) * * *

(b) All agencies, except DOD, shall follow the policies, procedures, and requirements established in FPMR Temporary Regulation A–22, for the use of contract air carriers for official air travel between certain cities (city-pairs). DOD shall follow procedures established in the Military Traffic Management Regulation, AR 55–355/NAVSUP 4600.70/MCO P4600.14A/DLAR 4500.3.

10. Paragraph 1–3.4c is revised to read as follows:

* * * * *

c. *Unequal fares available.* Except as provided in FPMR Temporary Regulation A–22, when common carriers furnish the same method of travel at different fares between the same points for the same type of accommodations, the lowest cost service shall be used unless use of a higher cost service is administratively determined to be more advantageous to the Government. (See 1–2.2b–1.)

* * * * *

11. Paragraph 1–3.5 is revised to read as follows:

* * * * *

1–3.5. Unused, downgraded, or oversold transportation services.

a. *Unused tickets or reservations, or downgraded services.* When a traveler knows that reservations for transportation and/or accommodations will not be used he/she must cancel the reservations within the time limits specified by the carrier. Likewise, where the transportation furnished is different or of a lesser value than that authorized on the ticket or where a journey is terminated short of the destination specified on the transportation request, the traveler shall report the facts to the administrative office in the manner prescribed by the agency concerned. All adjustments in connection with official passenger transportation must be promptly processed to prevent losses to the Government. All unused tickets (including portions thereof), coupons, exchange orders, refund slips, notices of fare adjustments, etc., and the factual information relating to the unused passenger transportation must be attached to or entered on the travel voucher or other payment document. Failure of travelers to follow these procedures may subject them to liability for any resulting losses.

b. *Oversold reserved accommodations.* Tariff provisions of certain scheduled air carriers require the payment of liquidated damages in certain situations if the carrier fails to provide confirmed reserved space. When payment of liquidated damages results from travel on official business, these penalty payments are due the Government and not the traveler. Travelers shall be instructed to turn in to the agency any of these payments received from carriers.

c. *Agency responsibilities.* Each agency shall prescribe procedures for travelers to follow when submitting documentation and justification relating to unused or downgraded passenger transportation services. Included in these procedures will be instructions for submitting to the agency, payments received from carriers for denied confirmed reserved space.

Note.—Travelers are advised that the General Services Administration (GSA) publication, "How to prepare and process U.S. Government Transportation Requests," provides specific instructions for agencies and travelers regarding unused transportation services. Federal agencies may obtain copies of this publication by requisition from the GSA using national stock number 7610–01–038–1389, or from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 using stock number 022–005–00011–1.

* * * * *

Part 5—Baggage

12. Paragraph 1–5.1b is revised to read as follows:

1–5.1 Definitions.

* * * * *

(b) *Excess baggage.* Baggage in excess of the weight, size, or number of pieces that is carried free by transportation companies shall be classed as excess baggage.

* * * * *

13. Paragraph 1–5.2 is revised to read as follows:

* * * * *

1–5.2 Authorization for excess baggage.

Where less than first class accommodations are used, transportation of baggage up to the number of pieces or weight carried free on first-class service shall be allowed at Government expense; in all other instances, excess baggage charges shall be allowed only when authorized or approved.

* * * * *

Part 7—Per Diem Instead of Actual Subsistance

14. Paragraph 1–7.3 is amended by adding subparagraph 1–7.3f to read as follows:

1–7.3 Agency responsibility for authorizing individual rates.

* * * * *

f. *Subsistence payments for extended training assignments.*

(1) The Government Employees Training Act (5 U.S.C. 4101–4118), authorizes agencies to pay all or a part of the subsistence expenses of an employee assigned to training at a temporary duty station. Implementing regulations prescribed by the Office of Personnel Management (OPM) in part 410–603 of Title 5, Code of Federal Regulations (5 CFR 410–603) provide specific guidelines for the payment of subsistence expenses for employees on extended training assignments (more than 30 calendar days) at temporary duty stations.

(2) Generally, the OPM guidelines require a reduced subsistence payment of not more than 55 percent of the per diem rate (see 1–7), or if the training facility is in a high rate geographical area (HRGA), not more than 55 percent of the prescribed maximum daily rate

for the HRGA. Subsistence payments above these levels must be justified. However, these subsistence payments shall not in any case exceed the ceilings imposed by 5 U.S.C. 5702. Agencies shall refer to the OPM guidelines in 5 CFR 410–603 (published in 46 FR 40671–40672) for specific criteria to determine the appropriate subsistence payments. Guidelines are also published by OPM in the Federal Personnel Manual, Chapter 410, Section 6–3.

