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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Licensed Operator Staffing at Nuclear Power Units

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to require licensees of nuclear power units to provide a minimum number of licensed operators and senior operators on shift at all times to respond to normal and emergency conditions. These requirements will further assure the protection of the health and safety of the public by allowing the senior operator in charge the flexibility to move about the facility as needed while assuring that a senior operator is continuously present in the control room during unit operation.

EFFECTIVE DATE: January 1, 1984.

FOR FURTHER INFORMATION CONTACT: James Norberg, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–443–5863, or Clare Goodman, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–4894.

SUPPLEMENTARY INFORMATION:

Background

In the aftermath of the Three Mile Island (TMI) accident, a number of studies and investigations conducted by the NRC, the industry, and others recommended changes in the numbers, qualifications, and organization of nuclear power plant personnel.[1] The "NRC Action Plan Developed as a Result of the TMI–2 Accident" (NUREG–0660), Item I.A.1.3, adopted these recommendations and "Clarification of TMI Action Plan Requirements" (NUREG–0737) was issued to provide interim shift staffing criteria to all licensees of operating units, all applicants for operating licenses, and all holders of construction permits. NUREG–0737 criteria include the provisions that: (a) A shift supervisor with a senior operator's license shall be on site at all times that a nuclear power unit is loaded with fuel; (b) a licensed senior operator shall be in the control room from which a unit is being operated; (c) an individual who holds a senior operator license shall supervise core alterations; and (d) one or more control room operators shall be assigned on shift for each fueled unit depending on the number of units being operated from the control room.

These criteria have been used for licenses issued after the accident at Three Mile Island, and all licensees of operating nuclear power units are aware of the NRC's staffing criteria provided by NUREG–0737. To ensure that all operating nuclear power units are adequately staffed with licensed personnel, the amendment will apply these NUREG–0737 criteria to all operating nuclear power units. The staffing criteria of NUREG–0737 and the current technical specifications for nuclear power units call for more licensed operators than are required by current NRC regulations. Under current NRC regulations it is only necessary to have a licensed senior operator present at the facility or readily available on call during operation, and an operator or senior operator must be present at the controls at all times during operation.

Proposed Rule

On August 30, 1982, the NRC published a proposed rule in the Federal Register (47 FR 38135) that would require all licensees of nuclear power units to provide a minimum number of licensed operators and senior operators on shift and a person with a senior operator license in the control room at all times that the unit is being operated. Interested persons, applicants, and licensees were invited to submit written comments to the Secretary of the Commission. After consideration of the comments, the staff has amended the proposed rule, as discussed in the following section.

Comments on the Proposed Rule

The Commission received twenty-seven letters commenting on the proposed rule. Copies of those letters and an analysis of the comments are available for public inspection and copying for a fee at the NRC Public Document Room at 1717 H Street, NW, Washington, DC.

Implementation Schedule

A large number of the comments received stated that the implementation schedule for this rule is too ambitious. The long lead time necessary to acquire, train and license operators may make it very difficult to meet a near-term requirement to increase the number of operators required during operation. Additionally, several comments suggested that one means of easing the manpower problem would be to allow the second senior operator to replace the shift technical advisor. In a related effort, the Commission has under consideration a draft policy statement which would allow the functions of a senior operator and a shift technical advisor to be merged. In order to allow time to acquire, train, and license the required number of operators, the implementation date for the rule has been delayed one year, to January 1, 1984. All licensees of nuclear power units will be expected to meet these staffing requirements by January 1, 1984.

Licensees that believe they cannot meet this deadline must submit a request for an extension by October 1, 1983, to the Director of the Office of Nuclear Reactor Regulation. In that request they should address the following criteria:

1. Whether the licensee is firmly committed to hire and train the necessary number of operators. This criterion will be used to assure that a

[1] The recommendations of the investigating groups are collected in NUREG–0660, "NRC Action Plan Developed as a Result of the TMI–2 Accident," NUREG–0660, in Appendix E, discusses the availability of the reports prepared by the various organizations. NUREG documents are available for public inspection and copying for a fee in the Commission's Public Document Room at 1717 H Street, NW, Washington, DC. Copies of NUREG documents may be obtained from: the GPO Sales Program, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and the National Technical Information Service, Springfield, VA 22161.

real and continuing effort will be made to meet the intent of the rule.

2. Whether the licensee has set a reasonable target date by which it would meet the requirements. This criterion will assure that the upgraded staffing requirements will be met as quickly as possible, rather than delayed simply because the option was there.

3. Whether the licensee has an active recruitment program to hire the necessary numbers of operators. This criterion will be used to indicate whether or not the licensees have realistically considered the effects of attrition.

4. Whether the licensee has an adequate training program to assure that it has well-trained operators readily available. This criterion will be used to assess the estimates of the percentage of candidates that can be reasonably expected to become licensed and to ensure that the operators who control the unit while in a reduced staffing capacity are adequately trained.

5. Whether implementation of the rule would adversely affect the licensee's training program, overtime practices, number of shifts, or length of shift. This criterion will be used to assess the possible negative effect on safety of requiring increased staffing levels if this increase is made at the expense of excessive overtime, the training program, or the number of shifts available.

This request will be reviewed in accordance with the provisions of 10 CFR 50.54 by the Director of the Office of the Nuclear Reactor Regulation using the criteria listed above and any other information which is considered to be pertinent to the request. If the licensee demonstrates good cause for the request, the implementation date will be extended for that unit.

Exemptions From the Substantive Provisions of the Rule

Licensees that wish to be exempted from the substantive requirements of the rule must submit a request in accordance with the provisions of 10 CFR 50.12 and adequately justify reduced staffing levels based on plant size, lack of complexity, or other unique factors. If the licensee demonstrates good cause for the request, it will be granted.

Justification for the Provisions of the Rule

Several commentors stated that the NRC had not provided adequate justification of the need for codifying the proposed staffing requirements and that the comment period should be extended until the staff develops a technical basis which demonstrates an increase in safety as a result of implementation of the rule. While an empirical data base which specifies the exact number and qualifications of licensed operators needed on shift at nuclear power plants does not exist, the basis described below is considered sufficient to warrant these increased staffing requirements pending confirmation by research programs which are planned or are currently underway.

The Commission notes, in this regard, that although these staffing levels have been Commission policy for several years, they have not previously been codified through rulemaking because of a belief that the industry recognized the importance of adequate, competent staffing and would voluntarily implement these staffing levels. However, that assumption has been proven false in several cases. The Commission has therefore decided that to protect the health and safety of the public, it is necessary to adopt this rule to guarantee that all plants have an adequate number of licensed operators and senior operators available on shift. The changes made to the existing requirements and the bases for them are:

(a) A shift supervisor with a senior operator's license shall be on site at all times that any unit is loaded with fuel. The presence of this individual will assure that a technically competent supervisor will be present on each shift to direct the overall operation of the plant. A situation can arise at any time that requires the presence of someone with knowledge of the facility's technical specifications and the conditions and limitations in the facility license. Under current NRC requirements, senior operators are examined in more depth and more areas concerning a unit's conditions, limitations, and specifications than a reactor operator or unlicensed manager. In addition, a senior operator normally has more operational experience, further enhancing the senior operator's ability to respond to any situation that may occur. The absence of this knowledge on site, where it is readily available, could possibly create a hazardous condition. This person is required to be on site at all times that any unit is loaded with fuel, rather than just when a unit is being operated because the conditions and limitations in the facility's license and in the facility's technical specifications continue to apply.

(b) A senior operator shall be present at all times in the control room from which a unit is being operated. A senior operator's technical expertise is required in the control room in addition to a reactor operator's technical expertise because of the differences in their training programs and experience. A senior operator typically has greater operating experience than a reactor operator. Also, a senior operator is trained and examined in seven areas that are not required for a reactor operator. These areas are conditions and limitations in a facility license, design and operating limitations in the technical specifications, certain radiation hazards, coolant chemistry, procedures and limitations involved in core alterations and rod programming, fuel handling facilities and procedures, and procedures and equipment available for handling and disposal of radioactive materials. More detailed knowledge in some of these areas would be helpful to the operators in the control room in the event of an emergency. In addition, a senior operator's knowledge and analytic abilities in heat transfer and fluid flow are tested in more depth than a reactor operator's knowledge and analytic abilities. Individuals with this knowledge have a better basis to provide a broader viewpoint and, therefore, should be available in the control room of an operating nuclear power plant at all times.

The requirement for a senior operator's continuous presence in the control room would assure that: (1) A person is available who can provide the oversight function of the supervisor so that the probability of correctly detecting abnormal events early enough to mitigate potential adverse consequences might be increased; (2) the senior operator in the control room is aware of plant conditions prior to and resulting from an abnormal event so that the senior operator will be able to use extra experience, training and knowledge to act promptly to mitigate that event; and (3) the reactor operator is able to direct attention to performing the immediate actions necessary to mitigate that event rather than having to brief the senior operator about the background of that event if that person were absent from the control room. It cannot be foreseen how quickly accidents will develop; having a senior operator in the control room at the initiation of any incident, rather than several minutes later if the senior operator is simply on site, could alleviate potentially serious consequence of foreseeable accidents. The presence of a senior operator, with increased experience and training, will also increase the probability of correctly detecting abnormal events and human error early enough to mitigate potential consequences of any accident. The

Commission finds that these considerations are sufficient to justify imposition of the requirement that a senior operator be present at all times in the control room from which a unit is being operated.

Also, the additional senior operator is required in order to avoid limiting the shift supervisor's freedom to move about the plant as needed during normal and emergency situations. A senior operator may have to use knowledge and training to act outside the control room to mitigate the consequences of any accident and to deal with such items as technical communications regarding operations or emergency responses or to supervise at the site of the emergency within the plant. Another individual licensed as a senior operator is also necessary to provide routine relief for the senior operator in the control room should it be necessary to leave the control room for any reason. Finally, it is not envisioned that any individual senior operator assigned to the control room will be prevented from periodically touring the plant.

It must also be noted that the rule does not define "control room." Since some control rooms are defined so that a senior operator can be within the confines of the control room but not have direct and prompt access to information on current plant conditions, some additional clarification is necessary. The senior operator in the control room is expected to normally spend most of the time in that portion of the control room where there is direct and prompt access to information on current plant conditions and where the operator at the controls can be supervised. As duties may necessitate, the senior operator is to have the flexibility to periodically move to other parts of the control room. However, the senior operator should remain, at all times, in a position to provide prompt assistance to the reactor operators when requested. Additionally, this means that the senior operator must either (1) be in sight of or in the audible range of the reactor operators at the controls, or (2) be in the audible range of the control room annunciators. This is necessary so that the senior operator's training and knowledge will be immediately available as needed. The staff plans to amend Regulatory Guide 1.114, "Guidance on Being an Operator at the Controls of a Nuclear Power Plant," to include more detailed guidance on this subject.

(c) Core alterations shall be supervised by an individual who holds a senior operator license or a senior operator license limited to fuel handling for that unit. This requirement is based on the need for the presence during core alteration of a person whose training exceeds the minimum requirements for a reactor operator in the areas of: conditions and limitations in the facility license, the facility's technical specifications, procedures and limitations involved in core alterations, and fuel handling facilities and procedures. The presence of a person trained in these areas is necessary to assure that core alterations are conducted safely and do not endanger those working on the alterations. This training can be achieved by either successfully completing the requirements for a senior operator license, or by completing those portions of the requirements for a senior operator license which are applicable to core alterations.

(d) Each unit shall have one licensed operator at the controls at all times in addition to the requirement for a senior operator in the control room, and operating units shall have an additional licensed operator assigned to the unit. The requirement that an operator be at the controls is consistent with existing NRC regulations and will assure that plant instrumentation is continuously monitored and that controls are properly manipulated. The requirement for an additional licensed operator for operating units is necessary so that a qualified individual will be able to provide relief for the operator at the controls. The senior operator in the control room cannot be relied on for such relief under the rule because having the senior operator perform the functions of a reactor operator, even for a limited time, would result in loss of the oversight function of the supervisor which might decrease the probability of correctly detecting abnormal events early enough to mitigate potential adverse consequences. If the senior operator in the control room was without a second licensed individual to monitor plant instrumentation and manipulate controls, the senior operator might not be able to oversee and observe other relevant plant conditions. The additional licensed operator is also needed to assure that a licensed operator is available to perform other duties, such as conducting valve line-up checks, taking routine tours, investigating problem areas, and providing assistance during emergencies. It is necessary to have a licensed operator available for these tasks because the training that is provided to operators gives greater assurance that problems will be discovered and mitigated quickly.

Substantive Changes to the Proposed Rule

Based on the comments received, the following substantive changes have been incorporated into the final rule:

(1) The implementation date for the rule was revised from January 1, 1983 to January 1, 1984. (*See* §§ 50.54(m)(2) and (m)(3).)

(2) The points selected for the transition from "not operating" to "operating" were changed to be consistent with the operating mode definitions in the standard technical specifications and the phrase "For the purpose of this table . . ." was added to ensure that this footnote is not used as a definition of "operating" in other sections of title 10. (*See* § 50.54(m)(2)(i) footnote (2).)

(3) The rule was changed to allow for temporary deviations from the required minimum staffing levels to provide for unexpected situations such as illness of an operator during a shift. (*See* § 50.54(m)(2)(i) footnote (1).)

(4) The rule has been changed to state clearly that a senior operator with responsibility for overall plant operation shall be on site at all times that a nuclear unit is loaded with fuel. (*See* § 50.54(m)(2)(ii).)

(5) The rule has been changed to state clearly that a minimum of two operators (the senior operator in the control room and the operator or senior operator at the controls) shall be in the control room during operation and that an operator or senior operator shall be present at the controls at any time a unit is loaded with fuel. (*See* § 50.54(m)(2)(iii).)

(6) The requirement for core alterations to be supervised by a senior operator has been revised to allow core alterations to be supervised by a senior operator or a senior operator whose license is limited to fuel handling. (*See* § 50.54(m)(2)(iv).)

Paperwork Reduction Act Statement

The information collection requirements contained in this final rule impact nine or fewer entities and, therefore, are not subject to Office of Management and Budget clearance as required by 44 U.S.C. 3501, et seq.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule affects the staffing requirements of facilities licensed under the provisions of 10 CFR § 50.21(b) and 10 CFR § 50.22. The companies that own these facilities

do not fall within the scope of "small entities" as set forth in the Regulatory Flexbility Act or the small business size standards set out in regulations issued by the Small Business Administration in 13 CFR Part 121.

Regulatory Analysis

The Commission has prepared a regulatory analysis of this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. Interested persons may examine a copy of the regulatory analysis at the NRC Public Document Room, 1717 H Street, NW, Washington, DC. Single copies of the analysis may be obtained from Clare Goodman, U.S. Nuclear Regulatory Commission, Washington, DC 20555, 492–4894.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

Under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the following amendments to 10 CFR Part 50 are published as a document subject to codification.

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282,; secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50–81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100–50.102 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c) and 50.54 are issued under sec. 161o, 69 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Paragraph (m) of § 50.54 is redesignated paragraph (m)(1) of § 50.54 and paragraphs (m)(2) and (m)(3) are added to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(m) * * *

(2) Notwithstanding any other provisions of this section, by January 1, 1984, licensees of nuclear power units shall meet the following requirements:

(i) Each licensee shall meet the minimum licensed operator staffing requirements in the following table:

MINIMUM REQUIREMENTS [1] PER SHIFT FOR ON-SITE STAFFING OF NUCLEAR POWER UNITS BY OPERATORS AND SENIOR OPERATORS LICENSED UNDER 10 CFR PART 55

Number of nuclear power units operating [2]	Position	One unit	Two units		Three units	
		One control room	One control room	Two control rooms	Two control rooms	Three control rooms
None	Senior Operator	1	1	1	1	1
	Operator	1	2	2	3	3
One	Senior Operator	2	2	2	2	2
	Operator	2	3	3	4	4
Two	Senior Operator		2	3	[3] 3	3
	Operator		3	4	[3] 5	5
Three	Senior Operator				3	4
	Operator				5	6

[1] Temporary deviations from the numbers required by this table shall be in accordance with criteria established in the unit's technical specifications.

[2] For the purpose of this table, a nuclear power unit is considered to be operating when it is in a mode other than cold shutdown or refueling as defined by the unit's technical specifications.

[3] The number of required licensed personnel when the operating nuclear power units are controlled from a common control room are two senior operators and four operators.

(ii) Each licensee shall have at its site a person holding a senior operator license for all fueled units at the site who is assigned responsibility for overall plant operation at all times there is fuel in any unit. If a single senior operator does not hold a senior operator license on all fueled units at the site, then the licensee must have at the site two or more senior operators, who in combination are licensed as senior operators on all fueled units.

(iii) When a nuclear power unit is in an operational mode other than cold shutdown or refueling, as defined by the unit's technical specifications, each licensee shall have a person holding a senior operator license for the nuclear power unit in the control room at all times. In addition to this senior operator, for each fueled nuclear power unit, a licensed operator or senior operator shall be present at the controls at all times.

(iv) Each licensee shall have present, during alteration of the core of a nuclear power unit (including fuel loading or transfer), a person holding a senior operator license or a senior operator license limited to fuel handling to directly supervise the activity and, during this time, the licensee shall not assign other duties to this person.

(3) Licensees who cannot meet the January 1, 1984 deadline must submit by October 1, 1983 a request for an extension to the Director of the Office of Nuclear Regulation and demonstrate good cause for the request.

Dated at Washington, DC, this 5th day of July 1983.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 83-18037 Filed 7-8-83; 8:45 am]

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FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 563b, 563c, and 563d

[No. 83-348]

Information Disclosure Requirements in Connection With Conversions From the Mutual to the Stock Form of Organization, Filings Under the Securities Exchange Act of 1934, the Issuance of Mutual Capital Certificates, Debt Securities, and Retail Repurchase Agreements

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), has adopted amendments to its regulations governing the information disclosure requirements applicable to an institution the accounts of which are insured by the FSLIC ("institution") converting from the mutual to the stock form of organization, and to an institution which has registered a class of its equity securities with the Board under section 12 of the Securities and Exchange Act of 1934, 15 U.S.C. 781 ("1934 Act"). The amendments also affect the form and content of financial statements included in certain offering circulars covering the offer and sale by an institution of mutual

capital certificates, debt securities, and retail repurchase agreements. The amendments are designed (1) to coordinate the disclosure required in connection with mutual-to-stock conversions and registration of equity securities under the 1934 Act, (2) to eliminate unnecessary duplication of disclosure in the text and in the notes to financial statements, (3) to eliminate disclosure requirements which are unnecessarily burdensome in comparison to the benefit they provide, and (4) to provide specific guidance regarding the form and content of financial statements and related financial information required for a savings and loan institution.

EFFECTIVE DATE: These amendments are effective September 1, 1983 for filings received after that date that contain financial statements for any period ending subsequent to June 29, 1983. However, compliance with these requirements prior to that date is encouraged.

FOR FURTHER INFORMATION CONTACT: William E. Dobrzykowski, Deputy Chief Accountant (202-377-6364), Office of Examinations and Supervision, regarding financial statement and related financial information requirements; or John P. Harootunian (202-377-6415), Attorney, Division of Securities and Corporate Analysis, Office of General Counsel, regarding legal matters, at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: The Board has adopted revisions to its regulations pertaining to the disclosure required: (1) In proxy statements and offering circulars used in connection with mutual-to-stock conversions; (2) in filings with the Board under the 1934 Act; and (3) in offering circulars required to be used in connection with the offer and sale of mutual capital certificates, debt securities, and retail repurchase agreements.

The revisions are intended to coordinate the disclosure required in connection with mutual-to-stock conversions and the registration of equity securities under the 1934 Act, to eliminate unnecessary duplication of disclosure in the text and in the notes to financial statements, to eliminate disclosure requirements which are unnecessarily burdensome in comparison to the benefit they provide, and to provide specific guidance regarding the form and content of financial statements and related financial information required for savings and loan institutions.

Background

Under the Board's conversion regulations, Part 563b of the Rules and Regulations of the Federal Savings and Loan Insurance Corporation ("Insurance Regulations"), a converting institution must obtain approval of the conversion by its members and must sell its stock for a price equal to the estimated *pro forma* market value of the stock based on an independent valuation. The stock must be offered to members of the converting institution pursuant to certain subscription rights and, if not fully subscribed, to the public. Forms PS and OC under the conversion regulations prescribe the information to be included in (1) the proxy statement soliciting membership approval of the conversion, and (2) the offering circulars required to be used in the sale of conversion stock in the subscription and public offerings. Subpart A of Part 563c of the Insurance Regulations specifies the form and content of the financial statements required by Forms PS and OC. The same financial statement disclosure is required in offering circulars filed with the Board under § 563.7-4 of the Insurance Regulations, relating to mutual capital certificates, §§ 563.8 and 563.8-1 of the Insurance Regulations, relating to debt securities, and in certain offering circulars relating to retail repurchase agreements governed by § 563.8-4 of the Insurance Regulations.

Proposal and Comments

In Resolution No. 82-312, dated April 28, 1982, 47 FR 21056, May 17, 1982, the Board invited comments on proposed amendments to the information disclosure requirements applicable in the situations governed by this amendment. The Board's proposal accompanied its revision of its conversion regulations, Resolution No. 82-311, dated April 28, 1982, 47 FR 19672, May 7, 1982. In Board Resolution No. 83-149, dated March 17, 1983, 48 FR 15591, April 12, 1983, the Board again significantly amended its conversion regulations. These two major revisions of those regulations have greatly expanded their availability and simplified the conversion process.

The Board received only a limited number of comments regarding its information disclosure proposal. Those comments were favorable and recommended adoption of the proposed amendments, although, as discussed in reference to specific proposals, the commenters did urge certain technical changes.

In addition, subsequent to the Board's proposal, the Securities and Exchange Commission ("SEC") adopted certain amendments to its regulations applicable to filings under the 1934 Act, which by virtue of Part 563d of the Insurance Regulations constitute amendments to the Board's 1934 Act regulations. On June 28, 1982, in 1934 Act Release No. 18842, 47 FR 29832 (1982), the SEC amended its accounting regulation, Regulation S-X, 17 CFR Part 210, to specify uniform instructions regarding the preparation of *pro forma* financial statements, and on December 2, 1982, in 1934 Act Release No. 19290, 47 FR 55661 (1982), the SEC amended its disclosure requirements regarding management relationships and transactions (effective for documents filed on or after July 1, 1983, although earlier compliance is permitted), particularly Item 404 of Regulation S-K, 17 CFR 229.404. Also on March 7, 1983, in 1934 Act Release No. 19570, 48 FR 11104 (1983), the SEC revised 1934 Act Industry Guide 3, Statistical Disclosure by Bank Holding Companies, 17 CFR 229.802, and 241, and Article 9 of Regulation S-X, 17 CFR 210.09-01 *et seq.* Since a major focus of the Board's action is to coordinate disclosure obligations that are applicable to the same institution at the same time under its conversion and 1934 Act regulations, these amendments have been revised from the proposal to reflect the subsequent SEC actions.

It should be noted that the adoption of certain SEC Regulation S-K disclosure requirements as Board requirements applicable to conversions means that if the SEC amends those disclosure requirements the Board's conversion disclosure requirements will similarly be amended. This is the procedure that has been employed with great success by the Board in its 1934 Act regulations since 1974 and is appropriate in order to obtain consistency in disclosure between the Board's conversion regulations and 1934 Act regulations, both of which are applicable to a converting institution. In addition, it is desirable, and, as regards the Board's 1934 Act regulations, promoted by statute, that the Board's disclosure regulations approximate those of the SEC because (1) the antifraud provision of the federal securities laws are applicable to all offers for sale of securities, assuming the use of jurisdictional means, (2) the SEC disclosure regulations, as a practical matter, articulate and set the standards of disclosure recognized and expected in the capital marketplace, and (3) the SEC requirements are applicable to savings and loan holding companies which, in effect, are competing entities and could

very well be the resulting public-stockholder-owned entity in a conversion or in a subsequent corporate reorganization of a converted institution.

The Board through its staff continuously monitors proposed regulatory amendments by the SEC regarding their possible impact on filings with the Board, and can readily alter its own regulations as appropriate to change that impact should it determine that particular SEC-mandated disclosures are unnecessary or inappropriate for a savings and loan institution. In particular, it should be noted that on January 17, 1983, in Securities Exchange Act Release No. 19431, 48 FR 3625 (1983), the SEC has proposed amendments to the management remuneration disclosure requirements under Regulation S–K that are incorporated as conversion disclosure requirements by the Board. The Board invites any person wishing to comment on this proposed SEC action, or on any other proposed SEC regulatory amendment, with regard to its effect on filings with the Board by savings and loan institutions, to submit those comments to the Division of Securities and Corporate Analysis in the Board's Office of General Counsel.

Also, these regulations as adopted revise provisions in the proposal as a result of the Board's adoption on May 20, 1982, by Resolution No. 82–367, 47 FR 23140 (1982), of new § 563.8–4 of the Insurance Regulations governing sales of retail repurchase agreements. Section 563.8–4 requires, under certain circumstances, the disclosure of financial statements prepared in accordance with the requirements of § 563c.1 of the Insurance Regulations.

Moreover, it should be noted that the Board has proposed certain regulatory amendments regarding offerings of securities including mutual capital certificates, debt, and retail repurchase obligations that, if adopted, could require certain coordinating amendments to the Board's general financial disclosure requirements covered by this amendment. *See* Board Resolution No. 83–126, dated March 3, 1983, 48 FR 10684 (1983).

Discussion of Rules

These amendments have been adopted substantially as proposed; revisions are discussed below in reference to the particular items affected.

1. Items 5, 6, 7(n), and 9 of Form PS

In recognition of the central role played by Regulation S–K, 17 CFR Part 229, in the disclosure requirements under the federal securities laws, and the fact that all converted institutions are required to register their stock under the 1934 Act, the Board proposed to coordinate, where feasible, the disclosure required in mutual-to-stock conversion filings with the disclosure required under the 1934 Act through adoption of certain Regulation S–K requirements under its conversion regulations. The amendments adopted are substantially as proposed and accomplish their purpose by amending Item 5, Directors and executive officers, Item 6, Management remuneration and transactions, Item 7(n), Legal proceedings, and Item 9, Description of capital stock, to require the information called for by the equivalent items of Regulation S–K.

These revisions do not substantially alter the nature of the required disclosure from that currently required by Form PS, and they benefit converting institutions by coordinating the Board's conversion and 1934 Act disclosure regulations so that institutions are not subjected to different obligations or the uncertainty of different language specifying the appropriate disclosure. Among other things, the amendment increases from $40,000 to $50,000 the minimum salary level of directors and highest-paid officers required to be disclosed. Current SEC proposals regarding management remuneration, which would be applicable as Board requirements if adopted by the SEC, would increase the amount to $60,000.

As discussed below, Item 7 also is amended in various respects to reflect Regulation S–K disclosure in a manner that is designed to apply specifically to converting savings and loan institutions.

2. Item 7 of Form PS

Item 7 governs the disclosure of a converting institution's business in conversion proxy statements and offering circulars. In addition, the Office of General Counsel historically has interpreted the description of business required in 1934 Act filings to include the financial and other disclosures contemplated by Item 7. This interpretation is adopted by the Board in new § 563d.802. Accordingly, Item 7 replaces 1934 Act Industry Guide 3, 17 CFR 229.802(c) and 241, relating to statistical disclosure by bank holding companies, promulgated by the staff of the SEC, as the guide for description of business in 1934 Act reports filed with the Board by savings and loan institutions.

The following is a summary of amendments to Item 7:

A. Narrative Description of Business

Item 7(a) is amended to specify that what is called for is a description of the business conducted and intended to be conducted by the institution and its subsidiaries. This required disclosure includes information regarding the organization of the institution and the general development of the business of the institution, its subsidiaries,and any predecessor(s) during the past five years, or any shorter period as the institution may have been engaged in business. This disclosure should explain the general policy of the institution in the conduct of the savings and loan business, particularly in light of any recent, expanded authority and the existing economic environment. Factors that might be discussed in appropriate detail are (1) the institution's historical practices, including the average term to maturity of the institution's existing portfolio of mortgage loans, and (2) its present intention regarding the making of loans, whether real estate or other, the nature of security for loans, the retention or resale of the loans it originates, and the nature of those loans as to fixed or variable interest rates. Also, the disclosure should explain any significant impact to the institution as a result of any material acquisition.

One commenter suggested that the textual description should explain the institution's policies regarding the making of loans rather than its "present intention." Disclosure regarding historical policies of the institution would be reflected in its results of operations and related disclosure. Particularly in light of recently expanded lending authority, the Board believes that the "present intention" disclosure will serve as a better focus on the institution's anticipated activities.

This substantive textual explanation regarding the nature of the business conducted by the institution provides a basis for deletion of certain of the detailed tabular data previously required by Item 7.

B. Selected Statement of Financial Data

Item 7(b) is revised to conform substantially to Item 301 of Regulation S–K, Selected Financial Data, 17 CFR 229.301. Information is required for the preceding five fiscal years and for any required interim period, on a comparative basis with the equivalent period of the past fiscal year. The captions are modified from those contained in the Instructions to Item 301 of Regulation S–K to apply specifically to a savings and loan institution which historically has existed as a mutual

organization. The new captions include: (1) Total interest income; (2) total interest expense; (3) income (loss) from continuing operations; (4) net income; (5) total loans; (6) total investments; (7) total assets; (8) total savings accounts; (9) total borrowings; (10) total net worth; and (11) total number of customer service facilities indicating the number which are full service. The Item also encourages institutions to include additional information which they believe will aid investors and other users. In addition, the Item would provide for inclusion of information regarding changing prices required by the Financial Accounting Standard Board's ("FASB") Statement of Financial Accounting Standards No. 33, *Financial Reporting and Changing Prices* ("SFAS 33").

Since the revised tabular presentation includes appropriate income statement information, Item 14(b) of Form PS is revised to require consolidated statements of income and changes in financial position for each of the last three years, rather than for the five-year period previously required.

In summary, it is intended that the revised Selected Financial Data table present significant five-year trend data relating to an institution's financial condition and results of continuing operations. The Board believes that this treatment presents in a balanced manner all significant components of the institution's financial condition without unduly emphasizing one or more aspects of that condition, such as income or revenues.

C. Management's Discussion and Analysis of Financial Condition and Results of Operations

There is adopted, as revised Item 7(c), a new section entitled, "Management's Discussion and Analysis of Financial Condition and Results of Operations" ("Management's Discussion"). Item 7(c) is substantially the same as to Item 303 of Regulation S–K 17 CFR 229.303, and replaces the Management's Discussion previously required by Note 3 to Item 14 of Form PS.

The major features of this new Management's Discussion are as follows:

(1) The discussion focuses on the financial statements and not only upon the Statement of Operations.

(2) The discussion includes the following financial aspects of the institution's business: liquidity, capital resources, and results of operations.

(3) Within each area of the discussion, there should be emphasis upon favorable or unfavorable trends and upon the identification of significant events or uncertainties.

(4) Information concerning the effects of inflation and changing prices will be presented to the extent required by SFAS 33.

(5) The percentage tests and line-by-line analysis encouraged by the previous requirements of Note 3 to Item 14 of Form PS are eliminated. However, the Management's Discussion indicates that the causes of material changes in the line items should be discussed.

(6) The Item encourages the presentation of projections, or other forward-looking information, on a voluntary basis. To facilitate this, the Board is adopting a new § 563d.3b–6 of the Insurance Regulations to clarify the applicability of the SEC's safe-harbor rule for projections, 17 CFR 240.3b–6.

These changes are made as a result of the Board's concern that the disclosure elicited by the previous requirements of Note 3 to Item 14 of Form PS has not fulfilled originally contemplated objectives. The previous applicable percentage tests often were applied without regard to any concept of materiality to the institution's business. Accordingly, although some portions of the resulting discussion were meaningful, the impact was often obscured by inclusion of material which was of little relevance. In addition, the Board was concerned that the focus of Note 3 was too narrow. In today's environment there is a growing need to analyze an enterprise's liquidity and capital resources, in addition to its revenues and expenses. The narrow approach set forth in rescinded Note 3 did not ordinarily produce a discussion which focused upon the financial condition of the enterprise as a whole. Finally, the changes conform conversion disclosure requirements to 1934 Act requirements.

While the Board recognizes that the terms "liquidity" and "capital resources" lack some precision in definition, it is believed that additional specificity would decrease the flexibility needed by management for a meaningful discussion. In this light, the liquidity and capital resources discussions may be combined. It is not intended that liquidity merely mean "liquid assets" as defined by 12 CFR 523.10 of the Regulations for the Federal Home Loan Bank System ("Bank System Regulations") or that capital resources merely mean "regulatory net worth" as defined by 12 CFR 561.13 of the Insurance Regulations, although discussion regarding compliance with the liquidity requirements imposed by 12 CFR 523.11 of the Bank System Regulations and with the regulatory net-worth requirements imposed by 12 CFR 563.13 may form a part of the discussion regarding liquidity. Rather, it is intended that the Management's Discussion provide a substantive explanation of the institution's liquidity and capital resources. Comments which merely state that liquidity is adequate or that committed resources are at a satisfactory level are not acceptable. A narrative discussion of the risk elements included in the institution's loan, investment, and real estate portfolios is appropriate.

D. Mergers and Acquisitions

The previous Item 7(c) of Form PS, which required a tabular presentation regarding recent mergers, bulk purchases of assets, and similar acquisitions is deleted. This deletion is made because adequate disclosure regarding mergers and acquisitions should be included in response to the requirements for textual disclosure regarding developments in the business of the applicant, the management's discussion and analysis of the financial condition and results of operation, and the incorporation of the financial statement disclosure requirements of Rules 3–05, 11–01, 11–02, and 11–03 of the SEC's Regulation S–X, 17 CFR 210.3–05, 11–01, 11–02, and 11–03.

The Board in proposing these amendments cited the financial statement disclosure requirements of Rules 3–07 and 3–08 of Regulation S–X as a basis for deletion of the merger table. However, the SEC by 1934 Act Release No. 18842, dated June 24, 1982, 47 FR 29832 (1982), deleted those sections and adopted new sections 3–05, 11–01, 11–02, and 11–03 of Regulation S–X. Accordingly, the Board is adopting these new Regulation S-X sections as applicable to the financial statement disclosure in conversion and other filings. Pursuant to the requirements of current § 563d.1, those provisions of Regulation S–X have been applicable to 1934 Act reports filed with the Board. Rule 3–05 consolidates the requirements for financial statements of businesses acquired or to be acquired; Rule 11–01 specifies situations requiring *pro forma* financial information; Rule 11–02 governs the preparation of *pro forma* financial information; and Rule 11–03 permits the filing of a financial forecast in lieu of the *pro forma* condensed statements of income. When a forecast is used, the assumptions particularly relevant to the transaction and effects thereof should be clearly set forth so that the effect of the transaction will not be obscured by the other data included in the forecast.

E. Lending and Savings Activities

As proposed in Board Resolution No. 82-312, the amendments delete the requirements for a five-year tabular presentation of: (1) loans by type, previous Item 7(d)(2); (2) loan activity, previous Item 7(d)(3); and (3) loan origination fees, previous Item 7(d)(7). In addition, previous Item 7(d)(8), which required disclosure of the method of loan-origination fee and discount amortization, is deleted. Certain information regarding the institution's mortgage-market activity and the significance of its service fee income, required under previous Item 7(d)(3), is rearranged and included in the textual description contemplated by Item 7(d)(1).

These deletions relieve institutions from the five-year presentation previously required and from certain detailed disclosures that do not significantly aid investors. In addition, the deletions avoid the duplication of disclosures required in the financial statements. It is anticipated that these changes will provide a more meaningful presentation to investors and will overcome the tendency merely to include detailed tabular data without appropriate commentary.

The Board has determined, however, that certain proposed revisions should be modified in these final regulations. In particular, the Board has determined not to delete disclosure regarding scheduled items, previous Item 7(d)(9) and now Item 7(d)(6), and savings accounts, Item 7(e). At the same time, the Board has determined that certain disclosures proposed to be included in the audited notes to financial statements, including certain information regarding savings accounts that offset the previously proposed deletion, should more properly be included in the textual portion. Accordingly, the following disclosure that the Board proposed to be included in the notes to the financial statements has been moved to Item 7. Such presentation is consistent with current SEC requirements.

(1) Projected loan maturities, proposed as Balance Sheet Caption 5(i) to Item 7(d)(6).

(2) Projected deposit maturities, proposed as Balance Sheet Caption 11(d) to Item 7(e)(2.)

(3) Weighted-average rates for short-term borrowings, proposed as Balance Sheet Caption 12(d) to Item 7(e)(3).

One commenter objected and proposed alternatives to the disclosure required in (1) and (2) above on the grounds that it was difficult to gather. The Board believes that the requirements as to the information requested should be adopted as proposed because such disclosure is consistent with SEC requirements and is more informative than the commenter's alternative. The Board will, however, for good cause shown, consider requests for waiver of these requirements if they would impose an unreasonable effort or expense upon a particular institution.

It is anticipated that the revisions to the narrative description of business and Management's Discussion will make clear that appropriate disclosure regarding the significance of any material information previously presented in the deleted tables is required to be explained to investors. This narrative presentation should incorporate the required information in a format that is more readable and understandable to investors. Moreover, a significant portion of the deleted tabular information, for a three-year period rather than for a five-year period, is required to be included in the institution's financial statements or notes thereto pursuant to the requirements of revised Part 563c of the Insurance Regulations (12 CFR 563c.102). For example, disclosure is required of the amounts of loans in each of the following categories: (1) Real estate-mortgage, (2) real estate-construction, (3) installment, and (4) commercial, financial, and agricultural.

In addition the tabular presentation required by previous Item 7(d)(6) regarding the interest-rate differential between the interest earned on assets and the cost of funds has been revised to reduce required disclosure from five to three years and expanded to include rate/volume analysis which is consistent with that required by the 1934 Act Industry Guide 3, Statistical Disclosure by Bank Holding Companies, promulgated by the staff of the SEC. Previous Item 7(d)(6) is redesignated as Item 7(d)(4). Also the required disclosure concerning federal regulation of the institution, including the institution's compliance with the Board's regulatory net-worth requirements, is clarified in revised Item 7(f). Finally, new Item 7(d)(5) requires a table presenting return on assets, return on equity, and the ratio of equity to assets.

3. Item 8 of Form PS

The Board also has determined to amend paragraph (f) of Item 8, Description of the plan of conversion, which requires certain disclosures regarding *pro forma* earnings and book value per share. The Board's amendment will (a) clarify the required periods to be disclosed and (b) provide guidance as to the appropriate average yield to be used in computing *pro forma* earnings. Although this change was not proposed by the Board in Resolution 82-312, it merely clarifies the existing disclosure requirements.

4. Item 14 of Form PS

The Management's discussion previously required by Note 3 is replaced by the new Management's Discussion discussed under Item 7.

In addition, Item 14, as revised by these amendments, specifies the required financial statements in a conversion proxy statement and provides that their form and content shall be governed by § 563c.1 of the Insurance Regulations. This citation to § 563c.1 serves to centralize the requirements as to form and content of financial statements applicable to a converting institution under the conversion regulations and under the 1934 Act.

Of course, notwithstanding the date of financial statements required to be included in a conversion document, there should be included any appropriate capsule information, particularly regarding revenues and net income, as of the most recent practicable date and on a compartative basis to the similar period of the previous year, as well as any appropriate textual explanation of those results of operations.

5. Other Items of Form PS

In addition, Form PS is revised (1) to clarify the appropriate presentation under Item 10, Capitalization, and (2) to delete reference to possible optional charter provisions from Item 12, New charter, bylaws, or other documents.

6. Form OC, Offering Circular

Amendments are adopted that require a subscription offering circular to include any financial statements which, of necessity, would be required in a subsequent public offering circular. This coordinates the disclosure required in the subscription and public offerings.

7. Part 563c—Accounting Requirements

Section 563c.1 of the Insurance Regulations, which concerns the form and content of financial statements required in various filings with the Board, is revised to:

(1) Specifically provide that financial statements governed by Subpart A of Part 563c shall be prepared and presented in accordance with generally accepted accounting principles ("GAAP").

(2) Provide that the form and content of the financial statements shall conform to new Subpart C of Part 563c, Financial

Statement Presentation. Subpart C prescribes the form and content of financial statements included in filings with the Board under the conversion regulations, the 1934 Act, and §§ 563.7–4, 563.8, 563.8–1, and 563.8–4 of the Insurance Regulations relating to certain offerings of mutual capital certificates, debt securities, and retail repurchase agreements.

(3) Extend Subparts A and C of Part 563c to filings with the Board under the 1934 Act, as provided in § 563d.210.

(4) Incorporate by reference Articles 1 through 4 and 10 and 11 of Regulation S–X, and delete the present incorporation of parts of Articles 5 and 9 of Regulation S–X.

In addition, these amendments (1) revise § 563c.2, Definitions; (2) delete §§ 563c.4, General notes to financial statements, 563c.5, Consolidation of financial statements of a registrant and its subsidiaries engaged in diverse financial activities, 563c.6, Balance sheets, 563c.7, Income statements, 563c.8, Statement of changes in financial position, and 563c.9, What schedules are to be filed; and (3) add a new § 563c.4, Condensed financial information [Parent only]. In general, the deleted disclosure is required by GAAP, Articles 1 through 4, 10 and 11 of Regulation S–X, or new Subpart C of § 563c.

Certain revisions have been made to the proposal by the Board regarding the form and content of financial statements specified by Subpart C of Part 563c of the Insurance Regulations. Several balance-sheet and income-statement captions have been changed in the new Subpart C requirements as a result of certain changes made by the SEC to Article 9 of Regulation S–X and Guide 3 of the Industry Guides. Also, as previously stated, loan and deposit maturities and short-term borrowing information has been moved from its proposed inclusion in the notes to the financial statements to the textual portion of Form PS. Further, financial statement note disclosure regarding loans to directors and executive officers has been increased to conform to revised SEC disclosure requirements.

8. Part 563d—Securities of Insured Institutions

An institution which has a class of equity securities registered with the Board under section 12 of the 1934 Act is subject to Part 563d of the Insurance Regulations, which, in general, adopts the regulations of the SEC governing registration, periodic reporting, and proxy solicitation. Prior to this amendment, Part 563d adopted Regulation S–X of the SEC, 17 CFR 210.1–01 *et seq.*, to govern the form and content of financial statements required in connection with 1934 Act filings. Section 563d.210 continues to adopt the SEC requirements to specify what financial statements are required in 1934 Act filings, but incorporates by reference § 563c.1 to govern the form and content of financial statements in 1934 Act filings. Also the Board has adopted § 563d.3b–6 to clarify the Board's safe-harbor rule for projections, 17 CFR 240.3b–6, in order to encourage projections in conversion proxy statements and offering circulars.

9. Interpretation Regarding Description of Business

The Board has adopted new § 563d.802 to codify a previous interpretation of its Office of General Counsel. This new section instructs 1934 Act registrants to conform the description of business required in Form 10K annual reports and other filings to Item 7 of Form PS as a substitute for SEC staff guidelines for Bank Holding Companies, 1934 Act Industry Guide 3, 17 CFR 229.802(c) and 241.

List of Subjects in 12 CFR Parts 563b, 563c, and 563d

Accounting, Savings and loan associations, Securities.

Final Regulatory Flexibility Analysis

The elements of regulatory analysis for major proposed regulations required by Board Resolution No. 80–584 (September 11, 1980) have been incorporated into the supplementary information regarding the amendments. Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164 (September 19, 1980), the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objective, and legal basis underlying the final rules and discussions of issues raised by the public comments.* These elements have been incorporated elsewhere in the supplementary information regarding the regulations.

2. *Small entities to which the final rules will apply.* The final rules will apply only to institutions the accounts of which are insured by the FSLIC and which (1) are converting from a mutual institution to the stock form of organization, (2) have a class of equity securities required to be registered under the 1934 Act, or (3) are offering for sale mutual capital certificates, debt securities, or retail repurchase agreements under certain circumstances. Affected institutions generally would not be considered small entities because of their asset size and diffuse ownership.

3. *Impact of the final rules on small institutions.* Since the regulations are designed to simplify and clarify the existing disclosure obligations of certain insured savings and loan institutions, they would benefit insured savings and loan institutions which may be considered small entities.

4. *Overlapping or conflicting Federal rules.* There are no known Federal rules that may duplicate, overlap, or conflict with the final regulations.

5. *Alternatives to the final rules.* The regulations constitute amendments to existing rules, and, therefore, are themselves an alternative to the existing rules. The final rules clarify the requirements for disclosure to the public of information material to investment and ownership decisions. It is not possible to eliminate or significantly modify these requirements for smaller entities engaged in the activities governed by the applicable rules, since the disclosure is mandated by the nature of the activity engaged in by the affected institution rather than by the identity or the size of the affected institution.

Statutory Authority and Findings

The Board is amending Parts 563b and 563c of the Insurance Regulations pursuant to the authority set forth in sections 402, 403, and 407 of the National Housing Act, 48 Stat. 1256, 1257, and 1260, as amended, 12 U.S.C. 1725, 1726, and 1730; in section 5 of the Home Owners' Loan Act of 1933, 48 Stat. 132, as amended, 12 U.S.C. 1464; and in Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1071 (1943–48 Comp.). The Board also is amending Parts 563c and 563d of the Insurance Regulations pursuant to the authority set forth in sections 3(b), 12, 13, 14, and 23 of the 1934 Act, 48 Stat. 881, as amended, 15 U.S.C. 78a *et seq.*, and in Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR Part 1071 (1943–48 Comp.). Pursuant to the requirements of section 12(i) of the 1934 Act, the Board finds that the amendments to its 1934 Act rules, Part 563d of the Insurance Regulations, are substantially similar to regulations and rules issued by the SEC. Also, as required by section 23(a) of the 1934 Act, the Board has specifically considered the impact that these actions taken pursuant to the 1934 Act would have on competition and has concluded that they would impose no significant burden on competition not necessary or appropriate in furtherance of the purposes of the 1934 Act.

Accordingly, the Board hereby amends Parts 563b, 563c, and 563d of Subchapter D, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

1. Amend Forms PS and OC following § 563b.9, as follows:

(a) Amend Form PS as follows by:

(1) Revising Item 6 of the Index to Items;

(2) Revising prefatory Note 2, Items 5 and 6, paragraphs (a), (b), (c), (d), (e), (f), and (n) of Item 7, and paragraph (f) of Item 8;

(3) Revising paragraph (a) of Item 9 and adding a new paragraph (d) thereto;

(4) Revising Items 10 and 12;

(5) Removing introductory Note 3 and paragraph (h) of Item 14; revising introductory Note 1 and paragraphs (a), (b), (c), (d), and (e) of item 14 and redesignating paragraph (g) thereof as paragraph (f).

(b) Amend Form OC by revising Item 2, paragraph (f).

Form PS

[Facing Sheet]

Federal Home Loan Bank Board

Federal Savings and Loan Insurance Corporation, 1700 G Street, N.W., Washington, D.C. 20552

Proxy Statement

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Proxy Statement Form—Index to Items

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Item 6. Management remuneration.