* * * * *

Part 8—Reimbursement of Actual Subsistence Expenses

15. Paragraph 1–8.1c is amended by revising paragraph 1–8.1c(2) to read as follows:

c. *Unusual circumstances of the travel assignment.*

* * * * *

(2) Notwithstanding the criteria outlined above, agencies shall not use the actual expense under unusual circumstances authority as blanket authority to authorize or approve automatic actual expense reimbursement for all travel to an area where the reimbursement rate is inadequate. This authority shall be used only on an individual case basis with approrpriate consideration in each case of the actual facts existing at the time the travel is directed and performed. If it becomes necessary to exercise this authority repetitively or on a continuing basis in a particular area, the agency should submit a request to GSA as prescribed in 1–8.7 for HRGA designation or for rate adjustment if the area is already an HRGA.

* * * * *

16. Paragraph 1–8.1c is further amended by adding paragraphs 1–8.1c(3) (e) and (f) are added to read as follows:

c. *Unusual circumstances of the travel assignment.*

* * * * *

(e) The traveler performs temporary duty in an area that has not been designated as an HRGA and due to the lack of availability of lower priced accommodations in the immediate area of the temporary duty site, the maximum per diem rate is inadequate; or the traveler performs temporary duty to an HRGA and the maximum actual expense reimbursement rate is substantially below that required to cover costs necessarily incurred. See 1–8.1c(2) regarding repeated use of this authority.

(f) The travel is to an area that is not designated as an HRGA but where the choice of accommodations is limited or the costs of accommodations are inflated because of conventions, sporting events, natural disasters, peak recreation season, a special occurrence at the temporary duty site (where the rates would not be inflated during normal times), or other causes which would reduce the number of available lodgings below the normal level.

* * * * *

17. Paragraph 1–8.1 is amended by adding new paragraph 1–8.1f to read as follows:

1–8.1 Authorization or approval.

* * * * *

f. *Subsistance payments for extended training assignments.* The regulations governing the payment of subsistance expenses for extended training assignments are issued by the Office of Personnel Management (OPM) in part 410.603 of Title 5, Code of Federal Regulations. (See 1–7.3f.) These OPM regulations shall be used as required and referenced in 1–7.3f when an employee is authorized training subsistence payments for a training assignment at a temporary duty station over 30 calendar days. The training assignment may be located in a high rate geographical area, or any other location where actual subsistence expense reimbursement may be authorized in 1–8 of these regulations.

* * * * *

Part 10—Source of Funds

18. Paragraph 1–10.2b(2) is revised to read as follows:

1–10.2 Procurement of common carrier transportation.

* * * * *

b. * * *

(2) Agencies may, by appropriate regulations, require a traveler to use cash to procure passenger transportation services within the United States (50 States and the District of Columbia) when the cost is over $10 but does not exceed $100, excluding Federal transportation tax, for each trip as authorized on the official travel authorization (see note below). Cash payment of official transportation expenses, without regard to the $100 limitation, is authorized when employees secure group or excursion fares available through travel agents as provided in 1–3.4b(2); travel agents may not otherwise be used under these cash payment provisions.

Note.—The National Railroad Passenger Corporation (Amtrak) will not accept a GTR for travel under $100. Amtrak will accept personal checks or major credit cards provided proper identification is shown when purchasing a ticket.

* * * * *

Part 11—Claims for Reimbursement

19. Paragraph 1–11.3c is amended to read as follows:

1–11.3. Travel vouchers and attachments.

* * * * *

c. *Receipts required.* Receipts are required for allowable cash expenditures in amounts in excess of $25, plus any applicable tax. When receipts are not available, the expenditures shall be explained on the voucher. Receipts are required for the following expenditures regardless of amount:

* * * * *

Chapter 2—Relocation Allowances

Part 7—Transportation of Mobile Homes

20. Paragraph 2–7.4 is revised to read as follows:

* * * * *

2–7.4. *Limitation on allowances.* The total amount allowable under 2–7.3 shall not exceed the maximum amount which would be allowable for transportation and 90 days' temporary storage of the employee's household goods if, instead of moving a mobile home, the maximum quantity of household goods allowable for the employee involved under 2–8.2 had been moved.

* * * * *

Part 8—Transportation and Temporary Storage of Household Goods and Professional Books, Papers, and Equipment

21. Paragraph 2–8.6c is revised to read as follows:

* * * * *

c. *Procedures.* In requesting an advance of funds, the employee shall submit a written statement designating: (1) The points of origin and destination, (2) the estimated weight of household goods to be shipped, and (3) any anticipated temporary storage not to exceed 90 days at Government expense. The estimate of weight required in support of an advance of funds shall consist of a statement of the estimated weight signed by the carrier selected to handle the shipment if it is available. If it is not available, evidence of actual weight or a reasonable estimate thereof acceptable to the agency shall be furnished.