* * * * *

Form PS

Information Required in Conversion Proxy Statement

Notes

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2. The proxy statement shall include such information which the General Counsel or the Director of the Division of Securities and Corporate Analysis of the Office of General Counsel by interpretative release or otherwise has deemed necessary to comply with items of this Form PS.

* * * * *

Item 5. *Directors and executive officers.*

(a) Furnish the information regarding directors and executive officers and certain relationships and related transactions required to be disclosed in a registration or proxy statement filed with the Board under the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* In particular, see Items 401 and 404 of Regulation S–K, 17 CFR 229.401 and 404, and Item 6 of Regulation 14A, 17 CFR 240.14a101. Unless the context otherwise requires, the words "registrant" and "issuer" in those regulations shall refer to the applicant and the word "Commission" shall refer to the Federal Home Loan Bank Board.

(b) State whether control of the applicant has been exercised through the use of proxies and the nature of such control.

Item 6. *Management remuneration.*

(a) Furnish the information regarding management remuneration required to be disclosed in a registration or proxy statement filed with the Board under the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* In particular, see Item 402 of Regulation S–K, 17 CFR 229.402, and Item 7 of Regulation 14A, 17 CFR 240.14a–101. Unless the context otherwise requires, the words "registrant" and "Commission" in those regulations shall refer to the applicant and to the Federal Home Loan Bank Board, respectively.

Item 7. *Business of the applicant.*

(a) *Narrative description of business.* (1) Discuss briefly the organizational history of the applicant, including the year of organization, the identity of the chartering authority, and any material charter conversions.

(2) Describe the business conducted and intended to be conducted by the applicant and its subsidiaries. This should include a description of the general development of the business of the applicant and any predecessor(s) during the past five years, or such shorter period as the applicant may have been engaged in business. Information shall be disclosed for earlier periods if material to an understanding of the general development of the business. Any material changes in the mode of conducting the business should be discussed.

(3) Consideration should be given to inclusion of a description of the applicant's historical practices, including the average remaining term to maturity of its portfolio of mortgage loans, and present intention regarding the making of loans, whether real estate or other, the nature of security received, the terms of loans, whether carrying fixed or variable interest rates, and the retention of loans or their resale in secondary mortgage markets. Historical description might require a general identification of the magnitude of various activities.

(4) Also explain any significant impact to the institution as a result of any material acquisitions.

(b) *Selected financial data.* Furnish in comparative columnar form a summary of selected financial data for the applicant for:

(1) Each of the last five fiscal years of the applicant (or for the life of the applicant and its predecessors, if less); and

(2) Any additional fiscal years necessary to keep the summary from being misleading.

Instructions

1. The purpose of the summary of selected financial data shall be to supply in convenient and readable format selected data which highlight significant trends in the applicant's financial condition and results of operations.

2. Subject to appropriate variation to conform to the nature of the applicant's business, the following items, as a minimum, shall be included in the summary: total interest income; total interest expense; income (loss) from continuing operations; net income; total loans; total investments; total assets; total savings; total borrowings; total net worth; and total number of customer service facilities indicating the number which provide full service. Applicants may include additional items which they believe would enhance understanding and highlight trends in their financial condition and results of operations. Briefly describe, or cross reference to a discussion of, factors such as accounting changes, business combinations, or dispositions of business operations that materially affect the comparability of the information reflected in selected financial data. Discussion of, or reference to, any material uncertainties should also be included where those matters might cause the data reflected not to be indicative of the applicant's future financial condition or results of operations.

3. Those applicants which are required to provide five-year summary information in accordance with the Financial Accounting Standards Board's Statement of Financial Accounting Standards No. 33 ("SFAS 33") may combine such information with the selected financial data appearing pursuant to this Item.

4. All references to the applicant in the summary and in these instructions shall mean the applicant and its consolidated subsidiaries.

5. If interim-period financial statements are included, or are required to be included by Item 14, applicants should update the selected financial data for the interim period to reflect any material change in the trends indicated; where such updating information is necessary, applicants shall provide the information on a comparative basis unless not necessary to an understanding of the updating information.

(c) *Management's discussion and analysis of financial condition and results of operations.* (1) Discuss applicant's financial condition, changes in financial condition, and results of operations. The discussion shall provide information as specified in paragraphs (A), (B), and (C) of this subsection with respect to liquidity, capital resources, and results of operations and also should provide all other information which the applicant believes to be necessary to an understanding of its financial condition, changes in financial condition, and results of operations. Significant business combination should be discussed. Discussions of liquidity and capital resources may be combined whenever the two topics are interrelated. Where in the applicant's judgment a discussion of subdivisions of the applicant's business would be appropriate to an understanding of the business, the discussion should focus on each relevant, reportable segment or other subdivision of the business and on the applicant as a whole.

(A) *Liquidity.* Identify any known trends or any known demands, commitments, events, or uncertainties which will result in or which are reasonably likely to result in the applicant's liquidity increasing or decreasing in any material way. If a material deficiency is identified, indicate the course of action which the applicant has taken or proposes to take to remedy the deficiency. Identify and separately describe internal and external sources of liquidity, and briefly discuss any

material unused sources of liquid assets. Comment on maturity imbalances between assets and liabilities and planned activities in the secondary mortgage market.

(B) *Committed resources.* (i) Describe the applicant's material commitments for loan fundings or other expenditures as of the end of the latest fiscal period and indicate the general purpose of the commitments and the anticipated source of funds needed to fulfill the commitments.

(ii) Describe any known material trends, favorable or unfavorable, in the applicant's committed resources. Indicate any expected material changes in the mix and the relative cost of the resources. This discussion should consider changes between savings, equity, debt, and any off-balance-sheet financing arrangements.

(C) *Results of operations.* (i) Describe any unusual or infrequent events or transactions or any significant economic changes which materially affected the amount of reported income from continuing operations and, in each case, indicate the extent to which income was affected. In addition, describe any other significant components of revenues or expenses which, in the applicant's judgment, should be described in order to understand the applicant's results of operations.

(ii) Describe any known trends or uncertainties which have had, or which the applicant reasonably expects will have a materially favorable or unfavorable impact on net sales or revenues or income from continuing operations. If the applicant knows of events which will cause a material change in the relationship between costs and revenues (such as known future increases in costs of money or interest rates) the change in the relationship should be disclosed.

(iii) To the extent that the financial statements disclose material increases in interest expense, provide a narrative discussion of the extent to which the increases are attributable to increases in rates or to increases in volume.

(iv) For the three most recent fiscal years of the applicant, or for those fiscal years in which the applicant has been engaged in business, whichever period is shorter, discuss the impact of inflation and changing prices on the applicant's revenues and on income from continuing operations.

(v) For the most recent financial statement presented, discuss any unusual risk characteristics in the assets of the applicant. This would include real estate development, significant amounts of commercial real estate as loan collateral, and any other significant risk factors inherent in the applicant's lending or investment portfolios, including significant increases in scheduled items.

Instructions

1. The applicant's discussion and analysis shall be of the financial statements and of other statistical data which the applicant believes will enhance a reader's understanding of its financial condition, changes in financial condition, and results of oeprations. Generally, the discussion should cover the three-year period covered by the financial statements and should utilize year-to-year comparisons or other formats which in the applicant's judgment enhance a reader's understanding. However, where trend information is relevant, reference to the five-year selected financial data appearing in Item 7(b) above may be necessary.

2. The purpose of the discussion and analysis should be to provide to investors and other users information relevant to an assessment of the financial condition and results of operations of the applicant as determined by evaluating the amounts and certainty of cash flows from operations and from outside sources. The information provided in this Item 7(c) need only include that which is available to the applicant without undue effort or expense and which does not clearly appear in the applicant's financial statements.

3. The discussion and analysis should specifically focus on material events and uncertainties known to management which would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. This would include description and amounts of (a) matters which would have an impact on future operations and have not had an impact in the past, and (b) matters which have had an impact on reported operations and are not expected to have an impact upon future operations.

4. Where the consolidated financial statements reveal material changes from year to year in one or more line items, the causes for the changes should be described to the extent necessary to an understanding of the applicant's business as a whole; provided, however, if the causes for a change in one line item also relate to other line items, no repetition is required and a line-by-line analysis of the financial statements as a whole is not required or generally appropriate. Applicants need not recite the amounts of changes from year to year which are readily computable from the financial statements. The discussion should not merely repeat numerical data contained in the consolidated financial statements.

5. The term "liquidity" as used in paragraph (c)(1)(A) of this Item refers to the ability of an enterprise to generate adequate amounts of cash to meet the enterprise's needs for cash. Except where it is otherwise clear from the discussion, the applicant should indicate those balance sheet conditions or income or cash flow items which the applicant believes may be indicators of its liquidity condition. Liquidity generally should be discussed on both a long-term and short-term basis. The issue of liquidity should be discussed in the context of the applicant's own business or businesses. Liquidity does not necessarily mean "liquid assets" as defined by § 523.10 of the Regulations for the Federal Home Loan Bank System.

6. Applicants are encouraged, but not required, to supply forward-looking information. This is to be distinguished from presently known data which will have an impact upon future operating results, such as known future increases in rates or other costs. This latter data is required to be disclosed. Any forward-looking information supplied is hereby expressly covered by the safe-harbor rule for projections, § 563d.3b–6 of the Rules and Regulations of the Federal Savings and Loan Insurance Corporation ("Insurance Regulations"), under the circumstances specified in that section.

7. Applicants which are required to provide narrative explanations of supplementary information disclosed in accordance with paragraph 37 of SFAS 33 may combine the explanations with their discussion and analysis required pursuant to this provision or they may supply the information separately. If the statement is combined, the supplementary information required by SFAS 33 shall be located in reasonable proximity to the discussion and analysis. If the statement is not combined, the discussion of the impact of inflation otherwise required by this item may be omitted but an appropriate cross reference to the explanation required by paragraph 37 of SFAS 33 shall be made.

8. Applicants which are not required to provide explanations of supplementary information disclosed in accordance with SFAS 33 may discuss the effects of inflation and changes in prices in whatever manner appears appropriate under the circumstances. Although voluntary compliance with SFAS 33 is encouraged, all that is required is a brief textual presentation of management's views. No specific numerical financial data need be presented.

9. All references to the applicant in the discussion and in these instructions shall mean the applicant and its consolidated subsidiaries.

(2) If interim-period financial statements are included or are required to be included by Item 14, a management's discussion and analysis of the financial condition and results of operations shall be provided to enable the reader to assess material changes in financial condition and results of operations between the periods specified in (A) and (B) below. The discussion and analysis shall include a discussion of material changes in those items specifically listed in paragraph (c)(1) of this Item 7, except that the impact of inflation and changing prices on operations for interim periods need not be addressed.

(A) *Material changes in financial condition.* Discuss any material changes in financial condition from the end of the preceding fiscal year to the date of the most recent interim balance sheet provided. If the interim financial statements include an interim balance sheet as of the corresponding interim date of the preceding fiscal year, any material change in financial condition from that date to the date of the most recent interim balance sheet provided shall also be discussed. If discussions of changes from both the end and the corresponding interim date of the preceding fiscal year are required, the discussions may be combined at the discretion of the applicant.

(B) *Material changes in results of operations.* Discuss any material changes in the applicant's results of operations with respect to the most recent fiscal year-to-date period for which an income statement is provided and the corresponding year-to-date period of the preceding fiscal year. If the applicant is required to or has elected to provide an income statement for the most recent fiscal year quarter, the discussion also

shall cover material changes with respect to that fiscal quarter and the corresponding fiscal quarter in the preceding fiscal year. In addition, if the applicant has elected to provide an income statement for the 12-month period ended as of the date of the most recent interim balance sheet provided, the discussion shall also cover material changes with respect to that 12-month period and the 12-month period ended as of the corresponding interim balance sheet date of the preceding fiscal year.

Instructions

1. If interim financial statements are presented together with financial statements for full fiscal years, the discussion of the interim financial information shall be prepared pursuant to paragraph (c)(2) and the discussion of the full fiscal year information shall be prepared pursuant to paragraph (c)(1) of this Item 7. Such discussions may be combined.

2. The discussion and analysis required by this paragraph (c)(2) is required to focus only on material changes. Where the interim financial statements reveal material change from period to period in one or more significant line items, the causes for the changes should be described if they have not already been disclosed; however, if the causes for a change in one line item also relate to other line items, no repetition is required. Applicants need not recite the amounts of changes from period to period which are readily computable from the financial statements. This discussion should not merely repeat numerical data contained in the financial statements. The information provided should include that which is available to the applicant without undue effort or expense and which does not clearly appear in the applicant's interim financial statements.

3. The applicant's discussion of material changes in results of operations should identify any significant elements of the applicant's income or loss from continuing operations which do not arise from or are not necessarily representative of the applicant's ongoing business.

4. Applicants are encouraged but are not required to discuss forward-looking information. Any forward-looking information supplied is expressly covered by the safe-harbor rule for projections, § 563d.3b–6 of the Insurance Regulations, under the circumstances specified in that section.

(d) *Lending activities.* (1) Briefly describe the applicable Federal and state restrictions on the lending activities of the applicant, including applicable laws affecting mortgage loan interest rates. Also briefly describe the applicant's general policy concerning loan-to-value ratios; customary methods of obtaining loan originations, such as the use of loan consultants; approval of properties as security for loans; the use of a loan committee, if any; and policies as to requiring title, fire, and casualty insurance on security properties. Indicate the applicant's general future intentions with respect to activities in secondary mortgage markets, including transactions with the Federal Home Loan Mortgage Corporation or mortgage bankers. If significant, indicate loan service fee income as a percentage of net interest income for the years required by Item 14(b).

(2) As to the lending area of the applicant, describe briefly (A) the lending area restrictions, if any, applicable to the applicant, (B) the areas in which the applicant normally lends, and (C) any material loan concentration areas of the applicant. The descriptions may include maps illustrating one or more of these areas. Furnish an estimate of the housing vacancy rates in areas where the applicant's loan concentrations are located, if practicable.

(3) Describe briefly the general long-term nature of investment in mortgage loans and the consequent effect upon the earnings spread of savings and loan associations. State the normal maturity of loans made by the applicant on the security of single-family dwellings and furnish an estimate as to the average length of time the loans are outstanding.

(4) For each of the periods required by Item 14(b), set forth in tabular form, excluding fees which are not considered adjustments of yield, the following:

(A) Average yield during the period on: (i) loan portfolio, (ii) investment portfolio, (iii) other interest-earning assets, and (iv) all interest earning assets. Average yield should be computed on no greater than a monthly basis.

(B) Average rate paid during the period on: (i) deposits, (ii) borrowings and Federal Home Loan Bank advances, (iii) other interest-bearing liabilities, (iv) all interest-bearing liabilities ((i), (ii), and (iii)). Average rate paid should be computed on no greater than a monthly basis.

(C) Weighted-average yield at end of the latest required period, for the items in (A) and (B) above.

(D) The net yield on average interest-earning assets (net interest earnings divided by average interest-earning assets, with net interest earnings equaling the difference between the dollar amount of interest earned and paid). Average interest-earning assets should be determined on an interval no more frequent than monthly.

(E) For each of the periods required by Item 14(b), set forth in tabular form: (i) the dollar amount of change in interest income and (ii) the dollar amount of change in interest expense. The changes should be segregated for each major category of interest-earning asset and interest-bearing liability (as stated in (A) and (B) above) into amounts attributable to (i) changes in volume [change in volume multiplied by old rate], (ii) changes in rates [change in rate multiplied by old volume], and (iii) changes in rate-volume [change in rate multiplied by the change in volume]. The rate/volume variances should be allocated on a consistent basis between rate and volume variance and the basis of allocation disclosed in a note to the table.

(5) For each of the periods required by Item 14(b), present the following:

(A) Return on assets (net income divided by average total assets).

(B) Return on equity (net income divided by average equity).

(C) Equity-to-assets ratio (average equity divided by average total assets).

Instructions

Applicants should supply any additional ratios which they deem necessary to explain their operations.

(6) As of the end of the latest fiscal year reported on, present separately the amounts of loans in each category required by balance sheet Item 7(b) which are due: (A) in each of the three years following the balance sheet, (B) after three through five years, (C) after five through ten years, (D) after ten through fifteen years, and (E) after fifteen years. In addition, present separately the total amount of all such loans due after one year which (A) have predetermined interest rates and (B) have floating or adjustable interest rates.

Instructions

1. Scheduled principal repayments should be reported in the maturity category in which the payment is due.

2. Demand loans, loans having no stated schedule of repayments and no stated maturity, and overdrafts should be reported as due in one year or less.

3. Determinations of maturities should be based upon contract terms. However, such terms may vary due to the applicant's "rollover policy," in which case the maturity should be revised as appropriate and the rollover policy should be briefly discussed.

(e) *Savings activities.* (1) State whether the maximum rate of interest which the applicant may pay is established by regulatory authorities. State that, in the event of liquidation of the applicant after conversion, savings account holders will be entitled to full payment of their accounts prior to payment to shareholders. Also indicate the percentage of total savings accounts which are from out-of-state sources, if such total is significant.

(2) Set forth in tabular form the amounts of time deposit accounts by categories of interest rates as of the dates of each balance sheet filed. Each interest-rate category should not be more than 200 basis points. As of the date of the latest balance sheet, set forth, in tabular form for each interest-rate category, the amounts of savings maturing during each of the three years following the balance sheet date and the total maturing thereafter.

(3) Disclose the weighted-average rate and general terms (as well as formal provisions for the extension of the maturity) of each category of short-term borrowings required by Balance Sheet Caption "14" along with the maximum amount of borrowings in each category outstanding at any month-end during each period for which an end-of-period balance sheet is required. In addition, disclose the approximate average short-term borrowings outstanding during the period and the approximate weighted-average interest rate (and a brief description of the means used to compute such average) for such aggregate short-term borrowings. The disclosure required by this paragraph (3) need not be furnished as regards borrowings in each particular category when the aggregate amount of such borrowings at the balance sheet date does not exceed one percent of assets at that date. Notwithstanding this reporting threshold, if the weighted average of such borrowings

outstanding during the year exceeds one percent of assets at year-end and significantly exceeds the amount of such borrowings at year-end, the disclosure called for by this paragraph (3) should be furnished. This information is not required to be given for any category of short-term borrowings for which the average balance outstanding during the period was less than 30 percent of stockholders' equity at the end of the period.

(f) *Federal regulation.* Describe briefly, to the extent not otherwise covered by other items, Federal regulation of the applicant and the conduct of its operations. In particular, describe briefly the insurance of accounts and the general regulatory authority of the Corporation, and Federal regulatory net-worth requirements, the results of failure to meet those requirements, and the applicant's net-worth position in relation to those requirements. Also describe the annual insurance premium payment and prepayment requirements.

* * * * *

(n) *Legal proceedings.* Furnish the information regarding legal proceedings required to be disclosed in a registration statement filed with the Board under the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* In particular, see Item 103 of Regulation S-K, 17 CFR 229.103. Unless the context otherwise requires, the word "registrant" in that regulation shall refer to the applicant.

* * * * *

Item 8. *Description of the plan of conversion.*

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(f) Unless the offering of stock is not to commence until after the meeting of association members to vote on the plan of conversion, discuss (1) the earnings per share of the capital stock to be sold on a *pro forma* basis as of the most recent year-end and interim period required by Item 14(b); and (2) the book value per share on a *pro forma* basis as of the most recent year-end and interim period required by Item 14(a).

Instructions

1. Earnings and book value per share shall be furnished without giving effect to the estimated net proceeds from the sale of the capital stock and then after giving effect to such proceeds, with all assumptions used clearly stated.

2. In computing *pro forma* earnings, the applicant shall use the arithmetic average of the (i) average yield on all interest-earning assets (Item 7(d)(4)(A)(iv)) and (ii) average rate paid on deposits (Item 7(d)(4)(B)(i)).

3. If significant changes in interest rates occur during the periods presented, the Corporation will consider permitting alternative computations proposed by an applicant that are properly supported.

4. An appropriate statement should be included which explains that the *pro forma* data should not be relied upon as indicative of the actual financial position or results of continuing operations that will be experienced by the applicant after its conversion.

* * * * *

Item 9. *Description of capital stock.*

(a) Furnish the information regarding capital stock of the applicant required to be disclosed in a registration statement filed with the Board under the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* In particular, see Item 202 of Regulation S-K, 17 CFR 229.202. Unless the context otherwise requires, the term "registrant" in that regulation shall refer to the applicant.

* * * * *

(d) If the rights evidenced by the capital stock will be materially limited or qualified by the rights of savings account holders or borrowers, include the information regarding the limitations or qualifications necessary to enable investors to understand the rights evidenced by the capital stock.

Item 10. *Capitalization.*

Set forth in substantially the tabular form indicated below the dollar amounts of the capitalization of the applicant. Captions below may be modified as appropriate.

	Capitalization as of most recent balance sheet date (A)	Pro forma adjustments as a result of conversion (B)	Pro forma capitalization after giving effect to the conversion (C)
Deposits			
FHL Bank Advances			
Other Borrowings			
Capital Stock			
Preferred Stock			
Paid-in Capital			
Retained Earnings			
Restricted			
Unrestricted			
Total			

Instructions

1. With respect to capital stock, indicate in the table or in a footnote the total number of shares to be authorized, the par or stated value of such shares, and the number of shares to be sold as part of the conversion.

2. With respect to the funds to be received by the applicant from the sale of its capital stock, indicate in the table the estimated total amount of funds to be obtained and in a footnote state the price per share used in making the estimate. The total amount and price per share shall be clearly identified as being estimates.

3. With respect to Column A, the applicant should use the most recent balance sheet date required by Item 14.

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Item 12. *New charter, bylaws, or other documents.*

Describe briefly any material differences between the provisions of the existing charter, bylaws, and any similar documents of the applicant and those which will take effect after conversion.

Instruction

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Item 14. *Financial statements.*

Notes.—1. The following instructions specify the consolidated balance sheets, the consolidated statements of income, changes in financial position, and stockholders' equity required to be included in the proxy statement. Subpart A of Part 563c governs the certification, form, and content of such financial statements, including the basis of consolidation.

* * * * *

(a) *Consolidated balance sheets.* (1) There shall be furnished for the applicant and its subsidiaries consolidated, audited balance sheets as of the end of each of the two most recent fiscal years.

(2) If the latest balance sheets furnished under (1) of this paragraph are in excess of 135 days prior to the date of Board approval of the conversion, there shall be furnished an interim balance sheet as of a date within 135 days of such approval. This interim balance sheet need not be audited.

(b) *Consolidated statements of income and changes in financial position.* (1) There shall be furnished for the applicant and its subsidiaries and predecessors consolidated, audited statements of income and changes in financial position for each of the three fiscal years preceding the date of the most recent balance sheet furnished.

(2) In addition, for any interim period between the latest audited balance sheet and the date of the most recent interim balance sheet being filed, and for the corresponding period of the preceding fiscal year, statements of income and changes in financial position shall be furnished. The interim financial statements may be unaudited.

(c) *Changes in stockholders' equity.* An analysis of the changes in each caption of stockholders' equity presented in the balance sheets shall be given in a note or separate statement. This analysis shall be presented in the form of a reconciliation of the beginning balance to the ending balance for each period for which an income statement is required to be furnished with all significant reconciling items described by appropriate captions.

(d) *Financial statements of business acquired or to be acquired.* There shall be furnished the information required by 17 CFR 210.3-05, 210.11-01 to -03 regarding business acquired or to be acquired.

(e) *Separate financial statements of subsidiaries not consolidated and 50-percent-or less-owned persons.* There shall be furnished the information required by 17 CFR 210.3-09 regarding separate financial statements of subsidiaries not consolidated and 50-percent- or less-owned persons.

* * * * *

Form OC

[Facing Sheet]

Federal Home Loan Bank Board

Federal Savings and Loan Insurance Corporation, 1700 G Street, N.W., Washington, D.C. 20552

Offering Circular

* * * * *

Item 2. *Additional current information required.*

* * * * *

(f) Any other information necessary to make such offering circular current, including full financial statements of the applicant within six months prior to the date of issuance of such offering circular. In addition, a subscription offering circular shall contain any more recent financial statements which, at the time of commencement of the subscription offering, it can be determined will be required to be included in an offering circular to be used in the Direct Community Offering or Public Offering pursuant to this paragraph (f).

* * * * *

PART 563c—ACCOUNTING REQUIREMENTS

2. Revise the table of contents for Subpart A, and add entries for new Subpart C to read as follows:

Subpart A—Form and Content of Financial Statements

Sec.

563c.1 Form and content of financial statements.
563c.2 Definitions.
563c.3 Qualifications of public accountant.
563c.4 Condensed financial information [Parent only].

* * * * *

Subpart C—Financial Statement Presentation

563c.101 Application of this subpart.
563c.102 Financial statement presentation.

Authority: Secs. 402, 403, 407 of the National Housing Act, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, and 1730); Sec. 5 of the Home Owners' Loan Act of 1933, 48 Stat. 132, as amended (12 U.S.C. 1464); Secs. 3(b), 12, 13, 14, and 23 of the Securities Exchange Act of 1934, 48 Stat. 882, 892, 894, 895, and 901, as amended (15 U.S.C. 78c(b), m, n, and w); and Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943–48 Comp., p. 1071.

Subpart A—Form and Content of Financial Statements

3. Revise § 563c.1 to read as follows:

§ 563c.1 Form and content of financial statements.

(a) This subpart states the requirements as to form and content of financial statements included by an insured institution in the following documents. However, the Board's regulations governing the applicable documents specify the actual financial statements that are to be included in that document.

(1) Any proxy statement or offering circular required to be used in connection with a conversion under Part 563b of this Subchapter.

(2) Any offering circular required to be used in connection with the issuance of mutual capital certificates under § 563.7–4, debt securities under §§ 563.8 and 563.8–1, and retail repurchase agreements under § 563.8–4 of this Subchapter.

(3) Any filing under the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.*, made pursuant to the requirements of Part 563d of this Subchapter.

(b) Except as otherwise provided by the Federal Home Loan Bank Board by rule, regulation, or order made specifically applicable to financial statements governed by this section, financial statement shall:

(1) Be prepared and presented in accordance with generally accepted accounting principles;

(2) Comply with Subpart C of this Part;

(3) Consistent with the provisions of this subpart, comply with Articles 1, 2, 3, 4, 10, and 11 of Regulation S–X adopted by the Securities and Exchange Commission (17 CFR 210.1–210.4, 210.10, and 210.11).

(4) Be audited, when required, by an independent auditor in accordance with the standards imposed by the American Institute of Certified Public Accountants.

(c) The term "financial statements" includes all notes to the statements and related schedules.

4. Revise paragraph (b) of § 563c.2 to read:

§ 563c.2 Definitions. (See also 17 CFR 210.1–02).

(a) *Registrant.* * * *

(b) *Significant subsidiary.* The term "significant subsidiary" means a subsidiary, including its subsidiaries, which meets any of the following conditions:

(1) The institution's and its other subsidiaries' investments in and advances to the subsidiary exceed 10 percent of the total assets of the institution and its subsidiaries consolidated as of the end of the most recently completed fiscal year (for purposes of determining whether financial statements of a business acquired or to be acquired in a business combination accounted for as a pooling of interests are required pursuant to 17 CFR 210.3–05, this condition is also met when the number of common shares exchanged by the institution exceeds 10 percent of its total common shares outstanding at the date the combination is initiated); or

(2) The institution's and its other subsidiaries' proportionate share of the total assets (after intercompany eliminations) of the subsidiary exceeds 10 percent of the total assets of the institution and its subsidiaries consolidated as of the end of the most recently completed fiscal year; or

(3) The institution's and its other subsidiaries' equity in the income from continuing operations before income taxes, extraordinary items, and cumulative effect of a change in accounting principle of the subsidiary exceeds 10 percent of such income of the institution and its subsidiaries consolidated for the most recently completed fiscal year.

Computational note: For purposes of making the prescribed income test the following guidance should be applied:

1. When a loss has been incurred by either the parent or its consolidated subsidiaries or the tested subsidiary, but not both, the equity in the income or loss of the tested subsidiary should be excluded from the income of the institution and its subsidiaries consolidated for purposes of the computation.

2. If income of the institution and its subsidiaries consolidated for the most recent fiscal year is at least 10 percent lower than the average of the income for the last five fiscal years, such average income should be substituted for purposes of the computation. Any loss years should be omitted for purposes of computing average income.

5. Revise § 563c.4 and remove §§ 563c.5–563c.9.

§ 563c.4 Condensed financial information [Parent only].

(a) The information prescribed by Schedule III required by section IV of § 563c.102 of this Part shall be presented in a note to the financial statements when the restricted net assets (17 CFR 210.4–08[e][3]) of consolidated subsidiaries exceed 25 percent of consolidated net assets as of the end of the most recently completed fiscal year. The investment in and indebtedness of and to institution subsidiaries shall be stated separately in the condensed balance sheet from amounts for other subsidiaries; and the amount of cash dividends paid to the parent institution for each of the last three years by institution subsidiaries shall be stated separately in the condensed income statement from amounts for other subsidiaries.

(b) For purposes of the above test, restricted net assets of consolidated subsidiaries shall mean that amount of the institution's proportionate share of net assets of consolidated subsidiaries (after intercompany eliminations) which as of the end of the most recent year may not be transferred to the parent company by subsidiaries in the form of loans, advances, or cash dividends without the consent of a third party (i.e., lender, regulatory agency, foreign government, etc.).

(c) Where restrictions on the amount of funds which may be loaned or advanced differ from the amount restricted as to transfer in the form of cash dividends, the amount least restrictive to the subsidiary shall be used. Redeemable preferred stocks (*See* Item I (21) in § 563c.102) and minority interest shall be deducted in computing net assets for purposes of this test.

6. Subpart C is added to read as follows:

Subpart C—Financial Statement Presentation

§ 563c.101 Application of this subpart.

This Subpart contains rules pertaining to the form and content of financial statements included as part of (a) a conversion application under Part 563b, including financial statements in proxy statements and offering circulars, (b) a filing under the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.*, and (c) any offering circular required to be used in connection with the issuance of mutual capital certificates under § 563.7–4, debt securities under § 563.8 and § 563.8–1, and retail repurchase agreements under § 563.8–4 of this Subchapter.

§ 563c.102 Financial statement presentation.

This section specifies the various line items which should appear on the face of the financial statements governed by this Subpart C and additional disclosures which should be included with the financial statements in related notes.

I. Balance Sheet

Balance sheets shall comply with the following provisions:

Assets

1. *Cash and amounts due from depository institutions.* (a) The amounts in this caption should include noninterest-bearing deposits with depository institutions.

(b) State in a note the amount and terms of any deposits in depository institutions held as compensating balances against long- or short-term borrowing arrangements. This disclosure should include the provisions of any restrctions as to withdrawal or usage. Restrictions may include legally restricted deposits held as compensating balances against short-term borrowing arrangements, contracts entered into with others, or company statements of intention with regard to particular deposits; however, time deposits and short-term certificates of deposits are not generally included in legally restricted deposits. In cases where compensating balance arrangements exist but are not agreements which legally restrict the use of cash amounts shown on the balance sheet, describe in the notes to the financial statements these arrangements and the amount involved, if determinable, for the most recent audited balance sheet required and for any subsequent unaudited balance sheet required. Compensating balances that are maintained under an agreement to ensure future credit availability shall be disclosed in the notes to the financial statements along with the amount and terms of the agreement.

(c) Checks outstanding in excess of an applicant's book balance in a demand deposit account shall be shown as a liability.

2. *Interest-bearing deposits in other banks.*

3. *Federal funds sold and securities purchased under resale agreements or similar arrangements.* These amounts should be presented, i.e., gross and not netted against Federal funds purchased and securities sold under agreement to repurchase as reported in Caption 14.

4. *Trading-account assets.* Include securities or any other investments held for trading purposes only.

5. *Other short-term investments.*

6. *Investment securities.* (a) Include securities held for investment only. Disclose the aggregate book value of investment securities as the line item on the balance sheet; and also show on the face of the balance sheet the aggregate market value at the balance sheet date. The aggregate amounts should include securities pledged, loaned, or sold under repurchase agreements and similar arrangements. Borrowed securities and securities purchased under resale agreements or similar arrangements should be excluded.

(b) Disclose in a note the carrying value and market value of securities of (i) the U.S. Treasury and other U.S. Government agencies and corporations; (ii) states of the U.S. and political subdivisions thereof; and (iii) other securities.

7. *Loans.* (a) Disclose separately: (i) Total loans (including financing type leases), (ii) allowance for loan losses, (iii) unearned income on installment loans, (iv) discount on loans purchased, and (v) loans in process.

(b) State on the balance sheet or in a note the amount of loans in each of the following categories: (i) Real estate mortgage; (ii) real estate construction; (iii) installment; and (iv) commercial, financial, and agricultural.

(c)(i) Include under the real estate mortgage category loans payable in monthly, quarterly, or other periodic installments and secured by developed income property and/or personal residences.

(ii) Include under the real estate construction category loans secured by real estate which are made for the purpose of financing construction of real estate and land development projects.

(iii) Include under the installment category loans to individuals generally repayable in monthly installments. This category shall include, but not be limited to, credit card and related activities, individual automobile loans, other installment loans, mobile home loans, and residential repair and modernization loans.

(iv) Include under the commercial, financial, and agricultural category all loans not included in another category. This category shall include, but not be limited to, loans to real estate investment trusts, mortgage companies, banks, and other financial institutions; loans for carrying securities; and loans for agricultural purposes. Do not include loans secured primarily by developed real estate.

(d) State separately any other loan category regardless of relative size if necessary to reflect any unusual risk concentration.

(e) Unearned income on installment loans shall be shown and deducted separately from total loans.

(f) Unamortized discounts on purchased loans shall be deducted separately from total loans.

(g) Loans in process shall be deducted separately from total loans.

(h) A series of categories other than those specified in (b) above may be used to present details of loans if considered a more appropriate presentation. The categories specified in (b) above should be considered the minimum categories that may be presented.

(i) For each period for which an income statement is presented, disclose in a note the total dollar amount of loans being serviced by the association for the benefit of others.

(j)(i)(A) As of each balance sheet date, disclose in a note the aggregate dollar amount of loans (exclusive of loans to any such persons which in the aggregate do not exceed $60,000 during the last year) made by the institution or any of its subsidiaries to directors, executive officers, or principal holders of equity securities (17 CFR 210.1–02) of the institution or any of its significant subsidiaries (17 CFR 210.1–02, or to any associate of such persons. For the latest fiscal year, an analysis of activity with respect to such aggregate loans to related parties should be provided. The analysis should include at the beginning of the period new loans, repayments, and other changes. (Other changes, if significant, should be explained.)

(B) This disclosure need not be furnished when the aggregate amount of such loans at the balance sheet date (or with respect to the latest fiscal year, the maximum amount outstanding during the period) does not exceed 5 percent of stockholders' equity at the balance sheet date.

(ii) If a significant portion of the aggregate amount of loans outstanding at the end of the fiscal year disclosed pursuant to subparagraph (i)(A) of this paragraph (j) above relates to scheduled items so state and disclose the aggregate amount of such scheduled items along with such other information necessary to an understanding of the effects of the transactions on the financial statements.

(iii) Notwithstanding the aggregate disclosure called for by paragraph (e) of this balance sheet caption 7, if any loans were not made in the ordinary course of business during any period for which an income statement is required to be filed, provide an appropriate description of each such loan (see 17 CFR 210.4–08(*l*)(3)).

(iv) For purposes only of Balance Sheet Item 7(j), the following definitions shall apply:

(A) "Associate" used to indicate a relationship with any person means (1) any corporation, venture, or organization of which such person is a general partner or is, directly or indirectly, the beneficial owner of

10 percent or more of any class of equity securities; (2) any trust or other estate in which such person has a substantial beneficial interest or for which such person serves as trustee or in a similar capacity; and (3) any member of the immediate family of any of the foregoing persons.

(B) "Executive officer" means the president, any vice president in charge of a principal business unit, division, or function (such as loans, investments, operations, administration, or finance), and any other officer or person who performs similar policy-making functions.

(C) "Immediate family" with regard to a person means such person's spouse, parents, children, siblings, mother- and father-in-law, sons- and daughters-in-law, and brothers- and sisters-in-law.

(D) "Ordinary course of business" with regard to loans means those loans which were made on substantially the same terms, including interest rate and collateral, as those prevailing at the same time for comparable transactions with unrelated persons and did not involve more than the normal risk of collectibility or present other unfavorable features.

(k) For each period for which an income statement is presented, furnish in a note a statement of changes in the allowance for loan losses, showing balances at beginning and end of the period, provision charged to income, recoveries of amounts previously charged off, and losses charged to the allowance.

8. *Premises and equipment.*

9. *Real estate owned.* State, parenthetically or otherwise:

(a) The amount of real estate owned by class as described in paragraph (b) below and the basis for determining that amount; and

(b) A description of each class of real estate owned (i) acquired by foreclosure or by deed in lieu of foreclosure, (ii) in judgment and subject to redemption, or (iii) acquired for development or resale. Show separately any accumulated depreciation or valuation allowances. Disclose the policies regarding, and amounts of, capitalized costs, including interest.

10. *Investment in joint ventures.* In a note, present summarized aggregate financial statements for investments in real estate or other joint ventures which individually (a) are 20 percent or more owned by the institution or any of its subsidiaries, or (b) have liabilities (including contingent liabilities) to the parent exceeding 10 percent of the parent's net worth. If an allowance for real estate losses subsequent to acquisition is maintained, the amount shall be disclosed, deducted from the other real estate owned, and a statement of changes in the allowance showing balances at beginning and end of period should be included. Provision charged to income and losses charged to the allowance account shall be furnished for each period for which an income statement is filed.

11. *Other assets.* (a) Disclose separately on the balance sheet or in a note thereto any of the following assets or any other asset the amount of which exceeds 30 percent of stockholders' equity. The remaining assets may be shown as one amount.

(i) Accrued interest receivable. State separately those amounts relating to loans and those amounts relating to investments.

(ii) Excess of cost over assets acquired (net of amortization).

(ii) Prepayment to FSLIC secondary reserve.

(b) State in a note (i) amounts representing investments in affiliates and investments in other persons which are accounted for by the equity method, and (ii) indebtedness of affiliates and other persons, the investments in which are accounted for by the equity method. State the basis of determining the amounts reported under (i). (See 17 CFR 210.4-08(*f*).)

12. *Total assets.*

Liabilities, and Stockholders' Equity

13. *Deposits.* (a) Disclose separately on the balance sheet or in a note the amounts in the following categories of interest-bearing and noninterest-bearing deposits: (i) NOW account and MMDA deposits (ii) savings deposits, and (iii) time deposits.

(b) Include under the savings-deposits category interest-bearing deposits without specified maturity or contractual provisions requiring advance notice of intention to withdraw funds. Include deposits for which an institution may require at its option written notice of intended withdrawal not less than 14 days in advance.

(c) Include under the time-deposits category deposits subject to provisions specifying maturity or other withdrawal conditions such as time certificates of deposits, open account time deposits, and deposits accumulated for the payment of personal loans.

(d) Include accrued interest or dividends, if appropriate.

14. *Short-term borrowings.* (a) State separately, here or in a note, the amounts payable for (i) Federal funds purchased and securities sold under agreements to repurchase (ii) commercial paper, and (iii) other short-term borrowings.

(b) Federal funds purchased and sales of securities under repurchase agreements shall be reported gross and not netted against sales of Federal funds and purchase of securities under resale agreements.

(c) Include as securities sold under agreements to repurchase all transactions of this type regardless of (i) whether they are called simultaneous purchases and sales, buy-backs, turnarounds, overnight transactions, delayed deliveries, or other terms signifying the same substantive transaction, and (ii) whether the transactions are with the same or different institutions, if the purpose of the transactions is to repurchase identical or similar securities.

(d) The amount and terms (including commitment fees and the conditions under which lines may be withdrawn) of unused lines of credit for short-term financing shall be disclosed, if significant, in the notes to the financial statements. The amount of these lines of credit which support a commercial paper borrowing arrangement or similar arrangements shall be separately identified.

15. *Advance payments by borrowers for taxes and insurance.*

16. *Other liabilities.* Disclose separately on the balance sheet or in a note any of the following liabilities or any other items which are individually in excess of 30 percent of stockholders' equity (except that amounts in excess of 5 percent of stockholders' equity should be disclosed with respect to Item (d)). The remaining items may be shown as one amount.

(a) Income taxes payable.

(b) Deferred income taxes.

(c) Indebtedness to affiliate and other persons the investment in which is accounted for by the equity method.

(d) Indebtedness to directors, executive officers, and principal holders of equity securities of the registrant or any of its significant subsidiaries. (The guidance in balance sheet caption "7(j)" shall be used to identify related parties for purposes of this disclosure.)

17. *Bonds, mortgages, and similar debt.* (a) Include bonds, Federal Home Loan Bank advances, capital notes, debentures, mortgages, and similar debt.

(b) For each issue or type of obligation state in a note:

(i) The general character of each type of debt, including: (A) the rate of interest (B) the date of maturity, or, if maturing serially, a brief indication of the serial maturities, such as "maturing serially from 1980 to 1990" (C) if the payment of principal or interest is contingent, an appropriate indication of such contingency (D) a brief indication of priority, and (E) if convertible, the basis. For amounts owed to related parties see 17 CFR 210.4-08(*f*).

(ii) The amount and terms (including commitment fees and the conditions under which commitments may be withdrawn) of unused commitments for long-term financing arrangements that, if used, would be disclosed under this caption shall be disclosed in the notes to the financial statements, if significant.

(c) State in the notes with appropriate explanations (i) the title and amount of each issue of debt of a subsidiary included in (a) above which has not been assumed or guaranteed by the institution, and (ii) any liens on premises of a subsidiary or its consolidated subsidiaries which have not been assumed by the subsidiary or its consolidated subsidiaries.

18. *Deferred credits.* State separately those items which exceed 30 percent of stockholders' equity.

19. *Commitments and contingent liabilities.* Total commitments to fund loans should be disclosed. The dollar amounts and terms of other than floating-market-rate commitments should also be disclosed.

20. *Minority interest in consolidated subsidiaries.*

21. *Preferred stock subject to mandatory redemption requirements or the redemption of which is outside the control of the issuer.* (a) Included under this caption amounts applicable to any class of stock which has any of the following characteristics: (i) it is redeemable at a fixed or determinable price on a fixed or determinable date or dates, whether by operation of a sinking fund or otherwise; (ii) it is redeemable at the option of the holder; or (iii) it has conditions for redemption which are not solely within the

control of the issuer, such as stock which must be redeemed out of future earnings. Amounts attributable to preferred stock which is not redeemable or is redeemable solely at the option of the issuer shall be included under caption 22 unless it meets one or more of the above criteria.

(b) State on the face of the balance sheet the title, carrying amount, and redemption amount of each issue. (If there is more than one issue, these amounts may be aggregated on the face of the balance sheet and details concerning each issue may be presented in the note required by paragraph (c) below.) Show also the dollar amount of any shares subscribed for but unissued, and show the deduction of subscriptions receivable therefrom. If the carrying value is different from the redemption amount, describes the accounting treatment for such difference in the note required by paragraph (c) below. Also state in this note or on the face of the balance sheet, for each issue, the number of shares authorized and the number of shares issued or outstanding, as appropriate. (See 17 CFR 210.4–07.)

(c) State in a separate note captioned "Redeemable Preferred Stock" (i) a general description of each issue, including its redemption features (e.g., sinking fund, at option of holders, out of future earnings) and the rights, if any, of holders in the event of default, including the effect, if any, on junior securities in the event a required dividend, sinking fund, or other redemption payment(s) is not made, (ii) the combined aggregate amount of redemption requirements for all issues each year for the five years following the date of the latest balance sheet, and (iii) the changes in each issue for each period for which an income statement is required to be presented. (See also 17 CFR 210.4–08(d).)

(d) Securities reported under this caption are not to be included under a general heading "stockholders' equity" or combined in a total with items described in captions 22, 23, or 24 which follow.

22. *Preferred stock which is not redeemable or is redeemed solely at the option of the issuer.* State on the face of the balance sheet, or, if more than one issue is outstanding, state in a note, the title of each issue and the dollar amount thereof. Show also the dollar amount of any shares subscribed for but unissued, and show the deduction of subscriptions receivable. State on the face of the balance sheet or in a note, for each issue, the number of shares authorized and the number of shares issued or outstanding, as appropriate. (See 17 CFR 210.4–07.) Show in a note or separate statement the changes in each class of preferred shares reported under this caption for each period for which an income statement is required to be presented. (See also 17 CFR 210.4–08(d).)

23. *Common stock.* For each class of common shares state, on the face of the balance sheet, the number of shares issued or outstanding, as appropriate (see 17 CFR 210.4–07), and the dollar amount thereof. If convertible, this fact should be indicated on the face of the balance sheet. For each class of common stock state, on the face of the balance sheet or in a note, the title of the issue, the number of shares authorized, and, if convertible, the basis for conversion (see also 17 CFR 210.4–08(d)). Show also the dollar amount of any common stock subscribed for but unissued, and show the deduction of subscriptions receivable. Show in a note or statement the changes in each class of common stock for each period for which an income statement is required to be presented.

24. *Other stockholders' equity.* (a) Separate captions shall be shown on the face of the balance sheet for (i) additional paid-in capital, (ii) other additional capital, and (iii) retained earnings, both (A) restricted and (B) unrestricted. (See 17 CFR 210.4–08(e).) Additional paid-in capital and other additional capital may be combined with the stock caption to which it applies, if appropriate. State whether or not the institution is in compliance with the Federal regulatory net-worth requirements (and state requirements where applicable). Also include the dollar amount of those regulatory net-worth requirements and the amount by which the institution exceeds or fails to meet those requirements.

(b) For a period of at least 10 years subsequent to the effective date of a quasi-reorganization, any description of retained earnings shall indicate the point in time from which the new retained earnings dates, and for a period of at least three years shall indicate, on the face of the balance sheet, the total amount of the deficit eliminated.

(c) Changes in stockholders' equity shall be disclosed in accordance with the requirements of 12 CFR 210.3–04.

25. *Total liabilities and stockholders' equity.*

II. Income Statement

Income statements shall comply with the following provisions:

1. *Interest and fees on loans.* (a) Include interest, service charges, and fees which are related to or are an adjustment of the loan interest yield.

(b) Current amortization of premiums on mortgages or other loans shall be deducted from interest on loans, and current accretion of discount on such items shall be added to interest on loans.

(c) Discounts and other deferred amounts which are related to or are an adjustment of the loan interest yield shall be amortized into income using the interest (level yield) method.

2. *Interest and dividends on investment securities.* Include accretion of discount on securities and deduct amortization of premiums on securities.

3. *Trading account interest.* Include interest from securities carried in a dealer trading account or accounts that are held principally for resale to customers.

4. *Other interest income.* Include interest on short-term investments (Federal funds sold and securities purchased under agreements to resell) and interest on bank deposits.

5. *Total interest income.*

6. *Interest on deposits.* Include interest on all deposits. On the income statement or in a note, state separately, in the same categories as those specified for deposits at balance sheet caption 13(a), the interest on those deposits. Early withdrawal penalties should be netted against interest on deposits and, if material, disclosed on the income statement.

7. *Interest on short-term borrowings.* Include interest on borrowed funds, including Federal funds purchased, securities sold under agreements to repurchase, commercial paper, and other short-term borrowings.

8. *Interest on long-term borrowings.* Include interest on bonds, capital notes, debentures, mortgages on institution premises, capitalized leases, and similar debt.

9. *Total interest expense.*

10. *Net interest income.*

11. *Provision for loan losses.*

12. *Net interest income after provision for loan losses.*

13. *Other income.* Disclose separately any of the following amounts, or any other item of other income, which exceeds 1 percent of the aggregate of total interest income and other income. The remaining amount may be shown as one amount, except for investment securities gains or losses which shall be shown separately regardless of size.

(a) Commissions and fees from fiduciary activities.

(b) Fees for other services to customers.

(c) Commissions, fees, and markups on securities underwriting and other securities activities.

(d) Profit or loss on transactions in investment securities.

(e) Equity in earnings of unconsolidated subsidiaries and 50-percent- or less-owned persons.

(f) Gains or losses on disposition of investments in securities of subsidiaries and 50-percent- or less-owned persons.

(g) Profit or loss from real estate operations.

(h) Other fees related to loan originations or commitments not included in income statement caption 1.

The remaining other income may be shown in one amount.

(i) Investment securities gains or losses. The method followed in determining the cost of investments sold (e.g., "average cost," "first-in, first-out," or "identified certificate") and related income taxes shall be disclosed.

14. *Other expenses.* Disclose separately any of the following amounts, or any other item of other expense, which exceeds 1 percent of the aggregate of total interest income and other income. The remaining amounts may be shown as one amount.

(a) Salaries and employee benefits.

(b) Net occupancy expense of premises.

(c) Net cost of operations of other real estate (including provisions for real estate losses, rental income, and gains and losses on sales of real estate).

(d) Minority interest in income of consolidated subsidiaries.

(e) Goodwill amortization.

15. *Other income and expenses.* State separately material events or transactions that are unusual in nature or occur infrequently, but not both, and therefore do not meet both criteria for classification as an extraordinary item. Examples of items which would be reported separately are gain or loss from the sale of premises and equipment.

provision for loss on real estate owned, or provision for gain or loss on the sale of loans.

16. *Income or losses before income tax expense.*

17. *Income tax expense.* The information required by 17 CFR 210.4-08(h) should be disclosed.

18. *Income or loss before extraordinary items effects of changes in accounting principles.*

19. *Extraordinary items, less applicable tax.*

20. *Cumulative effects of changes in accounting principles.*

21. *Net income or loss.*

22. *Earnings-per-share data.*

23. *Conversion footnote.* If the association is an applicant for conversion from a mutual to a capital stock company or has converted within the last three years, describe in a note the general terms of the conversion and restrictions on the operations of the institution imposed by the conversion. Also, state the amount of net proceeds received from the conversion and costs associated with the conversion.

24. *Mergers and acquisitions.* For the period in which a business combination occurs and is accounted for by the purchase method of accounting, in addition to those disclosures required by Accounting Principles Board Opinion No. 16, the institution shall make those disclosures as noted below for all combinations involving significant acquisitions. (A significant acquisition is defined for this purpose to be one in which the assets of the acquired institution, or group of institutions, exceed 10 percent of the assets of the consolidated institution at the end of the most recent period being reported upon.)

(a) Amounts and descriptions of discounts and premiums related to recording the aggregate interest-bearing assets and liabilities at their fair market value. The disclosure should also include the methods of amortization or accretion and the estimated remaining lives.

(b) The net effect on net income before taxes of the amortization and accretion of discounts, premiums, and intangible assets related to the purchase accounting transaction(s). For subsequent periods, the institution shall disclose the remaining total unamortized or unaccreted amounts of discounts, premiums, and intangible assets as of the date of the most recent balance sheet presented. In addition, the institution shall disclose the net effect on net income before taxes of the amortization and accretion of discounts, premiums, and intangible assets related to prior business combinations accounted for by the purchase method of accounting. Such disclosures need not be made if the total amounts of discounts, premiums, or intangible assets do not exceed 30 percent of stockholders' equity as of the date of the most recent balance sheet presented.

III. Statement of Changes in Financial Position

The amounts shown in this statement should be those items which materially enhance the reader's understanding of the institution's business. For example, interest credited to savings accounts should be stated separately; purchase and/or sales of loans should be shown separately from loan originations and loan collections; amortization of loan fees should be shown separately from loan fees collected; significant additions to real estate owned should be shown separately from sales of real estate owned. Additional guidance may be found in the AICPA's *Savings and Loan Associations Audit and Accounting Guide.*

IV. Schedules Required To Be Filed

The following schedules, which should be examined by an independent accountant, shall be filed unless the required information is not applicable or is presented in the related financial statements:

(1) *Schedule I—Indebtedness of and to related parties—Not Current.* For each period for which an income statement is required, the following schedule should be filed in support of the amounts required to be reported by balance sheet Items 7(j) and 16(c) unless such aggregate amount does not exceed 5 percent of stockholders' equity at either the beginning or the end of the period:

Indebtedness of and to Related Parties—Not Current

Name of Person [1]	Indebtedness of—				Indebtedness to—			
	Balance at beginning	Additions [2]	Deductions [3]	Balance at end	Balance at beginning	Additions [2]	Deductions [3]	Balance at end
A	B	C	D	E	F	G	H	I

[1] The persons named shall be grouped as in the related schedule required for investments in related parties. The information called for shall be shown separately for any persons whose investments were shown separately in such related schedule.

[2] For each person named in column A, explain in a note the nature and purpose of any increase during the period that is in excess of 10 percent of the related balance at either the beginning or end of the period.

[3] If deduction was other than a receipt or disbursement of cash, explain.

(2) *Schedule II—Guarantees of securities of other issuers.* The following schedule should be filed as of the date of the most recently audited balance sheet with respect to any guarantees of securities of other issuers by the person for which the statements are being filed:

GUARANTEES OF SECURITIES OF OTHER ISSUERS [1]

Col. A. Name of issuer of securities guaranteed by person for which statement is filed	Col. B. Title of issue of each class of securities guaranteed	Col. C. Total amount guaranteed and outstanding [2]	Col. D. Amount owned by person or persons for which statement is filed	Col. E. Amount in treasury of issuer of securities guaranteed	Col. F. Nature of guarantee [3]	Col. G. Nature of any default by issue of securities guaranteed in principal, interest, sinking fund or redemption provisions, or payment of dividends [4]

[1] Indicate in a note to the most recent schedule being filed for a particular person or group any significant changes since the date of the related balance sheet. If this schedule is filed in support of consolidated or combined statements, there shall be set forth guarantees by any person included in the consolidation or combination, except that such guarantees of securities which are included in the consolidated or combined balance sheet need not be set forth.

[2] Indicate any amounts included in column C which are included also in column D or E.

[3] There need be made only a brief statement of the nature of the guarantee, such as "Guarantee of principal and interest," or "Guarantee of dividends." If the guarantee is of interest or dividends, state the annual aggregate amount of interest or dividends so guaranteed.

[4] Only a brief statement as to any such defaults need be made.

(3) *Schedule III—Condensed financial information.* The following schedule shall be filed as of the dates and for the periods specified in the schedule.

Condensed Financial Information

[Parent only]

[Institution may determine disclosure based on information provided in footnotes below]

(a) Provide condensed financial information as to financial position, changes in financial position, and results of operations of the institution as of the same dates and for the same periods for which audited consolidated financial statements are required. The financial information required need not be presented in greater detail than is required for condensed statement by 17 CFR 210.10-01(a) (2), (3), (4). Detailed footnote disclosure which would normally be included with complete financial statements may be omitted with the exception of disclosure regarding material contingencies, long-term obligations, and guarantees. Description of significant provisions of the institution's long-term obligations, mandatory dividend, or redemption requirements of redeemable stocks, and guarantees of the institution shall be provided along with a 5-year schedule of maturities of debt. If the material contingencies, long-term obligations, redeemable stock requirements, and guarantees of the institution have been separately disclosed in the consolidated statements, they need not be repeated in this schedule.

(b) Disclose separately the amount of cash dividends paid to the institution for each of the last three fiscal years by consolidated subsidiaries, unconsolidated subsidiaries, and 50-percent- or less-owned persons accounted for by the equity method, respectively.

PART 563d—SECURITIES OF INSURED INSTITUTIONS

7. Amend the table of contents to Part 563d by redesignating the text of 563d.1 and 563d.200–30 as Subpart A—Regulations, by adding new 563d.3b–6 and 563d.210 to Subpart A, and by adding entries for new Subpart B—Interpretations, to read as follows:

Subpart A—Regulations

Sec.

563d.1 Requirements under certain sections of the Securities Exchange Act of 1934.
563d.3b–6 Liability for certain statements by institution.
563d.200–30 Delegation of authority to General Counsel.
563d.210 Form and content of financial statements.

Subpart B—Interpretations

563d.801 Application of this Subpart.
563d.802 Preparation and filing of reports under the Securities Exchange Act of 1934.

Authority: Secs. 3(b), 12, 13, 14, and 23 of the Securities Exchange Act of 1934, 48 Stat. 882, 892, 894, 895, and 901, as amended [15 U.S.C. 78c(b), 78*l*, m, n, and w]; 15 U.S.C. 78d–1; and Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943–48 Comp. p. 1071.

Subpart A—Regulations

8. Sections 563d.3b–6 and 563d.210 are added to Subpart A to read as follows:

* * * * *

§ 563d.3b–6 Liability for certain statements by registrants.

This section replaces adherence to 17 CFR 240.3b–6 and applies as follows:

(a) A statement within the coverage of paragraph (b) of this section which is made by or on behalf of an issuer or by an outside reviewer retained by the issuer shall be deemed not to be a fraudulent statement (as defined in paragraph (d) of this section), unless it is shown that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith.

(b) This section applies to the following statements:

(1) A forward-looking statement (as defined in paragraph (c) of this section) made in a proxy statement or offering circular filed with the Board under Part 563b of this Subchapter; in a registration statement filed with the Board under the Securities Exchange Act of 1934 on Form 10 (17 CFR 249.210); in Part I of a quarterly report filed with the Board on Form 10–Q (17 CFR 241.308a); in an annual report to shareholders meeting the requirements of § 563d.1, particularly 17 CFR 240.14a–3 (b) and (c) or 17 CFR 240.14c–3 (a) and (b) under the Securities Exchange Act of 1934; in a statement reaffirming such forward-looking statement subsequent to the date the document was filed or the annual report was made publicly available; or a forward-looking statement made prior to the date the document was filed or the date the annual report was made publicly available if such statment is reaffirmed in a filed document or annual report made publicly available within a reasonable time after the making of such forward-looking statement: *Provided,* that

(i) At the time such statements are made or reaffirmed, either (A) The issuer is subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and has complied with the requirements of 17 CFR 240.13a–1 or 240.15d–1 thereunder, if applicable, to file its most recent annual report on Form 10–K; or (B) if the issuer is not subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, the statements are made either in a registration filed under the Securities Act of 1933 or pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934, or in a proxy statement or offering circular filed with the Board under Part 563b of this subchapter if such statements are reaffirmed in a registration statement under the Securities Exchange Act of 1934 on Form 10, filed with the Board within 180 days of the institution's conversion, and

(ii) The statements are not made by or on behalf of an issuer that is an investment company registered under the Investment Company Act of 1940;

(2) Information (i) relating to the effects of changing prices on the business enterprise presented voluntarily or pursuant to Item 303 of Regulation S–K (17 CFR 229.303), management's discussion and analysis of financial condition and results of operations, or Item 302 of Regulation S–K (17 CFR 229.302), supplementary financial information, and (ii) disclosed

in a document filed with the Board or in an annual report to shareholders meeting the requirements of 17 CFR 240.14a–3 (b) and (c) or 17 CFR 240.14c–3 (a) and (b) under the Securities Exchange Act of 1934: *Provided*, that such information included in a proxy statement or offering circular filed pursuant to Part 563b of this Subchapter shall be reaffirmed in a registration statement under the Securities Exchange Act of 1934 on Form 10 filed with the Board within 180 days of the institution's conversion.

(c) For purposes of this section, the term "forward-looking statement" shall mean and shall be limited to:

(1) A statement containing a projection of revenues, income (loss), earnings (loss) per share, capital expenditures, dividends, capital structure, or other financial items;

(2) A statement of management's plans and objectives for future operations;

(3) A statement of future economic performance contained in management's discussion and analysis of financial condition and results of operations pursuant to Item 303 of Regulation S–K; or

(4) Disclosed statements of the assumptions underlying or relating to any of the statements described in (1), (2), or (3) above.

(d) For purposes of this section, the term "fraudulent statement" shall mean a statement which is an untrue statement of a material fact, a statement false or misleading with respect to any material fact, an omission to state a material fact necessary to make a statement not misleading, or which constitutes the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business, or an artifice to defraud, as those terms are used in the Securities Act of 1933 or the rules or regulations promulgated thereunder.

§ 563d.210 Form and content of financial statements.

The Financial statements required to be contained in filings with the Federal Home Loan Bank Board under the Securities Exchange Act of 1934 are as set out in the applicable form and Regulation S–X, 17 CFR Part 210. Those financial statements, however, shall conform as to form and content to the requirements of § 563c.1 of this Subchapter.

9. A new Subpart B is added to read as follows:

Subpart B—Interpretations

§ 563d.801 Application of this Subpart.

This subpart contains interpretations pertaining to the requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder as applied to insured institutions by the Corporation.

§ 563d.802 Description of business.

(a) This section applies to the description-of-business portion of (1) registration statements filed on Form 10 (Item 1) (17 CFR 249.210), (2) proxy and information statements relating to mergers, consolidations, acquisitions, and similar matters (Item 14 of Schedule 14A and Item 1 of Schedule 14c) (17 CFR 240.14a–101 and 240.14c–101), and (3) annual reports filed on Form 10–K (Item 7) (17 CFR 249.310).

(b) The description of business should conform to the description of business required by Item 7 of Form PS under Part 563b of this Subchapter.

(c) No repetitive disclosure is required by virtue of similar requirements in Item 7 of Form PS and Items 301 and 303 of Regulation S–K (17 CFR 229.301, 303). However, there should be included appropriate disclosure which arises by virtue of the registrant being a stock institution. For example, the table regarding return on equity and assets, Item 7(e)(5), should include a line item for "dividend payout ratio (dividends declared per share divided by net income per share)."

(Secs. 402, 403 and 407 of the National Housing Act, 48 Stat. 1256, 1257 and 1260, as amended, 12 U.S.C. 1725, 1726 and 1730; Sec. 5 of the Home Owners' Loan Act of 1933, 48 Stat. 132, as amended, 12 U.S.C. 1464; Secs. 3(b), 12, 13, 14 and 23 of the Securities Exchange Act of 1934, 48 Stat. 882, 892, 894, 895 and 901, as amended, 15 U.S.C. 78c, l, m, n and w; and Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1071 (1943–48 Comp.))

Dated: June 23, 1983.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 83–18444 Filed 7–8–83; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

Gates Learjet Corp; Aircraft Products and Parts Certification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Issuance of final special conditions No. 25–ANM–2, Gates Learjet Corporation model 55 series airplane.

SUMMARY: These special conditions are issued pursuant to §§ 21.16 and 21.101(b) of the Federal Aviation Regulations (FAR) to Gates Learjet Corporation for an amended type certificate for the Gates Learjet Model 55 series airplane. The Model 55 airplane will have novel or unusual design features associated with an automatic takeoff thrust control system (ATTCS) for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. The ATTCS will allow the airplane to take off with less than maximum takeoff thrust approved for the airplane; and, if an engine fails, the system will automatically provide maximum takeoff thrust on the operating engine. These special conditions contain safety standards which the Administrator finds necessary to establish a level of safety equivalent to that provided by the regulations applicable to the Gates Learjet Model 55 series airplane because of the novel or unusual features.

DATE: These special conditions were issued by Wayne J. Barlow, Acting Director, Northwest Mountain Region, in Seattle, Washington, on June 24, 1983.

How to obtain copies: A copy of these special conditions may be obtained by contacting James Walker, Policy and Procedures Branch, ANM–110, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168; telephone (206) 431–2116.

Issued in Seattle, Washington, on June 24, 1983.

D. L. Riggin,

Manager, Regulations and Policy Office, Northwest Mountain Region.

[FR Doc. 83–18488 Filed 7–8–83; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 83–NM–59–AD; Amdt. 39–4678]

Boeing Model 747 Series Airplanes; Airworthiness Directive

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires modification of certain Collins and Bendix low range radio altimeters (LRRA) installed in certain Boeing

Model 747 series airplanes, except the 747SP. This action is necessary because these altimeters may exhibit an anomalous behavior when operating over wet runways which may result in a hard landing during autopilot coupled operations.

DATE: Effective July 18, 1983.

Compliance as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from: Bendix Corporation, Air Transport Avionics Division, 2150 NW 62nd Street, P.O. Box 9327, Fort Lauderdale, Florida 33310, Attention: Air Transport Order Administration; Collins Air Transport Division/Rockwell International, Cedar Rapids, Iowa 52498; or Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may also be examined at the address listed below.

FOR FURTHER INFORMATION CONTACT: James H. Husband, Systems and Equipment Branch, ANM-130S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, telephone (206) 767-2500. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Certain model radio altimeters manufactured by Collins and Bendix have been found to exhibit anomalous behavior when the aircraft is over the runway threshold and the runway is wet. The phenomenon involved results when the altimeter signal which is reflected back to the aircraft has sufficient energy to be re-reflected from the aircraft to the ground and the radio altimeter accepts it as a valid return signal. The altimeter may then output an altitude value which indicates the airplane is at a higher than actual altitude. On autopilot coupled approaches, this signal tends to produce pitchdown commands since the autopilot believes the aircraft is above the intended path. This potentially results in a hard landing onto a wet runway.

The problem has been observed on the 747-long bodies during flight testing. However, flight testing has shown that the anomaly does not occur on the 747SP. The following factors contribute to the occurrence of this situation:

1. Wet runways (to increase the coefficient of reflectivity from the runway).

2. Large reflective surface area under the aircraft where the radio altimeter antennas are mounted which provides low loss reflector to re-radiate reflected energy back to the runway.

3. Radio altimeter transmit and receive antenna location on the aircraft.

4. Radio altimeter receiver design.

5. Autopilot control law that uses radio altitude during the flare maneuver.

The affected radio altimeters (Collins 860F-4, P/N 622-3890-0XX and Bendix ALA 51A, P/N 2067631-05XX or -51XX) can be modified by a minor circuit modification to correct the problem. Service bulletins exist from each vendor to perform the modification. The modified radio altimeters are identified by part number changes (Collins becomes 622-3890-1XX and Bendix becomes 2067631-53XX). Applicable Boeing service bulletins are 747-34A2225 (Collins LRRA) and 747-34A2226 (Bendix LRRA).

Since a situation exists which requires the immediate adoption of this regulation to prevent hard landings and possible damage to the 747 airplane, it is found that notice and public procedure hereon are practicable and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of Amendment

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

Boeing: Applies to all model 747 airplanes, except the 747SP, certificated in all categories equipped with either the Landing Control Logic Unit (LCLU) or Landing Rollout Control Unit (LRCU) automatic landing systems and either Collins Low Range Radio Altimeter (LRRA), Model 860F-4, or Bendix Low Range Radio Altimeter, Model ALA 51A. To prevent hard landing due to false altitude information from the LRRA to the autopilot, accomplish the following, unless already accomplished:

A. Within 15 days after the effective date of this AD, install a placard on the autopilot P10 mode control panel which reads as follows: "DO NOT USE AUTOPILOT BELOW 50 FT. ON WET RUNWAYS." The placard may be removed when either paragraph B, C, or D below is accomplished.

B. Remove Collins Model 860F-4 LRRA (P/N 622-3890-0XX), if installed, and perform Collins Service Bulletin 860F-4, Service Bulletin #8. Modified units become P/N 622-3890-1XX. Install modified, or production equivalents, according to the Boeing Service Bulletin 747-34A2225.

C. Remove Bendix Series ALA 51A LRRA (P/N 2067631-05XX or -51XX), if installed, and perform Bendix Service Bulletin M-1632-(ALA-51A-34-56). Modified units become P/N 2067631-53XX. Install modified, or production equivalents, according to Boeing Service Bulletin 747-34A2226.

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.

All persons affected by this proposal who have not already received the Service Bulletins may obtain copies upon request to Boeing, Collins Air Transport Division, or Bendix Corporation as appropriate. These documents may also be examined at the FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective July 18, 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 regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the person identified above under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Seattle, Washington on June 27, 1983.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 83-18462 Filed 7-7-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 82-NM-117-AD; Amdt. 39-4677]

Airworthiness Directives: Short Brothers Limited Model SD3-30 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to certain Short Brothers Limited Model SD3-30 airplanes which requires inspection and modification of the fuel lines and their protective shrouds. Leaks in fuel lines resulting in fuel vapor leaks into the passenger compartment have

been reported in several cases. These conditions create a fire hazard.

DATES: Effective August 11, 1983.

ADDRESSES: The service bulletins specified in this AD may be obtained upon request to Shorts Aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202 or may also 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: The Civil Aviation Authority of the United Kingdom (CAA) has classified Short Brothers Limited Service Bulletins SD3-53-47, Revision 2; SD3-28-17; and SD3-28-16, Revision 1 as mandatory. A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring inspections, modifications and replacements, as necessary, of certain fuel lines and fuel line shrouds was published in the **Federal Register** on February 22, 1983 (48 FR 7465). The comment period closed April 11, 1983. Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received.

One comment was received stating that since the Short Brothers Limited service bulletins are classified mandatory, there is no reason for the FAA to issue an AD; also, there is a Revision 2 of Service Bulletin SD3-53-47. The FAA disagrees. The Short Brothers Limited service bulletin's requirements are mandatory only for aircraft registered in the United Kingdom. An AD is necessary to mandate the operators of U.S. registered aircraft to comply with the required actions. The later service bulletin revision, which adds an optional modification, is incorporated in the AD.

It is estimated that 50 U.S. registered airplanes will be affected by this AD, that it takes approximately 186 manhours per airplane to accomplish the required actions, and that the average labor cost is $35 per manhour. Repair parts are estimated at $450 per airplane. Based on these figures, the total cost impact of this AD to the U.S. operators is estimated to be $348,000. For these reasons, 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 will be affected by this action.

Therefore, after reviewing the available data, including the above comment, the FAA has determined that air safety and the public interest require the adoption of the proposed rule with the change noted.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Section 39.13 of Part 39 of the Federal Aviation Regulations [14 CFR 39.13] is amended by adding the following new Airworthiness Directive:

Short Brothers Limited: Applies to all models of the SD3-30 airplane, certificated in all categories, with the serial numbers specified below. To prevent a potential fuel fire hazard, accomplish the following within the next 60 days after the effective date of this AD, unless already accomplished.

A. For aircraft serial numbers SH3002 to SH3091 inclusive, modify the fuel vapor exhaust ducting in accordance with paragraph 2, Accomplishment Instructions, of Shorts Service Bulletin No. SD3-53-47, Revision 2, dated February 4, 1983.

B. For aircraft serial numbers SH3002 to SH3089 inclusive, replace the existing flexible vapor proof shrouds covering fuel lines in the passenger compartment in accordance with paragraph 2, Accomplishment Instructions, of Shorts Service Bulletin No. SD3-28-17, dated October 5, 1982.

Note.—The actions of paragraph A must be accomplished before performing the requirements of paragraph B.

C. For aircraft with serial numbers specified in paragraph 1, Planning Information, of Shorts Service Bulletin No. SD3-28-16, Revision 1, dated September 30, 1982, inspect, replace components if necessary, and pressure check the fuel lines as required in accordance with paragraph 2, Accomplishment Instructions, of the service bulletin.

Note.—The actions of paragraphs A. and B. must be accomplished before performing the requirements of paragraph C.

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.

This amendment becomes effective August 11, 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.—For the reasons discussed earlier in the preamble, 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. 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 27, 1983.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 83-18470 Filed 7-7-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 83-NM-58-AD; Amdt. 39-4679

McDonnell Douglas Model DC-10-15, DC-10-30, and Military KC-10A Series Airplanes; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain McDonnell Douglas Model DC-10 (Atlas Configuration) and Military KC-10A series airplanes, which requires rework of the electrical wiring associated with the flight interphone system. There have been reports of a single failure causing loss of all air-to-ground communication systems. This AD is needed to prevent the reoccurrence of these failures.

DATES: Effective July 18, 1983. Compliance schedule required within the next 30 days after the effective date of this AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from: McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Eugene F. Huettner, Aerospace Engineer, Systems & Equipment Branch, ANM-130L, FAA, Northwest Mountain

Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808, telephone (213) 548-2831.

SUPPLEMENTARY INFORMATION: One operator reported two incidents in which all voice transmission communication capability between flight crew and ground was lost due to the inability of the flight crew to transmit on HF, VHF, UHF radios, and on the flight interphone. The problem is caused by the use of a common (single) ground point for all microphone returns which can become loose or break.

Providing separate electrical ground points for each communication system in accordance with the Accomplishment Instructions in McDonnell Douglas DC-10 Service Bulletin 23-46, dated May 12, 1983, will minimize the potential for a complete loss of voice communication transmission capability from airplane to ground.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires modification of the service and flight interphone audio system wiring to provide for two electrical ground points instead of one.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Lists of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

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 adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas DC-10-15, DC-10-30, and all KC-10A (military) airplanes, fuselage numbers 75 through 337, 341 through 345, and 352 through 378, certificated in all categories. Compliance required within 30 days from the effective date of this AD, unless already accomplished.

To prevent loss of communication transmission capability from airplane to ground, accomplish the following:

A. Modify the service and flight interphone audio system wiring in accordance with the Accomplishment Instructions in McDonnell Douglas DC-10 Service Bulletin No. 23-46, dated May 12, 1983, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. 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 modifications required by this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

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.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Seattle, Washington on June 27, 1983.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 83-18464 Filed 7-8-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 82-AGL-11]

Designation of Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action is to correct the description of the Grand Rapids, Minnesota, control zone. A final rule was published in the **Federal Register** dated April 21, 1983 (48 FR 17063), to establish a new part-time control zone at Grand Rapids, Minnesota. When the control zone was initially defined, a portion of the description was inadvertently omitted. The purpose of this amendment is to correct the published final rule. Since this action is editorial in nature, further notice and public procedure are not necessary. The effective date of this correction coincides with that of the original amendment. The complete description of the new control zone is presented in the text of this amendment.

EFFECTIVE DATE: June 9, 1983.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: List of subjects in 14 CFR Part 71, Aviation Safety, Control Zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is further amended, effective 0901 G.m.t., June 9, 1983, as follows:

Grand Rapids, MN

Within a 5-mile radius of the Grand Rapids-Itasca County Airport (latitude 47°12'45" N., longitude 93°31'00" W.). The control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

(Secs. 313(a), 314(a), 601 through 610, and 1102, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983.)

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. Therefore, it is certified that this—(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 Des Plaines, Illinois, on June 20, 1983.

Paul K. Bohr,

Director, Great Lakes Region.

[FR Doc. 83-16480 Filed 7-7-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 23684; Amdt. No.1246]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATE: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Information Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures and Airspace Branch (AFO-730), Aircraft Programs Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4 and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, or contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. By amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN SIAPs identified as follows:

* * * *Effective September 1, 1983*

Shreveport, LA—Shreveport Downtown, VOR Rwy 14, Amdt. 11

* * * *Effective August 18, 1983*

Fort Smith, AR—Fort Smith Muni, VOR or TACAN Rwy 25, Amdt. 18
Fort Smith, AR—Fort Smith Muni, VOR/DME or TACAN Rwy 7, Amdt. 8
Madera, CA—Madera Muni, VOR Rwy 30, Amdt. 2
Fort Myers, FL—Southwest Florida Regl, VOR Rwy 24, Original
Winter Haven, FL—Winter Haven's Gilbert VOR/DME-A, Amdt. 3
Goshen, IN—Goshen Muni, VOR Rwy 27, Amdt. 3
Goshen, IN—Goshen Muni, VOR Rwy 9, Amdt. 9
Lake Charles, LA—Lake Charles Muni, VOR-A, Amdt. 10
Lake Charles, LA—Lake Charles Muni, VOR/DME-B, Amdt. 5
Ionia, MI—Ionia County, VOR Rwy 27, Amdt. 5
Oneonta, NY—Oneonta Muni, VOR Rwy 6, Amdt. 4
Saranac Lake, NY—Adirondack, VOR Rwys 5 & 9, Amdt. 10
Greensboro, NC—May, VOR/DME-A, Original
Cleveland, OH—Cuyahoga County, VOR-A, Original
Cleveland, OH—Cuyahoga County, VOR Rwy 23, Amdt. 3, Cancelled
Ponca City, OK—Ponca City Muni, VOR-A, Amdt. 7
Charleston, SC—Charleston Executive, VOR A, Amdt. 5
Dillon, SC—Dillon County, VOR-DME Rwy 6, Amdt. 3
Manning, SC—Clarendon County, VOR/DME-A, Amdt. 3

Manning, SC—Clarendon County, VOR-B, Amdt. 4, Cancelled
Clarksville, TN—Outlaw Field, VOR Rwy 34, Amdt. 12
Austin, TX—Tims Airpark, VOR/DME Rwy 18, Amdt. 1
Laredo, TX—Laredo Intl, VOR/DME or TACAN Rwy 14, Amdt. 3
Laredo, TX—Laredo Intl, VOR OR TACAN Rwy 32, Amdt. 3

** * * Effective June 24, 1983*

Russell, KS—Russell Muni, VOR/DME-A, Amdt. 3

2. By amending § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, and SDF/DME SIAPs identified as follows:

** * * Effective September 1, 1983*

Shreveport, LA—Shreveport Downtown, LOC Rwy 14, Amdt. 1

** * * Effective August 18, 1983*

Fort Smith, AR—Fort Smith Muni, LOC BC Rwy 7, Amdt. 7
South Lake Tahoe, CA—Lake Tahoe, LDA/DME Rwy 18, Original
Goshen, IN—Goshen Muni, LOC Rwy 27, Amdt. 1
Garden City, KS—Garden City Muni, LOC Rwy 35, Amdt. 1
Lake Charles, LA—Lake Charles Muni, LOC BC Rwy 33, Amdt. 13
Farmingdale, NY—Republic, LOC BC Rwy 32, Amdt. 4
Ponca City, OK—Ponca City Muni, LOC Rwy 17, Amdt. 1
Philadelphia, PA—Northeast Philadelphia, LOC BC Rwy 6, Amdt. 5
Clarksville, TN—Outlaw Field, LOC Rwy 34, Amdt. 3
Tyler, TX—Tyler Pounds Field, LOC BC Rwy 31, Amdt. 15

3. By amending § 97.27 NDB and NDB/DME SIAPs identified as follows:

** * * Effective August 18, 1983*

Fort Smith AR—Fort Smith Muni, NDB Rwy 7, Amdt. 6
Fort Smith, AR—Fort Smith Muni, NDB Rwy 25, Amdt. 23
Tucson, AZ—Ryan Field, NDB-D, Original
Tucson, AZ—Tucson Intl, NDB-C, Amdt. 2, Cancelled
Vinton, IA—Vinton Veterans Meml Arpk, NDB Rwy 16, Amdt. 2
Vinton, IA—Vinton Veterans Meml Arpk, NDB Rwy 27, Original
Garden City, KS—Garden City Muni, NDB Rwy 12, Amdt. 8, Cancelled
Lake Charles, LA—Lake Charles Muni, NDB Rwy 15, Amdt. 16
Worcester, MA—Worcester Muni, NDB Rwy 11, Amdt. 15
Worcester, MA—Worcester Muni, NDB Rwy 29, Amdt. 7
Potsdam, NY—Potsdam Muni/Damon Fld, NDB Rwy 24, Amdt. 2
Wadesboro, NC—Anson County, NDB Rwy 16, Original
Wilson, NC—Wilson Muni, NDB Rwy 3 Amdt. 2
Bellefontaine, OH—Bellefontaine Muni, NDB Rwy 22, Amdt. 3
Ponca City, OK—Ponca City Muni, NDB Rwy 17, Amdt. 2
Ponca City, OK—Ponca City Muni, NDB Rwy 35, Amdt. 1
Bradford, PA—Bradford Regional, NDB Rwy 32, Amdt. 13
Dillon, SC—Dillon County, NDB Rwy 6, Amdt. 2
Rock Hill, SC—Bryant Field, NDB-C, Original
Chattanooga, TN—Lovell Field, NDB Rwy 20, Amdt. 27
Clarksville, TN—Outlaw Field, NDB Rwy 34, Amdt. 3
Laredo, TX—Laredo Intl, NDB Rwy 17L, Original, Cancelled
Laredo, TX—Laredo Intl, NDB Rwy 17C, Amdt. 4
Tyler, TX—Tyler Pounds Field, NDB Rwy 13, Amdt. 13
Abingdon, VA—Virginia Highlands, NDB-A, Amdt. 1, Cancelled

4. By amending § 97.29 ILS ILS/DME, ISMLS, MLS, MLS/DME and MLS/RNAV SIAPs identified as follows:

** * * Effective August 18, 1983*

Fort Smith, AR—Fort Smith Muni, ILS Rwy 25, Amdt. 18
Lake Charles, LA—Lake Charles Muni, ILS Rwy 15, Amdt. 16
Worcester, MA—Worcester Muni, ILS Rwy 11, Amdt. 15
Philadelphia, PA—Northeast Philadelphia, ILS Rwy 24, Amdt. 9
Chattanooga, TN—Lovell Field, ILS Rwy 20, Amdt. 32
Laredo, TX—Laredo Intl, ILS Rwy 17C, Amdt. 5
Tyler, TX—Tyler Pounds Field, ILS Rwy 13, Amdt. 15

5. By amending § 97.31 RADAR SIAPs identified as follows:

** * * Effective August 18, 1983*

Fort Smith, AR—Fort Smith Muni, RADAR-1, Amdt. 5
Lake Charles, LA—Lake Charles Muni, RADAR-1, Amdt. 2
White Plains, NY—Westchester County, RADAR-1, Amdt. 3

6. By amending § 97.33 RNAV SIAPs identified as follows:

** * * Effective August 18, 1983*

Lake Charles, LA—Lake Charles Muni, RNAV Rwy 5, Amdt. 1
Lake Charles, LA—Lake Charles Muni, RNAV Rwy 23, Amdt. 1
Bellefontaine, OH—Bellefontaine Muni, RNAV Rwy 22, Amdt. 2
Ponca City, OK—Ponca City Muni, RNAV Rwy 35, Amdt. 1

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.49(b)(3))

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 warrent preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C. on July 8, 1983.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

John M. Howard,

Manager, Aircraft Programs Division.

[FR Doc. 83-18403 Filed 7-8-83; 8:45 am]

BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

14 CFR Part 222

[Reg. ER-1348; Economic Regulations; Amdt. No. 1 to Part 222]

Intermodal Cargo Services by Foreign Air Carriers

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This final rule gives notice that the Office of Management and Budget (OMB) has approved the extension of CAB Form 222, "Foreign Air Carrier Application for Statement of Authorization for Intermodal Cargo Services," filed pursuant to Part 222 of the Board's Economic Regulations (ER-1228, 46 FR 32552, June 24, 1981). This approval has been extended through June 30, 1986. OMB approval is required under the Paperwork Reduction Act of 1980.

DATES: Adopted: July 5, 1983. Effective: June 15, 1983.

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

List of Subjects in Part 222

Air transportation-foreign, Freight, and Intemodal transportation.

PART 222—[AMENDED]

Accordingly, the Civil Aeronautics Board amends Part 222 of its Economic Regulations (14 CFR Part 222) by adding a note at the end of the table of contents to Part 222 to read:

Note.—The application requirements contained in § 222.3 have been approved by the Office of Management and Budget under number 3024-0045.

This amendment is issued by the undersigned pursuant to delegation of authority from the Board to the Secretary in 14 CFR 385.24(b). (Sec. 204 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324).

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-18612 Filed 7-8-83; 8:45 am]

BILLING CODE 6320-0-M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 2

[Docket No. 30630-119]

Procedures for Handling and Settlement of Claims Under the Federal Tort Claims Act

AGENCY: Office of the Secretary, Commerce.

ACTION: Final rule.

SUMMARY: This rule will revise and update the regulations for handling claims under the Federal Tort Claims Act. The revision reflects a change of responsibility for the subject matter from the Assistant Secretary for Administration to the General Counsel.

EFFECTIVE DATE: July 11, 1983.

FOR FURTHER INFORMATION CONTACT: Christina M. Gattuso, Office of the Assistant General Counsel for Administration, Office of the General Counsel, United States Department of Commerce, Washington, D.C. 20230, (202) 377-0386.

SUPPLEMENTARY INFORMATION: This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect thereto are impractical and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after publication in the **Federal Register.** Since this rule, which relates to agency organization and management, is not a major rule as defined in Executive Order No. 12291, it has not been submitted to the Director of the Office of Management and the Budget. This rule does not fall within the provisions of the Regulatory Flexibility Act, nor will it create any information collection burdens on the public because of its subject matter, so as to be governed by the Paperwork Reduction Act.

List of Subjects in 15 CFR Part 2

Federal Tort Claims Act.

Irving P. Margulies,

Deputy General Counsel.

PART 2—[AMENDED]

Accordingly, Part 2, Title 15, Code of Federal Regulations, is amended as follows:

§ 2.1 [Amended]

1. In § 2.1, paragraph (b) is removed.

2. Section 2.3 is revised to read as follows:

§ 2.3 Delegation of authority.

(a) The General Counsel is hereby named as the designee of the Secretary of Commerce with respect to tort claims filed under Section 2672 of Title 28, U.S. Code, as described in § 2.2, with authority to act on such claims as provided in said section 2672, including denial thereof.

(b) Authority delegated under this section may, with the approval of the General Counsel, be redelegated to other designees.

(c) Settlement or denial of any claim under this part is final for the Department of Commerce.

§ 2.4 [Amended]

3. Section 2.4 (b) and (c) are amended by removing the words "Assistant Secretary for Administration" and inserting, in their place, the words "Assistant General Counsel for Administration."

4. Section 2.5 is amended by revising paragraphs (a) and (b) as follows:

§ 2.5 Adjudication and settlement of claims.

(a) Upon receipt of a claim by the Assistant General Counsel for Administration, the time and date of receipt shall be recorded. The Assistant General Counsel may, after recording the claim, transmit it to the Departmental office or primary operating unit involved in the claim and request that an investigation be conducted. The appropriate Departmental office or primary operating unit shall designate an official to conduct the investigation, who shall prepare a file, obtain additional information as necessary, and prepare for the Assistant General Counsel's signature a proposed award or denial of the claim. If the investigation capabilities of the office or unit are insufficient for a proper and complete investigation, the office or unit shall consult with the Departmental Office of Investigations and Security to: (1) Have that Office conduct the investigation or (2) request another Federal agency to conduct the investigation as necessary, pursuant to § 14.8 of the Regulations (28 CFR Part 14), all on a reimbursable basis.

(b) If the amount of the proposed award exceeds $25,000 (in which case, approval by the Attorney General is required), or if consultation with the Department of Justice is desired or required pursuant to § 14.6 of the Regulations, the Assistant General Counsel for Administration will prepare and compile the material required by the Department of Justice under § 14.7 of the Regulations.

* * * * *

5. Section 2.7 is revised to read as follows:

§ 2.7 Annual Report.

The Assistant General Counsel for Administration shall compile an annual report covering the preceding fiscal year, describing actions, including denials, taken under this part, name of claimant, amount claimed, amount of any award, and a brief description of the claim. The report shall be prepared by November 15 of each year.

§ 2.8 [Amended]

6. Section 2.8(a) is amended by removing the words "Assistant Secretary for Administration" and inserting, in their place, the words "Assistant General Counsel for Administration."

7. Section 2.8(b) is amended by removing the words "Assistant Secretary for Administration and the General Counsel" and inserting, in their place, the words "Assistant General Counsel for Administration."

APPENDIX A—[REMOVED]

8. Appendix A is removed.

[FR Doc. 83-18576 Filed 7-8-83; 8:45 am]

BILLING CODE 3510-BW-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 720

Appraisal Function; Reimbursement

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The purpose of the amendment is to increase the minimum allowable payment for the acquisition of a parcel from $100 to $500 to reflect inflation and increased property values. This change is intended to reduce the administrative burden on the States.

EFFECTIVE DATE: July 11, 1983.

FOR FURTHER INFORMATION CONTACT: Richard Moeller, Real Estate Division, Office of Right-of-Way (202-426-0142).

or Virginia Cherwek, Office of the Chief Counsel (202–426–0791), Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours: Monday–Friday from 7:45 a.m. to 4:15 p.m. ET.

SUPPLEMENTARY INFORMATION: Paragraph (d)(2) of 23 CFR 720.201 provides that States may prescribe a minimum payment for the acquisition of a parcel even though the approved appraisal estimate of just compensation reflects an amount less than the prescribed minimum, or even a zero amount. The current maximum amount for a minimum payment is $100.

In recent years inflation and rapidly rising real estate values have effectively eliminated utilization of the minimum payment provision. Further, increasing State activity in the upgrading and maintenance of existing roadways, as opposed to the creation of new highways, will result in the necessity to acquire a great number of smaller parcels, many of which could more easily be acquired if the minimum payment were raised to $500.

The increase from $100 to $500 for a minimum payment recognizes inflation, increased property values and the drastic changes in the economic environment which have occurred since the $100 limit was established in 1973. An increase to $500 would increase program efficiency and reduce "redtape" burdens on the States by allowing them to expedite small acquisitions.

The FHWA had determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under DOT regulatory policies and procedures. The FHWA has also determined that the changes will have only minimal impact on the affected States and the public. Accordingly, a full regulatory evaluation is not required, and for the foregoing reasons and under the criteria of the Regulatory Flexibility Act it is certified that this action will not have a significant economic impact on a substantial number of small entities.

Since the change being adopted in this document is administrative in nature and makes no substantive changes in the regulations, the FHWA finds good cause to make this amendment final without prior notice and opportunity for comment and without a 30-day delay in effective date required by the Administrative Procedure Act. Notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action would result in the receipt of useful information.

List of Subjects in 23 CFR Part 720

Appraisal of real property, Government contracts, Grant programs—transportation, Highways and roads, Rights-of-way—appraisal.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The procedures provided in OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program)

Issued on: June 29, 1983.

Ray A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

PART 720—[AMENDED]

In consideration of the foregoing, Part 720, Subpart B of Chapter 1 of Title 23, Code of Federal Regulations, is amended as set forth below:

In § 720.201, paragraph (d)(2) is revised to read as follows:

§ 720.201 Appraisal and specialty reports.

* * * * *

(d) * * *

(2) Where the State prescribes a minimum payment, not to exceed $500, for the acquisition of a parcel, although the approved appraisal estimate of just compensation reflects a lesser or even a zero consideration, Federal participation shall be allowed if such payment is otherwise eligible.

(23 U.S.C. 315; 42 U.S.C. 4633; 23 CFR 1.32)

[FR Doc. 83-18467 Filed 7-8-83; 8:45 am]

BILLING CODE 4910-22-M

Coast Guard

33 CFR Part 157

[CGD 83-019b]

Disestablishment of Merchant Marine Technical Branch; Ninth Coast Guard District, Cleveland, Ohio

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: The U.S. Coast Guard is disestablishing the Merchant Marine Technical Branch of the Ninth Coast Guard District in Cleveland, Ohio. As of July 1, 1983, the plan review duties for the geographical area served by the Ninth Coast Guard District will be assumed by the Merchant Marine Technical Branch, Third Coast Guard District, New York, New York. This reorganization is necessary to increase the overall efficiency, quality and consistency of plan review. This document makes the necessary changes in plan submittal procedures and updates the mailing addresses for each of the field merchant marine technical offices.

EFFECTIVE DATE: July 1, 1983.

FOR FURTHER INFORMATION CONTACT: LT Randall R. Fiebrandt, Marine Technical and Hazardous Materials Division, [G–MTH–4/13], Room 1304, Coast Guard Headquarters, 2100 Second St., SW., Washington, D.C. 20593 [202–426–2197].

SUPPLEMENTARY INFORMATION: The Coast Guard has completed an evaluation of its Merchant Marine Technical Branch field organization, taking into account many factors including personnel considerations and system efficiency. As a result, the Commandant concluded that a consolidation of the Merchant Marine Technical Branches of the Third and Ninth Coast Guard Districts was necessary for improved overall plan review efficiency, quality and consistency. Accordingly, the workload previously assigned to the Ninth District's Merchant Marine Technical Branch will be reassigned to the Third Coast Guard District Technical office.

Shipyards, designers and other businesses and persons within the geographical area of the Ninth Coast Guard District who are directly affected by this action have been informed of the consolidation by letter from the Commander, Ninth Coast Guard District (mmt).

The purpose of this notice is to provide the revised plan submittal procedure and to update mailing addresses for each of the district merchant marine technical offices.

This rule has been evaluated under Executive Order 12291 and DOT Order 2100.5 and has been determined to be non-major and non-significant. This rule reflects a change in agency organization with no economic impact upon the public. Notice of proposed rulemaking and opportunity for public comment are not required by 5 U.S.C. 553, and this rule may be effective less than 30 days after its publication date. Since no economic impact is expected, an economic evaluation has not been conducted.

In accordance with Section 605(b) of the Regulatory Flexibility Act (30 Stat. 1164), it is certified that these regulations will not have a significant economic impact on a substantial number of small entities for the reasons stated above.

Drafting Information

The principal persons involved in drafting this document are LT Randall R. Fiebrandt, Project Manager, Office of Merchant Marine Safety, and LT Mark Hanlon, Project Attorney, Office of Chief Counsel.

List of Subjects in 33 CFR Part 157

Environmental protection, Oil pollution, Tank vessels, Water pollution control, Cargo vessels.

In consideration of the foregoing, Chapter I of Title 33, Code of Federal Regulations, is amended as follows:

PART 157—RULES FOR THE PROTECTION OF THE MARINE ENVIRONMENT RELATING TO TANK VESSELS CARRYING OIL IN BULK

1. In § 157.100 by removing and reserving paragraph (b)(4) and revising paragraphs (b)(1), (b)(3), and (b)(5) to read as follows:

§ 157.100 Plans for U.S. tank vessels: Submission.

* * * * *

(b) * * *

(1) Commander, 3rd Coast Guard District (mmt), Governors Island, New York, N.Y. 10004, if the COW system is installed in the area under the 1st, 3rd, 5th or 9th Coast Guard Districts.