* * * * *

(Executive Order No. 11609, July 22, 1971; 5 U.S.C. 5707)

Dated: May 20, 1983.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 83-15610 Filed 6-10-83; 8:45 am]

BILLING CODE 6820-AM-M

[GSA Bulletin FPMR A-40, Supp. 6]

Federal Travel Regulations; Changes to Federal Travel Regulations

AGENCY: Office of Federal Supply and Services, General Services Administration (GSA).

ACTION: Federal travel regulations; Changes to Federal travel regulations.

SUMMARY: GSA has issued GSA Bulletin FPMR A-40, Supplement 6, transmitting changed pages to amend the Federal Travel Regulations (FTR), FPMR 101-7, to (a) increase the mileage rates for use of privately owned vehicles and (b) revise the listing of high rate geographical areas. Certain of these FTR changes reflect the results of GSA's recent report to the Congress on the investigations of the cost of travel and the operation of privately owned vehicles. GSA is required by statute to conduct these cost investigations and report the results to the Congress annually. The report to the Congress was published as a notice document in the **Federal Register** on June 6, 1983 (48 FR 25272).

EFFECTIVE DATE: June 19, 1983.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Jones, Travel Regulations Branch (703-557-1253).

SUPPLEMENTARY INFORMATION: 1. 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.

2. Accordingly, the Federal Travel Regulations are amended as follows:

a. Paragraphs 1-4.2a(2) and 1-4.2c (1) and (2) are revised to reflect an increase in the mileage rate from 20.0 cents to 20.5 cents per mile for the use of a privately owned automobile when its use is advantageous to the Government.

b. Paragraphs 1-4.4 b and d are revised to increase the mileage allowance to 18 cents per mile and paragraph 1-4.4c is revised to increase the mileage to 9.5 cents per mile for use of a privately owned automobile when it is used instead of a Government furnished automobile.

c. The HRGA listing in appendix 1-A to the FTR is revised to designate additional HRGA's and to increase the maximum actual subsistence expense rate and/or redefine the boundaries of certain existing HRGA's.

Note.—The GSA has published the revised HRGA listing as a notice document in this **Federal Register.**

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: May 9, 1983.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 83-15609 Filed 6-10-83; 8:45 am]

BILLING CODE 6820-AM-M

Addendum to the Report To Congress on the Cost of Subsistence and the Cost of Operation of Privately Owned Vehicles

1. The changes to the mileage rates for use of privately owned automobiles and travel allowances reflected in the report published on June 6, 1983, are effective for travel performed on or after June 19, 1983. The Federal Travel Regulations (FTR), FPMR 101-7, transmitted by GSA Bulletin FPMR A-40, Supplement 1, dated September 28, 1981, are amended as follows:

a. Paragraphs 1-4.2a(2) and 1-4.2c (1) and (2) are revised to reflect an increase in the mileage rate from 20.0 cents per mile to 20.5 cents per mile for the use of a privately owned automobile when its use is advantageous to the Government.

b. Paragraphs 1-4.4 b and d are revised to increase the mileage allowance to 18 cents per mile and paragraph 1-4.4c is revised to increase the mileage allowance to 9.5 cents per mile for use of a privately owned automobile when it is used instead of a Government furnished automobile.

c. The HRGA listing in appendix 1-A to the FTR is revised to designate additional HRGA's and to increase the maximum actual subsistence expense rate and/or redefine the boundaries of certain existing HRGA's. The following listing will be published in appendix 1-A.

DESIGNATED HIGH RATE GEOGRAPHICAL AREAS (HRGA'S)