(2) * * *

(3) Commander, 8th Coast Guard District (mmt), F. Edward Hebert Building, Room 845, 600 South St., New Orleans, LA 70130, if the COW system is installed in the area under the 2nd, 7th or 8th Coast Guard Districts.

(4) [Reserved]

(5) Commander, 12th Coast Guard District (mmt), Government Island, Building 51, Alameda, CA 94501, if the COW system is installed in the area under the 11th, 12th, 13th, 14th, or 17th Coast Guard Districts.

2. In § 157.200, by removing and reserving paragraph (b)(4) and revising paragraphs (b)(1), (b)(3), and (b)(5) to read as follows:

§ 157.200 Plans for U.S. tank vessels: Submission.

* * * * *

(b) * * *

(1) Commander, 3rd Coast Guard District (mmt), Governors Island, New York, N.Y. 10004, if the dedicated clean ballast tank system is installed in the area under the 1st, 3rd, 5th or 9th Coast Guard Districts.

(2) * * *

(3) Commander, 8th Coast Guard District (mmt), F. Edward Hebert Building, Room 845, 600 South St., New Orleans, LA 70130, if the dedicated clean ballast tank system is installed in the area under the 2nd, 7th or 8th Coast Guard Districts.

(4) [Reserved]

(5) Commander, 12th Coast Guard District (mmt), Government Island, Building 51, Alameda, CA 94501, if the dedicated clean ballast tank system is installed in the area under the 11th, 12th, 13th, 14th, or 17th Coast Guard Districts.

* * * * *

(46 U.S.C. 391a, 49 U.S.C. 1655(b), 49 CFR 1.46(n)(4))

Dated: June 30, 1983.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 83-18512 Filed 7-8-83; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-3-FRL 2396-5]

Full Delegation of Authority for the Prevention of Significant Deterioration of Air Quality; Pennsylvania

AGENCY: Environmental Protection Agency.

ACTION: Rule related notice.

SUMMARY: Section 301 in conjunction with Sections 101 and 110 of the Clean Air Act Amendments of 1977 authorizes the Administrator to delegate his authority to implement and enforce the Prevention of Significant Deterioration of Air Quality (PSD) regulations to any State which has submitted adequate implementation and enforcement procedures. The City of Philadelphia, Pennsylvania submitted to the EPA Region III office a request that EPA delegate to them its responsibility for implementing and enforcing the PSD program. After a thorough review of the request and available information, the Regional Administrator determined that such delegation is appropriate with the conditions set forth in the letter reproduced below.

The rule published elsewhere in this issue of the **Federal Register** institutes an address change for the implementation of the technical and administrative review and enforcement of the PSD provisions.

EFFECTIVE DATE: July 11, 1983.

ADDRESSES: Copies of the delegation of authority request and accompanying support documents are available for inspection during normal business hours at the following offices:

U.S Environmental Protection Agency, Region III, Curtis Building, Second Floor, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106, Attn: Vernon Butler (3AW11), (215) 597-3697 or FTS 597-3697

Philadelphia Department of Public Health, Air Management Services, 500 S. Broad Street, Philadelphia, PA 19112, Attn: William Reilly.

FOR FURTHER INFORMATION CONTACT: Vernon Butler at the address indicated above, (215) 597-3697.

SUPPLEMENTARY INFORMATION: The Regional Administrator finds good cause for making this delegation of authority effective immediately in that it is an administrative change and not one of substantive content. On July 11, 1979, EPA Region III received a letter from the City of Philadelphia, Pennsylvania which requested full delegation of authority for the implementation and enforcement of the PSD program. After a thorough review of the request for full PSD program delegation, the Regional Administrator has determined that such delegation is appropriate subject to the conditions set forth in the following official letter to the City of Philadelphia, Pennsylvania. Therefore, pursuant to the authority delegated to him by the Administrator, on April 20, 1983, the Regional Administrator formally notified the City of Philadelphia by the following letter that he delegates full PSD regulatory authority to the City of Philadelphia, Pennsylvania as of the publication date of this notice. The Regional Administrator finds good cause for making this delegation of authority effective immediately in that it is an administrative change and not one of substantive content.

Stuart H. Shapiro, M.D., M.P.H.,
Health Commissioner, Department of Public Health, Room 540, Municipal Services Building, Philadelphia, Penna. 19107

Dear Dr. Shapiro: Thank you for your request for delegation of authority to implement the Prevention of Significant Air Quality Deterioration (PSD) regulations. The intent of the request and the following delegation is to reduce duplicate PSD permit reviews by our respective agencies and to provide prospective applicants with only one agency to deal with in obtaining a construction permit.

We have reviewed the pertinent laws of the City of Philadelphia and the rules and regulations thereof and have determined that they provide an adequate and effective procedure for full implementation of PSD.

We have also reviewed the procedures for new source review of the City of Philadelphia and have determined that they provide an adequate and effective procedure for the implementation of all the portions of the PSD program. Therefore, pursuant to 40 CFR 52.21(u), we hereby delegate our authority for

all portions of the Federal PSD program, as described in 40 CFR 52.21, as amended August 7, 1980, to the City of Philadelphia as follows:

1. Authority is delegated for all sources located in the City of Philadelphia subject to review for the Prevention of Significant Air Quality Deterioration. This includes all source categories listed in 40 CFR 52.21 for each pollutant regulated by the Clean Air Act.

2. If at any time there is a conflict between a City regulation and a Federal regulation, the Federal regulation must be applied if it is more stringent than that of the City. If the City does not have the authority to implement a Federal regulation that is more stringent than the applicable City regulation, the pertinent portion of the authority may be revoked.

3. In processing applications for PSD permits pursuant to 40 CFR 52.21, the City shall follow all procedural requirements which the Administrator would be required to follow in processing such applications, whether these procedural requirements are set forth in full in 40 CFR 52.21 or only referenced there.

4. If the Regional Administrator determined that the City's procedure for implementing all the portions of the PSD program is inadequate, or is not being effectively carried out, this authority may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the Air Management Services (hereafter the "AMS").

5. The City of Philadelphia will ensure through its interstate intergovernmental cooperation procedures, that all potential source interactions along City boundaries are properly determined.

6. Enforcement of PSD in the City of Philadelphia will be the primary responsibility of the AMS. If the City determines that such enforcement is not feasible and so notifies EPA, or where the City acts in a manner inconsistent with the terms of this granted authority, EPA will exercise its concurrent enforcement authority pursuant to Sections 113 and 167 of the Clean Air Act with respect to sources within the City of Philadelphia subject to PSD requirements. In accordance with 40 CFR 52.21(r) and Sections 113 and 167 of the Clean Air Act, 42 U.S.C. 7413 and 7477, EPA reserves the right to commence an enforcement action against any entity in violation of the Prevention of Significant Air Quality Deterioration Regulations should the City of Philadelphia fail to take such an enforcement action or, in the opinion of EPA, fail to pursue a timely or appropriate enforcement action.

7. Acceptance of this delegation of presently promulgated PSD regulations does not commit the City of Philadelphia to request or implement enforcement authority for future standards and requirements.

8. The City and EPA will develop a system of communication sufficient to guarantee a program that includes the items described below:

a. Each agency is informed of the current compliance status of subject sources in the City of Philadelphia, PA.

b. The AMS shall send a copy of preliminary determinations and public comment notices required under paragraph (q) of 40 CFR 52.21 to the Air and Waste Management Division, EPA Region III, at the same time the notice is being forwarded for publication in the newspaper.

c. The AMS will forward to EPA Region III copies of the final PSD permit at the time of issuance.

d. The status of incomplete permit applications will be provided to EPA Region III on an as needed basis.

9. Prior EPA concurrence is to be obtained on any matter involving the interpretation of sections 160–169 of the Clean Air Act or 40 CFR 52.21 to the extent that implementation, review, administration, or enforcement of these sections have not been covered by determinations or guidance sent to the AMS.

10. Where it is the convenience to both the AMS and EPA and a benefit to the applicant, any PSD reviews already initiated by EPA prior to this delegation shall be transferred to the AMS for completion.

11. Enforcement actions already initiated by EPA prior to this delegation of authority shall be completed by EPA.

12. A notice announcing these actions will be published in the **Federal Register** in the near future. This delegation of authority shall be effective as of the publication date of that notice. The notice will also state, among other things, that effective immediately, all reports required pursuant to the PSD regulations by sources located in the City of Philadelphia will be reviewed and final permit approval action and enforcement will be taken by the AMS.

13. This delegation will supersede the memorandum of understanding (MOU) which provided cooperative procedures for reviewing permit applications from certain air pollution sources subject to PSD regulations.

This delegation of authority should not be construed as a transfer of PSD responsibility under Section 110(a)(2)(J) of the Clean Air Act. As you are aware, such a transfer involves different procedures and considerations.

There is no requirement that the City notify EPA of its acceptance. Unless EPA receives from the City written notice of objections within 10 days of the date received of this letter, the State will be deemed to have accepted all of the terms as stated herein.

Sincerely yours,

Peter N. Bibko,

Regional Administrator.

Conclusion

The amendment below directs Prevention of Significant Air Quality Deterioration (PSD) permit applicants locating in the City of Philadelphia, Pennsylvania to submit their applications to the City of Philadelphia rather than EPA. This change is required since EPA has delegated PSD authority to the City. The notice announcing the Delegation of Authority is published elsewhere in this issue of the **Federal Register.**

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

Effective immediately, all applications and other information pursuant to § 51.21 from sources locating in the City of Philadelphia, Pennsylvania but not having a PSD permit application currently under review by EPA should be submitted to the City agency at the following address: City of Philadelphia, Department of Public Health, Air Management Services, 500 S. Broad Street, Philadelphia, PA 19112, Attn: William Reilly.

List of Subjects in 40 CFR Part 52

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

Authority: (42 U.S.C. 7401, 7410 and 7470–79).

Note.—Incorporation by reference of the State Implementation Plan for the State of Pennsylvania was approved by the Director of the Federal Register on July 1, 1982.

Dated: June 22, 1983.

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 83-18648 Filed 7-8-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-3-FRL 2396-4]

Approval and Promulgation of Implementation Plans Approval of Revision of the Commonwealth of Pennsylvania State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The amendment below institutes an address change for the implementation of technical and administrative review and enforcement of Prevention of Significant Deterioration provisions. The notice announcing the delegation of authority is published elsewhere in this issue of the Federal Register.

EFFECTIVE DATE: July 11, 1983.

ADDRESSES: Copies of all support documents are available for inspection during normal business hours at the following offices:

U.S. Environmental Protection Agency, Region III, Curtis Building, Second Floor, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106

Attn: Vernon Butler (3AW11), (215) 597-3697 or FTS 597-3697.
Philadelphia Department of Public Health Air Management Services, 500 S. Broad Street, Philadelphia, PA. 19112, Attn: William Reilly.

FOR FURTHER INFORMATION CONTACT: Vernon Butler (215) 597-3697.

SUPPLEMENTARY INFORMATION: The Regional Administrator finds good cause for making this rulemaking effective immediately in that it is an administrative change and not one of substantive content.

The Regional Administrator finds good cause for foregoing prior public notice and for making this rule effective immediately in that it is an administrative change and not one of substantive content. The delegation becomes effective upon publication of this rule; therefore, it serves no purpose to delay the technical change of this addition of the city address to the Code of Federal Regulations.

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

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available *only* by the filing of a petition for review in the United State Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

List of Subjects in 40 CFR Part 52

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

Authority: (42 U.S.C. 7401, 7410 and 7470-79).

Note.—Incorporation by reference of the State Implementation Plan for the State of Pennsylvania was approved by the Director of the Federal Register on July 1, 1982.

Dated: June 22, 1983.

Stanley L. Laskowski,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations is amended as follows:

Subpart NN—Pennsylvania

1. Section 52.2058, new paragraph (c) is added to read as follows:

§ 52.2058 Significant deterioration of air quality.

* * * * *

(c) Pursuant to 40 CFR 52.21(u) full delegation of authority for all portions of the Federal PSD program, as described in 40 CFR 52.21, was delegated to the City of Philadelphia, Pa. as of (date of publication). All applications submitted as of that date and supporting information required pursuant to Section 52.21 from sources located in City of Philadelphia, Pennsylvania shall be submitted to: City of Philadelphia, Department of Public Health, Air Management Services 500 S. Broad Street, Philadelphia, Pennsylvania 19112.

[FR Doc. 83-18947 Filed 7-8-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 145

[OW-FRL-2391-5]

State of New Mexico; Underground Injection Control Program Approval

AGENCY: Environmental Protection Agency.

ACTION: Approval of State Program.

SUMMARY: The State of New Mexico has submitted an application under Section 1422 of the Safe Drinking Water Act (SDWA) for the approval of an Underground Injection Control (UIC) program governing Classes I, III, IV, and V injection wells. After careful review of the application, the Agency has determined that the State's injection well program for all classes of injection wells meets the requirements of Section 1422 of the Act and, therefore, approves it.

EFFECTIVE DATE: This approval is effective July 11, 1983

FOR FURTHER INFORMATION CONTACT: Julie Coston, Groundwater Protection Section, U.S. Environmental Protection Agency, Region VI, 1201 Elm Street, Dallas, Texas 75270. PH: (214) 767-8996. Copies of the responsiveness summary are available from the above address.

SUPPLEMENTARY INFORMATION: Part C of the Safe Drinking Water Act (SWDA) provides for an Underground Injection Control (UIC) program. Section 1421 of the SDWA requires the Administrator to promulgate minimum requirements for effective State programs to prevent underground injection which endangers drinking water sources. The Administrator is also to list in the Federal Register each State for which in his judgment a State UIC program may be necessary. Each State listed shall submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State: (i) Has adopted, after reasonable notice and public hearings, a UIC program which meets the requirements of regulations in effect under Section 1421 of the SDWA; and (ii) will keep such records and make such reports with respect to its activities under its UIC program as the Administrator may require by regulations. After reasonable opportunity for public comment, the Administrator shall by rule approve, disapprove or approve in part and disapprove in part, the State's UIC program.

The State of New Mexico was listed as needing a UIC program on September 25, 1978 (43 FR 43420). The New Mexico program to regulate Class II oil and natural gas related injection wells was approved by EPA on February 5, 1982. The State submitted on application under Section 1422 on December 8, 1982, for a UIC program governing Classes I, III, IV, and V injection wells to be administered jointly by the Mining and Minerals Division, the Oil Conservation Division, and the Environmental Improvement Division. On December 30, 1982 the EPA published notice of receipt of the application, requested public comments, and offered a public hearing on the UIC program submitted by the State (47 FR 58307). The public hearing was held on January 28, 1983 in Santa Fe, New Mexico. After careful review of the application and comments from the public, I have determined that the New Mexico UIC program for Classes I, III, IV, and V injection wells submitted by the State meets the requirements established by the Federal regulations pursuant to Section 1422 of the SDWA and, hereby, approve it.

The EPA has determined, based on the criteria of the SDWA, that the New Mexico demonstration of authority over Indian lands is presently inadequate. The EPA will implement a UIC program on Indian lands in New Mexico after consultation with the Indian tribes, the State, other interested organizations and the public. The EPA's program will be proposed in the Federal Register, public comment will be solicited and a public hearing will be held.

The EPA is publishing this approval, effective immediately, so that New Mexico can begin issuing UIC permits for Classes I, III, IV, and V wells under a federally approved UIC program.

List of Subjects in 40 CFR Part 145

Indians—lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Water supply, Intergovernmental relations, Penalties, Confidential business information.

OMB Review: The Office of Management and Budget has exempted

this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act: Pursuant to the provisions of 5 U.S.C. 605(b), I certify that approval by EPA under Section 1422 of the Safe Drinking Water Act of the application by the State of New Mexico will not have a significant economic impact on a substantial number of small entities, since this rule only approves State actions. It imposes no now requirements on small entitites.

Dated: July 1, 1983.

William D. Ruckelshaus,

Administrator.

[FR Doc. 83-18591 Filed 7-8-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 720

[OPTS-50002I; TSH-FRL 2397-7]

Premanufacture Notification, Delay of Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule: Delay of regulation.

SUMMARY: EPA is postponing the effective date of the final premanufacture notice (PMN) rule (48 FR 21722) issued under section 5 of the Toxic Substances Control Act (TSCA) for 60 days, from July 12, 1983, to September 10, 1983. This postponement is necessary to give EPA time to clarify certain provisions of the rule that have been identified by industry as ambiguous and to consider the need to revise certain other provisions.

DATE: The effective date of the premanufacture notification rule is September 10, 1983.

FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 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

Under section 5 of TSCA, any person who intends to manufacture or import a new chemical substance for commercial purposes must notify EPA at least 90 days before manufacture or import begins. This requirement has been in effect since July 1, 1979. Since then, EPA has received and reviewed more than 2,300 notices on new chemicals. EPA operates the new chemical review program under interim policies published in the **Federal Register** of May 15, 1979 (44 FR 28564), November 7, 1980 (45 FR 74378), and July 2, 1982 (47 FR 28969).

EPA proposed a rule interpreting section 5 requirements and establishing notification procedures in the **Federal Register** of January 10, 1979 (44 FR 2242). Portions of this rule were reproposed on October 16, 1979 (44 FR 59764). In addition, EPA proposed processor reporting requirements in the **Federal Register** of August 15, 1980 (45 FR 54642) and a clarification of importer requirements on September 23, 1980 (45 FR 63806).

After reviewing public comments and evaluating its own experience in conducting the PMN program, EPA issued final premanufacture notice rules that were published in the **Federal Register** of May 13, 1983. These rules were scheduled to become effective on July 12, 1983. The rules cover the scope and applicability of section 5 requirements; the general procedures for submitting notices; information requirements, including a mandatory notice form; and EPA's procedures for processing information contained in the notices, including confidential business information.

On June 17, 1983, the Chemical Manufacturers Association (CMA) petitioned EPA to stay the effective date of the PMN rule for 90 days to provide EPA time "to clarify and modify the rule in several respects." CMA stated that, without clarification and possible modification of certain rule provisions, the rule would impose an undue burden on its member companies. CMA particularly expressed concern about: (1) The research and development exemption, (2) the PMN notice form, (3) the submission of test data and other data on the PMN substance and related chemicals, (4) the procedures for declaring PMNs "incomplete," and (5) the definition of "possession or control." A copy of the CMA petition has been included in the public file on the PMN rule.

In addition, on June 27, 1983, the Society of the Plastics Industry (SPI) submitted a petition to EPA to stay the effective date of the PMN rule. SPI raised several issues that were addressed in the CMA petition. The SPI petition has also been included in the public file.

EPA has not had sufficient time to review the CMA or SPI petitions thoroughly. Based on a preliminary review, however, EPA believes that questions raised by the petitions concerning the specific language of certain rule provisions and the implementation of the rule justify postponement of the rule's effective date. This postponement will allow EPA time to review the rule language and, where necessary, clarify ambiguous points. The nature of the postponement and the reasons for granting it are discussed below.

II. Postponement of the Effective Date of the PMN Rule

In response to the CMA and SPI petitions, EPA is postponing the effective date of the PMN rule for 60 days, until September 10, 1983. The Agency believes that a 60-day postponement, rather than the 90 days requested by CMA, will be adequate to address the major concerns expressed by industry.

EPA believes that most of the issues raised by CMA can be addressed through clarifications of existing rule language. In any case, the basic structure and underpinnings of the rule will remain unchanged. During the 60-day period, EPA will consider the specific points raised by CMA and SPI to determine where clarification is necessary and whether specific rule language needs modification. Before the 60-day period expires, EPA will respond in the **Federal Register** to the general points raised in the CMA and SPI petitions, clarifying rule language where appropriate to remove any ambiguity, and, possibly, further delaying the effective date of specific provisions where additional clarification or revision is necessary. In general, EPA believes that it will be able to address the major industry concerns through clarifications during the 60-day period and that, at the most, it will be necessary to take further time to address only a few narrow provisions of the rule.

When effective, the PMN rule will standardize PMN reporting and recordkeeping provisions. This will allow EPA more effectively to address the increasing number of new chemical notices it is now receiving and will ensure consistent enforcement of section 5 provisions. The effect of the 60-day postponement will be to delay the implementation of these standardized procedures, meaning that EPA will continue to operate the program under its current interim policies for PMN review. This delay will impose some resource burdens on the Agency. EPA believes, however, that it is appropriate for the Agency to assume this burden for the course of the 60-day postponement, while it reviews the specific points identified by industry and, where appropriate, clarifies rule requirements.

This will lead in the long run to more consistent industry compliance with the rule.

The 60-day postponement will not adversely affect the operation of EPA's new chemicals program, which is conducted under the statutory authority of TSCA section 5, and it will not place the public at greater risk from new chemicals during the period before the PMN rule becomes final. EPA is now performing effective reviews of approximately 100 new chemicals a month under TSCA section 5 and the Agency's interim policies. This program will continue while the specific concerns identified in the industry petitions are under review.

III. Public Record

EPA has established a public record for the PMN rulemaking (docket number OPTS-50002), which is available for inspection in Rm. E-107, 401 M St. SW., Washington, D.C. 20460 from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays. Persons who do not have access to the public reading room should contact Jack P. McCarthy, Director, TSCA Assistance Office (TS-799) at the address given earlier in this notice.

The following information related to this postponement has been added to the record:

(22) USEPA-OTS, "Premanufacture Notification; Premanufacture Notice Requirements and Review Procedures, 48 FR 21722, dated May 13, 1983.

(23) Chemical Manufacturers Association (CMA), "Petition for a Stay of the Final Rule and Notice Form Implementing the Premanufacture Notification Requirements of the Toxic Substances Control Act," dated June 17, 1983.

(24) Society of the Plastics Industry, Inc. (SPI), "Petition of the Society of the Plastics Industry, Inc. for a Stay of the Final Rule and Notice Form Implementing the Premanufacture Notification Requirements of the Toxic Substances Control Act and a Request That Rule Making Be Reopened," dated June 27, 1983.

Therefore, the effective date of 40 CFR Part 720 has been delayed until September 10, 1983.

(15 U.S.C. 2604)

List of Subjects in 40 CFR Part 720

Chemicals, Environmental protection, Premanufacture notification, Hazardous materials, Recordkeeping and reporting requirements.

Dated: July 8, 1983.

William D. Ruckelshaus,

Administrator.

[FR Doc. 83-18722 Filed 7-8-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 59 and 67

[Docket No. SLPS-67-83A]

National Flood Insurance Program Appeal Data Requirement

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This regulation specifies more completely the data which must be submitted by one who appeals a flood elevation determination made under the National Flood Insurance program. It is needed to simplify and make more specific and economize the procedures for such appeals and aid in determining whether appeals are valid. It adds definitions of the terms "Scientifically incorrect" and "Technically incorrect". Appellants will have more information on which to develop and support their appeals. This is a procedural rule.

EFFECTIVE DATE: July 11, 1983.

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

SUPPLEMENTARY INFORMATION: In establishing base flood elevations for communities under Section 110 of the Flood Disaster Protection Act of 1973 the Federal Emergency Management Agency (FEMA) is required to publish notificiation of flood elevation determinations in a prominent local newspaper at least twice during the ten-day period following notification to the local government. During the 90-day period following the second publication, any owner or lessee or real property within the community who believes his or her propeaty rights to be adversely affected by the proposed elevations may appeal such elevations to FEMA through the local government. The sole basis for such appeal shall be the possession of knowledge or information indicating that the elevations proposed by FEMA are scientifically or technically incorrect. FEMA's experience with appeals and other statements of disagreement with flood insurance study findings has pointed out the need for a structured procedure. In the interests of efficiency and economy, it is necessary to differentiate between statements of disagreement and valid appeals which were envisioned under the Flood Disaster Protection Act of 1973, as amended. Only valid appeals warrant significant further investigation by FEMA. These final regulations serve that function by describing to appellants the scientific and technical data which must be submitted to constitute an acceptable appeal.

The proposed rule, published on October 13, 1982, 47 FR 45044-46, defined for the first time in regulatory form, "scientifically incorrect" and "technncially incorrect." These definitions and the rule which sets forth the data requirements for an acceptable appeal clarify FEMA's administration of Section 110 of the Act. Thus, appellants have more information on which to develop and support their appeals.

A concept which is basic to this rule is that of "relative correctness." FEMA's experience with the technical procedures for establishing base flood elevations has demonstrated that scientific and technical "correctness" is usually a matter of degree rather than absolute. Existing hydrologic, hydraulic and statistical techniques represent only approximations of real world behavior and include numerous simplifying assumptions. Similarly, economic considerations limit the amount and precision of basic date collection. In application, scientific and technical "correctness" is relative and evaluated on the basis of professional judgment as to whether methods and their application result in a reasonable approximation of reality, given the limitations of available technology and basic input data. Because of this, the rule requires appellants to demonstrate that FEMA's determinations are incorrect by providing an alternative application or analysis shown to produce more accurate results. Such information will allow FEMA to evaluate the merits of an alternative analysis or application in a more cost effective and objective manner.

The final rule requires that the appeal submission include: (1) Identification and analysis of the specific source of the purported incorrectness. (2) Where the appeal is based on scientific incorrectness, methods or assumptions claimed to be more correct must be applied, submitted, and demonstrated by the appellant to produce results which are more correct than those obtained using the contested method. (3) Where the appeal is based on technical incorrectness, due to purported deficiencies in quality or quantity of

input data, an alternative application must be submitted, utilizing the same methods, but using data demonstrated to be more accurate and to produce results which are more correct than those obtained in the contested application. (4) Where the appeal is based on identification of changed physical conditions, or a mathematical or measurement error which can be demonstrated by the appellant, FEMA will be responsible for applying the corrected data to establish whether changes are necessary. The appellant need only identify the error in this case.

Response to Comments

Issue 1—More Detailed Data, Local Conditions

The proposed rule was apparently interpreted by several commenters to exclude the appellant from submitting an appeal based on more detailed data. This is an incorrect interpretation. In fact, a primary purpose of the rule is to encourage appellants to develop more detailed data and analyses. Under the definition of "technically incorrect" the sufficiency of data may be basis of an appeal. Section 67.6(b)(2) identifies the requirements for an appeal based on more correct data obtained by the appellant. One objective of this rule is to recognize that in many instances "incorrectness" is a relative term. Appellants may submit an appeal provided they demonstrate that their application is based upon data which is more detailed than that utilized by FEMA.

Similarly, some commenters believed that the proposed rule precluded the submittal of analyses which are more sensitive to local conditions. Again, one of the main bases for the rule is the concept of "relative correctness." FEMA recognizes that a methodology with greater detail, or assumptions more attuned to local conditions, may yield results which are more accurate in specific situations. Section 67.6(b)(3) of the rule allows the submittal of analyses based on methods or assumptions claimed to be more scientifically correct than those utilized by FEMA.

Issue 2—Requirements on Appellants

Some commenters indicated that the burden should not be on the appellant to demonstrate FEMA's incorrectness, but that appeals which present alternative methods and assumptions should also be considered. The burden for providing evidence of scientific and technical incorrectness is clearly placed on the appellant by the statute. In this rule, FEMA is introducing the concept of "relative correctness." That is, an appellant need only demonstrate that an alternative analysis or application is more correct than that utilized by FEMA. The mere submittal of an alternative methodology or data is insufficient because there are many possible approaches for estimating base flood elevations, each providing possible variation from results obtained by FEMA. FEMA should not be obligated to utilize results deemed more favorable to an appellant unless a higher degree of correctness of those results can be demonstrated.

When the appellant finds an error in measurement or computation, in the flood insurance study or where physical conditions have changed, it is necessary for the appellant only to identify the error or the physical changes. FEMA will apply the corrected data.

Issue 3—Backup Technical Data

Several commenters requested that FEMA publish the detailed technical back-up data used in establishing proposed base flood elevations, in advance of the appeal period, in order that appellants can be better prepared to appeal. FEMA has not formally published such data for primarily economic reasons. The technical documentation of a study, in a format suitable for general distribution, could add several thousand dollars to the cost of a flood insurance study. Historically, the request for such documentation has been extremely rare; much less than one percent of all studies FEMA has completed. FEMA has been providing background data upon request to communities and individuals. The provision of all such data for general public review is simply not a cost effective approach. Communities should be fully aware of the results of their study well in advance of the start of the 90-day appeals period and may request copies of detailed background data prior to that time.

Issue 4—Historical Data

Some commenters suggested that historical flood elevation data should be considered by FEMA when it is included in an appeal. It is extremely rare that historic flood data has not been considered, either directly or indirectly, in the establishment of proposed base flood elevations. Yet, statements of local historic flood experience are most frequently submitted as the basis for appeal of such elevations. The possession of one or more historic data points does not, on its own, demonstrate scientific or technical incorrectness on FEMA's part. Under the proposed rule, the appellant would be required to verify the accuracy of those data points, establish that they were excluded by FEMA, and demonstrate that their inclusion would yield a more correct estimate of the base flood elevations. This effort on the part of the appellant is warranted because historic data points are often difficult to verify and can rarely be used to support alternate results.

Issue 5—Geographic Extent of Alternate Analyses

One commenter expressed concern that an appellant should not be required to restudy an entire area when his/her concern may be at a particular location. FEMA does not disagree with this position. However, it must be recognized that the nature of the appeal submittal will vary with the nature of the appeal itself. For example, an appellant claiming technical incorrectness may submit an application of a hydraulic analysis utilizing more detailed topographic information in the vicinity of his property. In this case, the appellant's application could be very restricted in geographic area. As an opposite example, another appellant, claiming scientific incorrectness, may submit an appeal utilizing a coastal storm surge model which is more sophisticated than that used by FEMA. Such modeling, by its nature, would require analysis on a broad geographic basis.

Issue 6—Definitions

Several commenters noted that the use of the terms "inaccurate" and "superior" in the proposed rule caused confusion in that they were not defined. The commenters feared that such terms would lead to arbitrary reviews of appeals. The final rule changes those terms to "incorrect" (Section 67.6(a)) and "more correct," respectively. Such terms are more consistent with the concept of "relative correctness" inherent in the rule, i.e., the appellant must demonstrate that an alternative analysis or application is superior to that utilized by FEMA because it produces more correct results.

Other issues

Concern was expressed by one commenter that the rule assumes that the methodology employed by FEMA is the "superior" method. In fact, the rule is not based on the assumption that the methodology employed by FEMA is superior, only that it is scientifically and technically correct. The statute places the burden on the appellant to demonstrate otherwise. This may be done, under the rule, by demonstrating that more correct results have been

obtained through the use of better methods, data or assumptions.

Another commenter stated that the terms "scientifically incorrect" and "technically incorrect" were too open-ended to be of value. These terms are statutory. The purpose of the rule is to expand upon and define the terms to make them of value for appellants in preparing an acceptable appeal and for FEMA in reviewing appeals.

One commenter was concerned about the acceptability of providing photographs which would contradict FEMA's flood information as depicted on the map, and, thus, provide evidence of the use of inadequate data by FEMA. The provision of photographs can rarely be used to contradict a study's results. However, where they can be used to demonstrate measurement error, or changed physical conditions, they can be used as support for an appeal.

Another comment reflected concern that FEMA would no longer accept new data at any time which reflects errors in the map. FEMA will accept new data indicating mathematical or measurement error or changed conditions as a basis for appeal as indicated under § 67.6(b)(1). Such data may also be submitted at any time under Part 65. It should be noted that outside these situations, FEMA is requiring the appellant to demonstrate that the "new data" indeed produce improved results, thereby demonstrating that FEMA's determinations are relatively incorrect.

It was asserted that the effects of flood control projects, even if they do not meet the criteria of 44 CFR 61.12, should be shown on the Flood Insurance Rate Maps. This comment is irrelevant to the substance of the rule and contrary to the statutory provisions relating to flood control projects.

Another comment stated that the rule change should include a statement on floodways. This comment was not considered because the statute provides for appeals only of proposed base flood elevations, not for floodways.

One comment suggested that FEMA should provide each participating community with the funds to contract for and manage contracts for the preparation of maps and studies. This comment is also irrelevant to the issues in the rule and is contrary to the provisions in the statute regarding administration of flood insurance studies.

Another comment expressed concern that FEMA's contractors do not coordinate properly with local authorities. This comment is irrelevant to the rule. FEMA's contractors are required by contract to coordinate with local authorities at a minimum number of critical points. These include the formal Initial, Intermediate and Final Meetings. If these activities have not been carried out, the matter must be handled through the normal contract administration process.

The final rule does not contain any significant changes from the proposed rule of October 13, 1982. The following minor revisions appear in the final rule:

1. In § 59.1 the definition of "scientifically incorrect" was editorially improved by deleting the words, "based on theory demonstrated to be".

2. In § 59.1 a typographical error in the definition of "technically incorrect" was corrected. The word "use" in the proposed rule now appears as "due."

3. In § 67.6(a) the parenthetical phrase has been changed for clarity and consistency. Thus, "mistakes in computation or measurement" now appears as "mathematical or measurement error or changed physical conditions."

4. The word, "superior" has been changed wherever it appeared in the proposed rule to, "more correct." Similarly, the word "inaccurate" was changed to "incorrect." The reason for these changes is to provide consistency with the concept of "relative correctness" inherent in the rule.

5. In § 67.6 (a) and (b)(2) the word "analysis" was changed to "application" wherever it appeared. This clarifies the type of data required for an appeal based on technical incorrectness and distinguishes it from the type of data required for an appeal based on scientific incorrectness. Similarly, in § 67.6(b)(2)(iii), "a reanalysis applying" has been changed to "an application of" for the reason mentioned above.

6. In 67.6 (b)(2)(vi) and (b)(3)(v) the words, "areas" and "results" have been changed to "locations" and "base flood elevations," respectively for clarity.

An environmental assessment is not necessary because this rule change is procedural and has no effect on the quality of the human environment. This rule change is not a "major rule" within the context of Executive Order 12291. This rule does not have a significant economic impact on a substantial number of small entities because it calls for improving the appeal process for base flood elevation determinations.

List of Subjects in 44 CFR Parts 59 and 67

Flood insurance, Flood plains.

Accordingly Part 59 and Part 67 of Title 44 of the Code of Federal Regulations are amended as follows:

PART 59—GENERAL PROVISIONS

1. Section 59.1 is amended by adding new definitions in alphabetical order to read as follows:

§ 59.1 Definitions.

* * * * *

"Scientifically Incorrect". The methodology(ies) and/or assumptions which have been utilized are inappropriate for the physical processes being evaluated or are otherwise erroneous.

"Technically Incorrect". The methodology(ies) utilized has been erroneously applied due to mathematical or measurement error, changed physical conditions, or insufficient quantity or quality of input data.

* * * * *

PART 67—APPEAL FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

2. Section 67.6 is revised to read as follows:

§ 67.6 Basis of appeal.

(a) The sole basis of appeal under this Part shall be the possession of knowledge or information indicating that the elevations proposed by FEMA are scientifically or technically incorrect. Because scientific and technical correctness is often a matter of degree rather than absolute (except where mathematical or measurement error or changed physical conditions can be demonstrated), appellants are required to demonstrate that alternative methods or applications result in more correct estimates of base flood elevations, thus demonstrating that FEMA's estimates are incorrect.

(b) *Data requirements.* (1) If an appellant believes the proposed base flood elevations are technically incorrect due to a mathematical or measurement error or changed physical conditions, then the specific source of the error must be identified. Supporting data must be furnished to FEMA including certifications by a registered professional engineer or licensed land surveyor, of the new data necessary for FEMA to conduct a reanalysis.

(2) If an appellant believes that the proposed base flood elevations are technically incorrect due to error in application of hydrologic, hydraulic or other methods or use of inferior data in applying such methods, the appeal must demonstrate technical incorrectness by:

(i) Identifying the purported error in the application or the inferior data.

(ii) Supporting why the application is incorrect or data is inferior.

(iii) Providing an application of the same basic methods utilized by FEMA but with the changes itemized.

(iv) Providing background technical support for the changes indicating why the appellant's application should be accepted as more correct.

(v) Providing certification of correctness of any alternate data utilized or measurements made (such as topographic information) by a registered professional engineer or licensed land surveyor, and

(vi) Providing documentation of all locations where the appellant's base flood elevations are different from FEMA's.

(3) If any appellant believes the proposed base flood elevations are scientifically incorrect, the appeal must demonstrate scientific incorrectness by:

(i) Identifying the methods, or assumptions purported to be scientifically incorrect.

(ii) Supporting why the methods, or assumptions are scientifically incorrect.

(iii) Providing an alternative analysis utilizing methods, or assumptions purported to be correct.

(iv) Providing technical support indicating why the appellant's methods should be accepted as more correct and

(v) Providing documentation of all locations where the appellant's base flood elevations are different from FEMA's.

(Sec. 1363 of the National Flood Insurance Act of 1968, as amended 82 Stat. 574 (42 U.S.C. 4001 et seq.): Reorganization Plan No. 3 of 1978 (43 FR 41943) and E.O. 12127, dated March 31, 1979 (44 FR 19367))

(Catalog of Federal Domestic Assistance Number 83.100 National Flood Insurance Program)

Louis O. Giuffrida,

Director.

June 27, 1983.

[FR Doc. 83-18547 Filed 7-8-83; 8:45 am]

BILLING CODE 6718-01-M

44 CFR Part 64

[Docket No. FEMA 6543]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP) and eligible for second layer insurance coverage. These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the regular program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fourth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

FOR FURTHER INFORMATION CONTACT: Mr. Richard E. Sanderson, Chief, Natural Hazards Division, (202) 287-0270, 500 C Street Southwest, Donohoe Building—Room 505, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance." This program is subject to procedures set out in OMB Circular A-95.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance—flood plains.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and County	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
California:				
Mendocino	Unincorporated areas	060183B	June 1, 1983, suspension withdrawn	Jan. 3, 1974 and Apr. 25, 1978.
Tulare	Woodlake, city of	065071B	do	June 28, 1974 and May 7, 1976.
Illinois: Peoria	Unincorporated areas	170533	do	Feb. 15, 1980.
Indiana: Wells	do	180286C	do	Dec. 13, 1974, May 27, 1977 and June 22, 1979.
Iowa:				
Kossuth	Algona, city of	190160B	do	May 3, 1974 and Jan. 2, 1976.
Story	Unincorporated areas	190907B	do	Nov. 15, 1977.
Massachusetts:				
Bristol	DArmouth, town of	250051B	do	Feb. 28, 1975 and Aug. 15, 1977.
Worcester	Uxbridge, town of	250341B	do	Aug. 2, 1974, Oct. 29, 1976 and Oct. 3, 1980.

State and County	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
Minnesota: Yellow Medicine	Canby, city of	270545B	do	Apr. 5, 1974.
New Jersey: Middlesex	South Amboy, city of	340277C	do	Feb. 14, 1974, Dec. 4, 1979, and Dec. 12, 1975.
New York:				
Nassau	Manorhaven, village of	360479B	do	June 14, 1974 and Aug. 13, 1976.
Oneida	Yorkville, village of	360568B	do	Feb. 22, 1974 and Aug. 6, 1976.
Nassau	Woodsburgh, village of	360496B	do	June 28, 1974 and June 25, 1976.
Pennsylvania:				
Chester	West Pikeland, township of	421151B	do	Sept. 3, 1976.
York	Windsor, township of	420942	do	Jan. 23, 1974.
Texas: Jefferson	Unincorporated areas	480385B	do	Aug. 30, 1977.
Vermont:				
Franklin	Berkshire, town of	500049B	do	May 31, 1974 and Sept. 10, 1976.
Lamoille	Cambridge, village of	500228B	do	Aug. 9, 1974 and Nov. 26, 1976.
Wisconsin: Portage	Unincorporated areas	550572C	do	Dec. 23, 1977 and Jan. 26, 1979.
Washington: Whatcom	Ferndale, city of	530201B	do	Apr. 9, 1976.
Pennsylvania: York	Lower Windsor, township of	421187B	do	Aug. 30, 1974 and Aug. 20, 1976.
Maryland: Harford	Unincorporated areas	240040	June 2, 1983, suspension withdrawn	Apr. 4, 1975.
Wisconsin: Portage	Stevens Point, city of	550342B	June 1, 1983, suspension withdrawn	Dec. 28, 1973.
Illinois:				
Scott	Naples, village of	170609B	June 2, 1983, suspension withdrawn	Apr. 2, 1976 and Jan. 9, 1974.
Pulaski	Olmsted, village of	170566B	June 15, 1983, suspension withdrawn	Aug. 30, 1974 and Mar. 5, 1976.
Maryland: Worcester	Unincorporated areas	240083B	do	Feb. 15, 1979.
Massachusetts:				
Middlesex	Bedford, town of	255209B	do	Sept. 7, 1973, July 1, 1974, and Feb. 26, 1976.
Worcester	Harvard, town of	250308B	do	Aug. 2, 1974 and Oct. 29, 1976.
Middlesex	Littleton, town of	250200B	do	July 19, 1974 and Aug. 20, 1976.
Essex	North Andover, town of	250096B	do	June 28, 1974 and May 10, 1977.
Worcester	Northbridge, town of	250322B	do	July 26, 1974 and Oct. 15, 1976.
Do.	Royalston, town of	250330B	do	May 17, 1974 and Aug. 20, 1976.
Michigan: Saginaw	Carrollton, township of	260187B	do	July 19, 1974 and June 11, 1976.
Missouri:				
Boone	Unincorporated areas	290034B	do	Apr. 25, 1978.
Callaway	Fulton, city of	290051B	do	May 17, 1974 and Jan. 16, 1976.
Greene	Unincorporated areas	290782B	do	May 2, 1978.
New Jersey: Ocean	Dover, township of	345293C	do	Mar. 22, 1974, July 1, 1974, and Apr. 23, 1976.
New York:				
Albany	Bethlehem, town of	361540B	do	May 31, 1974 and Sept. 3, 1976.
Suffolk	Greenport, village of	361004B	do	May 24, 1974 and July 2, 1976.
Nassau	Plandome Manor, village of	360486B	do	June 14, 1974 and Oct. 31, 1975.
Texas: Chambers	Unincorporated areas	480119B	do	Aug. 9, 1974 and Oct. 25, 1977.
Vermont:				
Lamoille	Cambridge, town of	500081B	do	June 28, 1974 and Dec. 17, 1976.
Do.	Jeffersonville, village of	500062A	do	Aug. 9, 1974.
West Virginia: Kanawha	Charleston, city of	540073B	do	May 10, 1974 and Jan. 24, 1975.
Kansas: Clay	Unincorporated areas	200052	June 1, 1983, emergency	
New York: Oneida	Oneida Castle, village of	361526A	do	Nov. 26, 1976.
North Dakota: Bottineau	Lansford, township of	380675—New	do	
Tennessee:				
Macon	Unincorporated areas	470371	June 6, 1983, emergency	Oct. 27, 1978.
Warren	do	470363A	do	Nov. 25, 1977.
Missouri: Bollinger	Glen Allen, city of	290865—New	do	
Texas: Galveston	Tiki Island, Village of [1]	481585—New	April 15, 1983, emergency April 15, 1983, regular.	
Nebraska: Lincoln	Unincorporated areas	310452	February 28, 1983, emergency	Apr. 11, 1983.
Arkansas: Sevier	do	050463A	June 10, 1983, emergency	Dec. 13, 1983.
Missouri: St. Louis	Crystal Lake Park, city of	290345A	do	May 13, 1977.
Michigan:				
Oakland	Independence, township of	260475B	do	Do.
Lenawee	Palmyra, township of	260737—New	do	May 13, 1977 and May 16, 1983.
Utah: Utah	Genola, town of	490154	June 6, 1983, emergency	Feb. 7, 1975.
New York:				
Oneida	Steuben, town of	360555A	June 13, 1983, emergency	June 28, 1974 and July 9, 1976.
Lewis	Diana, town of	360364A	do	Sept. 13, 1974 and June 11, 1976.
Illinois: Tazewell and Woodford	Deer Creek, village of	170647	do	June 28, 1974.
Utah: Millard	Hinckley, town of	490200	June 9, 1983, emergency	
Missouri: Carroll	Unincorporated areas	290057	June 15, 1983, emergency	
Utah: Millard	Leamington, town of	490246—New	do	
Mississippi: Yalobusha	Unincorporated areas	280239	do	

[1] The Village of Tiki Island, Texas is a newly incorporated community which was formerly contained entirely in Galveston County, Texas. Since the community is compliant and was part of a Regular Program community, it has been entered directly in the regular program and will use the County's map in the interim for insurance and flood plain management purposes.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: June 27, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-18551 Filed 7-8-83; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

National Flood Insurance Program; Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modified flood insurance rate map	New community No.
Alabama: Lee County	City of Auburn (Docket No. FEMA-6510).	*Auburn Bulletin*, Feb. 16, 1983, Feb. 23, 1983.	Hon. Jan Dempsey, Mayor, City of Auburn, P.O. Box 511, Auburn, Ala. 36830.	Feb. 25, 1983	010144E
Georgia: Clayton County	City of Riverdale (Docket No. FEMA-6510).	*The News Daily*, Dec. 28, 1982, Jan. 4, 1983.	Hon. Lemor Hutcheson, Mayor, City of Riverdale, City Hall, 6690 Church Street, Riverdale, Ga. 30274.	Jan. 7, 1983	130047C
Iowa: Black Hawk	City of Evansdale (Docket No. FEMA-6510).	*Black Hawk County Sun*, Dec. 2, 1982, Dec. 9, 1982.	Hon. Henry L. Epperson, Mayor, City of Evansdale, 123 North Evans Road, Evansdale, Iowa 50707.	Nov. 10, 1982	190020B
Kentucky: Perry County	City of Hazard (Docket No. FEMA-6510).	*The Herald Voice*, Mar. 10, 1983, Mar. 17, 1983.	Hon. William D. Gorman, Mayor, City of Hazard, P.O. Box 420, Hazard Ky. 41701.	Mar. 18, 1983	215188C
Mississippi: LeFlore County (Docket No. FEMA-6510).	Unincorporated areas	*Greenwood Commonwealth*, Mar. 18, 1983, Mar. 25, 1983.	Hon. Ray Tribble, President, LeFlore County, Board of Supervisors, P.O. Drawer 1468, Greenwood, MS 38930.	Mar. 25, 1983	280101C
Missouri: St. Louis County	City of Hazelwood (Docket No. FEMA-6510).	*Florissant Valley Reporter*, Jan. 13, 1983, Jan. 20, 1983.	Hon. Douglas W. Palmer, Mayor, City of Hazelwood, City Hall, 7900 North Lindbergh Boulevard, Hazelwood, Mo. 63042.	Jan. 18, 1983	290357C
West Virginia: Logan (FEMA Docket No. 6374)	Chapmanville, WV	*Logan Banner*, July 30, 1982, and Aug. 6, 1982.	Hon. Jerome Bingess, Mayor of Chapmanville, Municipal Building, P.O. Box 426, Chapmanville, WV 25508.	Nov. 16, 1983	540092C

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

List of Subjects in 44 CFR Part 65

Flood insurance—flood plains.