High rate geographical areas	Prescribed maximum daily rates (in dollars)
Alabama	
**Birmingham (all locations within Jefferson County)	67
**Huntsville (all locations within Madison County)	63
**Mobile (all locations within Mobile County)	62
Arizona	
*Page (all locations within Coconino County)	60
**Phoenix/Scottsdale (all locations within Maricopa County)	70
Tucson (all locations within Pima County, including Davis Monthan AFB)	71
*Yuma (all locations within Yuma County)	55
Arkansas	
**Little Rock (all locations within Pulaski County)	64
California	
**Fresno (all locations within Fresno County)	72
Los Angeles (all locations within the counties of Los Angeles, Kern, Orange, and Ventura, including Edwards AFB and Naval Weapons Center and Ordnance Test Station, China Lake)	75
Monterey (all locations within Monterey County)	75
**Palm Springs (all locations within Riverside County)	
(Effective 7/1 thru 11/30)	73
(Effective 12/1 thru 6/30)	75
Sacramento (all locations within Sacramento County)	75
San Diego (all locations within San Diego County)	75
San Francisco/Oakland (all locations within the counties of San Francisco, Alameda, Contra Costa, and Marin)	75
San Jose (all locations within Santa Clara County)	75
**San Luis Obispo (all locations within San Luis Obispo County)	
(Effective 5/1 thru 10/31)	70
(Effective 11/1 thru 4/30)	64
**Santa Mateo (all locations within San Mateo County)	69
San Barbara (all locations within Santa Barbara County)	75
**Santa Cruz (all locations within Santa Cruz County)	
(Effective 5/1 thur 10/31)	75
(Effective 11/1 thru 4/30)	68
**Vallejo (all locations within Solano County)	68
Colorado	
Aspen (all locations within Pitkin County)	75
**Boulder (all locations within Boulder County)	71
*Colorado Springs (all locations within El Paso County)	61
Denver (all locations within the counties of Denver, Adams, Arapahoe, and Jefferson)	75
**Durango (all locations within La Plata County)	65
**Glenwood Springs (all locations within Garfield County)	69
**Grand Junction (all locations within Mesa County)	63
Vail (all locations within Eagle County)	75
Connecticut	
**Bridgeport (all locations within Fairfield County)	75
Hartford (all locations within the counties of Hartford and Middlesex)	75
New Haven (all locations within New Haven County)	75
**New London/Groton (all locations within New London County)	
(Effective 4/1 thru 10/31)	72
(Effective 11/1 thru 3/31)	61
Delaware	
Wilmington (all locations within New Castle County)	75
District of Columbia	
Washington, DC (all locations within the corporate limits of the District of Columbia; the cities of Alexandria, Falls Church, and Fairfax, and the counties of Arlington, Loudoun, and Fairfax in Virginia; and the counties of Montgomery and Prince Georges in Maryland) (see also Maryland and Virginia)	75
Florida	
***Cocoa Beach (all locations within Brevard County)	65

DESIGNATED HIGH RATE GEOGRAPHICAL AREAS (HRGA'S)—Continued

High rate geographical areas	Prescribed maximum daily rates (in dollars)
**Ft. Lauderdale (all locations within Broward County)	71
**Ft. Walton Beach (all locations within Okaloosa County)	
(Effective 5/1 thru Labor Day)	75
(Effective after Labor Day thru 4/30)	55
*Gainsville (all locations within Alachua County)	56
**Jacksonville (all locations within Duval County, including Naval Station Mayport)	68
Miami (all locations within the counties of Dade and Monroe)	75
**Orlando (all locations within Orange County)	69
*Panama City (all locations within Bay County)	71
*Pensacola (all locations within Escambia County)	60
**Sarasota (all locations within Sarasota County)	59
*Tallahassee (all locations within Leon County)	57
Tampa/St. Petersburg (all locations within the counties of Hillsborough and Pinellas)	75
**West Palm Beach (all locations within Palm Beach County)	60
Georgia	
*Albany (all locations within Dougherty County)	56
Atlanta (all locations within the counties of De Kalb, Fulton, and Cobb)	75
**Savannah (all locations within Chatham County)	60
Idaho	
**Boise (all locations within Ada County)	63
Illinois	
Chicago (all locations within the counties of Du Page, Cook, and Lake)	75
**Rockford (all locations within Winnebago County)	58
**Springfield (all locations within Sangamon County)	62
Indiana	
**Indiana Army Ammunition Plant, Charlestown (see also Louisville, KY)	74
**Ft. Wayne (all locations within Allen County)	67
**Gary (all locations within Lake County)	65
**Indianapolis (all locations within Marion County, including Fort Benjamin Harrison)	75
**South Bend (all locations within St. Joseph County)	64
Iowa	
**Des Moines (all locations within Polk County)	62
Kansas	
Kansas City (all locations within the counties of Johnson and Wyandotte) (see also Kansas City, MO)	75
**Wichita (all locations within Sedgwick County)	74
Kentucky	
**Covington (all locations within Kenton County)	62
**Lexington (all locations within Fayette County)	73
**Louisville (all locations within Jefferson County, and the Indiana Army Ammunition Plant, Charlestown, Indiana) (see also Indiana)	74
Louisiana	
**Baton Rouge (all locations within East Baton Rouge Parish)	75
*Lafayette (all locations within Lafayette Parish)	65
**Lake Charles (all locations within Calcasieu Parish)	63
New Orleans (all locations within the parishes of Jefferson, Orleans, Plaquemines, and St. Bernard)	75
Maine	
**Portland (all locations within Cumberland County)	72
*Kittery (including the Portsmouth Naval Shipyard) (See also Portsmouth, NH)	63
Maryland	
**Annapolis (all locations within Anne Arundel County)	66
Baltimore (all locations within Baltimore City and the counties of Baltimore and Harford)	75
Ocean City (all locations within Worcester County)	75
**Salisbury (all locations within Wicomico County)	68
Montgomery County (see also District of Columbia)	75
Prince Georges County (see also District of Columbia)	75
Massachusetts	
Boston (all locations within the counties of Middlesex, Norfolk, and Suffolk)	75
**Hyannis (all locations within Barnstable County)	
(Effective 6/1 thru Labor Day)	75
(Effective after Labor Day thru 5/31)	56
**Martha's Vineyard/Nantucket (all locations within the counties of Dukes and Nantucket)	
(Effective 6/1 thru Labor Day)	75
(Effective after Labor Day thru 5/31)	68
**New Bedford (all locations within Bristol County)	69
**Pittsfield (all locations within Berkshire County)	66
**Springfield (all locations within Hampden County)	65
**Worcester (all locations within Worcester County)	67
Michigan	
**Ann Arbor (all locations within Washtonaw County)	68
Detroit (all locations within Wayne County)	75
Grand Rapids (all locations within Kent County)	66
**Kalamazoo (all locations within Kalamazoo County)	62
**Pontiac (all locations within Oakland County)	66
**Saginaw (all locations within Saginaw County)	63
**Warren (all locations within Macomb County)	68
Minnesota	
**Duluth (all locations within St. Louis County)	63
**Minneapolis/St. Paul (all locations within the counties of Anoka, Hennepin, and Ramsey, including the Fort Snelling Military Reservation and Navy Astronautics Group (Detachment BRAVO), Rosemount)	75
Mississippi	
*Gulfport (all locations within Harrison County)	62
**Jackson (all locations within Hinds County)	63
Missouri	
Kansas City (all locations within the counties of Clay, Jackson, and Platte) (see also Kansas City, KS)	75
St. Louis (all locations within the counties of St. Charles and St. Louis)	75
*Springfield (all locations within Greene County)	57
Montana	
*Great Falls (all locations within Cascade County)	56
Nebraska	
*Lincoln (all locations within Lancaster County)	55
**Omaha (all locations within Douglas County)	67
Nevada	
*Carson City (all locations within Carson City County)	55
Las Vegas (all locations within Clark County, including Nellis AFB)	75
*Reno (all locations within Washoe County)	60
New Hampshire	
**Manchester (all locations within Hillsborough County)	69
*Portsmouth/Newington (all locations within Rockingham County including Pease AFB) (See also Kittery, ME)	63
New Jersey	
Atlantic City (all locations within Atlantic County)	75
**Camden (all locations within Camden County)	67
*Cape May (all locations within Cape May County)	75
**Dover (all locations within Morris County, including Picatinny Arsenal)	75
Eatontown (all locations within Monmouth County, including Ft. Monmouth)	75
Edison (all locations within Middlesex County)	75
Newark (all locations within the counties of Bergen, Essex, Hudson, Passaic, and Union)	75
Princeton/Trenton (all locations within Mercer County)	75
**Tom's River (all locations within Ocean County)	69
New Mexico	
**Albuquerque (all locations within Bernalillo County)	73
**Santa Fe (all locations within Santa Fe County)	
(Effective 6/1 thru 10/31)	75
(Effective 11/1 thru 5/31)	71
New York	
**Albany (all locations within Albany County)	74
**Buffalo/Niagara Falls (all locations within the counties of Erie and Niagara)	73
**Lake Placid (all locations within Essex County)	
(Effective 6/1 thru Labor Day)	75
(Effective after Labor Day thru 5/31)	73
New York (all locations within the Boroughs of the Bronx, Brooklyn, Manhattan, Queens, and Staten Island, and the counties of Nassau and Suffolk)	75
Rochester (all locations within Monroe County)	75
Syracuse (all locations within Onondaga County)	75
**West Point (all locations within Orange County)	62
North Carolina	
**Asheville (all locations within Buncombe County)	75
**Charlotte (all locations within Mecklenburg County)	65
*Durham (all locations within Durham County)	55
**Raleigh (all locations within Wake County)	70
North Dakota	
**Bismarck (all locations within Burleigh County)	61
Ohio	
**Akron (all locations within Summit County)	61
**Cincinnati/Evendale (all locations within the Counties of Hamilton and Warren)	75
Cleveland (all locations within Cuyahoga County)	75
**Columbus (all locations within Franklin County)	71
**Dayton (all locations within Montgomery County, including Wright-Patterson AFB)	74
**Toledo (all locations within Lucas County)	70
Oklahoma	
**Oklahoma City (all locations within Oklahoma County)	67
Tulsa (all locations within the counties of Tulsa and Osage)	75
Oregon	
**Portland (all locations within Multnomah County)	73
Pennsylvania	
**Chester (all locations within Delaware County)	59
Coatesville/Valley Forge (all locations within Chester County)	75
*Erie (all locations within Erie County)	55
Harrisburg (all locations within Dauphin County)	75
King oil Prussia/Ft. Washington (all locations within Montgomery County, except Bala Cynwyd) (see also Philadelphia, PA)	75
Philadelphia/Bala Cynwyd (all locations within Philadelphia County and the city of Bala Cynwyd in Montgomery County)	75
Pittsburgh/Monroeville (all locations within Allegheny County)	75
**Reading (all locations within Berks County)	58
**York (all locations within York County)	63
Rhode Island	
**Newport (all locations within Newport County)	
(Effective 5/1 thru 10/31)	75
(Effective 11/1 thru 4/30)	71
Providence (all locations within Providence County)	75
South Carolina	
**Charleston (all locations within the counties of Charleston and Berkeley)	66
**Columbia (all locations within Richland County)	65
Hilton Head (all locations within Beaufort County)	75
South Dakota	
*Rapid City (all locations within Pennington County)	65
*Sioux Falls (all locations within Minnehaha County)	59
Tennessee	
*Chattanooga (all locations within Hamilton County)	59
**Knoxville/Oak Ridge (all locations within Knox County and the city of Oak Ridge)	58
**Memphis (all locations within Shelby County)	73
**Nashville (all locations within Davidson County)	69
Texas	
**Amarillo (all locations within Potter County)	61
Austin (all locations within Travis County)	75
**Beaumont (all locations within Jefferson County)	58
**Brownsville (all locations within Cameron County)	60
**Corpus Christi (all locations within Nueces County)	75
Dallas/Ft. Worth (all locations within the counties of Dallas and Tarrant)	75
El Paso (all locations within El Paso County)	72