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

Issued: June 15, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-18552 Filed 7-8-83; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 50, 71, 91, 107, 110, and 189

[CGD 83-019a]

Disestablishment of Merchant Marine Technical Branch, Ninth Coast Guard District

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The U.S. Coast Guard is disestablishing the Merchant Marine Technical Branch of the Ninth Coast Guard District in Cleveland, Ohio. As of July 1, 1983, the plan review duties for the geographical area served by the Ninth Coast Guard District will be assumed by the Merchant Marine Technical Branch, Third Coast Guard District, New York, New York. This reorganization is necessary to increase the overall efficiency, quality and consistency of plan review. This document makes the necessary changes in plan submittal procedures and updates the mailing addresses for each of the field merchant marine technical offices.

EFFECTIVE DATE: July 1, 1983.

FOR FURTHER INFORMATION CONTACT: Lt. Randall R. Fiebrandt, Marine Technical and Hazardous Materials Division, (G-MTH-4/13), Room 1304, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, D.C. 20593; (202) 426-2197.

SUPPLEMENTARY INFORMATION: The Coast Guard has completed an evaluation of its Merchant Marine Technical Branch field organization, taking into account many factors including personnel considerations and system efficiency. As a result, the Commandant concluded that a consolidation of the Merchant Marine Technical Branches of the Third and Ninth Coast Guard Districts was necessary for improved overall plan review efficiency, quality and consistency. Accordingly, the workload previously assigned to the Ninth District's Merchant Marine Technical Branch will be reassigned to the Third Coast Guard District Technical office.

Shipyards, designers and other businesses and persons within the geographical area of the Ninth Coast Guard District who are directly affected by this action have been informed of the consolidation by letter from the Commander, Ninth Coast Guard District (mmt).

The purpose of this notice is to provide the revised plan submittal procedure and to update mailing addresses for each of the district merchant marine technical offices.

This rule has been evaluated under Executive Order 12291 and DOT Order 2100.5 and has been determined to be non-major and non-significant. This rule reflects a change in agency organization with no economic impact upon the public. Notice of proposed rulemaking and opportunity for public comment are not required by 5 U.S.C. 553, and this rule may be effective less than 30 days after its publication date. Since no economic impact is expected, an economic evaluation has not been conducted.

In accordance with Section 605(b) of the Regulatory Flexibility Act (30 Stat. 1164), it is certified that these regulations will not have a significant economic impact on a substantial number of small entities for the reasons stated above.

Drafting Information

The principal persons involved in drafting this document are Lt. Randall R. Fiebrandt, Project Manager, Office of Merchant Marine Safety, and Lt. Mark Hanlon, Project Attorney, Office of Chief Counsel.

List of Subjects in 46 CFR Parts 50, 71, 91, 107, 110, and 189

Marine safety, Vessels, Organization and functions (Government agencies).

In consideration of the foregoing, Chapter I of Title 46, Code of Federal Regulations, is amended as follows:

PART 50—GENERAL PROVISIONS

1. In § 50.20–5, by removing and reserving paragraph (d)(4) and revising paragraphs (d)(1), (d)(2) and (d)(3) to read as follows:

§ 50.20–5 Procedures for submittal of plans.

* * * * *

(d)* * *

(1) Commander, 3rd Coast Guard District (mmt), Governors Island, New York, N.Y. 10004, for the geographical area covered by the 1st, 3rd, 5th, and 9th Coast Guard Districts.

(2) Commander, 8th Coast Guard District (mmt), F. Edward Hebert Building, Room 845, 600 South St. New Orleans, LA 70130, for the geographical area covered by the 2nd, 7th and 8th Coast Guard Districts.

(3) Commander, 12th Coast Guard District (mmt), Government Island, Building 51, Alameda, CA 94501, for geographical area covered by 11th, 12th, 13th, 14th, and 17th Coast Guard Districts.

(4) [Reserved]

* * * * *

PART 71—INSPECTION AND CERTIFICATION

2. In § 71.65–15, by removing and reserving paragraph (a)(3)(iv) and revising paragraphs (a)(3)(i), (a)(3)(ii) and (a)(3)(iii) to read as follows:

§ 71.65–15 Procedure for submittal of plans.

(a)* * *

(3)* * *

(i) Commander, 3rd Coast Guard District (mmt), Governors Island, New York, N.Y. 10004, for the geographical area covered by the 1st, 3rd, 5th, and 9th Coast Guard Districts.

(ii) Commander, 8th Coast Guard District (mmt), F. Edward Hebert Building, Room 845, 600 South St., New Orleans, LA 70130, for the geographical area covered by the 2nd, 7th and 8th Coast Guard Districts.

(iii) Commander, 12th Coast Guard District (mmt), Government Island, Building 51, Alameda, CA 94501, for geographical area covered by 11th, 12th, 13th, 14th, and 17th Coast Guard Districts.

(iv) [Reserved]

* * * * *

PART 91—INSPECTION AND CERTIFICATION

3. In § 91.55–15, by removing and reserving paragraph (a)(3)(iii) and revising paragraphs (a)(3)(i), (a)(3)(ii) and (a)(3)(iv) to read as follows:

§ 91.55–15 Procedures for submittal of plans.

(a)* * *

(3)* * *

(i) Commander, 3rd Coast Guard District (mmt), Governors Island, New York, N.Y. 10004, for the geographical area covered by the 1st, 3rd, 5th and 9th Coast Guard Districts.

(ii) Commander, 8th Coast Guard District (mmt), F. Edward Hebert Building, Room 845, 600 South St., New Orleans, LA 70130, for the geographical area covered by the 2nd, 7th and 8th Coast Guard Districts.

(iii) [Reserved]

(iv) Commander, 12th Coast Guard District (mmt), Government Island, Building 51, Alameda, CA 94501, for geographical area covered by 11th, 12th, 13th, 14th, and 17th Coast Guard Districts.

* * * * *

PART 107—INSPECTION AND CERTIFICATION

4. In § 107.317, by removing and reserving paragraph (b)(4) and revising paragraphs (b)(1), (b)(3) and (b)(5) to read as follows:

§ 107.317 Addresses for submittal of plans, specifications, and calculations.

* * * * *

(b) * * *

(1) Commander, 3rd Coast Guard District (mmt), Governors Island, New York, N.Y. 10004, for the geographical area covered by the 1st, 3rd, 5th and 9th Coast Guard Districts.

* * * * *

(3) Commander, 8th Coast Guard District (mmt), F. Edward Hebert Building, Room 845, 600 South St., New Orleans, LA 70130, for the geographical area covered by the 2nd, 7th and 8th Coast Guard Districts.

(4) [Reserved]

(5) Commander, 12th Coast Guard District (mmt), Government Island, Building 51, Alameda, CA 94501, for geographical area covered by 11th, 12th, 13th, 14th, and 17th Coast Guard Districts.

* * * * *

PART 110—INSPECTION AND CERTIFICATION

5. In § 110.25–3, by removing and reserving paragraph (b)(3) and revising paragraphs (b)(1), (b)(2) and (b)(4) to read as follows:

§ 110.25–3 Procedure for submitting plans.

* * * * *

(b) * * *

(1) Commander, 3rd Coast Guard District (mmt), Governors Island, New York, N.Y. 10004, for the geographical area covered by the 1st, 3rd, 5th and 9th Coast Guard Districts.

(2) Commander, 8th Coast Guard District (mmt), F. Edward Hebert Building, Room 845, 600 South St., New Orleans, LA 70130, for the geographical area covered by the 2nd, 7th and 8th Coast Guard Districts.

(3) [Reserved]

(4) Commander, 12th Coast Guard District (mmt), Government Island, Building 51, Alameda, CA 94501, for geographical area covered by 11th, 12th, 13th, 14th, and 17th Coast Guard Districts.

* * * * *

PART 189—INSPECTION AND CERTIFICATION

6. In § 189.55–15, by removing and reserving paragraph (a)(3)(iii) and revising paragraphs (a)(3)(i), (a)(3)(ii) and (a)(3)(iv) to read as follows:

§ 189.55–15 Procedure for submittal of plans.

(a) * * *

(3) * * *

(i) Commander, 3rd Coast Guard District (mmt), Governors Island, New York, N.Y. 10004, for the geographical area covered by the 1st, 3rd, 5th and 9th Coast Guard Districts.

(ii) Commander, 8th Coast Guard District (mmt), F. Edward Hebert Building, Room 845, 600 South St., New Orleans, LA 70130, for the geographical area covered by the 2nd, 7th and 8th Coast Guard Districts.

(iii) [Reserved]

(iv) Commander, 12th Coast Guard District (mmt), Government Island, Building 51, Alameda, CA 94501, for geographical area covered by 11th, 12th, 13th, 14th, and 17th Coast Guard Districts.

* * * * *

(46 U.S.C. 367, 369, 375, 391, 392, 416, 49 U.S.C. 1655(b), 49 CFR 1.49(b))

Dated: June 30, 1983.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 83–18511 Filed 7–8–83; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[FCC 83–287]

American Telephone and Telegraph; Petition for Waiver

AGENCY: Federal Communications Commission.

ACTION: Waiver of Commission Rules.

SUMMARY: The Federal Communications Commission grants the petition filed by the American Telephone and Telegraph Company seeking a waiver of the Commission's rules prescribing a rate structure for the charges a telephone company may impose upon an interexchange carrier to transport its traffic within the local network. The waiver will extend to all telephone companies during the period ending December 31, 1984, enabling them to impose charges to recover their transport costs that do not comply with these rules. The Commission concluded that this action was necessary to promote fair competition in the MTS-WATS market while equal interconnection options remain unavailable to all interexchange carriers.

EFFECTIVE DATE: July 11, 1983.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen B. Levitz, Common Carrier Bureau (202) 632–9342.

List of Subjects in 47 CFR Part 69

Access charges.

Memorandum Opinion and Order

In the Matter of American Telephone and Telegraph Company; Petition for Waiver of §§ 69.1(b), 69.3(e), 69.4(b) (7) and (8), 69.101, 69.111 and 69.112 of the Commission's Rules and Regulations; FCC 83–287.

Adopted: June 23, 1983.

Released: June 28, 1983.

By the Commission; Commissioner Fogarty not participating.

1. On March 17, 1983, the American Telephone and Telegraph Company (AT&T) and the Bell Operating Companies filed an emergency petition for waiver of our §§ 69.1(b), 69.3(e), 69.4(b) (7) and (8), 69.101, 69.111 and 69.112 of this Commission's Rules and Regulations to the extent necessary to enable Bell System Operating Companies that will be divested ("BOCs") to implement transport access charges that are consistent with the Appendix to the *Modification of Final Judgment* ("MFJ") entered in *United States* v. *American Telephone and Telegraph Co.*, 552 F. Supp. 131 (D. D.C. 1982), *affirmed sub nom. Maryland* v. *United States*, U.S. (51 U.S.L.W. 3628, decided February 28, 1983). The AT&T petition states that the methods that have been prescribed for the computation of transport charges in the access charge rules adopted by this Commission differ in several respects from the MFJ Appendix requirements for the computation of access charges and that the BOCs would be required to prepare duplicative tariffs based upon different methodologies in the absence of Commission action upon this waiver request. For reasons set forth below we grant a waiver for a period of one year ending December 31, 1984, and shall permit all telephone companies during that year to impose charges to recover their transport costs that do not comply with the applicable sections of Part 69 of our Rules.

Background

2. In the Third Report and Order in CC Docket No. 78–72, FCC 82–579, released February 28, 1983 ("Access Charge Order"), we adopted a comprehensive plan for recovering the costs of exchange carrier facilities assigned to the interstate jurisdiction through the

separations process. Among these costs were those incurred to transport an interexchange carrier's switched interstate traffic between its facilities and the end office through which that traffic originates or terminates. A telephone company may transport an interexchange carrier's traffic between these two locations solely through dedicated trunks or through a combination of jointly used (or common) trunking and dedicated trunks. To recognize the differences between these two alternatives for moving traffic, the *Access Charge Order* allocated transport costs between two access rate elements, Dedicated Transport and Common Transport. The *Order* allocated to Dedicated Transport the costs of the dedicated facilities and equipment used to provide conditioning and interface arrangements between the local carrier's and the interexchange carrier's facilities. Common Transport included the costs of the jointly used trunking and access tandems upon which interexchange carriers might alternatively rely to complete the transport of traffic between their facilities and an end office. The rate structure for each element reflected the manner in which the costs allocated to it were incurred. For the Common Transport element, the Order prescribed a usage and distance sensitive rate structure, *see* 47 CFR 69.111, while for Dedicated Transport, the charges would be based on the number of voicegrade channels provided to the interexchange carrier and other non-traffic sensitive parameters reflecting the cost of the facilities provided. *See* 47 CFR 69.112.

3. The MFJ also required that the BOCs file cost-based tariffs for access services. *See* MFJ, Appendix B, Section B. For transport charges, however, it delayed the effective date of this requirement until September 1, 1991. The MFJ required that until that date:

> Charges for delivery or receipt of traffic of the same type between end offices and facilities of interexchange carriers within an exchange area, shall be equal, per unit of traffic delivered or received, for all interexchange carriers; provided, that the facilities of an interexchange carrier within five miles of an AT&T class 4 switch shall, with respect to end offices served by such class 4 switch, be considered in the same subzone as such class 4 switch.
>
> MFJ, App. B at para. B(3).[1]

[1] The "five mile" requirement is similar to one imposed in the Access Charge Order to reduce the competitive advantage AT&T enjoys over other interexchange carriers because of the location of some of its switches. *See* 47 CFR 69.112(c).

4. In their March 17 petition, AT&T and the BOCs requested that we waive the requirement that they file cost-based rates for common and dedicated transport facilities insofar as this requirement conflicts with the MFJ requirement of "equal charge per unit of traffic delivered or received". They noted that our granting the waiver would enable them to comply with the MFJ, would affect only the charges for the two elements and would increase the transport charges assessed on AT&T by twenty to thirty million dollars.

5. The Department of Justice ("Justice"), the Ad Hoc Telecommunications Users Committee ("Ad Hoc") and seven carriers filed oppositions or other comments.[2] Justice, Satelco and Teltec supported the waiver request while Cincinnati, SNET and SBS opposed the waiver request. Southern Pacific said that a waiver should be granted, but that the waiver should be "carefully limited" to ensure that the BOC tariffs will comply with a correct interpretation of the MFJ.[3]

6. Opponents of the waiver request opposed it for somewhat different reasons. Ad Hoc said that the waiver should be denied because the access charge rules provide a better method of computing transport charges than the method described in the MFJ Appendix. SBS said that the MFJ Appendix methodology is better,[4] and Cincinnati and SNET expressed no opinion with respect to the relative merits of the two methods. SBS, Cincinnati and SNET said that a decision to waive the transport access charge rules for divested BOCs and to retain them for all other exchange carriers would produce an undesirable absence of uniformity in access charges. Those carriers recommended that we deny the waiver petition and use proceedings relating to petitions for reconsideration of our decision adopting the access charge rules as a vehicle for determining the appropriate transport charges for all exchange carriers.

7. The AT&T Reply stated that an industry-wide waiver is "not essential," but that it would not object to such an action "if the Commission believes that it can grant the industry-wide waiver on the basis of the Comments * * *" (Reply, p. 2, note * * *). AT&T adds that its waiver request should be granted because "prompt Court approval of AT&T's Proposed Plan of Reorganization hinges on an expeditious grant of the Emergency Petition * * *." (*Id.* at 2–3.)[5]

Discussion

8. This Commission may waive any provision of our rules "on its own motion or on petition if good cause therefor is shown." 47 CFR 1.3. An applicant for waiver must clearly demonstrate that the general rule is not in the public interest when applied to its particular case and that the grant of the waiver will not undermine the public policy served by the rule. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969). We are unconvinced that AT&T itself has made the clear demonstration required to justify the relief it seeks. The entire record in this waiver proceeding, however, convinces us that we should suspend the provisions of the rules setting charges for the dedicated and common transport access elements for a short period during which we shall determine the extent to which delays in equal interconnection opportunities for all interexchange carriers justify some departure from a cost-based rate structure for these elements.

9. The OCCs note that our access charge plan will immediately cause substantial increase in OCC costs without a concomitant improvement in their interconnection options.[6] The transport rules were in fact proposed on the assumption that interexchange carriers would from the outset have the ability to choose the kind of transport facilities (*i.e.*, dedicated or shared) that

[2] Cincinnati Bell Inc. ("Cincinnati"); Satelco Incorporated ("Satelco"); Satellite Business Systems ("SBS"); Southern New England Telephone Company ("SNET"); Southern Pacific Communications Company ("Southern Pacific"); Teltec Savings Communications Co. ("Teltec"); and Tel Systems Management Corporation ("Tel System").

[3] SPC urged us to limit the waiver to assure that transport charges continue to reflect the cost difference on the varying types and qualities of access that are now and will in the future be offered to interexchange carriers. *See* SPC Comments at 9–17.

[4] SBS explains that, under the Commission's transport rules, the OCCs could be forced to pay potentially much higher rates to cover the costs of designing and constructing the new parallel transport system that the BOCs plan to build to comply with the MFJ's requirement that they offer equal exchange services to all interexchange carriers. *See* SBS Response at 2,4. Because of the direct trunks, "left over" from its past monopoly control over the local network, that link its toll switches to end offices, AT&T, however, will largely escape such charges.

[5] The Department of Justice has conditioned its approval of the proposed reorganization plan upon our granting the requested waiver of our transport rules.

[6] In their petitions for reconsideration of the *Access Charge Order*, filed on April 14, 1983, SBS and SPC have renewed the arguments they have already presented in this proceeding. While admitting that our transport rules might be reasonable if all carriers had the option of equal interconnection, they claim that with existing interconnection arrangements determined by a network design reflecting AT&T's historical monopoly of toll traffic, the cost-based charges mandated by these rules unfairly penalize the OCCs.

they would be offered. If, based upon economic considerations, an interexchange carrier concluded that it preferred dedicated transport facilities to carry its traffic to a particular end office, it could order such facilities and then should expect to bear the cost of such facilities. We have, however, only recently begun the rulemaking proceeding through which we anticipate extending to independent telephone companies the equal interconnection obligations that the MFJ has imposed upon the BOCs. *See Notice of Proposed Rulemaking* in CC CR re: release Docket No. 78-72, Phase III, FCC 83-178, released May 31, 1983. It has also become apparent that even within BOC territory the choice of transport facilities may not be available. Therefore, the OCCs will remain unable to choose the routes their traffic travels through the local network or the facilities used to carry that traffic. Under these circumstances, imposing cost-based transport charges could have anticompetitive effects if AT&T, because of its past control over local network design, pays relatively less for comparable interconnection. Until interexchange carriers have the flexibility we anticipated their having in the *Access Charge Order*, we conclude that the rules governing transport charges imposed by any telephone company should be modified to reflect the existing interconnection choices of interexchange carriers.[7]

10. Having concluded that a change should be made in the transport charge rules of Part 69, we must now determine the most appropriate and expeditious way to proceed. SBS had recommended that we review our transport rules in the now pending reconsideration proceeding in Phase I of CC Docket No. 78-72. In order for 1984 access tariffs to reflect any modifications to Part 69 that we may make on reconsideration, we must, and expect to, complete our reconsideration proceeding shortly. We believe that more time is required for us to be able to determine the transport rate structure that will best meet the goals of this docket. We would also find helpful comments that discuss this issue in light of the additional information, available only since we adopted our *Access Charge Order*, concerning how the BOCs propose to satisfy the MFJ's equal interconnection requirements. For this reason we are granting a waiver until December 31, 1984, of the rules prescribing the rate structure for Dedicated Transport and Common Transport.[8] Accordingly, telephone companies shall recover the costs allocated to the Dedicated Transport and Common Transport elements by Subparts D and E of Part 69 by filing 1984 access tariffs that comply with our general tariff requirements instead of following §§ 69.111 and 69.112.[9] In the exchange carrier association's tariff such charges shall replace charges for the Dedicated Transport and Common Transport elements. Companies electing for 1984 to cross-reference an association charge for any carrier's carrier access element other than the Carrier common Line element or elements and the transitional surcharges must cross-reference the association's charges for transport. The waiver does not, moreover, alter the requirement that telephone companies participating in extended area agreements either file a joint tariff for all traffic sensitive elements or concur in the association tariff for these elements.[10] See *Access Charge Order* at paras. 321-22.

11. Accordingly, IT IS HEREBY ORDERED, That pursuant to Sections 4(i) and 4(j) of the Communications Act of 1934, As Amended, 47 U.S.C. 154 (i) and (j), and Section 1.3 of the Commission's Rules, 47 CFR 1.3, the Emergency Petition for Waiver filed by the American Telephone and Telegraph Company and the Bell System Operating Companies is GRANTED to the extent reflected herein and is OTHERWISE DENIED.

12. IT IS FURTHER ORDERED, That Sections 69.111 and 69.112 of the Commission's Rules, 47 CFR 69.111-112, shall not apply to access service tariffs filed by or on behalf of any telephone company for the period ending December 31, 1984. A waiver of §§69.1(b), 69.4(b) (7) and (8), and 69.101, 47 CFR 69.1(b), 69.4.(b)(7)-(8), and 69.101, 47 CFR 69.1(b), 69.4(b)(7)-(8), and 69.101, shall also be in effect during this period to the extent that these sections compel compliance with §§ 69.111 and 69.112.

13. IT IS FURTHER ORDERED, That the Secretary shall cause this *Memorandum Opinion and Order* to be Published in the **Federal Register.**

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 83-18557 Filed 7-6-83; 8:45 am]

BILLING CODE 6712-01-M

[7] We agree with the Cincinnati-SNET-SBS view that it would be unwise to follow a course that results in different access elements and associated rate structures for divested BOCs and other exchange carriers. A considerable degree of uniformity in access charge elements and rate structures is essential to the success of our access charge scheme and must be viewed as one of the paramount purposes of the access phase of CC Docket No. 78-72. If the MFJ Appendix methodology is preferable to the methodology described in the access charge rules, that methodology should be imposed upon all carriers. If the MFJ Appendix methodology is not preferable, it should not be imposed upon any of them.

[8] On issue before us on reconsideration of the Access Charge Order concerns upon whom carrier's carrier charges, including transport charges, should be assessed. The action we take today in no way prejudges that issue, but affects only the 1984 rate structures for the Common Carrier and Dedicated Transport elements. This waiver may in fact be affected by the outcome of the reconsideration proceeding. Until our reconsideration of the *Access Charge Order* is completed, however, carriers should proceed in their tariff preparation assuming that the waiver is in effect.

[9] Compliance with MFJ criteria is not one of the standards that we shall require an access charge tariff to satisfy. Compliance or noncompliance is an issue to be resolved by the court. Our action today, however, should leave AT&T and the BOCs with sufficient flexibility to meet both MFJ criteria and the standards imposed by the Communications Act of 1934, 47 U.S.C. 151 *et seq.*, and Commission rules and regulations.

[10] In their petitions for reconsideration of the Access Charge Order several parties have asked us to reconsideration imposing this requirement. *See, e.g.*, petitions for reconsideration filed by AT&T, Centel Corporation, GTE and Rochester Telephone Company. We shall address the issue shortly in that reconsideration proceeding.

INTERSTATE COMMERCE COMMISSION

49 CFR Ch. X

[Ex Parte. No. 311 (Sub-4)]

Motor Carrier Fuel Surcharge Program; Modification

AGENCY: Interstate Commerce Commission.

ACTION: Termination of owner-operator fuel reimbursement program; rule-related notice.

SUMMARY: The United States Court of Appeals for the Fifth Circuit determination that the Commission does not have jurisdiction to require motor carriers to reimburse owner-operators for increased fuel costs. The mandatory program will end on the effective date of the Fifth Circuit's mandate.

EFFECTIVE DATE: This decision will be effective on July 23, 1983.

FOR FURTHER INFORMATION CONTACT:

Washington, DC, Lee Alexander (202) 275-7723
Washington, DC, Ted Kalick (202) 275-6446
Washington, DC, Alan Rothenberg (202) 275-7597
Boston, MA, John B. Thomas (617) 223-1830
Philadelphia, PA, Martin J. Carroll (215) 597-4460
Atlanta, GA, Sara K. Bryant (404) 881-2167

Chicago, IL, Richard A. Pettit (312) 353–6204

Ft. Worth, TX, Glenn A. Eady (817) 334–2794

San Francisco, CA, Marga L. Deminne, (415) 974–7125

SUPPLEMENTARY INFORMATION: In a decision served October 8, 1981 (46 FR 50070, Oct. 9, 1981), the Commission required regulated motor carriers to reimburse owner-operators for their increased fuel costs based on a cents-per-mile formula. This decision became effective February 12, 1982.

The United States Court of Appeals for the Fifth Circuit has now held that the Commission exceeded its statutory authority in requiring carriers to reimburse owner-operators for a portion of their fuel costs. *See Central Forwarding, Inc.* v. *I.C.C.*, 698 F.2d 1266 (5th Cir. 1983). The court vacated orders promulgated in this proceeding, effective 60 days following the issuance of the mandate or at such earlier time as the Commission might act.[1] The court's mandate was issued on May 24, 1983, and all Ex Parte No. 311 (Sub-No. 4) regulations have been vacated, effective July 23, 1983. The fuel reimbursement program will be terminated on that date.

In the future, the issue of fuel costs will be a matter for negotiation between owner-operators and carriers. The Commission's leasing rules require only that the lease clearly specify, among other items, the responsibility of each party with respect to the cost of fuel, fuel taxes, and empty miles. *See* 49 CFR 1057.12(f) (1982). The parties are also encouraged to eliminate any provisions that reduce gross revenue subject to the revenue split for the purpose of avoiding dual compensation that were inserted into leases as a result of the mileage payment regulations.

Although the court vacated the Commission's rules insofar as they mandated fuel payments to owner-operators by carriers, the court held that its decision has no retroactive effect and that the fold-ins that took place during the fold-in period do not have to be undone. *See Central Forwarding*, 698 F.2d at 1285. In addition, the court left intact the Commission's authority to allow short notice rate increases to reflect rising fuel costs.[2]

As noted, the court's decision will become effective on July 23, 1983. Until that time, carriers are required to reimburse owner-operators pursuant to the cents-per-mile figure. The Commission will continue to publish changes in this figure if warranted. The final weekly fuel survey will be June 27, 1983. Subsequent adjustments would serve no purpose because changes are effective on 10 working days' notice after publication in the **Federal Register.**

Finally, it should be emphasized that the court left intact existing rates. At the same time, it invited "disgruntled shippers who may wish to protest existing rates" to file complaints with the Commission. *See id.* Moreover, the court suggested, in denying a petition for rehearing of *Central Forwarding*, that the Commission did not carefully consider the shippers' contentions concerning the rate structure. *See Central Forwarding, Inc.* v. *I.C.C.*, No. 81–4437 (5th Cir. May 13, 1983). However, in the absence of a complaint, it is unclear what action, if any, the Commission should take. If shippers wish to assert claims or request relief they believe is warranted by the court's decision they should file an appropriate petition.

It is ordered:

Regulations promulgated in Ex Parte No. 311 (Sub-No. 4) requiring motor carriers to reimburse owner-operators pursuant to a cents-per-mile figure are vacated.

This proceeding is discontinued.

This decision will be effective on July 23, 1983.

Decided: June 27, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison. Chairman Taylor concurred in part and dissented in part with a separate expression.

Agatha L. Mergenovich,

Secretary.

Chairman Taylor, concurring in part and dissenting in part:

I disagree with the majority's decision in two respects.

First, in discontinuing this proceeding, I would also have canceled Special Tariff Authority Nos. 81–2500 and 81–2501. In light of the recent decline and current stabilization in fuel prices, there is no present fuel emergency which warrants a blanket special tariff authority permitting all carriers to file fuel-related increases on short notice.

Carriers, on an individual basis, could petition for special permission whenever short-notice rate relief is necessary. Should the price of fuel begin to rapidly escalate in the future, the Commission could immediately reinstitute relief on an industry-wide basis. Until such time, however, the Commission should proceed on a case-by-case basis.

Second, I do not believe that the majority has adequately considered or properly addressed the court's concern over the fold-in fuel cost segment of presently effective rates.

In their petition for rehearing, the Drug and Toilet Preparation Traffic Conference and National Small Shipments Traffic Conference (NSSTC) contended that the Commission lacked a rational basis for folding in fuel costs on the basis of a percentage of revenue. They alleged that the Commission's fold-in method forced shippers paying the highest rates to bear the greater burden of fuel costs. Although the court denied the motion for rehearing, it characterized the shippers' argument as a "strong contention" and suggested that the Commission had not given this matter careful consideration. See *Central Forwarding, Inc.* v. *I.C.C.*, No. 81–4437 (5th Cir. May 13, 1983). The court specifically pointed out that it had remanded this proceeding to the Commission for further consideration of this issue. Although I agree with the majority's decision not to take any specific action with respect to existing rates at this time, I believe a more detailed explanation is warranted in light of the court's decision.

Throughout the duration of the fuel surcharge program, the Commission has recognized and taken appropriate action to reflect the differences in the relationship of fuel expense to gross revenue between truckload (TL) and less-than-truckload (LTL) traffic. This was evidenced by our applying different surcharges for TL and LTL traffic. In devising the surcharges, relationships of fuel expense to revenue were determined to be 16.9% for TL and 2.9% for LTL traffic.[3] In a decision of the Commission served February 11, 1982, the LTL surcharge was frozen at 3.1 percent and the TL surcharge at 18 percent for purposes of the fold-in. The rules promulgated in this proceeding limited a carrier's fold-in to the lesser of the existing fuel surcharge or actual fuel costs. In addition, fold-in proposals were to be filed on 30-days' notice, during which period shippers could file protests. Shippers may still file complaints against excessive fold-ins. The revenue surcharge program, the limitation on the fold-in, and the requirement for 30-days' notice protected the interests of LTL shippers. These protections were instituted in response to the legitimate concerns expressed by LTL shippers and should be contrasted with the earlier proposal of July 31, 1981, which would have permitted a fold-in of the surcharge without limitation on one-day's notice.

The Commission specifically addressed NSSTC's concerns in a decision served November 6, 1981. In a petition for administrative review, NSSTC argued that we should require a mileage-based fold-in by the use of mileage arbitraries or by the adjustment of individual rates based on

[1] On April 5, 1983, the Commission, by a 2–2 vote, declined to appeal the court's decision (Chairman Taylor and Commissioner Gradison voted to seek rehearing, Vice Chairman Sterrett and Commissioner Andre voted not to seek further review).

[2] *See* Special Tariff Authority Nos. 81–2500 and 81–2501.

[3] The relationship of fuel to revenue for LTL traffic was originally established at 6.0 percent. However, in order to assure that general commodity carriers were not overcompensated for total fuel expense increases (i.e., TL and LTL), the percentage was adjusted from 6.0 percent to 2.9 percent. The effect of this adjustment was to significantly understate the LTL fuel surcharge (i.e., 2.9 percent vs. 6.0 percent).

actual mileage rather than require a percentage increase. The former approach was found unacceptable because it would have represented a perpetuation of the fuel surcharge structure. The latter proposal, given the number of individual tariffs published by all regulated carriers, would have been impossible to implement.

For purposes of rate increases, carriers generally determine the additional revenue sought and express this figure as a percentage. In this proceeding, carriers were required to limit the fold-in to their fuel costs based on mileage if owner-operators were used, or actual costs if company equipment was used. The fact that this increase was later expressed as a percentage in no way differs from traditional ratemaking.

Accordingly, I continue to believe it was appropriate to use percentage increases for purposes of the fold-ins. If shippers believe that rates are now too high, because of percentage increases attributable to the fold-ins, the best way for them to seek a resolution is on a case-by-case basis through complaints filed with the Commission. Because shippers are in a much better position than the Commission to identify rates that may be unreasonably high as a result of the fold-ins, the complaint process is the most efficient way to deal with such rates.

[FR Doc. 83-18567 Filed 7-8-83; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 301

Delegation of Authority To Make Determinations Under the Regulatory Flexibility Act

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The authority to improve Federal rulemaking by creating procedures to analyze the availability of more flexible regulatory approaches for small entities, i.e. small businesses, organizations, and governments was vested in Federal agency heads, including the Secretary of Transportation, by the Regulatory Flexibility Act (Pub. L. 96-354) effective January 1, 1981. On April 20, 1981, in the Federal Register, a final rule was published by the Office of the Secretary of Transportation delegating "to the heads of the Departments operating administrations and to appropriate officials within the Office of the Secretary," including the Federal Highway Administrator, the authority to carry out the associated responsibilities under the Regulatory Flexibility Act (49 CFR 1.45 and 49 CFR 1.54). By this document, this authority is being delegated formally from the Federal Highway Administrator to the Associate Administrator for Safety, Traffic Engineering and Motor Carriers, and then from the Associate Administrator to the Director, Bureau of Motor Carrier Safety. Until now, the delegated authority has been appropriately used by the Director in conjunction with his already delegated rulemaking responsibilities.

EFFECTIVE DATE: July 11, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Laska, Office of the Chief Counsel, (202) 426-0762, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Since this amendment relates to Departmental management, procedures and practices, notice and public procedure on it are not required and it may be made effective in fewer than 30 days after publication in the **Federal Register.**

The Federal Highway Administration has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. No new or additional economic impacts are expected from this rule. Accordingly, the preparation of a full regulatory evaluation is not required.

List of Subjects in 49 CFR Part 301

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

PART 301—[AMENDED]

In consideration of the foregoing, and under the authority of the Regulatory Flexibility Act (Pub. L. 96-354), 49 U.S.C. 322, 49 CFR 1.45(a)(13), the Federal Highway Administration is amending title 49, Code of Federal Regulations, Part 301 by adding a new § 301.60(e)(7) to read as set forth below:

§ 301.60 Delegations of authority relating to motor carrier safety.

* * * * *

(e) * * *

(7) Perform the functions enumerated in § 1.45(a)(13) of this title relating to the authority to make certifications, findings, and determinations, under the Regulatory Flexibility Act (Pub. L. 96-354), for rulemaking documents for which issuance authority has been delegated.

Issued on: June 29, 1983.

Ray A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 83-18468 Filed 7-8-83; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 29

Rights-of-Way General Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule corrects errors and eliminates burdensome, outdated and unneeded provisions concerning wheeling stipulations in the right-of-way regulations for right-of-way grants issued under the provisions of section 4(d)(2) of the National Wildlife Refuge System Administration Act of 1966, as amended, and other pertinent statutes.

EFFECTIVE DATE: August 10, 1983.

FOR FURTHER INFORMATION CONTACT: Richard E. Corthell, Division of Realty, U.S. Fish and Wildlife Service, Washington, D.C. 20240, (202) 653-7650.

SUPPLEMENTARY INFORMATION: This rulemaking revises the General Fish and Wildlife Service Right-of-Way Regulations to correct minor errors, implement administrative changes, and eliminate a burdensome and outdated provision.

The definitions in 50 CFR 29.21 are revised to recognize Alaska as an administrative region for purposes of the general refuge regulations and to delete a reference to the Department of Energy.

The reference to section "29.218" in § 29.21-1(a) is corrected to read section "29.21-9".

The word "Bureau" in § 29.21-2(b) is corrected to read "Service". Paragraph (c) corrects the address of Region 4, the States listed for Regions 3 and 6, and changes Area Director to Regional Director for Alaska.

The requirements for electric power transmission line rights-of-way in § 29.21-8 are revised to delete the requirement for applicants to agree to wheeling stipulations for electric power transmission lines of 66 KV or greater. This revison deletes paragraphs (c) through (e). Wheeling stipulations had been a requirement of the Department of the Interior from 1948 until 1954, and again from 1963 until 1982. By final rulemaking published March 23, 1982, the Bureau of Land Management (BLM)

deleted this requirement from its regulations in 43 CFR Part 2800. This revision is consistent with the change implemented by BLM.

On December 6, 1982, a Notice of Proposed Rulemaking was published in the Federal Register (47 FR 54840–54841) with a comment period of 45 days.

Summary of Public Comment with Service Responses: Between December 6, 1982, and January 20, 1983, nineteen comments were received of which twelve were opposed to, and seven were in favor of, the proposed rulemaking. Included were 2 letters from associations of electric companies, 2 letters from associations of electric cooperatives, 3 letters from investor owned utilities, 9 letters from publicly owned utilities or cooperatives, 2 letters from Federal power marketing administrations, and one letter from another Federal agency.

Objections to the proposed rule are listed below and are ranked according to the frequency mentioned.

1. Deletion of the wheeling requirement would result in some transmission lines being underutilized and would cause the construction of duplicate facilities.

2. The provisions of section 211 of the Public Utilities Regulatory Policies Act, 16 U.S.C. 824j, are cumbersome and ineffective for seeking orders to require wheeling.

3. Without wheeling, the cost of Federal power to preference customers may increase and would make it more difficult for cooperatives to provide power to sparsely populated areas.

4. The deletion of the wheeling requirement would allow an applicant to receive a right-of-way across Fish and Wildlife Service administered lands without reserving to the United States the right to utilize surplus capacity at reasonable rates.

5. Deletion of the wheeling requirement would increase the workload and time involved for the Federal Power Marketing Administrations (PMA's) to negotiate wheeling contracts with the investor owned utilities.

6. The Fish and Wildlife Service should consider the PMA's views on need for wheeling during the environmental review process.

7. Unused capacity on PMA lines is available for use by other utilities and utilitylines utilizing public lands should be afforded the same consideration.

8. Without a wheeling stipulation, there is little incentive for investor owned utilities to negotiate wheeling with the PMA's.

The Service makes the following responses to the above-mentioned comments.

1. *Underutilization of existing lines and duplication of facilities.* The rationale here is that absent a wheeling stipulation requirement, power companies with lines having available capacity can refuse to negotiate wheeling agreements and thus cause the Federal Power Marketing Agencies (PMA's) to construct duplicate lines in the same area in order to market Federal power. We believe that the likelihood of this happening as a result of the Service's granting rights-of-way is remote since the Fish and Wildlife Service processed only three applications over the last five years wherein the wheeling stipulation would be applicable. Under section 211 of the Public Utilities Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 824j, power marketing agencies can petition the Federal Energy Regulatory Commission (FERC) for an order to provide wheeling. In order for the Fish and Wildlife Service to grant a right-of-way across National Wildlife Refuge System land, the proposed use must be compatible with the purpose for which the unit of the System was established. At best, electric transmission line uses do cause substantial alteration of wildlife habitats, and therefore the Service would require that certain conditions be agreed to before it permitted the construction of a duplicate facility across its lands. The Service can impose such stipulations as may be necessary under its right-of-way regulation at 50 CFR 29.21–4(b).

2. *The provisions of PURPA are cumbersome and ineffective.* The process provided in PURPA was selected by the Congress to fairly represent both interests.

3. *The cost of Federal power to preference customers would increase and make it more difficult for cooperatives to provide power to rural areas.* This may be true, but to what extent would be difficult to quantify. The removal of the stipulation from the Service's regulation should have a minimal effect because of the small number of applications received where wheeling would be a factor.

4. *Applicant could receive a right-of-way across Service land without reserving to the United States the right to utilize surplus capacity.* Conditions have changed since the stipulation was first imposed in 1948 and re-imposed in 1963. PURPA was enacted in 1978, and gives entities seeking wheeling agreements a process whereby they can petition the Federal Energy Regulatory Commission for an order to provide wheeling. When wheeling was first imposed by regulation, and until the late 1960's, transmission lines were permitted across public lands for a nominal right-of-way charge and the wheeling stipulation could be viewed as an additional form of compensation to the United States. The National Wildlife Refuge System Administration Act of 1966, as amended in 1974, requires the payment of fair market value for rights-of-way across lands administered by the Service. In addition, we believe the Federal Power Marketing Agencies are now better organized in that they own and operate their own transmission systems, and are capable of negotiating wheeling agreements without the leverage provided by the wheeling stipulation.

5. *Would increase the workload of PMA's to negotiate wheeling agreements.* Because of the low number of qualifying applications received by the Service, the effect of the proposed rule would be minor.

6. *The Service should consider the appropriate PMA's views on the need for wheeling during the environmental review process.* The Service will consider all comments, including the PMA's views during the environmental process. If it appears that an application would result in a duplicate line, the applicant would be referred to the Department of Energy to seek wheeling under 16 U.S.C. 824j.

7. *Unused capacity on PMA lines is available for use by others—Utility lines utilizing public lands should do the same.* The availability of PMA lines is a requirement of law for the Pacific Northwest Federal Power Transmission System, 16 U.S.C. 838, 839. The Congress had required this availability of investor owned utilities only through the provisions of PURPA.

8. *There is little incentive for investor owned utilities to negotiate wheeling with PMA's.* Without the wheeling stipulation, the leverage to require utilities to negotiate would be removed. We disagree that there would be little incentive to negotiate. Such negotiations would instead be governed by a free market.

Other information: The principal author of this rulemaking is Richard E. Corthell, Division of Realty, Fish and Wildlife Service.

It is hereby determined that the publication of this document is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to section 102(2)(C) of the National

Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

The Department has determined that this document is not a major rule under Executive Order 12291. The regulations are not expected to increase costs significantly to consumers of power marketing agencies; the agencies may negotiate with applicants or seek orders for wheeling from the Federal Energy Regulatory Commission under 16 U.S.C. 824j. The revised regulations will reduce the cost to the United States of processing some rights-of-way, the cost to the applicant caused by delays in construction schedules, and will not increase costs to States or local governments. The change will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (Pub. L. 96-354). This rule does not contain information collection requirements subject to Office of Management and Budget review under 44 U.S.C. 3501 *et seq.*

List of Subjects in 50 CFR Part 29

National Wildlife Refuge System, Public land/mineral resources, Public lands/rights-of-way wildlife refuges.

Under the authority of section 4(d)(2) of the National Wildlife Refuge System Administration Act of 1966, as amended, 16 U.S.C. 668dd(d)(1)(B), and other applicable statutes, Subpart B of Part 29, Title 50 of the Code of Federal Regulations is amended as set forth below:

PART 29—[AMENDED]

1. In § 29.21, Definitions, revise paragraphs (c) and (i) to read as follows:

§ 29.21 [Amended]

* * * * *

(c) "Regional director" means the regional director for one of the Service's seven regions.

* * * * *

(i) "Department" means U.S. Department of the Interior unless otherwise specified.

§ 29.21-1 [Amended]

2. In 29.21-1(a) change the reference to "§ 29.218" to read "§ 29.21-9."

§ 29.21-2 [Amended]

3. In 29.21-2(b), change the word "Bureau" to read "Service."

4. Revise 29.21-2(c) (3), (4), (6) and (7) to read as follows:

* * * * *

(c) *Regional Director's addresses.*

* * * * *

(3) For the States of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin:

Regional Director, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

(4) For the States of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and Virgin Islands:

Regional Director, U.S. Fish and Wildlife Service, Richard B. Russell, Federal Building, Suite 1200, 75 Spring Street, S.W., Atlanta, Georgia 30303.

* * * * *

(6) For the States of Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming:

Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225.

(7) For the State of Alaska:

Regional Director, U.S. Fish and Wildlife Service, 1101 E. Tudor Road, Anchorage, Alaska 99503.

§ 29.21-8 [Amended]

5. In § 29.21-8, Electric power transmission line rights-of-way, remove paragraphs (c), (d), and (e).

Dated: July 1, 1983.

G. Ray Arnett,

Assistant Secretary of the Interior.

[FR Doc. 83-18680 Filed 7-8-83; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 681

[Docket No. 30627-118]

Western Pacific Spiny Lobster Fisheries; Emergency Interim Rule

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

ACTION: Emergency interim rule.

SUMMARY: The Secretary of Commerce issues this emergency interim rule to change the specification of the required entryway openings for lobster traps. The intent is to allow a wider range of lobster trap designs in the spiny lobster fishery in the northwestern Hawaiian Islands (NWHI) while still affording protection of the Hawaiian monk seal. This action is nondiscretionary because of a unanimous vote of the Western Pacific Fishery Management Council and is required by the Magnuson Fishery Conservation and Management Act.

DATE: The interim rule is effective on July 6, 1983 and will remain effective until October 11, 1983.

ADDRESS: Floyd S. Anders, Jr., Acting Regional Director, National Marine Fisheries Service, Southwest Region, 300 S. Ferry Street, Terminal Island, California 90731.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, 213-548-2518.

SUPPLEMENTARY INFORMATION: On February 7, 1983, regulations for the Western Pacific Spiny Lobster Fisheries of the Western Pacific Region (FMP) were published in the **Federal Register** with an effective date of March 9, 1983. The FMP was approved on April 12, 1982. Approval and final implementation of the FMP were delayed because of issues of Federal inconsistency with coastal zone management plans raised by the State of Hawaii. Soon after the publication of the final regulations, the National Marine Fisheries Service (NMFS) discovered that many of the lobster traps in use in the spiny lobster fishery in the Northwestern Hawaiian Islands (NWHI) did not meet the entryway opening requirements. These requirements only apply to the NWHI fishery. During the period between FMP preparation and implementation, new traps had been brought into the fishery.

The entryway opening requirements are one of several measures in the FMP and in the regulations designed to protect monk seals, which are endangered marine mammals in the NWHI.

After review and analysis, more fully explained elsewhere in this document, the Western Pacific Fishery Management Council (Council) concluded that monk seals would still be protected from becoming caught in the entryways of traps, and that the fishermen's ability to use a greater variety of traps could be enhanced and their financial hardships minimized by changing the entryway opening regulation. The Council voted unanimously on May 24, 1983, at a regular Council meeting in Honolulu to change the entryway opening regulation and to request the Secretary of Commerce (Secretary) to promulgate emergency regulations to make the change.

The existing spiny lobster regulations specifically require that the entryway of a spiny lobster trap measure no greater than 10.5 inches in the greatest diagonal or diameter at the larger end, and no greater than 6.5 inches in the greatest diagonal or diameter at the smaller end.

The FMP only specifies the required dimensions for the smaller opening. The purpose of the regulation is to minimize any potential impacts of lobster traps on the Hawaiian monk seal.

Implementation of size requirements for trap entryway developed from the concern that monk seals could possibly be caught in lobster traps while searching for food. Openings were measured on traps in use in the fishery as the FMP was being prepared, and measurements were taken of the cranial circumference of dead monk seals. The diameter of monk seal skulls ranged from 5.1 inches for a pup of unknown age to 7.6 inches for an adult. Although monk seals have been observed tangled in lines or netting, there are no records of seals being caught in lobster traps. To protect the monk seals, the entryway measurements of existing traps came to be required by the regulations. This was done because (1) the existing traps were being used in the fishery with no documented monk seal problems and (2) the opening was small enough so that, based upon the cranial measurements, most monk seals could not get their heads inside the trap. The Council adopted the trap entryway measurements in the FMP because it concluded that the restriction would not disrupt the fishery and that it would prevent the future use of traps with larger openings which might be dangerous to the seals.

Two problems related to traps in the fishery have developed: (1) The trap openings in wire traps distort as the result of stacking the traps and (2) traps of various designs with different entryway openings have entered the fishery since preparation of the FMP. On March 8, 1983, 100 sample lobster traps were measured. Because of stacking and use, most openings of the traditional wire traps were oblong rather than round. The most consistent measurement at the large opening was 9.5 inches x 11.5 inches and 6.5 inches x 5.5 inches at the small opening. According to the existing regulations, the dimensions of the large opening makes these traps illegal.

A new molded plastic trap which folds in half for easy stacking has been purchased by lobster fishermen. The easy stacking of these traps is a significant benefit to lobster fishermen because it enables a larger number of traps to be transported to the fishing grounds, approximately 450 to 1,500 nautical miles from port. The openings of these traps also are oblong. The outer opening of the traps measure 11 inches x 12.75 inches and the inner openings measure 7 inches x 3.5 inches. The outer opening now is illegal because it exceeds 10.5 inches in the greatest diagonal and the inner opening now is illegal because it exceeds 6.5 inches in the greatest diagonal. If the current regulations are not amended, most of the wire lobster traps and all of the molded plastic traps in the fishery could not be used without costly modification.

A wire and wooden slat trap also has been introduced from the Caribbean lobster fishery. The outer and inner openings are square and the same size, 7.5 inches on each side; therefore, they also are illegal.

In the biological opinion for the FMP, the adequacy of trap design for preventing entrapment of monk seals was considered. It was stated that the maximum dimension restriction of the inner trap opening (6.5 inches) would prevent adult monk seals from becoming entrapped, but that weaned pups could become entrapped. The opinion concluded that the FMP contained safeguards to reduce adverse impacts to monk seals from the lobster fishery, and recommended that the FMP be implemented with provisions for emergency closures in the event fishery-related mortality of monk seals was identified.

The proposed change in the regulations on trap openings is as protective as those considered in the biological opinion because it prevents the same size class on monk seals from becoming entrapped. In some instances the new traps are likely to be safer. For example, the 3.5 inch height of the plastic trap is likely to prevent weaned pups from becoming entrapped. The proposed change in the regulation is consistent with the conclusions of the biological opinion; therefore, reinitiation of the consultation process is not necessary.

There was a discussion of the trap problems at a March 22, 1983, meeting with the Chairman of the Hawaiian Monk Seal Recovery Team, members of the Council Spiny Lobster Planning Team, and NMFS personnel. Following a review of the various trap designs at that meeting, it was determined that only the wooden slat trap presented a potential problem to monk seals.

The Council heard public comments on the trap problem and discussed the issue at its May 23, 1983, meeting. The traps in use by fishermen were presented at the meeting and the problem of entrapment was reviewed. From the information presented, the Council felt that some flexibility in the design of traps should be allowed as long as the potential for entrapment of monk seals was minimized.

Section 305(e)(2)(A) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), as amended by Pub. L. 97–453 on January 12, 1983, authorizes the Secretary of Commerce to implement emergency regulations if the Council finds that an emergency exists involving any fishery within its jurisdiction, whether or not a fishery management plan exists for the fishery. If the Council finding is by unanimous vote of the members who are voting members, no Secretarial discretion is afforded.

By unanimous vote at its May 23, 1983, meeting the Council determined that an emergency exists in the spiny lobster fishery in the NWHI because most of the traps being used by the fishermen are illegal under the existing regulations, and the Council directed that immediate action be taken to amend the existing entryway opening regulation so that the lobster fishery will not be curtailed. Specifically, it voted to eliminate the outer opening requirement and to change the method of measuring the inner opening size. The Council approved proposed language that would require that the smallest opening of an entryway of any spiny lobster trap not allow any sphere or cylinder greater than 6.5 inches in diameter to pass from outside the trap to inside the trap.

The change in the trap entryway opening requirement will maintain a 6.5 inch measurement to prevent the possible entrapment of monk seals while allowing the use of a more oblong opening in traps. It will not require modification of the wire or the plastic traps; however, it will require some modification of the wooden slat trap. The Council will submit an amendment to the FMP that will, upon approval and implementation, permanently establish this emergency provision.

Classification

The NOAA Assistant Administrator for Fisheries (Assistant Administrator) concurs with the Council's finding that these modified rules are necessary and appropriate in order to prevent curtailment of the Western Pacific Spiny Lobster Fishery. He has determined the Council's unanimous action is consistent with section 305(e)(2)(A) of the Magnuson Act and that these rules must be implemented as emergency rules. The Assistant Administrator also finds for good cause that the reasons justifying implementation of these rules on an emergency basis make it impracticable and contrary to the public interest to provide notice and opportunity for comment upon, or to delay for 30 days the effective date of these emergency

regulations, under the provisions of section 553 (b) and (d) of the Administrative Procedure Act.

The NOAA Administrator has determined that these rules are not "major" under E.O. 12291, and that the emergency which justified the promulgation of emergency regulations under section 305(e) of the Magnuson Act also constitutes an emergency under section 8(a)(1) of E.O. 12291. This conclusion was reached because the difference between this action and existing regulations is insignificant and the existing regulations were found to be nonmajor (48 FR 55610 February 7, 1983.) Because it is imperative to implement these rules immediately, it is impracticable to comply with section 3(c)(3) of E.O. 12291, which requires that NOAA transmit to the Director of the Office of Management and Budget (OMB) a copy of every nonmajor rule at least 10 days prior to publication. Nevertheless, a copy of this emergency regulation has been transmitted to the Director of OMB.

The Council is preparing an amendment to its spiny lobster FMP that, upon approval and implementation, will permanently establish this emergency rule. When completed, the Council's amendment will include an environmental assessment, a regulatory flexibility analysis as required by the Regulatory Flexibility Act, a determination of the applicability of the Paperwork Reduction Act and a determination of consistency of the amendment with the approved coastal zone management programs of Hawaii, American Samoa, and Guam as required by section 307(c) of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 681

Fish, Fisheries, Reporting requirements.

Dated: July 5, 1983.

Carmen J. Blondin,

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

PART 681—WESTERN PACIFIC SPINY LOBSTER FISHERIES

For reasons set out in the preamble, 50 CFR Part 681 is amended as follows:

1. The authority citation for Part 681 reads as follows:

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

2. In § 681.24, paragraph (b) is revised to read as follows:

§ 681.24 Gear restriction.

* * * * *

(b) The smallest opening of an entryway of any spiny lobster trap may not allow any sphere or cylinder greater than 6.5 inches in diameter to pass from outside the trap to inside the trap.

[FR Doc. 83-18590 Filed 7-6-83; 3:04 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 48, No. 133
Monday, July 11, 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

Agricultural Marketing Service

7 CFR Part 51

United States Standards for Grades of Fall and Winter Type Squash

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to amend the voluntary United States Standards for Grades of Fall and Winter Type Squash to include pumpkin. Currently there are no U.S. standards for pumpkin. Adding pumpkin to the standards would provide industry with official levels of quality. This proposal also includes minor changes in wording, procedures and standards format. AMS has the responsibility, in cooperation with industry, to maintain and update standards in line with current marketing practices.

DATE: Comments must be received on or before September 9, 1983.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Hearing Clerk, U.S. Department of Agriculture, Room 1077 South Building, Washington, D.C. 20250. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Philip C. Eastman, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250 (202) 447-5024.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated as a "non-major" rule. It will not result in an annual effect of $100 million or more. There will be no major increase in cost or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Public Law 96-354 (5 U.S.C. 601), because it reflects current marketing practices.

These current standards became effective in 1944 and apply to squash customarily referred to as fall and winter type, and include varieties such as Hubbard, Turban, Acorn, Marrow, Delicious and Butternut. They are harvested when fully developed and characteristically have a hard skin or shell and mature seeds, in contrast to summer squash which are harvested at a stage when the skin and seeds are tender.

In recent years members of the produce industry has expressed an interest in having these standards also apply to fresh pumpkin, noting the similarity of pumpkin to fall and winter type squash. They have pointed out to USDA inspection personnel the necessity of establishing official levels of quality.

Botanically, there is no distinction between squash and pumpkin. They are both members of the cucurbit family and cultural practices are generally the same. Therefore, it would be a practical application of the grade standards to include squash and pumpkin of the species Cucurbita pepo, C. moshata, C. maxima and C. mixta. This action would provide growers, shippers, wholesale receivers and processors of fresh pumpkin with official levels of quality.

Additional changes proposed include the following:

(1) Definitions of the terms, "similar varietal characteristics;" "fairly well matured" and "well matured," would be reworded in the interest of clarity and application of the standards to pumpkin.

(2) Provision would be made for determining percentages on the basis of count when the squash or pumpkin are fairly uniform in size. Currently, the standards require percentages to be determined by weight.

(3) Establishment of a constant sample size for squash and pumpkin shipped in bulk or bulk bins.

List of Subjects in 7 CFR part 51

Fresh fruits, Vegetables, and other products (inspection certification, and standards).

PART 51—[AMENDED]

Accordingly, it is proposed that the U.S. Standards for Grades of Fall and Winter Type Squash, 7 CFR 51.4030 through 51.4035 be amended as follows:

Subpart—United States Standards for Grades of Fall and Winter Type Squash and Pumpkin [1]

Sec.

51.4030 General.
51.4031 Grades.
51.4032 Size.
51.4033 Tolerances.
51.4034 Application of tolerances.
51.4035 Definitions.

§ 51.4030 General.

(a) These grade standards apply to squash and pumpkin, both of the cucurbit family (Cucurbita pepo, C. moshata, C. maxima, C. mixta), having a hard shell and mature seeds.

§ 51.4031 Grades.

(a) "U.S. No. 1" consists of squash or pumpkin which meet the following requirements:

(1) Basic requirements:
(i) Similar varietal characteristics;
(ii) Well matured; and
(iii) Not broken or cracked.
(2) Free from:
(i) Soft rot or wet breakdown.
(3) Free from damage by:
(i) Scars;
(ii) Dry rot;
(iii) Freezing;
(iv) Dirt;
(v) Disease;
(vi) Insects; and
(vii) Mechanical or other means.
(4) Tolerances (See § 51.4033).

[1] Compliance with the provisions of these standards shall not excuse failure to comply with provisions of applicable Federal or States laws.

(b) "U.S. No. 2" consists of squash or pumpkin which meet the following requirements:
(1) Basic requirements:
(i) Similar varietal characteristics;
(ii) Fairly well matured; and
(iii) Not broken or cracked.
(2) Free from:
(i) Soft rot or wet breakdown.
(3) Free from serious damage by:
(i) Scars;
(ii) Dry rot;
(iii) Freezing;
(iv) Dirt;
(v) Disease;
(vi) Insects; and
(vii) Mechanical or other means.
(4) Tolerances (See § 51.4033).

§ 51.4032 Size.

Minimum and/or maximum size of any lot of squash or pumpkin may be specified in connection with the grade in terms of whole pounds and/or fractions thereof.

§ 51.4033 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by weight, or by count when fairly uniform in size, are provided as specified:

(a) *Defects.* Ten percent for specimens in any lot which fail to meet the requirements of the specified grade: *Provided,* That included in this amount not more than 2 percent shall be allowed for soft rot or wet breakdown, or serious damage by dry rot.

(b) *Size.* Five percent in any lot for specimens which are smaller than a specified minimum weight, and 15 percent which are larger than a specified maximum weight.

§ 51.4034 Application of tolerances.

When packed in containers the entire contents shall be the sample, or when in bulk or bulk bins, the sample shall consist of approximately 50 pounds, or 25 specimens when fairly uniform in size. Samples are subject to the following limitations:

(a) For a tolerance of 10 percent or more, individual samples in any lot may contain not more than one and one-half times the tolerance specified, except that when the individual sample contains 15 specimens or less, individual samples may contain not more than double the tolerance specified: *Provided,* That at least two defective or off-size specimens may be permitted in any individual sample: *And provided further,* That the average for the entire lot is within the tolerance specified for the grade.

(b) For a tolerance of less than 10 percent, individual samples in any lot may contain not more than double the tolerance specified: *Provided,* That at least one defective or off-size specimen may be permitted in any individual sample: *And provided further,* That the average for the entire lot is within the tolerance specified for the grade.

§ 51.4035 Definitions.

"Similar varietal characteristics" means having the same general characteristics, such as shape, texture and color.

"Well matured" means reaching a stage of development which is indicative of good handling and keeping quality for the variety.

"Fairly well matured" means reaching a stage of development in which the outer skin (shell) is not tender.

"Cracked" means split open, exposing the flesh.

"Damage" means any specific defect described in this section; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance, or edible or marketing quality.

The following specific defects shall be considered as damage:

(a) Scars, except stem scars, caused by rodents or other means, which are not well healed and corked over, or which cover more than 10 percent of the surface in the aggregate, or which form depressions or pits that materially affect the appearance.

(b) Stem scars which are unhealed on varieties which normally retain their stems after harvesting.

(c) Dry rot which affects an area more than 1 inch (2.5cm) in diameter in the aggregate on a 10 pound (4.5kg) specimen, or correspondingly smaller or larger areas depending on the size of the specimen.

"Serious damage" means any specific defect described in this section; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance, or the edible or marketing quality.

The following specific defects shall be considered as serious damage:

(a) Scars, except stem scars, caused by rodents or other means, which are not well healed or corked over, or which cover more than 25 percent of the surface in the aggregate or which form depressions or pits that seriously affect the appearance.

(b) Dry rot which affects an area more than 2 inches (5cm) in diameter in the aggregate on a 10 pound (4.5kg) specimen, or correspondingly smaller or larger areas depending on the size of the specimen.

(Agricultural Marketing Act of 1946, secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended (7 U.S.C. 1622, 1624))

Done at Washington, D.C. on: July 6, 1983.

William T. Manley,

Deputy Administrator, Marketing Program Operations

[FR Doc. 83-18634 Filed 7-8-83; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1004

[Docket No. AO-160-A61]

Milk in the Middle Atlantic Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends lowering the pooling requirements for reserve processing plants operated by either a cooperative association or a federation of cooperative associations. The proposed amendment, which is based on an industry proposal considered at a public hearing held May 25, 1983, is necessary to reflect current marketing conditions and to assure orderly marketing in the Middle Atlantic marketing area.

DATE: Comments are due by July 18, 1983.

ADDRESS: Comments (five copies) should be filed with the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, 202/447-7183.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements to Executive Order 12291.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendment would promote orderly marketing of milk by producers and regulated handlers.

Prior document in this proceeding:

Notice of Hearing: Issued May 11, 1983; published May 16, 1983 (48 FR 21961).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Middle Atlantic marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C., 20250, on or before July 18, 1983. It is necessary to limit the time for filing exceptions to seven days after Federal Register publication in order to complete this proceeding so that an amended order would be effective not later than September 1, 1983. Five copies of exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendment set forth below is based on the record of a public hearing held at Philadelphia, Pennsylvania, on May 25, 1983, pursuant to notice thereof issued May 11, 1983 (48 FR 21961).

The material issues on the record of the hearing relate to:

1. Performance standards for pool reserve processing plants.

2. Whether emergency marketing conditions exist that warrant the omission of a recommended decision and the opportunity to file written exceptions thereto.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Performance standards for pool reserve processing plants.* The minimum percentage of a cooperative association's total milk supply for a federation of cooperative associations' total milk supply that must be delivered to pool distributing plants in order to pool the cooperative's or federation's reserve processing plant should be reduced from 40 to 30 percent.

Presently, the order provides that a reserve processing plant operated by a cooperative association at which milk is received from dairy farmers shall be a pool plant if the total quantity of fluid milk products (except filled milk) transferred from such plant to, and the milk of member producers physically received at, pool distribution plants is not less than 40 percent of the total milk of member producers during the month. Likewise, a reserve processing plant operated by a federation of cooperative associations at which milk of member producers of the cooperatives is received shall be a pool plant if the total quantity of fluid milk products (except filled milk) transferred from such plant to, and the milk of member producers of the cooperative physically received at, pool distributing plants is not less than 40 percent of the combined milk of member producers of the cooperative during the month.

Pennmarva Dairymen's Federation, Inc. (Pennmarva), a federation of six cooperative associations whose member producers are principal suppliers of milk to the market, proposed the change adopted herein. Several members of Pennmarva, individually or through a federation of cooperatives, operate three reserve milk processing plants (milk manufacturing plants) that are pooled under the order. These plants, which are located in Allentown and Mt. Holly Springs, Pennsylvania, and Laurel, Maryland, can handle about 5 million pounds of milk per day. Most of the market's reserve milk supplies are processed into butter, skim milk powder and hard cheese at these three plants.

The spokesman for Pennmarva testified that there have been significant changes in marketing conditions within the market since the present delivery requirement was adopted in 1979 that necessitates the adoption of the proposed modification. The changed conditions since 1979 referred to by the witness include a substantial buildup in producer receipts while Class I sales have declined. The proponent witness stated that this marketing situation, coupled with a number of distributing plant closings, has increased the proportion of producer milk that must be delivered to its members' reserve processing plants. According to the witness, this situation is further aggravated by the need for increasing reserve milk supplies associated with the changing processing practices at distributing plants. As a result of these changes, he claimed, Pennmarva members have been experiencing greater difficulty in pooling the producer milk that has been historically associated with the three pool reserve milk processing plants operated by its members.

There was no opposition to the proposed change.

The record establishes that the supply-demand relationship for milk associated with the market has changed significantly since 1979 when the present 40 percent delivery requirement for a cooperative operated reserve processing plant was adopted. For example, during the 3-year period from 1979 to 1982, producer milk receipts increased from 5.39 billion pounds in 1979 to 6.04 billion pounds in 1982 (a 12 percent increase). During this same period, the quantity of producer milk classified as Class I milk declined from 2.91 billion pounds in 1979 to 2.79 billion pounds in 1982 (a 4 percent decrease). Consequently, the market's Class I utilization percentage of producer milk has decreased substantially since 1979 (from 54 percent in 1979 to 42 percent in 1982). These data clearly indicate significant changes in the market's supply-demand relationship for milk since the present 40 percent delivery requirement for reserve plants was adopted in 1979.

Another changed marketing condition described on the record supporting a reduction in the delivery requirement of a reserve processing plant concerns the substantial change in the market's fluid milk processing operations. Not only has there been a reduction in the number of pool plants that bottle fluid milk products six or seven days per week but also the relatively few remaining operations have become large specialized distributing plants that operate only four or five days per week. As a result, the day-to-day fluid milk requirements at such specialized plants fluctuate widely. On the heavy bottling days of the week, such plants need significant quantities of milk for their fluid operations while on weekends, the plants are closed and no milk is received. This pattern of fluctuating demand for milk at these specialized distributing plants necessitates the need for larger quantities of reserve milk on a weekly basis than when milk was received at smaller distributing plants that bottled milk six or seven days per week.

At the time of the hearing, the three plants of Pennmarva's members were maintaining their pool plant status through the order's automatic pooling feature that applies to a reserve processing plant. Under this pooling arrangement, a reserve processing plant that is a pool plant during the months of September–February shall have automatic pool plant status during the

following months of March through August unless the handler requests nonpool status. In the absence of any amendment, however, Pennmarva expects that, beginning in September when the delivery requirement must be met again, it may be necessary for its members to make inefficient movements of milk to distributing plants solely for the purpose of pooling these three plants and the milk of member producers who have regularly supplied the fluid needs of the market. This would significantly increase milk transportation and hauling costs. Such inefficient marketing practices can be avoided by reducing the order's pooling requirements for reserve processing plants.

In view of the significance of the changed marketing conditions described above, lowering the minimum delivery requirements for pooling reserve processing plants operated by either a cooperative association or a federation of cooperative associations from 40 to 30 percent would allow cooperatives to continue to serve the fluid milk needs of the market in an efficient manner. Likewise, the modification adopted herein will permit cooperatives to perform needed balancing functions without causing inefficient deliveries of milk merely for the purpose of meeting the pooling requirements of the order.

2. *Whether emergency marketing conditions exist that warrant the omission of a recommended decision and the opportunity to file written exceptions thereto.* There is no need to omit the issuance of a recommended decision and opportunity to file exceptions thereto as requested.

The request for emergency action by proponents was based on the view that the Department would not have sufficient time after the hearing to issue both a recommended and final decision and make any action taken effective by September 1, 1983.

Interested parties should have an opportunity to file exceptions to the findings and conclusions contained herein. Further, it appears feasible within the limited time allotted for filing exceptions to issue both a recommended and final decision and still have a final order effective by September 1.

Rulings on Proposed Findings and Conclusions

A brief and proposed findings and conclusion was filed on behalf of proponent federation. This brief, proposed findings and conclusion and the evidence in the record were considered in making the findings and conclusion set forth above. To the extent that the suggested findings and conclusion filed by proponent are inconsistent with the findings and conclusion set forth herein, the requests to make such findings or reach such conclusion are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Middle Atlantic order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commerical activity specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Middle Atlantic marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

List of Subjects in 7 CFR Part 1004

Milk marketing orders, Milk, Dairy products.

PART 1004—[AMENDED]

§ 1004.7, paragraphs (d)(1) and (d)(2) are revised to read as follows:

§ 1004.7 Pool plant.

* * * * *

(d) * * *

(1) A reserve process plant operated by a cooperative association at which milk from dairy farmers is received if the total of fluid milk products (except filled milk) transferred from such cooperative association plant(s) to, and the milk of member producers physically received at, pool plants pursuant to § 1004.7(a) is not less than 30 percent of the total milk of member producers during the month.

(2) A reserve processing plant operated by a federation of cooperative associations at which milk of member producers of the cooperatives is received if the total of fluid milk products (except filled milk) transferred from such federation plant(s) to, and the milk of member producers of the cooperatives physically received at, pool plants pursuant to § 1004.7(a) is not less than 30 percent of the combined milk of member producers of the cooperatives during the month.

* * * * *

Signed at Washington, D.C., on: July 6, 1983.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 83-18063 Filed 7-8-83; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 55

Hearings on Denial of Reactor Operator License; Withdrawal of Proposed Rule

AGENCY: Nuclear Regulatory Commission.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Nuclear Regulatory Commission has decided to terminate action on proposed amendments to 10 CFR Parts 2 and 55 regarding adjudicatory hearings in operator license proceedings.

DATE: July 11, 1983.

FOR FURTHER INFORMATION CONTACT: William M. Shields, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Phone: 301–492–8693.

SUPPLEMENTARY INFORMATION: On November 24, 1982, the Commission published in the **Federal Register** (47 FR 53028) a notice of proposed rulemaking which offered for public comment several amendments to 10 CFR Parts 2

and 55. The effect of the amendments would have been to substitute a written appeal procedure for an adjudicative hearing where an operator license application is denied based upon failure of the examination.

Ten comments were received, three from licensed operators, one from an operator organization, five from utilities, and one from a law firm representing five utilities. Most of the comments strongly opposed elimination of the right of operator license applicants to request an adjudicative hearing even where the license denial is based solely upon failure of an examination.

The Commission has decided to withdraw the proposed amendments and terminate this rulemaking. If adjudicative hearings in the operator licensing context should become burdensome in the future, the Commission will at that time consider whether amendments are needed along the lines of those proposed.

Dated at Washington, D.C., this 1st day of July, 1983.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 83-18636 Filed 7-8-83; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 82-NM-78-AD]

McDonnell Douglas Model DC-10 Series Airplanes; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws a Notice of Proposed Rulemaking (NPRM) which proposed an airworthiness directive (AD) that would have required installation of test knobs in place of slotted screws on certain DC-10 fuel quantity indicators not so equipped and would have required additional certificate limitations pertaining to quantity system validity checks. This action was initiated as a result of several incidents of erroneously high readings which contributed to engine flameouts and/or fuel starvation. Upon further consideration and in light of comments received and additional findings, the FAA has determined that the proposed AD is not required, and accordingly the NPRM is withdrawn.

EFFECTIVE DATE: June 27, 1983.

FOR FURTHER INFORMATION CONTACT: Roy A. McKinnon, Propulsion Branch, ANM-140L, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2835.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which, if adopted, would have required installation of test knobs on certain DC-10 fuel quantity indicators in accordance with Gull Service Bulletin 28-35 dated January 15, 1981, and implementation of procedures to use them was published in the **Federal Register** on October 21, 1982 (47 FR 46860). The knobs would have replaced slotted screw switches currently installed. Comments were requested from the public. Written comments were received from seven airline operators and the aircraft manufacturer. All comments objected to the proposed additional limitations. All commenters contended that existing fuel load checking procedures were adequate. Three commenters agreed the slotted BITE switch should be replaced with a knob. Two of these have installed, or are installing, knobs fleetwide. One commenter pointed out that the fuel quantity indicating system is not the sole means of determining fuel load and/or use.

Following review and analysis of the comments received, the FAA conducted further study and concluded that the condition described in the NPRM which would have required the installation of test knobs on the DC-10 fuel quantity indicators does not constitute a safety hazard, therefore the AD is not justified.

Withdrawal of this Notice of Proposed Rule Making constitutes only such action, and does not preclude the agency from issuing another Notice in the future, or commit the agency to any course of action in the future.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Withdrawal

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator, the proposed airworthiness directive published as document 82-28578 in the **Federal Register** on October 21, 1982 (47 FR 46860), is hereby withdrawn.

(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 11.85)

Note.—Since this action only withdraws a Notice of Proposed Rulemaking (NPRM), it may be made effective in less than 30 days. It is neither a proposed nor final rule, and, therefore, is not covered under Executive Order 12291, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Seattle, Washington on June 27, 1983.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 83-18465 Filed 7-7-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 83-NM-45-AD]

Sundstrand Data Control, Inc., Digital Flight Data Recorder, Model 573A; Airworthiness Directive

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD) that would require inspection of certain Sundstrand Data Control, Inc., Digital Flight Data Recorders (DFDR) Model 573A installed in transport category airplanes. This action is necessary because some DFDR connector sockets were manufactured without retaining clips, which may cause erratic operation. Failure of a DFDR may result in the loss of data necessary to determine the probable cause of an accident and possible prevention of future accidents.

DATE: Comments must be received on or before August 26, 1983. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from: Sundstrand Data Control, Inc., Overlake Industrial Park, Redmond, Washington 98052. This information may also be examined at the address listed below.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Ebina, Systems and 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:

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 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 proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available both before and after the closing date for comments in the rules docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed 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 Directive Rules Docket, Docket No. 83-NM-45-AD, 17900 Pacific Highway South, C-69866, Seattle, Washington 98168.

Discussion

The FAA has been advised by Sundstrand Data Control, Inc., that some DFDR connectors were manufactured with sockets missing their retaining clips which may cause mating pins to fit loosely. Sundstrand Data Control, Inc., has issued Service Bulletin No. 23 (Document No. 012-0118-123) (Mod 15), dated August 2, 1982, for the Digital Flight Data Recorder (DFDR) Model 573A, recommending owners to inspect the specific DFDR connectors for the type of connector sockets used and to replace those connectors which have incorrect sockets. The connectors with incomplete sockets were inadvertently introduced at the factory and could affect approximately 450 DFDR's. Units with Mod 8 but without Mod 15 are affected. The affected DFDR's must be inspected for the correct sockets to ensure against loss of electrical contact or circuit interruption due to vibration or shock.

An active connector socket with a loose fit may significantly affect the proper operation of DFDR's by giving erratic operation, including stopping of the recorder. An AD is proposed that would require an inspection of DFDR connectors and replacement of connectors containing incorrect sockets to assure failure of the DFDR will not result in loss of data necessary for accident investigation.

It is estimated that 450 digital flight recorders would be affected by this AD and that it will take approximately ¼ manhour to identify the type of sockets used and two hours to replace the connectors. Replacement connectors are available from the factory at no charge until January 2, 1984. Based on these figures, the maximum total cost of this AD to all operators combined is estimated to be $4,500. 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

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:

Sundstrand Data Control, Inc.: Applies to Sundstrand Model 573A, Digital Flight Data Recorder (DFDR) Part Number 981-6009-001/010/011/012/013/014. To prevent loss of recorded data, accomplish the following within the next 2,000 hours time-in-service after the effective date of this AD, unless already accomplished:

A. Inspect the DFDR to determine modification status. For DFDR's which have Mod 8 accomplished, but not Mod 15, accomplish Sundstrand Service Bulletin No. 23 (Document No. 012-0118-123), (Mod 15), dated August 2, 1982, or later FAA approved revisions.

B. 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.

All persons affected by this proposal who have not already received the Service Bulletin may obtain copies upon request to Sundstrand Data Control, Inc., Overlake Industrial Park, Redmond, Washington 98052. This document may also be examined at the FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

(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 24, 1983.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 83-18481 Filed 7-7-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 83-NM-55-AD]

Boeing Model 757 and 767 Series Airplanes; Airworthiness Directives

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 rework of the cabin pressure control valve on Boeing 757 and 767 airplanes. During ground testing, two separate types of failures of the valve assembly occurred. This action is necessary because in either case, a similar failure in flight may result in rapid cabin decompression.

DATE: Comments must be received on or before August 26, 1983. Compliance required within 500 hours after the effective date of this AD, unless already accomplished.

ADDRESSES: The applicable Service Bulletins may be obtained from: Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington, 98124. This information may also be examined at the address listed below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. McCracken, Systems and 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:

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 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 proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available both before and after the closing date for comments in the rules docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed 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 Directive Rules Docket, Docket No. 83-NM-55-AD, 17900 Pacific Highway South, C-69866, Seattle, Washington 98168.

Discussion

During a recent fuselage proof pressure test on a production airplane, excessive leakage was observed occurring at the cabin pressure outflow valve. Investigation revealed that one of the outflow valve push rod assembly end bearings had slipped out of the rod end, shifting the entire load onto the other push rod assembly. The added load caused the other push rod assembly to bend, allowing the outflow valve to partially open. The rod end bearing had not been properly staked onto the rod end and the buckled rod had not been properly heat-treated.

In an unrelated incident, an operator replaced an outflow valve due to loss of automatic control. During bench testing in manual mode, the valve jammed partially open. Examination of the valve by the manufacturer revealed a modified stop striker had fractured and jammed the valve.

Outflow valves which have improperly staked rod end bearings and improperly heat-treated pushrods or modified stop strikers can fail in service causing rapid cabin decompression. Boeing has issued Service Bulletins 757-21-9 dated May 23, 1983, 767-21-13 dated March 31, 1983, and 767-21-15, Rev. 1, dated May 13, 1983, providing instructions to identify and rework outflow valve actuators having a modified stop striker and to rework the outflow valve assembly to replace pushrod assemblies that have improperly staked rod end bearings or improperly heat treated pushrods. Since these outflow valves may be in use on other airplanes of the same type designs, the proposed AD would require the inspection and rework, as necessary, to minimize the likelihood of outflow valve failures.

Approximately 33 U.S. registered airplanes would be affected by this proposed AD. It is estimated that 5 manhours per airplane would be required to complete the procedures required by this AD and that average labor cost would be $40 per manhour. Based on these figures, the total cost to U.S. operators is estimated at $6,600. 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

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:

Boeing: Applies to Boeing Model 767 and 757 Series airplanes: Boeing 767: VA003, VA005-VA014, VA302-VA308, VA501-VA503, VA701-VA702, VA801-VA805 and Boeing 757: NA005, NA007-NA010. To prevent the loss of pressurization control due to failure of the cabin pressure control, accomplish the following within 500 hours time in service after the effective date of this AD, unless already accomplished:

A. Inspect and rework outflow valve actuators per Boeing Service Bulletins 757-21-9 or 767-21-13 dated May 23, 1983, and March 31, 1983, respectively as applicable, or later FAA approved revisions.

B. Rework the outflow valve assemblies per Boeing Service Bulletins 757-21-9 or 767-21-15, Rev. 1, dated May 23, 1983, and March 31, 1983, respectively as applicable, or later FAA approved revisions.

C. 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.

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

(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 Exective 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 24, 1983.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 83-18687 Filed 7-8-83; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Proposed Requirements for Child-Resistant Packaging; Diphenhydramine Hydrochloride

AGENCY: Consumer Produce Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes, under the Poison Prevention Packaging Act of 1970, to require child-resistant packaging for any preparation that contains more than 75 mg diphenhydramine hydrochloride in a single package and that is in a dosage form intended for oral administration. The Commission preliminarily finds that this special packaging requirement is required to protect children under 5 years of age from serious personal injury and serious illness resulting from ingesting such substance.

DATES: Written comments should be submitted on or before September 9, 1983.

The requirement is proposed to be effective 6 months after the final requirement is issued in the **Federal Register**, as to products packaged after that date.

ADDRESSES: Written comments, preferably in five copies, should be submitted to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. All material which the Commission has that is relevant to this proceeding, including any comments that may be received on this proposal, may be seen in, or copies obtained from, the Office of the Secretary, Consumer Products Safety Commission, 8th Floor, 1111 18th Street, NW., Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Fred J. Marozzi, Ph.D., Division of Safety

Packaging and Scientific Coordination, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, D.C. 20207; (301) 492–6477.

SUPPLEMENTARY INFORMATION:

Background

The Poison Prevention Packaging Act of 1970 (the "PPPA"), 15 U.S.C. 1471–1476, authorizes the Commission to establish standards for the "special packaging" of any household substance if (1) the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance and (2) the special packaging is technically feasible, practicable, and appropriate for such substance. Special packaging is also referred to as a "child-resistant packaging" and is defined as packaging that is (1) designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and (2) not difficult for normal adults to use properly. (It does not mean, however, packaging which all such children cannot open, or obtain a toxic or harmful amount from, within a reasonable time.) Under the PPPA, effectiveness standards have been established for special packaging (16 CFR 1700.15), as has a procedure for evaluating the effectiveness (§ 1700.20). Regulations have been issued requiring special packaging for a number of household products (§ 1700.14).

One category of products that is required to be in child-resistant packaging is any drug for human use that is in a dosage form intended for oral administration and that is required by federal law to be dispensed only by or upon an oral or written prescription of a practitioner licensed by law to administer such drug (16 CFR 1700.14(a)(10)). The Food and Drug Administration (FDA) determines whether a prescription shall be required for the dispensing of a particular drug. This determination involves factors in addition to the potential toxicity of a drug to young children, which, together with the availability of the drug's package to young children, is the major factor in determining whether a substance should be required to be in child-resistant packaging.

When the FDA releases an oral drug from the prescription category, the drug is no longer required to be in child-resistant packaging by reason of being an oral prescription drug subject to § 1700.14(a)(10). Therefore, when the FDA takes such action, the Commission's staff considers whether child-resistant packaging is nevertheless needed to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance. When the Commission's staff determines that special packaging is needed, it recommends to the Commission that a regulation be issued requiring the substance to be subject to the special packaging requirements.

Recently, the FDA has released certain antihistamine drugs from the requirement that they be dispenses only by prescription, thereby allowing those drugs to be sold for over-the-counter (OTC) uses. One of these antihistamines is diphenhydramine hydrochloride, also referred to as diphenhydramine, which has been known to cause death and serious illness in children as the result of accidental overdose. Currently, the FDA has given final approval for the use of diphenhydramine in OTC antitussive (cough) preparations. Also, FDA's OTC Advisory Panel has recommended that the FDA release diphenhydramine for use in OTC sleep-aids. In April, 1982, the FDA announced an enforcement policy to permit the interim OTC marketing of such sleep-aids, pending a final agency determination on the Panel's recommendation. The future use of diphenhydramine in other OTC products is thought to be likely. These uses include preparations for the relief of symptoms of rhinitis, common colds, and hay fever.

Toxic Effects of Diphenhydramine

The most commonly observed adverse effects associated with therapeutic use of antihistamines include drowsiness, dry mouth, and gastrointestinal complaints such as nausea, vomiting, and diarrhea. For adults, the most common signs of toxicity from overdosage of antihistamines appear to be the result of central nervous system depressive effects.(*4, 6*)[1]. If sufficiently high doses are taken, symptoms of drowsiness, dizziness, and loss of coordination can be followed by cardio-respiratory depression and death.

By contrast, children appear to be more sensitive to the central nervous system stimulatory effects of antihistamines. The primary symptoms of overdosage in children are hallucinations, delirium, tremors, high fever, and convulsions.(*4, 6*) Terminally, a depressive phase ensues, leading to coma, cardio-respiratory collapse, and death. The major life-threatening consequences of overdosage in children have been effectively controlled in cases where the patient was able to obtain the proper treatment in a medical facility; however, rapid access to a medical facility is necessary. Normal first aid procedures may prove ineffective, since diphenhydramine can produce a strong antiemetic effect.(*4*)

Ingestion and Injury Data

Both the medical literature and the available ingestion data indicate a relatively low incidence of serious injury associated with accidental ingestion of OTC antihistamines by children under age five; however, some prescription antihistamines have caused serious injury and even death to young children. It is possible that the inherently lower toxicity of some of the OTC antihistamines, as well as their reduced dosage levels, accounts for the low incidence of injuries involving OTC antihistamines. Of the antihistamines that were previously prescription drugs but are now approved for certain OTC uses, diphenhydramine has caused a number of childhood injuries and deaths.

The Commission's staff reviewed medical literature for the years from 1950 to 1980 and noted 22 reports of serious symptoms caused by antihistamine overdose in children under five years of age; six of these cases resulted in death. Eighteen of the 22 cases appear to be due to accidental ingestion. Diphenhydramine was involved in 16 of the 22 reported cases and in four of the six fatalities.(*1, 2, 3, 5, 7, 8, 9, 10*) In one reported case (7), a 13-month-old child suffered major motor seizures, serious cardiac arrhythmia, and cardio-respiratory depression following ingestion of 100–150 mg of diphenhydramine hydrochloride.

Data from the FDA's National Clearinghouse for Poison Control Centers for the years 1977 through 1980 show that a total of 632 accidental ingestions of diphenhydramine were reported during this four-year period. Of these cases, 89 reported some symptomatology (i.e., lethargy, nausea, vomiting, etc.). A total of 20 children were hospitalized. Eight of the hospitalized children reported symptoms.

The Commission's death certificate file shows that seven deaths were reported for children under five years of age involving antihistamine preparations during the period of 1973 through 1980. Five of these deaths

[1] The numbers refer to the references listed at the end of this notice.

involved products containing diphenhydramine hydrochloride.

Need for Special Packaging

It is clear from both the literature and human experience data discussed above that diphenhydramine has accounted for a disproportionate share of antihistamine-induced injuries and poisonings among children. In the absence of a requirement that products containing diphenhydramine must be in special packaging, it can be expected that the number of incidents involving this drug will increase following the release of the drug to the over-the-counter market, since the product will no longer have to be in child-resistant packaging as an oral prescription drug. Furthermore, it can be expected that the use of the product will increase since it will be available to more persons in the OTC product than as one that may be dispensed only by prescription.

The OTC antitussive diphenhydramine product currently on the market is packaged in a four-ounce bottle containing 12.5 mg of diphenhydramine per teaspoon, or approximately 75 mg per ounce. This product is currently marketed in child-resistant packaging.

The Commission is aware of four firms that are currently marketing OTC sleep-aids containing diphenhydramine. At the time that these manufacturers were first contacted by the Commission's staff, three of these manufacturers' products were being marketed in non-child-resistant packaging, but one of these manufacturing already had plans to convert to child-resistant packaging with a short period of time. Of the remaining two products that are marketed in non-child-resistant packages, one is marketed in a bottle of 32 tablets, with each tablet containing 25 mg of diphenhydramine. The other is sold in a box of 24 tablets in unit-dose packaging, each tablet also containing 25 mg of diphenhydramine. Therefore, it is apparent that diphenhydramine preparations are, and will be, available in amounts that present a risk of serious injury or serious illness to children from ingesting such substances.

As noted above, the literature shows that serious toxic effects can be produced with doses as low as 100 mg of diphenhydramine. On the other hand, a dose of 75 mg could be within the prescribed dosage range for a child. Therefore, the Commission proposes that the special packaging requirements for diphenhydramine should apply to packages containing more than 75 mg of the drug.

More detailed discussions of the toxicity of diphenhydramine and the extent that preparations containing it are available to young children are included in the Commission staff briefing packages dated August 24, 1982, and June 3, 1983. These materials also discuss the toxicity of other antihistamine preparations.

Technical Feasibility, Practicability, and Appropriateness

In issuing a standard for special packaging under the PPPA, the Commission is required by section 3(a)(2) of the PPPA, 15 U.S.C. 1472(a)(2), to find that the special packaging is "technically feasible, practicable, and appropriate . . .".

A. *Technical feasibility.* Diphenhydramine preparations are marketed in tablet and liquid form, and there are numerous package designs that meet the requirements of 16 CFR 1700.15(b) that are suitable for use with each form of this product. [Memo, C. J. Wilbur, Diphenhydramine (DPH) Regulation—Technical Feasibility, Practicability, and Appropriateness of Child-Resistant Packaging; October 27, 1982.]

B. *Practicability.* Because many existing designs suitable for use with the diphenhydramine preparations that are the subject of the proposed regulation are currently being used in the packaging of other drugs and dietary supplements, it is clear that special packaging for this product is practicable in that it is adaptable to modern mass production and assembly line techniques. The Commission anticipates no major supply or procurement problems for the packagers of diphenhydramine-containing products or the manufacturers of child-resistant closure and capping equipment. *Id.* In addition, there should be no serious problems experienced by manufacturers of the products in incorporating the child-resistant packaging features into their existing packaging lines. *Id.*

C. *Appropriateness.* As shown by the use of many existing suitable designs with other drug products, special packaging is appropriate since it is available in forms that are not detrimental to the integrity of the substance and that do not interfere with its storage or use. *Id.*

Accordingly, as required by section 3(a)(2) of the PPPA (15 U.S.C. 1472(a)(2)), the Commission preliminarily finds that special packaging for diphenhydramine-containing preparations is technically feasible, practicable, and appropriate.

Effective Date

The PPPA provides that, except for good cause, no regulation shall take effect sooner than 180 days or later than one year from the date such regulation is issued. One manufacturer of sleep-aids containing diphenhydramine that does not currently market its product in child-resistant packaging indicated that it should be able to adopt child-resistant packaging for this product by March, 1984. Therefore, the Commission believes that a period of six months from the issuance of the final regulation should be adequate for the manufacturers of these preparations to obtain suitable child-resistant packaging and incorporate its use into their packaging lines.

Accordingly, the proposed effective date is six months after the final regulation is published in the Federal Register, as to all diphenhydramine preparations packaged after the effective date. However, a longer effective date could be chosen if additional data are obtained showing that manufacturers will suffer undue adverse economic effects from the proposed date.

Environmental Considerations

Rules requiring poison prevention packaging of products normally have little or no potential for affecting the human environment, and, therefore, neither an environmental assessment nor an environmental impact statement is required. *See* 16 CFR 1021.5(c)(3). From the facts presently available, the Commission concludes that this proposed rule, if issued, will have no significant effects on the environment. *Id.*

Regulatory Flexibility Act Certification

Using the criteria of the Regulatory Flexibility Act, 5 USC 601.(3), the Commission staff has concluded that neither of the firms that would be required to institute changes to their packaging under the proposed rule is a small business. Further, there are no indications that any small business doing business with the directly affected firms will be subject to any significant effects as a result of the proposed standard. Therefore, the Commission certifies that the rule proposed below will not, if promulgated, have a significant economic impact on a substantial number of small entities. *Id.*

Conclusion and Proposal

Therefore, having considered the available human experience data and the medical literature, the Commission concludes that the requirement for

special packaging set forth below should be proposed.[2] In making this determination, the Commission has considered—

(1) the reasonableness of the proposed rule;

(2) available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

(3) the manufacturing practices of industries affected by the PPPA; and

(4) the nature and use of the diphenhydramine preparations covered by the proposed rule.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

Accordingly, pursuant to provisions of the Poison Prevention Packaging Act of 1970 (Pub. L. 91–601, secs. 2(4), 3, 5, 84 Stat. 1670–72; 15 U.S.C. 1471(4), 1472, 1474) and under the authority vested in the Commission by the Consumer Product Safety Act (Pub. L. 92–473, sec. 30(a), 86 Stat. 1231; 15 U.S.C. 2079(a)), the Commission proposes to add a new paragraph (a)(17) to 16 CFR 1700.14, reading as follows (although unchanged, the introductory text of paragraph (a) is included below for context):

PART 1700—[AMENDED]

§ 1700.14 Substances requiring special packaging.

(a) *Substances.* The Commission has determined that the degree or nature of the hazard to children in the availability of the following substances, by reason of their packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances, and that the special packaging herein required is technically feasible, practicable, and appropriate for these substances:

* * * * *

(17) *Diphenhydramine hydrochloride.* Preparations for human use in a dosage form intended for oral administration and containing more than 75 mg diphenhydramine hydrochloride in a single package shall be packaged in accordance with the provisions of § 1700.15 (a), (b), and (c).

* * * * *

[2] The proposal was approved by a 4–1 vote of the Commission (Chairman Nancy Harvey Steorts, while voting to approve the text of the proposed rule, voted for a 12 month rather than a six month effective date.

Dated: July 5, 1983.

Sheldon D. Butts,

Deputy Secretary, Consumer Product Safety Commission.

References

(1) Aaron, F.E. A case of acute diphenhydramine hydrochloride poisoning. British Med. J., 2:24, 1953.

(2) Brody, J.L., Tobin, J.L. Apena due to Benadryl. Ann. Intern. Med., 47:172–177, 1957.

(3) Davis, J.H. and Homer, H.H. Accidental Benadryl Poisoning; Report of a Fatal Case. J. Pediatrics, 34:358–361, 1949.

(4) Douglas, William W. Histamine and Antihistamines; 5-Hydroxytryptamine and Antagonists. In *the Pharmacological Basis of Therapeutics.* (Goodman, L.S., and Gilman, A., eds.) The Macmillan Co., Toronto, 1970, pp. 635–641.

(5) Duerfeldt, T.H. Acute Benadryl Poisoning: Case Report. Northwest Medicine, 46:781–782, 1947.

(6) Gosselin, R.E., Hodge, H.C., Smith, R.P., and Gleason, M.N. *Clincial Toxicology of Commercial Products.* The Williams and Wilkins Co., Baltimore, 1976, pp. 35–36.

(7) Hestand, H.E. and Teska, D.W. Diphenhydramine Hydrochloride Intoxication. J. Pediatrics, 90:1017–1018, 1977.

(8) Reichelderfer, T.E. et al. Treatment of acute Benadryl (diphenhydramine hydrochloride) intoxication with severe central nervous system changes and recovery. J. Pediatrics, 46:303–307, 1955.

(9) Reyes-Jacang, A. and Wenzyl, J.F. Antihistamine toxicity in children. Clincial Pediatrics, 297–299, May, 1969.

(10) Wyngaarden, J.B. and Seevers, M.H. The toxic effects of antihistaminic drugs. J.A.M.A., 145:277–282, 1951.

[FR Doc. 83-18008 Filed 7-8-83; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 635

[FHWA Docket No. 83-5]

Physical Construction Authorization

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA proposes to revise its regulations governing the authorization of physical construction on federally assisted highway projects. Title 23 CFR 635.309(c) provides that States must certify that certain right-of-way acquisition and relocation assistance activities have been accomplished before advertising for bids for physical construction of a federally assisted highway project can be authorized by FHWA. This proposed revision would amend § 635.309(c)(3) to simplify current requirements, and in certain cases, where occupants of acquired property have had the relocation benefits and assistance to which they are entitled under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.) (Uniform Act) made available to them, to permit FHWA to authorize physical construction at the same time that it authorizes advertising for bids, even though all right-of-way has not been acquired nor all persons relocated. This proposed change is intended to avoid contract administration problems and increased costs which can result under the current regulation when bids are awarded but authorization to proceed with physical construction is delayed.