DESIGNATED HIGH RATE GEOGRAPHICAL AREAS (HRGA'S)—Continued

High rate geographical areas	Prescribed maximum daily rates (in dollars)
**Galveston (all locations within Galveston County)	
(Effective Memorial Day thru Labor Day)	75
(Effective all other times)	68
Houston (all locations within Harris County, including the L. B. Johnson Space Center and Ellington AFB)	75
**Lubbock (all locations within Lubbock County)	58
San Antonio (all locations within Bexar County)	75
Utah	
Salt Lake City (all locations within Salt Lake County, including Dugway Proving Ground and Tooele Army Depot	75
Vermont	
**Burlington (all locations within Chittenden County)	66
Virginia	
Alexandria (See also District of Columbia)	75
Fairfax (see also District of Columbia)	75
Falls Church (see also District of Columbia)	75
**Manassas (all locations within Prince William County)	61
**Norfolk (all locations within the cities of Norfolk, Virginia Beach, Portsmouth, Hampton, Newport News, and Chesapeake, and the county of York, including the Naval Weapons Station, Yorktown)	74
**Richmond (all locations within the city of Richmond and the counties of Chesterfield and Henrico, including the Defense General Supply Center)	65
**Roanoke (all locations within Roanoke City and the County of Roanoke)	59
**Williamsburg	
(Effective 4/1 thru 10/31)	75
(Effective 11/1 thru 3/31)	65
Arlington County (see also District of Columbia)	75
Fairfax County (see also District of Columbia)	75
Loudoun County (see also District of Columbia)	75
Washington	
Seattle (all locations within King County)	75
**Spokane (all locations within Spokane County)	68
**Tacoma (all locations within Pierce County)	61
West Virginia	
**Charleston (all locations within Kanawha County)	68
Wisconsin	
Madison (all locations within Dane County)	67
Milwaukee (all locations within Milwaukee County)	75
Wyoming	
**Casper (all locations within Natrona County)	69
Cheyenne (all locations within Laramie County)	62
*Rock Springs (all locations within Sweetwater County)	63

NOTES.—(1) Unless otherwise specified, HRGA's are defined as "all locations within, or entirely surrounded by, the corporate limits of the key city, including independent entities located within those boundaries." (2) HRGA's with county definitions shall include "all locations within, or entirely surrounded by, the corporate limits of the key city as well as the boundaries of the listed counties, including independent entities located within the boundaries of the key city and the listed counties." (3) Military installations or Government-related facilities (whether or not specifically named in the HRGA definition) that are partially located within the HRGA boundary shall include "all locations that are geographically part of the military installation or Government-related facility, even though part(s) of such activities may be located in an area that is not specifically listed in the HRGA definition."

*Newly designated HRGA.

**Rate adjustment or redefined boundary for previously designated HRGA.

***Subsistence costs increase during the period immediately preceding and following a spacecraft launch. Agencies should add $5.00 to the maximum daily reimbursement rate for the period which begins at 12:01 a.m. 2 days prior to a scheduled launch and runs until midnight of the second day following the actual launch.