DATE: Comments must be received on or before September 9, 1983.

ADDRESS: Comments must be sent (preferably in triplicate) to FHWA Docket No. 83–5, Federal Highway Administration, HCC–10 Room 4205, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Paul E. Cunningham, Chief, Construction and Maintenance Division, (202) 426–0392; or Reid Alsop, Office of the Chief Counsel, (202) 426–0800, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: Current FHWA regulations in § 635.309 set forth the conditions that must be satisfied by a State before FHWA can authorize the State to advertise for bids on a federally assisted highway project. Section 635.309(c) concerns the acquisition of land for the highway right-of-way and the relocation of persons occupying such land. Normally all land must be acquired and vacated before the FHWA authorization is granted. However, § 635.309(c)(3)(i) permits advertisement for bids, but not physical construction, to proceed in "very unusual circumstances" when a few parcels have not been acquired or vacated. Section 635.309(c)(3)(ii) permits physical construction to proceed, after contract award, when parcels are still occupied if the Regional Federal Highway Administrator grants a special waiver based on a public interest finding.

The proposed amendment to § 635.309(c)(3) would simplify the current section. It would also permit

FHWA to authorize physical construction at the same time that it authorizes advertising for bids. It would delete the waiver provision in § 635.309(c)(3)(ii), concerning FHWA authorizations prior to vacation of all occupied properties. In effect this authorization would be shifted from the FHWA Regional Administrator to the FHWA Division Administrator by deleting all reference to the Regional Administrator and to a waiver.

The proposed revision would protect persons occupying the proposed right-of-way by making it clear that no FHWA authorization for advertising or physical construction could be given, prior to their vacating such right-of-way, unless such persons had replacement housing made available to them in accordance with 23 CFR 740.12 and the Uniform Act. It also makes it clear that such FHWA authorization prior to vacation of the right-of-way is to occur only in exceptional cases and must be supported by a full explanation and reasons therefor. If physical construction is authorized prior to vacation of all persons from the right-of-way the State must ensure that all such persons are protected against "unnecessary inconvenience and disproportionate injury or any action coercive in nature."

In addition to simplifying the current regulation this proposed change is intended to prevent project delays that have occurred in a few cases. In such cases persons have been unwilling for a variety of reasons to vacate occupied property within a reasonable time after they had been offered replacement housing as required by the Uniform Act and 23 CFR Part 740. Under the current regulation, construction cannot be authorized by FHWA until all such persons have vacated. This could cause unwarranted project delays and resulting increases in project costs. The proposed regulation would allow FHWA to authorize construction prior to total vacation, subject to the conditions and limitations discussed above.

The FHWA has determined that this document is neither a major rule under Executive Order 12291 nor a significant regulation under DOT regulatory procedures. No new requirements are imposed. Accordingly, under the criteria of the Regulatory Flexibility Act, it is certified that this action, if promulgated, will not have a significant economic impact on a substantial number of small entities. The anticipated economic impact of this proposal is so minimal as not to require preparation of a full regulatory evaluation.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program)

List of Subjects in 23 CFR Part 635

Government contacts, Grant programs—transportation, Highways and roads, Relocation assistance.

Issued: June 29, 1983.

R. A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

In consideration of the foregoing, the FHWA proposes to amend Chapter I of title 23, Code of Federal Regulations, Part 635 by revising § 635.309(c)(3) to read as follows:

§ 635.309 Authorization.

* * * * *

(c) * * *

(3) The acquisition or right of occupancy and use of parcels is not complete, but such parcels do not include any occupied residentially improved properties whose occupants have not had replacement housing made available to them in accordance with 23 CFR 740.12. Subject to the above and when unusual circumstances warrant, advertisement for bids or the force account work may proceed on the basis that it will be in the public interest. The physical construction may also proceed, but the State shall ensure that occupants of residences, businesses, farms, or non-profit organizations who have not yet moved from the right-of-way are protected against unnecessary inconvenience and disproportionate injury or any action coercive in nature. This provision may be resorted to only in very unusual circumstances. This exception should never be allowed to become the rule. When this provision is used, full explanation and reasons therefor shall be set forth in writing, including identification of right-of-way parcels where the right to physically occupy and use has not been obtained. For each such parcel an estimated date, when physical occupancy and use is anticipated as well as substantiation that such date is realistic, must be set forth in writing. Appropriate notification shall be provided in the bid proposals identifying all locations where right of occupancy and use has not been obtained.

* * * * *

(23 U.S.C. 112, 114, 315; 42 U.S.C. 3334, 4231-4233, 4601, et seq.; 49 CFR 1.48)

[FR Doc. 83-18409 Filed 7-8-83; 8:45 am]

BILLING CODE 4910-22-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 surface coal mining and reclamation in the State. The amendments related 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.

DATE: Written comments, data or other relevant information must be received on or before 4:00 p.m. July 26, 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, 1982, 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(88), 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 (48 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 (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).

In the **Federal Register** dated June 13, 1983, OSM reopened the comment period to allow the public sufficient time to review and comment on the above Kentucky amendments (48 FR 27101). The public comment period closed June 28, 1983.

OSM is reopening the comment period for an additional 15 days 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.

Dated: July 6, 1983.

William B. Schmidt,

Assistant Director, Program Operations and Inspection.

[FR Doc. 83-18049 Filed 7-8-83; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

42 CFR Part 21

Involuntary Child and Spousal Support Allotments; Proposed Processing Provisions

AGENCY: Office of the Secretary, HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement section 172 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248). The proposed rule provides specific guidance to States, courts, and the Public Health Service on processing involuntary child or child and spousal support allotments. The provisions of these regulations apply only to PHS commissioned officers. The issuance: (a) Establishes Department of Health and Human Services policy; (b) provides instructions on the service of notice; (c) defines the limitations on the amount of a support allotment; (d) prescribes procedures for officer notification and consultation; and (e) lists the designated officials within the Department of Health and Human Services who will process involuntary support allotments.

DATE: Written comments must be received on or before August 10, 1983. Comment will be available for public inspection by request.

Because of the expected number of comments, we do not plan to acknowledge or respond to individual comments. However, we will respond to the comments in the preamble of the final rule.

ADDRESS: Address comments in writing to: Office of the Assistant Secretary for Health, Office of Management, Office of Personnel Management, Commissioned Personnel Operations Division, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Mr. Winston J. Dean, 301–443–2626.

SUPPLEMENTARY INFORMATION: In order to effect prompt implementation, beginning on October 1, 1982, the Department of Health and Human Services will follow the proposed rule until a final rule is issued.

Regulatory Impact Analysis

The Department has determined that this rule is not a major rule under E.O. 12291; therefore a regulatory impact analysis is not required. Only a few commissioned officers (less than five) are expected to have their pay garnished each month for overdue child and spousal support. Therefore, the total cost to officers as well as the cost of administering the regulation is minimal.

Additionally, we certify that these regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

Information Collection Requirements

Section 21.75 of this proposed rule contains information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these information collection requirements. Other organizations and individuals desiring to submit comments on these information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, D.C. 20503, ATTN: Desk Officer for HHS.

List of Subjects in 42 CFR Part 21

Definitions, Appointment.

Accordingly, it is proposed to revise 42 CFR Part 21 by adding a new Subpart C, reading as follows:

Subpart C—Involuntary Child and Spousal Support Allotments

Sec.

21.70 Purpose.
21.71 Applicability and scope.
21.72 Definitions.
21.73 Policy.
21.74 Responsibilities.

Sec.
21.75 Procedures.

Authority: 37 U.S.C. 101; 15 U.S.C. 1673; 42 U.S.C. 665.

Subpart C—Involuntary Child and Spousal Support Allotments

§ 21.70 Purpose.

Under references 37 U.S.C. 101, 15 U.S.C. 1673, and 42 U.S.C. 665, this subpart provides implementing policies governing involuntary child or child and spousal support allotments, assigns responsibilities, and prescribes procedures.

§ 21.71 Applicability and scope.

(a) This subpart applies to officers in the Public Health Service Commissioned Corps. The term "Public Health Service," hereinafter shall be referred to as Service.

(b) Its provisions pertain to officers of the Service under a call or order to active duty for a period of six months or more.

§ 21.72 Definitions.

(a) *Child Support.* Periodic payments for the support and maintenance of a child or children, subject to and in accordance with State or local law. This includes, but is not limited to payments to provide for health care, education, recreation, clothing, or to meet other specific needs of such a child or children.

(b) *Spousal Support.* Periodic payments for the support and maintenance of a spouse or former spouse in accordance with State or local law. It includes, but is not limited to, separate maintenance, alimony pendente lite, and maintenance. Spousal support does not include any payment for transfer of property or its value by an individual to his or her spouse or former spouse in compliance with any community property settlement, equitable distribution of property, or other division of property between spouse or former spouse.

(c) *Notice.* A court order, letter, or similar documentation issued by an authorized person, which provides notification that an officer has failed to make periodic support payments under a support order.

(d) *Support Order.* Any order providing for child or child and spousal support issued by a court of competent jurisdiction or by administrative procedures established under State law that affords substantial due process and is subject to judicial review. A court of competent jurisdiction includes Indian tribal courts within any State, territory, or possession of the United States and the District of Columbia.

(e) *Authorized Person.* (1) Any agent or attorney of any State having in effect a plan approved under Part D of title IV of the Social Security Act (42 U.S.C. 651–665), who has the duty or authority to seek recovery of any amounts owed as child or child and spousal support (including, when authorized under a State plan, any official of a political subdivision); and (2) the court which has authority to issue an order against the officer for the support and maintenance of a child, or any agent of such court.

(f) *Active Duty.* Full-time duty in the Service, including full-time training duty.

(g) *Legal Officer.* Shall be an officer of the Service or employee of the Department who is a lawyer and who has substantial knowledge of the regulations, policies, and procedures relating to the implementation of Section 172 of Pub. L. 97–248.

§ 21.73 Policy.

(a) It is the policy of the Department of Health and Human Services to withhold allotments from pay and allowances of commissioned officers on active duty in the Service to make involuntary allotments from pay and allowances as payment of child, or child and spousal, support payments when the officer has failed to make periodic payments under a support order in a total amount equal to the support payable for two months or longer. Failure to make such payments shall be established by notice from an authorized person to the designated official of the Department. Such notice shall specify the name and address of the payee to whom the allotment is payable. The amount of the allotment shall be the amount necessary to comply with the support order including amounts for arrearages as well as for current support. However the amount of the allotment, when added to any other amounts withheld from the officer's pay pursuant to a support order, shall not exceed the limits for involuntary allotments from pay as prescribed in section 303 (b) and (c) of the Consumer Credit Protection Act, 15 U.S.C. 1673. An allotment under this subpart shall be adjusted or discontinued upon notice from any authorized person.

(b) Notwithstanding the above, no action shall be taken to withhold an allotment from the pay and allowances of any officer until such officer has had an opportunity to consult with a legal officer of the Department to discuss the legal and other factors involved with respect to the officer's support obligation and his or her failure to make payments. The Department shall exercise continuing good faith efforts to arrange such a consultation, but must begin to withhold allotments on the first end-of-month payday after 30 days have elapsed since notice of an opportunity to consult was sent to the officer.

§ 21.74 Responsibilities.

(a) The General Counsel, Office of the Secretary, Department of Health and Human Services, shall be the Designated Official for the Department and shall provide guidance to the Service regarding administration of the provisions of these regulations.

(b) The Commissioned Personnel Operations Division, Office of Personnel Management, Office of Management, Office of the Assistant Secretary for Health, shall implement the provisions of these regulations.

§ 21.75 Procedures.

(a) *Service of Notice.* (1) An authorized person shall serve on the designated official of the Department a signed notice including:

(i) Full name of the officer;

(ii) Social security number of the officer;

(iii) Duty station location of the officer, if known;

(iv) A statement that support payments are delinquent by an amount at least equal to the amount of support payable for two months;

(v) A photocopy, along with any modifications, of the underlying support order;

(vi) A statement of the amount of arrearages provided for in the court order and the amount which is to be applied each month toward liquidation of the arrearages, if applicable;

(vii) The full name and address of the payee to whom the allotment will be payable;

(viii) Any limitations on the duration of the support allotment.

(2) The service of notice shall be accomplished by certified or registered mail, return receipt requested, or by personal service, upon the appropriate designated official of the Department. The designated official shall note the date and time of receipt on the notice.

(3) Valid service is not accomplished until the notice is received in the office of the designated official.

(4) If the order of a court or duly authorized administrative agency seeks collection of arrearages, the notice must state that the support allotment qualifies for the additional 5 percent in excess of the maximum percentage limitations found in 15 U.S.C. 1673. Supporting evidence must be submitted to the Department establishing that the support order is 12 or more weeks in arrears.

(5) When the information submitted is not sufficient to identify the officer the notice shall be returned directly to the authorized person with an explanation of the deficiency. However, before returning the notice, an attempt should be made to inform the authorized person who caused the notice to be served that it will not be honored unless adequate information is supplied.

(6) Upon proper service of notice of delinquent support payments and together with all required supplementary documents and information, the Service shall identify the officer from whom moneys are due and payable. The pay of the officer shall be reduced by the amount necessary to comply with the support order and liquidate arrearages if any, if provided by order of a court or duly authorized administrative agency. This maximum amount to be allotted under this provision together with any other moneys withheld from the officer for support pursuant to a court order may not exceed:

(i) 50 percent of the officer's disposable earnings for any month when the officer asserts by affidavit or other acceptable evidence that he or she is supporting a spouse or dependent child or both, other than a party in the support order. When the officer submits evidence, copies shall be sent to the authorized person, together with notification that the officer's support claim will be honored. If the support claim is contested by the authorized person, the authorized person may refer it to the appropriate court or other authority for resolution. Pending resolution of a contested support claim, the allotment shall be made but the amount of such allotment may not exceed 50 percent of the officer's disposable earnings;

(ii) 60 percent of the officer's disposable earnings for any month when the officer fails to assert by affidavit or other acceptable evidence, that he or she is supporting a spouse or dependent child or both;

(iii) Regardless of the limitations above, an additional five percent of the officer's disposable earnings shall be withheld when it is stated in the notice that the officer is in arrears in an amount equivalent to 12 or more weeks' support.

(b) *Disposable Earnings.* (1) The following moneys, as defined in the U.S. Public Health Service Commissioned Corps Personnel Manual, are subject to inclusion in computation of the officer's disposable earnings:

(i) Basic pay;

(ii) Basic allowances for quarters for officers with dependents and officers without dependents;

(iii) Basic allowance for subsistence;

(iv) Special pay for physicians, dentists, optometrists, and veterinarians;

(v) Hazardous duty pay;

(vi) Flying pay;

(vii) Family separation allowances (only for officers assigned outside the contiguous United States).

(c) *Exclusions.* The following moneys are excluded from the computation of the officer's disposable earnings. Amounts due from or payable by the United States shall be offset by any amounts:

(1) Owed by the officer to the United States.

(2) Required by law to be deducted from the renumeration or other payment involved including but not limited to:

(i) Amounts withheld from benefits payable under Title II of the Social Security Act when the withholding is required by law;

(ii) FICA.

(3) Properly withheld for Federal and State income tax purposes if the withholding of the amounts is authorized or required by law and if amounts withheld are not greater than would be the case if the individual claimed all dependents to which he or she were entitled. The withholding of additional amounts pursuant to 26 U.S.C. 3402(i) may be permitted only when the officer presents evidence of a tax obligation which supports the additional withholding.

(4) Deducted for the Servicemen's Group Life Insurance coverage.

(5) Advances of pay that may be due and payable by the officer in the future.

(d) *Officer Notification.* (1) As soon as possible, but not later than 30 calendar days after the date of receipt of notice, the Commissioned Personnel Operations Division shall send to the officer at his or her duty station, written notice:

(i) That notice has been served, including a copy of the documents submitted;

(ii) Of the maximum limitations set forth, with a request that the officer submit supporting affidavits or other documentation necessary for determining the applicable percentage limitation;

(iii) That by submitting supporting affidavits or other necessary documentation, the officer consents to the disclosure of such information to the party requesting the support allotment;

(iv) Of the amount or percentage that will be deducted if the officer fails to submit the documentation necessary to enable the designated official of the Service to respond to the legal process within the time limits set forth;

(v) That a consultation with a legal officer is authorized and will be provided by the Department. The name, address, and telephone number of the legal officer will be provided;

(vi) That the officer may waive the personal consultation with a legal officer; however if consultation is waived action will be taken to initiate the allotment by the first end-of-month payday after notification is received that the officer has waived his/her consultation;

(vii) That the allotment will be initiated without the officer having received a personal consultation with a legal officer if the legal officer provides documentation that consultation could not be arranged even though good faith attempts to do so had been made; and

(viii) Of the date that the allotment is scheduled to begin.

(2) The Commissioned Personnel Operations Division shall inform the appropriate legal officer of the need for consultation with the officer and shall provide the legal officer with a copy of the notice and other legal documentation served on the designated official.

(3) If possible, the Commissioned Personnel Operations Division shall provide the officer with the following:

(i) A consultation in person with the appropriate legal officer to discuss the legal and other factors involved with the officer's support obligation and his/her failures to make payment;

(ii) Copies of any other documents submitted with the notice.

(4) The legal officer concerned will confirm in writing to the Commissioned Personnel Operations Division within 30 days of notice that the officer received a consultation concerning the officer's support obligation and the consequences of failure to make payments. The legal officer concerned must advise the Commissioned Personnel Operations Division of the inability to arrange such consultation and the status of continuing efforts to contact the officer.

(e) *Lack of Money.* (1) When notice is served and the identified officer is found not to be entitled to any moneys due from or payable by the Department of Health and Human Services, the Commissioned Personnel Operations Division shall return the notice to the authorized person, and advise in writing that no moneys are due from or payable by the Department of Health and Human Services to the named individual.

(2) Where it appears that moneys are only temporarily exhausted or otherwise unavailable, the Commissioned Personnel Operations Division shall

advise the authorized person in writing on a timely basis as to why, and for how long, the moneys will be unavailable.

(3) In instances where the officer separates from active duty, the authorized person shall be informed in writing on a timely basis that the allotment is discontinued.

(f) *Effective Date of Allotment.* Allotments shall be withheld beginning on the first end-of-month payday after the Commissioned Personnel Operations Division is notified that the officer has had a consultation with a legal officer, has waived his/her right to such consultation, or the legal officer has submitted documentation that a consultation with the officer could not be arranged after good faith attempts to do so were made by the legal officer. The Service shall not be required to vary its normal allotment payment cycle to comply with the notice.

(g) *Designated Official.* Department of Health and Human Services, General Counsel, Room 5362 North Building, 330 Independence Avenue, SW., Washington, D.C. 20201.

Dated: June 10, 1983.

Margaret M. Heckler,

Secretary.

[FR Doc. 83-16509 Filed 7-8-83; 8:45 am]

BILLING CODE 4150-04-M

INTERSTATE COMMERCE COMMISSION

49 CFR Ch. X

[Ex Parte No. 445]

Standards for Intramodal Rail Competition; Denial of Petition for Rulemaking

AGENCY: Interstate Commerce Commission.

ACTION: Denial of Petition for Rulemaking.

SUMMARY: This decision denies the petition to begin a rulemaking proceeding relating to rail rate changes, route restrictions, and terminal operations. The Commission is, however, undertaking an in-depth study of the changes that are occurring, their reasons and their effects, and will use the results of that study to determine whether further action is necessary. If necessary in conjunction with the study, we may request comments in specific areas at a later date.

FOR FURTHER INFORMATION CONTACT: Louis Gitomer (202) 275-7245.

SUPPLEMENTARY INFORMATION: In a petition filed February 25, 1983, the National Industrial Transportation League (NITL) requested the Commission to institute a rulemaking proceeding [1] for the purpose of issuing rules to:

(1) Prohibit anticompetitive railroad cancellations of joint rates and through routes, and the closing of gateways; and

(2) Implement the pro-competitive provisions of the Staggers Rail Act of 1980 (Staggers Act) [2] pertaining to reciprocal switching arrangements and joint use of terminal facilities, through trackage rights or otherwise.

NITL expresses strong concern for recent developments in the area of railroad cancellations of rates, routes, gateways, reciprocal switching arrangements and arrangements for joint use of terminal facilities.[3] It argues that many of these cancellations, which are nationwide in scope, are anticompetitive, contrary to the public interest, and ultimately will undermine the unified, national rail transportation network.

In support of its position, NITL submits that a fundamental objective of the Staggers Act was to encourage and promote carrier competition, including intramodal rail competition and points out a number of pro-competitive goals of the national rail transportation policy at 49 U.S.C. 10101a.

NITL asserts that widespread cancellations impose an overwhelming burden on the shipping public and are incompatible with the Staggers Act and the rail transportation policy. Further, it suggests that such actions, when taken by carrier conglomerates, may pose antitrust problems under 15 U.S.C. 1, *et seq.*

In addition to requesting a rule to prohibit "anticompetitive" cancellation of reciprocal switching agreements, NITL seeks the issuance of a related rule "mandating the encouragement and implementation" of both reciprocal switching agreements and arrangements for joint use of terminal facilities in order to provide for the needs of the shipping public and to promote railroad competition in accordance with section 223 of the Staggers Act [49 U.S.C. 11103(c)]. NITL neither defines terms such as "anticompetitive" and "mandating . . . encouragement," nor proposes rules to accomplish these goals.

Section 223(c) authorizes the Commission to order reciprocal switching wherever "it finds such agreements to be practical and in the public interest, or where such agreements are necessary to provide competitive rail service." NITL asserts that section 223(c) contemplated not only the retention but the expansion of reciprocal switching arrangements. NITL further contends that the rail transportation policy dictates vigorous implementation of the provisions for joint use of terminal facilities stated in 49 U.S.C. 11103(a).

To avoid the burden, delay, and expense of individual litigation on a case-by-case basis, NITL maintains that rulemaking, rather than adjudication, is administratively efficient and appropriate to establish standards which will determine when a cancellation of route and rate, or a termination of reciprocal switching agreement, or termination of an arrangement for joint use of terminal facilities is anticompetitive in nature.

Statements supporting the petition were filed by various shippers (see Appendix). Shippers generally argue that the large number of cancellations of through routes,[4] joint rates, and reciprocal switching arrangements violates the spirit and intent of the Staggers Act, which is to promote intramodal rail competition while reducing government regulation of the railroads. They assert that these cancellations eliminate shippers' transportation alternatives, cause shippers to use circuitous, less efficient routes and thereby incur additional transportation costs, and impair the shippers' ability to enter into transportation contracts with certain carriers. Shippers further argue that this prevents them from using the most efficient rail transportation routes, requires substantial changes in distribution methods and also may create safety problems if they are required to use motor carriage for the transportation of hazardous materials. They project that the continued trend

[1] In a second petition filed March 4, 1983, NITL requests (1) immediate institution of the rulemaking proceeding proposed in its earlier petition; and (2) postponement of the March 14, 1983 effective date of certain rail traffic supplements until completion of the proposed proceeding. Those tariff supplements were protested, and the Commission's Suspension Board, in Suspension Case No. 71028, declined to suspend or investigate; thus, the provisions became effective as scheduled. An appeal of the Board's decision was denied by Division 2 on March 11, 1983. NITL filed a petition seeking expedited consideration on April 29, 1983.

[2] Pub. L. No. 96-448, 94 Stat. 1895.

[3] NITL indicates that the Commission is in a position to take official notice of the phenomenon of increasing cancellations of railroad routes and rates. In appendices B and C of its petition, NITL submits excerpts from the Journal of Commerce (February 16 and 17, 1983) to illustrate the magnitude of the problems involved in recent cancellations.

[4] We are unaware of carrier actions allowed to become effective that *physically* close routes. Rate actions that restrict rates over particular routes do not close them, *per se*.

toward cancellations and similar restrictive tariff actions will result in the virtual absence of intramodal competition.

Consolidated Rail Corporation,[5] Soo Line Railroad Company, and the Chicago, Milwaukee St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie, Trustee) (Milwaukee Road), also support the petition. Soo Line expressed concern that its ability to enter into allowance contracts has been jeopardized by restrictive tariff amendments designed to limit the applicability of existing rates to the canceling carrier's long haul. Milwaukee Road contends that recent railroad cancellations and similar restrictive tariff actions have adversely affected all of its gateways, numerous commodities, some of its basic operational patterns, and its ability to achieve revenue adequacy and to utilize transportation contracts. It emphasizes that these cancellations essentially are filed by large carriers with the objective of preserving the route and rate that accords the canceling carrier its longest haul. As a regional carrier, Milwaukee Road insists that it is vital that it be permitted to compete with other railroads through all of its gateways.

Replies in opposition to the petition were filed by the Burlington Northern Railroad Company (BN) and Illinois Central Gulf Railroad Company (ICG). Essentially, they argue that the Interstate Commerce Act, as amended, clearly establishes the principles under which route and rate cancellations, reciprocal switching arrangements, trackage rights and other operations and services are to be considered. Thus, they view the proposed rulemaking as essentially restating the statutory criteria and serving no useful purpose.

BN and ICG point out that the current statutory and regulatory scheme under which the Commission, the railroads, and the shipping public must function is marked by clear Congressional directives to reduce regulation, and to permit the marketplace to determine, to the maximum extent possible, the nature and price of railroad services. They submit that the issues raised by NITL are best addressed in a case-by-case analysis, as only by individual adjudication, can efficiency, revenue, redundancy, energy, and competitive issues be accorded adequate and factual consideration.

While the breadth of the actions taken raises legitimate concerns, we remain supportive of the direction of these changes. Accordingly, we will address the key issues here. In order to respond to the NITL petition it is initially necessary to review recent actions relating to joint rate and reciprocal switching cancellations and some of the bases for those actions.

[5] Although Conrail supports the petition for rulemaking, it believes that an investigation will result in a determination that no rules should be adopted. It would require NITL to submit more specific information as to possible new rules.

Background

A. *Legislative Actions.* In October of 1980, the Staggers Rail Act of 1980 became law. This represented the second major effort in five years [6] to resolve the continuing problem of railroad revenue adequacy. The legislative history states, in part:

> Earnings by the railroad industry are the lowest of any transportation mode and are insufficient to generate funds for necessary capital improvements. By 1985, the railroad industry will experience a capital shortfall of between $16 billion and $20 billion. . . . Modernization of economic regulation of railroads, with greater reliance on the market place is essential to achieve maximum utilization of railroads, to save energy and to combat inflation. H.R. Rep. No. 96-1430, 96th Cong. 2nd Sess. 79 (1980).

Congress enacted a new rail transportation policy, made findings and set goals, all of which emphasize the need for railroads to earn adequate revenues. The statute reflects a legislative intent "to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates." 49 U.S.C. 10101a(1). See also 49 U.S.C. 10701a(b)(3). The regulatory scheme was substantially reformed in order to free rail rates from regulation in all but those limited instances where effective competition does not exist. H.R. Rep. No. 96-1430, *supra*, at 89.

Congress also spoke extensively to the issue of revenue adequacy in the joint rate context. It noted:

> Two of the major problems caused by the existing joint rate system are too low rate divisions and a *proliferation of uneconomic routes* protected by the archaic "commercial closing" doctrine.[7] *Id.* at 111. (emphasis supplied)

In response, Congress provided additional remedies for depressed earnings on joint movements.[8] However, it stated it had no intent to limit a carrier's existing rights to secure improved earnings over specific routes. It found that, beyond the new extraordinary procedures, existing remedies [10705(e)] should be adequate "assuming the Commission chooses to administer them in order to realize the revenue adequacy goals of the Act." Congress recognized a serious problem with the existing joint rate structure and anticipated that revisions would be undertaken by rail carriers.

In another action that had a direct impact on carrier activities, Congress addressed the way in which railroads should price joint line service. See 49 U.S.C. 10706. In expanding the limitations on collective activity first enacted in the Railroad Revitalization and Regulatory Reform Act of 1976, Congress restricted joint line price discussions to require carriers to conduct separate meetings covering each particular route.

Realizing that these changes would, if taken advantage of, dramatically change both railroads' services and their pricing, Congress offered new protection in the form of an amendment to 49 U.S.C. 11103. This amendment expanded the Commission's discretion to require reciprocal switching where practicable and in the public interest, or where necessary to provide competitive rail service.

B. *Administrative Actions.* In direct response to the Staggers Act, the Commission took a number of actions that have affected railroad pricing of joint services.[9]

[6] The first was the Railroad Revitalization and Regulatory Reform Act of 1976 (the 4R Act).

[7] This doctrine, since abandoned, held that any rate increase to a joint movement making one route more expensive than another route between the same points, cancelled the joint route for purposes of invoking section 10705(e) jurisdiction.

[8] See, e.g. 49 U.S.C. 10705a. While this provision has been used by a number of carriers, it is not the gravamen of the NITL petition, and activities under it will not be discussed in depth here.

[9] Actually, the impetus for much of the rail activity being challenged came before the Staggers Act. In fact, these statutory amendments addressed inadequacies in the prior statute. Serious joint line rate problems were exposed in a number of earlier Commission proceedings. In No. 37646 (Sub-No. 66) et al., *Hog Hair, Versailles, Ohio to Etowah, Tenn.*, not printed, decided March 21, 1980, the Commission addressed an ongoing dispute between the Family Lines System and the Southern Railway Company concerning the question of rate equalization for competing single line and joint line routes. The Commission said there:

> "The fact that rate parity once existed between single and joint line routes does not mandate a finding of unlawfulness when that rate parity is changed by publication of new lower single line rates. . . . [P]rotestant has no *right* to participate as a connection in movements originated by other carriers."

Soon after, the Commission issued decisions in *Conrail Surcharge on Pulpboard*, 362 I.C.C. 740 and 843 (1980). In that pre-Staggers Act case the evidence clearly established that Conrail's division of joint rate revenue often did not cover its variable cost of service. The Commission discussed the need to review and identify routing that were unprofitable and suggested use of the cancellation remedy under 49 U.S.C. 10705(d) [now (e)].

In *Western Railroads Agreement*, 364 I.C.C. 635 (1981), the Commission undertook to implement limitations on collective ratemaking. In the past, all railroads that could participate in service between two points often decided upon, with antitrust immunity, a uniform rate between those two points regardless of routing.[10] The concerns of many that routing would become limited due to the new requirement that participants in particular routes price separately was discussed. The Commission concluded that:

> If this occurs, we can see no harm to the carriers or the shipping public in reducing the number of routes. We recognize that under the current route system, shippers have numerous options. . . . To the extent that our definition . . . will result in the loss of some routes . . . that effect is outweighed by the desirability of more efficient routing. . . . Those routes which remain in shipper demand and which are profitable . . . will continue. . . . The elimination of costly, circuitous and inefficient routes will benefit the industry as well as its customers. . . . Carriers are free to create rates for new traffic in which they would participate, and are encouraged to pursue aggressively potential shippers with competitive offers of service. pp. 649–650.

The Commission also noted that, should carriers act to restrict routing, there were remedies (under the statute and the antitrust laws) against cancellation of joint rates and routes. See e.g., section 10705(e). The Commission may also prescribe joint rates under certain circumstances. See section 10705(a). The decision acknowledged that some bridge (intermediate) carriers might lose business which they had under the prior open routing system. However, the Commission found that this outcome was contemplated by the Staggers Act.

In March of 1982, the Commission took another important action to implement the Staggers Act's policy of greater flexibility in the joint rate structure. Since the 1920's, the Commission had imposed so-called DT&I conditions intending to lessen the impact of rail consolidations on nonapplicant railroads and the public. As pertinent here, Condition 1 had been interpreted to require rate equalization between a new single line routing (created by the merger) and competing joint line routes in which the consolidated carrier participated. The other conditions imposed similar strictures, generally preventing the consolidated carrier from preferring its own lines. In *Traffic Protective Conditions*, 366 I.C.C. 112 (1982),[11] the Commission removed these conditions, finding generally that they prevented carriers from offering the cheapest, most efficient service and kept rates artificially high. Notably, the Commission found that interchange costs related to interlining may outweigh costs associated with greater circuity, and therefore, that a longer single line route was not necessarily unlawful. The Commission also addressed the potential problem that carriers would use this new freedom to cancel routes to obtain monopoly rates. It noted that there usually is ample competition from other modes to prevent monopoly pricing. However, if market dominance existed, we would have reasonableness jurisdiction over the rate level as well as section 10705 authority to prescribe joint rates.

C. *Carrier Actions.* Soon after passage of the Staggers Act, the carriers began to implement the new flexibility through their rate structures. Conrail was perhaps the most active, beginning a surcharge program in early 1981. In addition to imposing numerous section 10705a surcharges, Conrail also proposed in mid-1981 to cancel many joint rates over particular routes and restrict routing for others. The Commission investigated some of these proposals.[12] Our policy on section 10705(e) cancellations has evolved through these investigations and later adjudications.[13] These cases balance the statutory goals of the public interest, carrier efficiency and revenue adequacy.

Conrail's actions have been notable not only because of their breadth but because Conrail also undertook to revise entirely its rate structure on the affected movements. For example, in the *Grain* case adjustment, Conrail established a new rate structure dependent upon the extent of its ability to handle the traffic. The new rates (whether single line or proportional)[14] were designed to recapture traffic, much of which had been lost to trucks due to noncompetitive rail rates.

Beginning in late 1981 and early 1982, other carriers began similar programs, typically targeting particular commodities. As a general proposition, these actions comport with the Staggers Act mandate. That is, rail carriers are no longer acting in concert, offering equal opportunities for all regardless of location, management efficiency or other variables, but instead are being operated as individual businesses, run to make the most of what each has to offer the shipping public.

It is not surprising that one result of this industry about-face on the prior joint rate-open routing practice would be a corresponding change in approach to a by-product of it—reciprocal switching.

The rate structure for reciprocal switching was, for many carriers, in need of revision. In part because these rates were rarely, if ever, subject to general rate increases, they tended to be very low and in some cases may not even have covered marginal cost. Therefore, we see carriers critically evaluating the cost and benefits of reciprocal switching on the basis of individual markets. We cannot conclude that this type of behavior is anticompetitive *per se*. We have yet to see a situation where a shipper did not have recourse to an alternate commercial switching rate or a line haul rate or other competitive alternative. Of course, where the Commission otherwise has jurisdiction over the remaining rate, a complaint case may be brought to test that rate's reasonableness.

The Petition

The above discussion reflects our experience to date with the evolving structure of joint rates and reciprocal switching.[15] It is in this context that the

[10] Obviously, this "open routing" was not market or cost-based pricing. For example, the shipper would pay the same amount whether the route chosen was 1,000 or 2,000 miles and whether there were one, three, or more carriers involved.

[11] The U.S. Court of Appeals, 6th Circuit, has stayed the decision pending judicial review. No. 82-3251, *Detroit, Toledo & Ironton Railroad Company v. I.C.C.*, decision of May 19, 1982.

[12] *Routing Provisions-Conrail/July, 1981*, 365 I.C.C. 753, 759 (1982), remanded, *Chesapeake and Ohio Railway Co., et al. v. I.C.C.*, 704 F.2d 373 (D.C. Cir., 1983). Remand directed to question of representativeness of evidence. *Restructured Rates on Recycables-Conrail*, 365 I.C.C. 596 (1982), remanded as to connecting carriers' compliance with Section 204 of the Staggers Act in *National Association of Recycling Industries, Inc., v. I.C.C.*, 704 F.2d 638 (D.C. Cir. 1983). *Restructured Rates on Grain and Grain Products, Conrail, (Grain)*, 365 I.C.C. 635 (1982), appeal dismissed for lack of jurisdiction in *N.Y. Dock Ry. v. U.S.*, 696 F.2d 32 (2d Cir., 1982).

[13] E.g. *Joint Line Cancellation-Soda Ash-UP R. Co.*, 365 I.C.C. 951 (1982). *(Soda Ash)*

[14] When a joint rate is cancelled, local or proportional rates will apply, at the least for the cancelling carrier's portion of the movement. A local rate carries no restrictions on its use with other rates. A proportional rate is restricted to use in combination with a prior or subsequent movement. It is often necessary for the other carriers involved in the movement to reassess their connecting local rates, determine whether they are competitive in combination with the cancelling carrier's new rates, and make adjustments based on marketing considerations. See *Routing Provisions-Conrail-July, 1981*, 365 I.C.C. at 649–650.

[15] See Finance Docket No. 29908, *Delaware & Hudson Railway Co. and New York Department of Transportation—Exemption for Use of Terminal Facilities*, not printed, decision served May 3, 1983; *Delaware & H. Ry. Co. v. Consolidated Rail Corp.*, 366 I.C.C. 845 (1982); Finance Docket No. 29831, *Western Kentucky Trucking Co., Inc., Louisville and Nashville Railroad Co. and Illinois Central*

NITL petition and supporting statements must be analyzed.

Overall, NITL does not point to *particular* anticompetitive results. It appears to assume that activities limiting joint rate application and use of existing market power are anticompetitive *per se*. As should be clear from the prior discussion, we disagree with this underlying premise. See also Ex Parte No. 427, *Joint Rates Study*, not printed, served November 18, 1982. Certain comments also seem to imply that the shipper's statutory right to route includes the right to the same rate over different routes. Virtually all shippers and carriers express a preference for the relative simplicity of joint rates (compared to proportional rates) and the service alternatives that exist when many routes are available.

In our view, however, it is not the number of routes alone that constitutes competition, but also the competitiveness of the alternatives. Moreover, as discussed earlier, rate disparities among routes are not unlawful, *per se*.

To the extent that recent changes to the joint rate structure reflect inherent or developed advantages one carrier may have over another, such as a shorter or more efficient single line route, they are changes that the Staggers Act encourages, as they ultimately produce a more efficient and competitive industry. A similar conclusion is required to the extent switching charges begin to reflect cost as well as particular competitive conditions. If revenue adequacy is to be attained, or stockholders satisfied, carriers need to pursue the opportunities available under the statute.[16] Indeed, part of the Commission's role is to encourage carriers in these pursuits. See, *e.g.*, section 10101a. Ultimately, the public interest is served.

There are, and will continue to be, some uncertainties, dislocations and other problems for individual shippers and carriers. This will be true during any transition.

We are and will continue to be sensitive to situations where one party may wield an unfair advantage over another party without losing sight of the broader goals of the statute.[17] There are existing remedies available to shippers and carriers to address such individual wrongs. While the comments indicate a high level of sophistication in this area, a few brief comments may be in order.

First, certain parties question the right of carriers to effect numerous rate and route changes in one action. We have held that the Act does not prohibit broad actions, but that a representative showing is necessary. *Routing Provisions—Conrail—July, 1981, supra.* The reviewing court affirmed this analysis, it is consistent with section 10701a(a), and piece-by-piece activity would unnecessarily delay otherwise lawful changes.

Second, in response to comments submitted by the Soo Line, we reject the argument that a cancellation must be found unlawful if it has the effect of nullifying a contract with an intermediate carrier. See *Chesapeake and Ohio Railway Co., et al.* v. *I.C.C., supra.* The carrier cancelling the joint rate is not a party to the contract and, thus, has no legal obligation to abide by it. The statutory standards for joint rate cancellation include consideration of the contract issue in connection with the required analysis of the impact on affected shippers and carriers.

Most important to our sections 10705 and 11103 analysis is, however, the fact that the existing statutory criteria require case-by-case analysis of individual fact patterns which will reflect different economic and competitive circumstances in each case.[18] As found in *Cancellation of Intermediate Routing, Michigan N. Ry.*, 365 I.C.C. 51 (1981), what may appear on the surface to be anticompetitive conduct may simply be a reasoned and justifiable business response.

Because of the importance of the specific facts in each case, the provisions of section 10705(e), section 10705a and section 11103 cannot usefully be interpreted in the broad sense NITL seeks.[19] It would be administratively impractical, via a general rulemaking, to state categorically which actions are lawful and which are not. We are not prepared at this time to attempt to propose or adopt new standards nor would it serve any real purpose to reiterate the existing standards of review discussed in this decision.

Finally, we note that complaints may always be filed. This avenue lends itself to the in-depth analysis of unique fact patterns required by the statute. Indeed, some parties to this proceeding have already filed such complaints and they are going forward. We will require corrective action in a particular case if warranted.

Summary of the Statutory Scheme as it Relates to the Petition

In the 4R and Staggers Acts, Congress struck a balance between railroad revenue need and protection of captive shippers. Recognizing that rail assets are relatively fixed, revenue adequacy can only be reached by each carrier using its particular resources and advantages. The Interstate Commerce Act considered as a whole clearly reflects a Congressional understanding that exercise of rail market power is not *per se* unlawful.[20] Differential pricing, reflecting supply and demand, must be permitted if a private sector rail industry is to survive. See Ex Parte No. 347 (Sub-No. 1), *Coal Rate Guidelines—Nationwide*, notice of proposed rulemaking served February 24, 1983. Market power, where it exists, will in most cases ultimately be controlled through our jurisdiction over the rate level for captive traffic.

The Commission should not unnecessarily expand the limitations imposed by the statute and should ~~in~~stead allow each carrier all possible freedom to structure its own pricing,

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Gulf Railroad Co.—Reciprocal Switching Agreement, not printed, decision of Division 2 served May 13, 1983; No. 38891, *Central States Enterprises, Inc.* v. *Seaboard Coast Line Railroad Co., et al.*, not printed, initial decision served February 1, 1983; and No. 39021, *Midtec Paper Corp., et al.* v. *Chicago & North Western Transportation Co. (Use of Terminal Facilities and Reciprocal Switching Agreement)*, not printed, initial decision served April 29, 1983. In the first three cases, the relief was granted; in the last two it was denied.

[16] For the most part, our review of these activities indicates, however, that carriers are extremely sensitive to the effects of rate and routing adjustments on their shippers. Typically, their actions include adjustments that reflect the circumstances of valued shippers. See letter from Conrail, dated April 20, 1983. It may not be assumed that railroads will behave irrationally and drive attractive traffic off the system. However, we recognize that essentially ministerial functions may be made more difficult (e.g., rate determination, bill of lading preparation). These practical problems will also be addressed in our study.

[17] In fact, we have suspended and set for investigation those proposals where there is the probability of unlawfulness. See e.g., I&S No. 9260, *Restriction of Reciprocal Switching, Pulp, Paper and Coal, Conrail;* I&S No. 9261, *Restricted Application of Single-Factor Joint Rates, Southern Pacific;* and I&S No. 9262, same title. In all these cases, the carriers voluntarily cancelled the suspended matter, in one case prior to our action.

[18] We have seen few protests that contain convincing, particularized data addressing the statutory criteria. We again direct the parties' attention to the various § 10705(e) cases cited here. Those cases discuss in detail the type of evidence that will satisfy the statutory tests.

[19] For example, § 10705(e) directs us to consider: (1) the distance traveled and the average transportation time using the various routes preferred by opposing parties; (2) effects of the cancellation on energy consumption; and (3) the impacts of cancellation on affected shippers and carriers. This requires an extremely complicated and detailed study (including cost data) of routing prior to and after the adjustment to determine, in effect, whether different routes are natural competitors or if prior routings were competitive solely because of the arbitrary and non-cost based open routing/rate equalization practice.

[20] See sections 10709 and 10505.

service and other competitive responses. See section 10707a(h). We are to intervene only when there are inadequate economic restraints on market power. Accordingly, we may not consider sections 10705(e), 11103, or any other provision in a vacuum. For example, it may be inconsistent for us to require maintenance of a particular joint rate if the involved traffic is subject to sufficient competitive pressure to restrain rail market power overall. As we discussed in Ex Parte No. 320 (Sub-No. 20), *Market Dominance Determinations*, 365 I.C.C. 118 (1981),[21] these pressures take many forms, and require individualized analysis. Thus before we may exercise our discretion to prevent route or rate adjustment or require reciprocal switching, we should be confident that our intervention is necessary because natural competitive pressures do not exist or are insufficient to produce economically rational pricing or service.

Conclusion

There is no doubt that the Staggers Act has had a significant effect on rail pricing and service. It has ushered in a new era of railroad flexibility and reduced regulation. The changes Congress sought to effect are not without transition cost. As we have said in a number of other contexts, Staggers Act created a new way of doing business in the rail industry. Many of the restraints on rail pricing and behavior have been removed. An important part of these changes is the increased ability of rail carriers to set the terms of their participation in joint line arrangements.

We view our role in this transition seriously. The Commission is to facilitate change to a less-regulated environment, and to provide remedies should carriers abuse their new freedoms.

To assist in both these roles, the Commission has initiated an industry-wide study of the activities with which the parties here are concerned. The study will be based on an in-depth analysis of the causes and effects of these carrier actions. It will be designed to: (1) Assess the impact of these changes on individual shippers and the system as a whole; and (2) analyze them in light of the policies and provisions of the statute. If needed, we will seek further public comment on particular issues. We will use the results of the study and any comments we may request to determine the need for further action on our part. It should be useful, as well, in connection with oversight hearings on the Staggers Act, and our continuing review of joint rates in connection with Ex Parte No. 427, *supra*. We believe this approach will be far more useful than attempting to establish new standards through a rulemaking and, in conjunction with ongoing adjudications, should address the concerns expressed by many commentors—concerns which we share.

The petition is denied.

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

Decided: June 27, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison. Chairman Taylor concurring in part, dissenting in part with a separate expression.

Agatha L. Mergenovich,

Secretary.

Chairman Taylor, concurring in part, dissenting in part:

In disposing of the NITL petition, a majority of the Commission categorically states that cancellations of joint rates and reciprocal switching can only be analyzed in individual adjudications after a careful examination of the facts in each case. The same rationale is applied to the Commission's ability under 49 U.S.C. 11103(c)(1) to require carriers to enter into reciprocal switching arrangements, where such agreements are found practicable and in the public interest.

I agree with the general theme of the majority's position, i.e., that the law must be applied in individual adjudications. However, I believe that public comments on the issues raised by the NITL would be useful and would ultimately aid the Commission in the adjudication of individual joint rate and reciprocal switching cancellations. Such comments would also help us determine our general powers under 49 U.S.C. 11301(c)(1).

On the subject of joint rate cancellations, the majority appears to be signaling a move toward the elimination of any consideration of the specific standards contained in 49 U.S.C. 10705(e) by concentrating its analysis solely on the reasonableness of the resulting proportional or local rates. The majority decision relies upon 49 U.S.C. 10707a(h) and the emphasis of the Staggers Act on railroad revenue adequacy as support. I am not so certain of this course and would have preferred to explore this subject by the solicitation of public comments. The Staggers Act did not specifically modify section 10705(e) to allow greater flexibility in joint rate cancellations. By enacting 49 U.S.C. 10705a, Congress only created greater, not unfettered flexibility for the lowest revenue to variable cost traffic.