2. The changes explained above will be incorporated in the revised Federal Travel Regulations issued September 28, 1981, effective November 1, 1981. Changed pages will be transmitted by GSA Bulletin FPMR A–40, Supplement 6.

Dated: May 9, 1983.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 83-15596 Filed 6-10-83; 8:45 am]

BILLING CODE 6820-AM-M

Reader Aids

Federal Register

Vol. 48, No. 114

Monday, June 13, 1983

INFORMATION AND ASSISTANCE

PUBLICATIONS

Code of Federal Regulations

CFR Unit	202-523-3419 523-3517
General information, index, and finding aids	523-5227
Incorporation by reference	523-4534
Printing schedules and pricing information	523-3419

Federal Register

Corrections	523-5237
Daily Issue Unit	523-5237
General information, index, and finding aids	523-4534
Privacy Act	523-4534
Public Inspection Desk	523-5215
Scheduling of documents	523-3187

Laws

Indexes	523-5282
Law numbers and dates	523-5282 523-5266
Slip law orders (GPO)	275-3030

Presidential Documents

Executive orders and proclamations	523-5233
Public Papers of the President	523-5235
Weekly Compilation of Presidential Documents	523-5235
United States Government Manual	523-5230

SERVICES

Agency services	523-5237
Automation	523-3408
Library	523-4986
Magnetic tapes of FR issues and CFR volumes (GPO)	275-2867
Public Inspection Desk	523-5215
Special Projects	523-4534
Subscription orders (GPO)	783-3238
Subscription problems (GPO)	275-3054
TTY for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JUNE

24311-24652.....1
24653-24854.....2
24855-25168.....3
25169-26278.....6
26279-26442.....7
26443-26584.....8
26585-26750.....9
26751-27026.....10
27027-27218.....13

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:
Presidential Determinations:
No. 83-7 of June 3, 1983.....26585
Executive Orders:
September 15, 1916 (Revoked in part by PLO 6392).....26315
September 30, 1916 (Revoked in part by PLO 6392).....26315
May 21, 1920 (Revoked in part by PLO 6392).....26315
Proclamations:
5066.....24855
5067.....26443

5 CFR

213.....24857
581.....26279

7 CFR

51.....26751
52.....26752
68.....24857
319.....24311
354.....26294
910.....24859, 26587, 26757
915.....24860
916.....24653
932.....24311
944.....24860
959.....25169
966.....26757
1033.....24861
1036.....24863
1139.....24864
Proposed Rules:
51.....24723
800.....27082, 27084
1007.....24391
1046.....24905
1125.....26460
1133.....26460
1207.....24724

9 CFR

92.....24866
318.....24314

10 CFR

20.....26295
25.....24318
61.....26295
95.....24318
Proposed Rules:
50.....24391
960.....26440

11 CFR

102.....26300
114.....26303

12 CFR

5.....26758
207.....26587
211.....26445
220.....26587, 26589
221.....26587
224.....26587
303.....27027
505c.....26590
Proposed Rules:
7.....24913
614.....25210

13 CFR

121.....26760

14 CFR

39.....26590-26593, 27030, 27031
71.....25169, 25170, 26594-26596, 27032-27034
75.....26596
95.....24654
204.....26596
252.....24866
389.....24323
Proposed Rules:
23.....26623
39.....25210, 27085-27087
121.....25211
139.....25211
159.....25215
221.....24916
252.....24918
291.....24922, 26830
377.....24923

15 CFR

369.....24323
371.....25171
373.....25174
376.....25171
379.....25171
386.....25171, 26303, 26449
399.....25171, 25174, 26450

16 CFR

423.....24868
453.....25174
1406.....26761
Proposed Rules:
13.....24724, 27089
457.....25218

17 CFR

170.....26304
200.....24663

240 24663
249 24663
270 25175
Proposed Rules:
12 25218
210 26623
240 ..... 24725, 24728
270 ..... 25220, 26460

18 CFR

2 ..... 24323, 24358
35 24323
271 25177-25179
Proposed Rules:
35 26831
271 ..... 24730-24732, 25223

19 CFR

101 25180
177 25180
Proposed Rules:
Ch. I 26831
101 27092
123 26832
175 26833
177 25224

20 CFR

Proposed Rules:
632 24392
633 24392
634 24392
635 26430
684 24392

21 CFR

5 26311
131 24868
175 24869
177 ..... 26312, 26761
178 24869
357 27004
510 ..... 24870, 24871
520 ..... 24871, 26762
522 26313
540 ..... 24872, 24873
558 24871
600 26313
895 ..... 25126, 25137
Proposed Rules:
158 26319
310 26986
312 26720
341 24925

22 CFR

Proposed Rules:
11 26834

23 CFR

Ch. I 24852, 25181

24 CFR

111 24361
221 27035
234 27035
235 27035
1800 24873

25 CFR

Proposed Rules:
700 24734

26 CFR

601 24668
Proposed Rules:
1 ..... 24736, 25224, 25228

27 CFR

21 24672
212 24672
Proposed Rules:
9 24737

28 CFR

0 25183
540 24622
550 24623
551 24623
Proposed Rules:
547 24626
570 24626
571 24626

29 CFR

Proposed Rules:
1910 26962
1952 26836
2670 27092
2675 27092

30 CFR

226 26763
256 26778
260 24873
784 24638
785 24638
816 24638
817 24638
818 24638
916 24874
944 24876
946 25184
1625 26434
Proposed Rules:
57 27024
250 26837
901 24739
913 24741
917 ..... 26839, 27101
936 24928
938 27102
942 25229
946 26624
948 24393

32 CFR

242b 26451
806b 24878

33 CFR

100 ..... 25186, 26599-26602
117 26602
165 25187
Proposed Rules:
117 26625
162 ..... 25231, 27103

34 CFR

668 26779
682 24584

35 CFR

222 25187
262 26603
Proposed Rules:
13 26319

37 CFR

Proposed Rules:
1 26319
5 26319

38 CFR

3 27036
Proposed Rules:
17 26627

39 CFR

Proposed Rules:
111 27103

40 CFR

52 ..... 24362, 24689
144 27039
146 27039
162 26451
180 ..... 24364, 24365, 24689, 26452
204 27039
205 27039
211 27039
271 27041
712 27040
716 24366
720 27043
763 27041
Proposed Rules:
Ch. I 24930
51 26840
52 26841
65 24930
66 26627
67 26627
81 24393
86 24932
145 26842
180 ..... 24394, 24396, 26629
271 25236
403 24933
405 24742
406 24742
407 24742
408 24742
409 24742
411 24742
412 24742
422 24742
424 24742
426 24742
429 24742
430 24742
431 24742
432 24742
433 24742
440 24742
600 26698
610 24397

41 CFR

Ch. 7 25188
1-15 26453
3-3 26605
101-29 25196
101-45 24878
101-47 ..... 24879, 25199
105-53 25200

42 CFR

57 25064
66 24879
Proposed Rules:
57 ..... 25071, 25072

43 CFR

Public Land Orders:
23 27008
1600 26314
3200 24367
3210 24367
3220 24367
3240 24367
3250 24367
3600 27008
3610 27008
3620 27008
6377 26780
6391 25205
6392 26315
Proposed Rules:
3000 26320
3100 26320
8370 26485

44 CFR

64 ..... 24369, 26780, 26796
65 26605
67 ..... 24370, 26784, 26796
Proposed Rules:
67 ..... 24743, 26629, 26630
302 27105

45 CFR

1207 26802
1208 26806
1209 26815

46 CFR

221 27044
310 27044
Proposed Rules:
125 26631
126 26631
127 26631
128 26631
129 26631
130 26631
131 26631
132 26631
133 26631
134 26631
135 26631
136 26631
542 27112
543 27112
544 27112

47 CFR

Ch. I 27044
0 ..... 24383, 26606
1 ..... 24884, 27182
2 27054
22 ..... 26820, 27182
31 27072
73 ..... 24383, 24898, 26453, 26608, 27054, 27182
74 ..... 24383, 27054
81 27182
87 27182
90 ..... 26617, 27182
94 27182
95 24884
97 ..... 26455, 26606
Proposed Rules:
2 ..... 24945, 26461
22 24945
94 27113

69 26632
73 ..... 24945, 24949, 26462–26471
74 24945
76 26472
94 24950
96 24953
97 ..... 24954, 26647

49 CFR

192 25206
195 25206
571 ..... 24690, 24717, 25209
1011 26456
1033 24386
1039 ..... 24900, 26822
1153 24386
1162 24388
1175 26317
1176 26317
1307 24388

Proposed Rules:

Ch. X 24397
25 26649
172 26650
173 ..... 25236, 26650
179 25236
571 ..... 24751, 25237
1186 26485

50 CFR

20 26457
250 26621
260 24901
301 27073
371 24902
424 ..... 24718, 24903
611 ..... 24719, 27075
674 27080

Proposed Rules:

17 26488
23 26651
611 25238
646 26843
661 26653
674 24751
675 25238

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.) Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

Note: The Office of the Federal Register proposes to terminate the formal program of agency publication on assigned days of the week. See 48 FR 19283, April 28, 1983.

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last Listing June 9, 1983