Congress also enacted section 11103(c)(1) to encourage the expansion of competitive rail service where a possibility exists that competition might be reduced by subsequent joint rate cancellations or by the operation of other provisions of the Staggers Act. H.R. Rep. No. 96-1035, 96th Cong. 2nd Session 67 (1980). How does section 11103(c)(1) relate to criteria for allowing the cancellation of reciprocal switching arrangements? Should the Commission look only at the reasonableness of the resulting switching charge or at other factors? Comments on these questions would be helpful, because too few cases have been handled at the formal level for the majority to make categorical statements concerning the "law" of cancellation of reciprocal switching. Generally speaking, reciprocal switching can be regarded as pro-competitive, and as a result, the reduction of its availability should be carefully examined.

The Staggers Act focused on eliminating unnecessary regulation and increasing railroad revenues to adequate levels. However, especially in the sensitive area of joint rate cancellations and reciprocal switching, it appears that Congress sought to balance the need for competition and adequate revenue levels with the maintenance of an efficient and properly coordinated national rail system. I had hoped a public proceeding would explore these goals and the tools available to the Commission to strike the balance sought by Congress. In my opinion, such an inquiry would have greatly assisted our adjudication of subsequent proceedings.

I also believe these questions should be addressed now and not at some unspecified time hereafter within the context of a staff study on the effects of joint rate and reciprocal switching cancellations. Moreover the staff's analytical efforts should not be compromised by the incorporation of somewhat questionable interpretations of statutory intent. In any event, such a staff study should be a supplement to and not a substitute for a thorough examination of the highly important policy questions raised by the NITL petition.

Appendix

Replies in support of the NITL petitions were filed by:

Aerospace Industries of America, Inc.
American Paper Institute, Inc.
The Chlorine Institute, Inc.
Dow Chemical Company
Ethyl Corporation
FMC Corporation
Monsanto Company
Occidental Chemical Corporation
PPG Industries Inc.
Bartlett Agri Enterprises, Inc.
Pennwalt Corporation
International Minerals & Chemical Corporation
Anchor Hocking Corporation
Farm Industrial Equipment Institute
National Grain and Feed Association
The Fertilizer Institute
The Procter & Gamble Company
Southern Hardwood Traffic Association
Allied Chemical Corporation
Sun Refining and Marketing Company
LCP Chemicals & Plastics, Inc.
American Petroleum Institute
Chemical Manufacturers Association
Owens-Illinois, Inc.

[21] Remanded, *Western Coal Traffic League, et al. v. I.C.C.*, 649 F.2d 378 (5th Cir. 1982), rehearing *en banc* granted March 7, 1983.

National Steel Corporation
Institute of Scrap Iron & Steel, Inc.
Rubber Manufacturers Association, Transportation Committee
Society of the Plastic Industry, Inc., Committee on Transportation and Distribution
American Feed Manufacturers Association.

[FR Doc. 83-18567 Filed 7-8-83; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 30701-21]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California; Proposed Rule and Request for Comments

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

ACTION: Proposed rule and request for comments.

SUMMARY: The Secretary of Commerce issues these proposed regulations to implement the 1983 amendment of the "Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California Commencing in 1978."

Specific management measures in the proposed regulations vary by fishery and area but generally establish fishing seasons, quotas, inseason management procedures, daily catch limits for recreational fisheries, gear restrictions, and minimum size limits for salmon. The 1983 amendment and implementing regulations are intended to prevent overfishing, to apportion equitably the ocean harvest between commercial and recreational fisheries, and to allow salmon to escape the ocean fisheries (1) to provide fish for various inside fisheries, (2) to meet U.S. obligations to treaty Indian fishermen, and (3) to achieve spawning escapement goals.

DATE: Comments on this proposed rule must be received by August 19, 1983.

ADDRESSES: Send comments on these proposed regulations to the Director, Northwest Region, National Marine Fisheries Service (NMFS), BIN C15700, Seattle, Washington 98115. Copies of the 1983 amendment and accompanying report, which includes the regulatory impact review/initial regulatory flexibility analysis and the final environmental impact statement, are available from the Pacific Fishery Management Council, 526 SW. Mill St., Portland, Oregon 97201.

FOR FURTHER INFORMATION CONTACT: H. A. Larkins (Regional Director, NMFS), 206-527-6150.

SUPPLEMENTARY INFORMATION:

Background

The fishery management plan (FMP) for the Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California, prepared by the Pacific Fishery Management Council (Council), was approved by the NOAA Assistant Administrator for Fisheries (Assistant Administrator), on March 2, 1978. Regulations to implement the FMP were first published on April 14, 1978 (43 FR 15629) as emergency regulations and were made final regulations on July 11, 1978 (43 FR 29791). Regulations to implement annual amendments to the FMP have been issued yearly. Regulations implementing the 1982 Council amendment to the FMP as well as certain changes occasioned by a Secretarial amendment, were last issued as final rules on August 16, 1982 (47 FR 35489) and on September 1, 1982 (47 FR 38545).

The Council has amended the FMP to improve management of the ocean salmon fisheries in 1983. A draft supplement to the environmental impact statement (DSEIS) for the 1983 amendment has been filed with the Environmental Protection Agency. A notice of availability of the DSEIS was published on February 4, 1983 (48 FR 5308). The Council held six hearings on the amendment during the period February 15-17, 1983. The 1983 amendment is intended to provide adequate escapement from the ocean salmon fisheries for treaty Indian fisheries, for various all-citizen internal water fisheries and for spawning. In addition, the amendment is intended to maintain viable ocean fisheries and to allocate equitably the salmon resources between the ocean commercial and recreational fisheries.

Section 305(e)(2) of the Magnuson Act authorizes the Secretary of Commerce (Secretary), upon the recommendations of the Council, to promulgate emergency regulations to address a fishery emergency without regard to whether a fishery management plan or amendment exists for the fishery. At the request of a majority of Council members, the Assistant Administrator filed emergency regulations identical to these proposed regulations on May 5, 1983, which became effective on May 23, 1983 (48 FR 21135). They will remain in effect until August 21, 1983, and may be extended, by agreement of the Secretary of the Council, for a second 90-day period.

The preamble to the emergency regulations outlined the current status of the resource and provided rationale for the proposed management measures. This notice is being published to solicit public review of the proposed regulations. All comments received will be considered when developing final regulations. Following their filing with the Office of the Federal Register, the final regulations will be effective for 1983 and subsequent years unless superseded or modified.

A number of comments, including five letters representing views of Washington trollers, were received before the Council submitted the 1983 amendment for Secretarial approval. Responses to those comments are incorporated in the FSEIS (Appendix I of the 1983 amendment), and are summarized below.

Comments received during the public comment period on the emergency regulations ending May 23 were considered and also are discussed below.

Comments

1. The Columbia River Inter-Tribal Fish Commission recommended:

a. A separate chinook quota for the May troll season north of Cape Falcon to protect upper Columbia River summer chinook stocks;

b. The ocean fisheries be monitored not only during May but also through the July and August seasons so that emergency inseason closures could be implemented on a timely basis if necessary to protect fall chinook;

c. There be more fisheries enforcement to improve compliance with the various zones; and

d. An assessment be made to assure that the proposed regulatory regime fairly allocates Columbia River coho of upper-river origin between the treaty and non-treaty fishermen.

2. The Northwest Indian Fisheries Commission commented that:

a. The troll season for pink and sockeye salmon north of Carroll Island would jeopardize future Puget Sound runs of pink salmon and result in allocation imbalances between treaty Indian and non-treaty fisheries; and

b. The treaty Indian allocation for Skagit River coho will not be met for the third consecutive year due to the size of the non-treaty coho quota north of Cape Falcon.

3. The Humboldt Fishermen's Marketing Association, Inc. objected to the emergency closure of the troll fishery between Cape Vizcaino and

Cape Blanco until May 16, 1983, and commented that the long-term Klamath River spawning escapement goal is unrealistic.

4. Washington trollers commented that:

a. Five-inch plugs and whole bait should be allowed in the July fishery off Washington, as allowed in the chinook fishery off Oregon in June;

b. The public was not afforded an opportunity to review and comment on the revised allocation between commercial and recreational fisheries north of Cape Falcon; and

c. Chinook quotas north of Cape Falcon also were not subjected to public review and where established in spite of statements by the Council's salmon plan development team that not enough is known about chinook abundance to make valid predictions.

5. The Hoopa Valley Tribal Business Council commented that:

a. A more restrictive set of ocean fishing regulations from Cape Vizcaino to Cape Blanco should be implemented so that more chinook would return to the Klamath River for the in-river subsistance harvest and spawning escapement; and

b. The rebuilding schedule for the Klamath River chinook and changing from a spawning escapement goal to an in-river run goal should not be approved.

Responses

1a. Research by the Washington Department of Fisheries (WDF) in 1982 on the stock composition of the May troll catch north of Cape Falcon indicates that only 0.3 percent of the chinook taken are summer chinook from the upper Columbia River. Nevertheless, the Council adopted a six-mile conservation closure around the mouth of the Columbia River, in part to reduce further the already minimal ocean harvest of mature spring and summer chinook entering the river, even though the Council's salmon team could not quantify potential benefits of the new river-mouth closure. In addition, no troll fishery is allowed for chinook or coho after July north of the Columbia River to protect upriver stocks of bright fall chinook returning to the river. These management measures will be evaluated prior to next year's fishery and, based on that evaluation, if additional protection of upper Columbia River stocks is necessary, troll chinook quotas by month may be reconsidered.

1b. The state fishery management agencies will monitor landings throughout the season—not just doing May—and will provide necessary information upon which to base emergency inseason closures if necessary. Computerized catch data are compiled from landing tickets as rapidly as possible, but weekly statistics have not been available until the following Thursday morning. This time lag will necessitate the use of preliminary data complied from telephone surveys of fish buyers and hand tallying of fish tickets for decision-making purposes. In season management action, which is necessary and consistent with the Secretary's authority, will be taken.

1c. State and Federal enforcement will be carefully coordinated among U.S. Coast Guard, National Marine Fisheries Service, and State agency personnel to determine compliance with area restrictions. Consideration of similar management measures in the future may be dependent upon the degree of compliance in 1983.

1d. Neither the Council nor the Secretary has authority to allocate fish in State waters. The 1983 ocean regulations for the coho fisheries north of Cape Falcon are based on the Oregon Production Index (OPI) and the status of coho runs produced in some Washington streams north of the Columbia. The status and escapement of upper Columbia River coho are taken into account in calculating the OPI. No data indicates that any group of fishermen is getting an unfair share of upper-river coho. It is difficult to predict the impact of the ocean fisheries on upper Columbia River coho stocks because of the unknown magnitude of the treaty Indian harvest in the ocean.

2a. The two-week troll fishery for pink and sockeye salmon north of Carroll Island will harvest predominantly Fraser-River-origin stocks of pink salmon, which are expected to be present in record high abundance. The WDF estimates that only 5 percent of the ocean catch of pink salmon north of Carroll Island would be depressed Puget-Sound-origin stocks (15,000 Puget-Sound-origin pinks in an ocean catch of 300,000). The International Pacific Salmon Fishery Commission has indicated it will prohibit pink salmon fishing in a management area in Puget Sound to increase the escapement of pinks to Puget Sound streams. Thus, the ocean fishery for pinks can be conducted without additional losses to spawning escapements to Washington streams.

2b. The 193 ocean fishery for coho north of Leadbetter Point is managed to achieve the court-adopted escapement to the Queets River. Washington coastal coho, particularly Queets River stocks, are more depressed than Skagit River coho. Proper management of inside fisheries, including tribal fisheries in the Skagit, will assure proper escapement in the Skagit. One serious impediment to additional Skagit River escapement is the unlimited treated ocean harvest. However, it may be, after study under the Court process, that the current WDF escapement goal to the Skagit River will prove to be unrealistic.

3. The Council adopted a rebuilding schedule for Klamath River chinook with the goal of increasing in-river runs every four years by an average of 20 percent over the previous four years. According to the new schedule, the long-term spawning escapement goal of 115,000 fish will be reached by 1998. While this sets some definite management goals for ocean management in 1983 future years, it does not resolve the concerns of some fishermen regarding the validity of the long-term goal. Several ongoing studies of habitat and environmental constraints may provide guidance for refining the Klamath River escapement goal in the future. A subcommittee of the Council could find no escapement goal which was clearly more accurate than the current goal. The two-week later troll season opening in 1983 is to protect predominantly four-year-old chinook returning to the Klamath River and will help reach the 1983–86 ocean escapement goal of 68,900 chinook.

4a. The Council decided to allow the use of five-inch plugs and whole bait in the early June commercial fishery off Oregon because coho are not as large nor as abundant in June as they are in July, thus not as susceptible to the five-inch plugs and whole bait. In July, off Washington, coho are larger and more abundant and thus more susceptible to harvest when smaller plugs and whole bait are used. To protect Washington coastal coho stocks and to direct the commercial fisheries on healthier chinook hatchery stocks, the Council decided to adopt a measure that allows the use of plugs no smaller than six inches and to restrict the use of whole bait.

4b. As has happened every year since the ocean salmon FMP was implemented in 1977, all of the data and analysis needed by the Council to determine precisely the allowable ocean harvest and the management measures required to protect the stocks had not been available until the March meeting. This year was no different in that respect. The reports of the Council's salmon team were made available to the Council, the Council's salmon advisors, the Council's scientific and statistical committee and other interested parties as soon as they were completed. The data and analysis were presented orally

to the Council and were discussed by the Council in public forum. The Council, after receiving public testimony, then decided upon the management measures to be recommended. On several occasions, including 1983, the Council has felt the need to select a tenative option, recess the meeting, and come back at a later date for further discussion and deliberation. Quite often, again as in 1983, the Council asks the team for further evaluation during the recess.

The options for the fisheries north of Cape Falcon, which subsequently were adopted, were developed and presented to the Council and the public at the March 16–17 meeting. The salmon plan development team analyzed the impacts of these proposals and this information (Appendix F of the 1983 Amendment) was completed the morning of March 23 and made available to those attending the meeting as rapidly as copies could be made and distributed.

Public comments on these and other matters were invited at both the March 16–17 and March 23 meetings. All persons indicating a desire to speak were heard at both meetings. In addition to the usual opportunities to comment, an extra opportunty was provided by inviting public comment on the 1983 emergency salmon regulations filed for public inspection with the Office of the Federal Register on May 5. No changes were justified as a result of public comments received, and the emergency regulations became effective on May 23.

4c. The Council adopted a complex management regime for the commercial and recreational fisheries north of Cape Falcon that is designed to concentrate the 1983 fisheries on healthy hatchery stocks, both chinook and coho, while minimizing the potential impacts on depressed natural stocks. The troll fishery is directed toward chinook salmon off Washington and away from depressed natural coho stocks. However, the Council also recognized that reprogramming troll fishing pressure from coho to chinook north of the Columbia River could result in an increase in the chinook harvest. Thus, the Council decided to adopt a chinook harvest ceiling, or quota, to prevent over-fishing of depressed Columbia River stocks. The chinook quota that the Council adopted is based upon the average chinook salmon harvest by both the commercial and recreational fisheries north of Cape Falcon during the four-year period from 1979 through 1982. This basis was discussed at the March 23 public meeting. The Council considers the 1983 chinook quota to be reasonable and necessary to protect and maintain the condition of chinook stocks.

5a. The 1983 commercial salmon fishing regulations for the area from Cape Vizcaino, California, to Cape Blanco, Oregon, are significantly more restrictive than the 1982 regulations were for the same area. This year the troll fishery opens 2 weeks later (May 16) than last year, closes for 2 weeks (June 16–30) and closes for the season on August 31. The August 31 closure is two months earlier than last year's closure north of the California-Oregon border and one month earlier to the south. In addition, a 12-mile-square closed area at the mouth of the Klamath will be imposed during August. The Council estimates the 35-day reduction in the commercial fishing season in the area and the river mouth closure will increase the Klamath River chinook in-river run over the 1982 run by 12 percent this year and by 20 percent in 1984.

While the impact of shifts in fishing effort are difficult to predict accurately, a reduction in early season fishing time may not be compensated by concentrated effort later in the season. Many fishermen that would have trolled for salmon early in the season will transfer to albacore in late June or early July and the lost early-season salmon fishing time cannot be made up. Further, limited entry fixes the size of the salmon fleet where it can exert no more than the maximum effort possible on every fishing day. At this point, effort shifts will not compensate for lost fishing days.

More severe ocean restrictions could cause over-escapement and under-utilization of healthy chinook stocks, particularly from southern Oregon streams. Consequently, a more gradual approach is being adopted to achieve progress toward the Klamath River spawning escapement goals of 115,000 fall chinook.

5b. The Council adopted a California Department of Fish and Game (CDFG) proposal to rebuild the chinook salmon runs that return to the Klamath River by an average of 20 percent every four years until the long-term spawning escapement goal of 115,000 chinook is met.

This proposal also, for the first time, defined the Council's chinook escapement goal in terms of in-river run size for the Klamath with the expectation that the 115,000 spawning escapement plus in-river harvest requirements would be met by 1998. This action was recommended because of the continuing uncertainty about the number of salmon which could, or should, be taken in the in-river recreational and Indian subsistence fisheries. The CDFG rebuilding schedule and in-river escapement goal was adopted because the Council believed that the ocean and in-river harvesters alike, should share in the responsibility for conserving and rebuilding the Klamath River chinook stock. The rebuilding schedule will require a long-term management commitment with the cooperation of the Council, CDFG, NMFS and the various user groups.

Classification

Section 304(a)(1)(C)(ii) of the Magnuson Act, as amended by Pub. L. 97–453, requires the Secretary of Commerce (Secretary) to publish regulations proposed by a Council within 30 days of receipt of the FMP [amendment] and regulations. At this time the Secretary has not determined that the FMP [amendment] these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The NOAA Administrator has determined that these rules implementing the proposed 1983 amendment are not "major" rules under Executive Order (E.O.) 12291 requiring a regulatory impact analysis. A regulatory impact review/initial regulatory flexibility analysis (RIR/IRFA) has been prepared and is integrated in the amendment. This review focuses on the issues and problems in the fisheries and contains an analysis of the expected impacts of the adopted management measures and alternative management options. Some issues could only be partially analyzed because of data limitations. Nevertheless, the review supports the determination that these rules are not "major" under the E.O. 12291 criteria.

This proposed rule is exempt from the procedures of E.O. 12291 under of section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act, as amended by Public Law 97–453, require the Secretary to publish this proposed rule 30 days after its receipt. The proposed rule is being reported to the Director, Office of the Management and Budget, with an explanation of why it is not possible to follow procedures of the order. The NOAA Administrator also has determined that the rules implementing the 1983 amendment will have a significant economic impact on a substantial number of small entities, for purposes of the Regulatory Flexibility Act. The IRFA has been prepared in

conjunction with the regulatory impact review and has been transmitted to the Small Business Administration for review and comment.

The RIR/IRFA acknowledges but does not quantify gains or losses that will result from increased or decreased harvests by fishermen fishing inshore waters, particularly treaty Indian fishermen, as a result of the 1983 regulations. It also does not attempt to quantify the benefits or losses that will accrue to the salmon fisheries (including the ocean fisheries) in future salmon cycles, as a result of increased or decreased spawning escapement over what would have occurred if the ocean fisheries were allowed to harvest more or less salmon in 1983. Estimated long-run benefits, resulting from maintenance and enhancement of the salmon runs, more than offset the short-term adverse impacts of more restrictive regulations; that is why the Council placed first priority on meeting ocean escapement and spawning goals.

The Regional Director has determined that this rule will be implemented in a manner consistent to the maximum extent practicable with the approved coastal zone management programs of Washington, Oregon, and California. Letters certifying consistency were mailed to the coastal zone agencies of those states and the one for the San Francisco Bay Area on April 6, 1983, under § 307 of the Coastal Zone Management Act.

The final supplement to the environmental impact statement (FSEIS) for this action, which supplements the original environmental impact statement and previous supplements prepared for the FMP, has been prepared and will be filed with the Environmental Protection Agency about August 10, 1983. A notice of availability of this FSEIS should be published on August 24, 1983.

These regulations to implement the FMP amendment do not entail any collection of information by or for the Federal government and, therefore, are exempt from the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 50 CFR Part 661

Fish, Fisheries, Fishing, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated: July 6, 1983.

Carmen J. Blondin,

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

PART 661—OCEAN SALMON FISHERIES OFF THE COASTS OF WASHINGTON, OREGON, AND CALIFORNIA

For the reasons set forth in the preamble, 50 CFR Part 661 is proposed to be revised to read as set forth in the interim emergency rule published on Wednesday, May 11, 1983, at 48 FR 21135.

[FR Doc. 83-18589 Filed 7-6-83; 3:04 pm]

BILLING CODE 3510-22-M

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50 CFR Part 662

[Docket No. 30705-123]

Northern Anchovy Fishery; Preliminary Determination

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

ACTION: Notice of preliminary determination.

SUMMARY: This notice announces the preliminary determination of estimated spawning biomass and harvest quota for the northern anchovy (*Engraulis mordax*) fishery in the fishery conservation zone for the 1983–84 fishing season. The harvest quota has been determined by application of the formula in the Northern Anchovy Fishery Management Plan (FMP). The FMP requires a preliminary determination of estimated spawning biomass and harvest quota to be announced on or about July 1 each year. A final determination will be announced on or about August 1, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Floyd S. Anders, Jr., Acting Regional Director, Southwest Regional, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731; telephone 213-548-2575.

SUPPLEMENTARY INFORMATION: In consulation with the California Department of Fish and Game and the Southwest Fisheries Center, National Marine Fisheries Services (NMFS), the Acting Regional Director, Southwest Region NMFS (Regional Director) has made a preliminary determination that the spawning biomass of the central subpopulation of northern anchovy is estimated to be 1,549,000 short tons. This preliminary determination is based on Administrative Report Number LJ-83-15, Southwest Fisheries Center, NMFS. The report currently is under review. It documents the method used to estimate the 1983 spawning biomass of the central subpopulation of northern anchovies. The biomass estimate is based on an egg production estimate. This method of biomass estimation has been calibrated to the larva census measure which has been used each year since implementation of the FMP and provides the historical data series for establishing annual harvest quotas.

Amendment 4 to the FMP was approved on March 11, 1983 and made effective on May 16, 1983 (48 FR 22301, May 18, 1983) by an emergency rulemaking which expires on August 15, 1983. The amendment reserves half of the reduction harvest quota to be withheld if scientific evidence demonstrates that the original biomass estimate was too high. The reduction quota reserve established by the amendment and the emergency regulations has been included in the preliminary determination of harvest quotas. Under the FMP formula, the optimum yield (OY) is set at 128,100 short tons and the total allowable level of foreign fishing is zero.

The Regional Director has made the following preliminary determinations for the 1983–84 fishing season, applying the formulas in the FMP and in 50 CFR 662.3 as amended to calculate the harvest quota and expected processing levels:

1. The total harvest quota is 128,100 short tons.

2. The domestic annual harvest (DAH) capacity is 128,100 short tons.

a. The portion of the DAH reserved for non-reduction fisheries is 12,600 short tons, however, non-reduction fisheries may exceed 12,600 short tons, provided that the total of the reduction and non-reduction fisheries does not exceed the harvest quota.

b. The total harvest limit for U.S. reduction purposes is 115,500 short tons.

c. The first half of the total harvest limit available for initial allocation to the U.S. reducton fishery is 57,800 short tons (rounded to the nearest 100 short tons).

d. Ten percent of the initial allocation or 5,800 short tons (rounded to the nearest 100 short tons) is reserved for the fishery north of Pt. Buchon, California.

e. The remainder of the initial allocation or 52,000 short tons is available to the fishery south of Pt. Buchon, California.

f. The extent to which U.S. firms are capable of processing anchovies (DAP) is estimated to be 119,600 short tons.

g. The amount of northern anchovy available for joint venture processing is

zero because DAH is equal to DAP plus the estimated live bait harvest of 8,500 short tons.

As specified in the FMP, these preliminary determinations have been made in consultation with the Pacific Fishery Management Council (Council). A summary of the information on which the estimates are based has been provided to the Council. Consultations with the Council will continue through July. A final determination of the harvest quotas will be announced on or about August 1, 1983.

List of Subjects in 50 CFR Part 662

Fish, Fisheries, Fishing.

(16. U.S.C. 1801 *et seq.*)

Dated: July 5, 1983.

Carmen J. Blondin,

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

[FR Doc. 83-18588 Filed 7-8-83; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

Cancellation of Public Hearing on Proposed Rule To Adopt a State-Federal Cooperative Agreement Between the State of West Virginia and the Department of the Interior

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Cancellation of Public hearing.

SUMMARY: The Office of Surface Mining (OSM) is announcing the cancellation of a public hearing scheduled on the proposed rule because no requests were received to testify at such hearing within the specified time period (July 7, 1983).

This notice cancels the public hearing but does not alter the comment period during which interested persons may submit written comments on the proposed rule.

DATE: The following hearing is cancelled:

The public hearing on the proposed rule adopting a State-Federal Cooperative agreement between the State of West Virginia and the Department of the Interior scheduled for July 11, 1982, in Charleston, West Virginia.

ADDRESS: Written comments should be mailed to:

Administrative Record (R&I–08), Office of Surface Mining, Room 5315–L 1951 Constitution Avenue, NW., Washington, D.C. 20240

or hand carried to:

Office of Surface Mining, Administrative Record (R&I–08), Room 5315, 1100 L Street, NW., Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: H. Leonard Richeson, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, N.W., Washington, D.C. 20240; Telephone: (202) 343–5866.

SUPPLEMENTARY INFORMATION: On June 17, 1982, the Office of Surface Mining published a proposed rule in the **Federal Register** which began the formal process for the adoption of a State-Federal cooperative agreement between the State of West Virginia and the Department of the Interior. 48 FR 27748. The proposed rule provided for a public hearing to be held on July 11, 1983 at the Office of Surface Mining, Charleston Field Office, 603 Morris Street, Charleston, West Virginia. It further provided that if no person expressed an interest in testifying by July 7, 1983, that hearing would be cancelled. As of July 7, 1983, no persons had contacted OSM indicating that they wished to testify at the hearing. Therefore, in the interest of cost savings, the Director of OSM is cancelling the hearing.

While there will be no public hearing, interested persons may still submit written comments on the proposed rule. Written comments must be received by 4:00 p.m., on July 18, 1983, to be considered.

Dated: July 8, 1983.

William B. Schmidt,

Assistant Director, Program Operations and Inspection, Office of Surface Mining.

[FR Doc. 83-18840 Filed 7-8-83; 12:10 pm]

BILLING CODE 4310-05-M

Notices

Federal Register
Vol. 48, No. 133
Monday, July 11, 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.

DEPARTMENT OF AGRICULTURE

Forest Service

San Juan National Forest Grazing Advisory Board; Meeting

The San Juan National Forest Grazing Advisory Board will meet on Tuesday, August 2, 1983, at 10:00 a.m., at the San Juan National Forest Office, Conference Room, 701 Camino del Rio, Durango, Colorado. The Board was established in accordance with provisions of the Federal Land Policy and Management Act of 1976.

The Agenda for the meeting will include: (1) Recommendations for the utilization of range betterment funds; (2) recommendations for the development of allotment management plans; (3) discussion of effects of the San Juan National Forest Land and Resource Plan on allotment management plans and utilization of range betterment funds.

The meeting will be open to the public. Persons who wish to attend and participate should notify H. E. Bond, San Juan National Forest (303–247–4874) prior to the meeting. The public may participate in discussions during the meeting or may file a written statement following the meeting.

Dated: July 1, 1983.

P. C. Sweetland,

Forest Supervisor.

[FR Doc. 83-18586 Filed 7-8-83; 8:45 am]

BILLING CODE 3410-11-M

CIVIL AERONAUTICS BOARD

[Docket 41526]

Key Airlines Inc.; Fitness Investigation; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge Ronnie A. Yoder. Future communications should be addressed to him.

Dated at Washington, D.C., July 6, 1983.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 83-18609 Filed 7-8-83; 8:45 am]

BILLING CODE 6320-01-M

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

Permits filed under Subpart Q of the Board's Procedural Regulations; Week Ended July 1, 1983.

Subpart Q Applications

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

Date filed	Docket No.	Description
July 1, 1983	41576	Aerostar, Inc. d/b/a Aerostar Airlines, c/o James L. Shaw, 1954 Airport Road, Suite #240, Atlanta, Georgia 30341. Application of Aerostar, Inc. d/b/a Aerostar Airlines pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations for an amendment to its Certificate of Public Convenience and Necessity to permit it to engage in worldwide operations. Conforming Applications, Motions to Modify Scope and Answers may be filed by July 29, 1983.
Do	41580	Surinaamse Luchtvaart Maatschappij, N.V. (Surinam Airways Limited), c/o Harry A Bowen, Bowen & Atkin, 2020 K Street, N.W., Suite 350, Washington, D.C. 20006. Application of Surinam Airways Limited pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations applies for (a) foreign air carrier permit authorizing the foreign air transportation of passengers, property and mail between Paramaribo, Suriname and Miami, Florida via the intermediates Georgetwon, Guyana; Port of Spain, Trinidad; Caracas, Venezuela; Curacao, Netherlands Antilles; Santo Domingo, Dominican Republic; and Port au Prince, Haiti; and (b) for authority to operate all route charters of persons and property. Answers may be filed by July 29, 1983.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-18613 Filed 7-8-83; 8:45am]

BILLING CODE 6320-01-M

Order Instituting Key Airlines, Inc. Fitness Investigation

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order instituting the *Key Airlines, Inc. Fitness Investigation*, Order 83–7–1, Docket 41526.

SUMMARY: The Board is issuing an order instituting a fitness investigation of Key Airlines, Inc.

DATES: Persons wishing to file a petition to intervene in the *Key Airlines, Inc. Fitness Investigation* shall file their petitions in Docket 41526 by July 15, 1983 and serve their filings on all persons listed below.

ADDRESSES: Petitions to intervene should be filed with the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428, in Docket 41526, *Key Airlines, Inc. Fitness Investigation.*

In addition, copies of such filings should be served on Key Airlines, Inc., and the Federal Aviation Administration. Service will also be required on any other person filing a petition. For further information contact: Nicholas Lowry, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825

Connecticut Ave., NW., Washington, D.C. 20428, (202) 673-5345.

SUPPLEMENTARY INFORMATION: The complete text of Order 83-7-1, is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 83-7-1 to that address.

By the Bureau of Domestic Aviation: July 1, 1983.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-18611 Filed 7-8-83; 8:45 am]

BILLING CODE 6320-01-M

Fitness Determination of Aries Management Corporation d.b.a. Regional Helicopter Airlines

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 83-7-2, Order to Show Cause.

SUMMARY: The Board is proposing to find that Aries Management Corporation d.b.a. Regional Helicopter Airlines is fit, willing, and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service conform to applicable safety standards. The complete text of this order is available, as noted below.

DATES: Responses: All interested persons wishing to respond to the Board's tentative fitness determination shall serve their responses on all persons listed below no later than July 15, 1983, together with a summary of the testimony, statistical data, and other material relied upon to support the allegations.

ADDRESSES: Responses or additional data should be filed with the Special Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and with all persons listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Timothy E. Carmody, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5121.

SUPPLEMENTARY INFORMATION: The complete text of Order 83-7-2 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 83-7-2 to that address.

By the Civil Aeronautics Board: July 1, 1983.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-18610 Filed 7-8-83; 8:45 am]

BILLING CODE 6320-01-M

COMMISSION ON CIVIL RIGHTS

North Dakota Advisory Committee; Agenda and Notice of Public Meeting

Correction

In FR Doc. 83-17991 beginning on page 30735 in the issue of Tuesday, July 5, 1983, make the following correction:

On page 30735, third column, first paragraph of the document, seventh line, "July 23, 1983" should read "July 22, 1983".

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget

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

Agency: Bureau of the Census.

Title: Current Population Survey (CPS).

Form Numbers: Agency—CPS-1; CPS-260; CPS-262; OMB—0607-0049.

Type of Request: Revision.

Burden: 58,000 respondents; 97,980 reporting hours.

Needs and Uses: The CPS is the primary source of estimates of employment, unemployment, and other characteristics of the civilian noninstitutional population and various subgroups of that population. Government policymakers and legislators use these results as important indicators of our nation's economic situation and for planning and evaluating many government programs.

Affected Public: Individuals or households.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Tim Sprehe, 395-4814.

Agency: Bureau of the Census.

Title: Housing Vacancy Survey (HVS).

Form Numbers: Agency—HVS-1; OMB—0607-0179.

Type of Request: Extension.

Burden: 5,200 respondents; 3,200 reporting hours.

Needs and Uses: The HVS provides quarterly estimates on national, regional, and state vacancy rates by various characteristics. These date give researchers the ability to gauge the housing inventory over time. Information is collected from homeowners, realtors, and other knowledgeable persons.

Affected Public: Individuals or households.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Timothy Sprehe, 395-4814.

Agency: Bureau of the Census.

Title: Address Listing Pages.

Form Numbers: Agency—DA-101A; DA-102A; DA-103A; D-169; OMB—NA.

Type of Request: New Collection.

Burden: 160,000 respondents; 5,661 reporting hours.

Needs and Uses: This test will require respondents in selected areas to provide information about their mailing addresses and in some cases, the name of the household head and the physical location of the housing unit. The 1984 test results will be used to evaluate various methods for address list compilation and update methods.

Affected Public: Individuals or households.

Frequency: Nonrecurring.

Respondent's Obligation: Mandatory

OMB Desk Officer: Timothy Sprehe, 395-4818.

Agency: Department of Commerce/Office of the Secretary.

Title: Solicitation (Request for Proposal (RFP), or Invitation for Bids (IFB).

Form Numbers: Agency—SF 19,33,255 et. al.; OMB—N/A.

Type of Request: New.

Needs and Uses: The Department contracts for supplies or services to help fulfill its mission. Solicitations are used to obtain proposals on bids from potential contractors. Proposals or bids are evaluated and the most advantageous is incorporated into a contract.

Affected Public: Businesses or other for-profit, non-profit organizations, and small businesses or organizations.

Frequency: On occasion.

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

OMB Desk Officer: Ken Allen, 395-3785.

Agency: International Trade Administration.

Title: Worldwide Services Program: Application for Publicity of Service Companies in *Commercial News USA*.

Form Numbers: Agency—ITA-4099P; OMB—N/A.

Type of Request: New.

Burden: 600 respondents; 200 reporting hours.

Needs and Uses: This information provided by American business firms on this application will enable the Department of

Commerce to promote sales abroad of American services. The Department's globally distributed *Commercial News USA* will be listing in its monthly issues and in its annual directory American companies that are willing and able to supply services abroad.

Affected Public: Businesses or other for-profit, small businesses or organizations.

Frequency: On occasions.

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

OMB Desk Officer: Ken Allen, 395-3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

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

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 83-18628 Filed 7-8-83; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

The following are notices of the receipt of applications for duty-free entry of scientific instruments published pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the instrument is intended to be used is being manufactured in the United States.

Comments must be filed in accordance with § 301.5(a) (3) and (4) of the regulations. They are to be filed in triplicate with the Director, Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230, within 20 calendar days after the date on which this notice of application is published in the Federal Register.

A copy of each application is on file in the Department of Commerce, and may be examined between 8:30 A.M. and 5:00 P.M., Monday through Friday, Room 1523, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket No.: 83-234. Applicant: Temple University, Institute for Video Exchange, 552 Gladfelter Hall, Philadelphia, PA 19122. Instrument: Portable Video Camera and Recorder Set Up, Model HR2200 and Accessories. Manufacturer: Japanese Victor Corp., (JVC), Japan. Intended use of instrument: The instrument is intended to be used to teach French language and culture.

Application received by commissioner of Customs: June 24, 1983.

Docket No.: 83-235. Applicant: University of Florida, Purchasing Division, Gainesville, FL 32611. Instrument: Thermal Ionization Mass Spectrometer, Model MM354H and Accessories. Manufacturer: VG Isotopes, Ltd., United Kingdom. Intended use of instrument: The instrument is intended to be used for the study of naturally occurring geologic materials, including isotopic compositions and trace element abundances. Extraterrestrail (e.g. meteorite) samples may also be studied. Experiments will be conducted to determine the ages of rocks and minerals and to study the geochemical evoluation of the Earth utilizing radioactive parent-daughter pairs to trace the long term effects of temporal geochemical processes involving radioactive elements (e.g. Sm, Rb, U, etc.). Application received by Commissioner of Customs: June 24, 1983.

Docket No.: 83-236. Applicant: University of Washington, School of Dentistry, 1959 N. E. Pacific, SB-24, Seattle, WA 98195. Instrument: Drilling Equipment. Manufacturer: Ingenjorsfirma V.J. Stefek, Sweden. Intended use of instrument: The instrument is intended to be used in conducting a research project based upon the principle of osseointegration which denotes permanent anchoring of the titanium implants by direct connection of the implants to vital remodelling jawbone without any intermediary connective tissue coat. The objective of the investigation is to develop improved surgical and prosthetic techniques which can be expected to reduce bone loss and improve the function of the permanently anchored bridges. Application received by Commissioner of Customs: June 24, 1983.

Docket No.: 83-237. Applicant: University of Washington, School of Dentistry, 1959 N.E. Pacific, SB-24, Seattle, WA 98195. Instrument: Titanium Product System for Osseointegration. Manufacturer: Bofors Nobelpharma, Sweden. Intended use of instrument: The instrument is intended to be used in conducting a research project based upon the principle of osseointegration which denotes permanent anchoring of the titanium implants by direct connection of the implants to vital remodelling jawbone without any intermediary connective tissue coat. The objective of the investigation is to develop improved surgical and prosthetic techniques which can be expected to reduce bone loss and improve the function of the permanently anchored bridges. Application received by Commissioner of Customs: June 24, 1983.

Docket No.: 83-238. Applicant: University of Massachusetts, Amherst, MA 01002. Instrument: Laboratory Ram Extruder. Manufacturer: Gottfert Werkstoff-Prufmaschinen, West Germany. Intended use of instrument: The instrument is intended to be used to study flow behavior of highly filled polymeric systems and the processing and extrusion behavior of the polymeric systems.

Applicant received by Commissioner of Customs: June 24, 1983.

Docket No.: 83-239. Applicant: Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, MA 02139. Instrument: Electron Microscope, EM 400 with Accessories. Manufacturer: Philips Electronic Instruments, The Netherlands. Intended use of instrument: The instrument is intended to be used for studies of metals, ceramics, polymers and composite materials. The properties to be investigated will include the mechanical strength, crystallography, electrical properties, effects of chemical, thermal or mechanical treatments, effects of manufacturing processes and relationships of these macroscopic properties to microstructure. Application received by Commissioner of Customs: June 24, 1983.

Docket No.: 83-240. Applicant: State University of New York at Buffalo, Buffalo, N.Y. 14214. Instrument: LHS-10 SIMS/00 Secondary Ion Mass Spectrometer/Ultra High Vacuum Surface Analaysis Chamber. Manufacturer: Leybold Heraeus GMBH, & Co., West Germany. Intended use of instrument: The instrument is intended to be used for studies of surfaces, thin films, monomolecular layers, interfaces of various solids, liquids, adsorbed gases on highly ordered crystals. Specimens of particular interest include: polymers, monolayers of fatty acids, membranes, crystalline polymers thin film semiconductors, electrode surfaces, electroactive and conducting polymers, heterogeneous catalysts. Experiments will be conducted to obtain an understanding of the physics and chemistry of surfaces and interfaces. The primary educational function of this

article will be in the training of M.S. and Ph.D. students during the course of their thesis research. Additional studies will be performed by post-doctoral students and graduate students from the departments of Chemical Engineering, Biophysics, Electrical Engineering, Physics, and Geology. Application received by Commissioner of Customs: June 24, 1983.

(Catalog of Federal Domestic Assistance Program No. 11 105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 83-18625 Filed 7-8-83; 8:45 am]

BILLING CODE 3510-25-M

Certain Forged Undercarriage Components From Italy; Postponement of Countervailing Duty Preliminary Determination

AGENCY: International Trade Administration.

ACTION: Postponement of countervailing duty preliminary determination.

SUMMARY: The countervailing duty preliminary determination involving certain forged undercarriage components from Italy is being postponed as the investigation has been determined to be extraordinarily complicated. We intend to issue the countervailing duty preliminary determination not later than August 25, 1983.

EFFECTIVE DATE: July 11, 1983.

FOR FURTHER INFORMATION CONTACT: Roland MacDonald, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 377-5496.

SUPPLEMENTARY INFORMATION: On May 24, 1983, we announced our initiation of a countervailing duty investigation to determine whether producers, manufacturers, or exporters of certain forged undercarriage components from Italy receive any benefits from the government of Italy that are subsidies (48 FR 23288). The notice stated that we would issue a preliminary determination by July 25, 1983.

As detailed in the notice of initiation of the countervailing duty investigation, the petition alleges that the government of Italy provides various programs which constitute subsidies to producers, manufacturers, or exporters of certain forged undercarriage components. The alleged subsidy practices are numerous and raise complex issues. The petitioners have made allegations concerning seven different areas of subsidy practices, which involve complex issues such as: Equity infusions, preferential financing of uncreditworthy companies, excessive rebates of indirect tax and preferential steel prices. We have determined that the government of Italy and the other parties concerned are cooperating and that additional time is necessary to make the preliminary countervailing duty determination.

For these reasons we determine that this investigation is extraordinarily complicated in accordance with section 703(c)(1)(B)(i) of the Tariff Act of 1930, as amended ("the Act"), and that additional time is necessary to make this preliminary determination in accordance with section 703(c)(1)(B)(ii) of the Act. We intend to issue the preliminary determination not later than August 25, 1983.

This notice is published pursuant to section 703(c)(2) of the Act.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

July 1, 1983.

[FR Doc. 83-18629 Filed 7-8-83; 8:45 am]

BILLING CODE 3510-25-M

Consolidated Decision on Applications For Duty-Free Entry of Scientific Articles

The following is a consolidated decision on applications for duty-free entry of scientific articles published pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR 301 as amended by 47 FR 32517).

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 1523, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Decision: Applications Denied. Applicants have failed to establish that instruments or apparatus of equivalent scientific value to the foreign articles for such purposes as the foreign articles are intended to be used are not being manufactured in the United States.

Reasons: The requirements for the resubmission of applications that have been denied without prejudice to resubmission are contained in § 301.5(e) of the regulations. Each of the applicants has failed to resubmit its application within the specified time period. Pursuant to § 301.5(e)(4), this failure shall result in a denial of the application.

In accordance with § 301.5(f), notice of these decisions is forwarded to the **Federal Register** for publication.

Docket No.: 82-00335. Applicant: Texas A & M University, College Station, TX 77843. Instrument: Marine Proton Magnetometer System V-75 with Accessories. Date of denial without prejudice to resubmission: April 12, 1983.

Docket No.: 82-00371. Applicant: Cornell University, Applied and Engineering Physics, 212 Clark Hall, Ithaca, NY 14853. Instrument: FL 2002 High Performance Tunable Dye Laser. Date of denial without prejudice to resubmission. April 22, 1983.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 83-18626 Filed 7-8-83; 8:45 am]

BILLING CODE 3510-25-M

Petitions by Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing from the following firms: (1) Tonga Trading Company, Ltd., Pier 2, 521 Ala Moana Boulevard, Honolulu, Hawaii 96822, producer of artifacts and cloth wallhangings (accepted May 23, 1983); (2) Triway Manufacturing, Inc., P.O. Box 39, Marysville, Washington 98270, producer of aircraft parts (accepted May 23, 1983); (3) Palace Knitting Mills, Inc., 41 Varick Avenue, Brooklyn, New York 11237, producer of knit fabrics (accepted May 23, 1983); (4) Modern Leather Goods Repair Shop, Inc., 11 West 32nd Street, New York, New York 10001, producer of handbags, belts and other needlepoint items (accepted May 24, 1983); (5) Milwaukee Boiler Manufacturing Company, 1101 South 41st Street, Milwaukee, Wisconsin 53215, producer of metal shapes and weldments; mining equipment; and vessels, tanks and tank trucks (accepted May 24, 1983); (6) Almar Metal Spinning Corporation, 135-41 West 20th Street, New York, New York 10011, producer of light reflectors, bakery molds and other metal products (accepted May 26, 1983); (7) Kukui Nuts of Hawaii, Inc., P.O. Box 685, Waialua, Hawaii 96791, producer of jewelry and cosmetics (accepted May 27, 1983); (8) White Water, Inc., 5945 East Sheila Street, City of Commerce, California 90040, producer of towels and men's and women's robes, bath wraps,

shorts, jackets, tops and pants (accepted June 1, 1983); (9) The W. O. Hickok Manufacturing Company, P.O. Box 2433, Harrisburg, Pennsylvania 17103, producer of paper converting machinery (accepted June 1, 1983); (10) Smith's Pacific Shrimp Company, P.O. Box 738, Garibaldi, Oregon 97118, processor of shrimp (accepted June 2, 1983); (11) Krystinel Corporation, 126 Pennsylvania Avenue, Paterson, New Jersey 07503, producer of ferrite cores (accepted June 3, 1983); (12) Treasure Craft, 2320 North Alameda Street, Compton, California 90222, producer of earthenware and stoneware (accepted June 3, 1983); (13) Aerospace Systems, Inc., P.O. Box 398, Vega Baja, Puerto Rico 00764, producer of electronic components (transformers and resistors) (accepted June 3, 1983); (14) Lawrence Maid Footwear, Inc., 50 Island Street, Lawrence, Massachusetts 01842, producer of women's footwear (accepted June 6, 1983); (15) Bordein Corporation, 11002 Wayzata Boulevard, Minnetonka, Minnesota 55343, producer of knife holders, other woodenware and cutlery (accepted June 7, 1983); (16) Dan-Co Farms, Inc., 6109 Oak Orchard Road, Elba, New York 14058, a producer of onions (accepted June 7, 1983); (17) The Peckham Corporation, 18 Sixth Street, Clintonville, Wisconsin 54929, producer of men's, women's and children's footwear, and shoe components (accepted June 8, 1983); (18) Camelot Industries Corporation, P.O. Box 1072, North Attleboro, Massachusetts 02761, producer of eyeglass frames, lenses and cases (accepted June 8, 1983); (19) E & M Coat Company, Inc., 94 Fulton Street, Paterson, New Jersey 07501, producer of women's coats (accepted June 8, 1981); (20) Bergen Cable Technologies, Inc., P.O. Box 1300, Lodi, New Jersey 07644, producer of cable and wire rope (accepted June 9, 1983); (21) Domino Sportswear Company, 43 Hall Street, Brooklyn, New York 11205, producer of men's, women's and children's coats and jackets (accepted June 9, 1983); (22) Bolts, Inc., P.O. Box 2037, Carolina, Puerto Rico 06628, producer of industrial fasteners (accepted June 9, 1983); (23) Oxford Textile, Inc., P.O. Box 98, One Wall Street, Oxford, New Jersey 07863, producer of fabric (accepted June 9, 1983); (24) Knickerbocker Guild, Inc., 565 Johnson Avenue, Brooklyn, New York 11237, producer of fireplace accessories and television tables (accepted June 10, 1983); (25) Anscott Chemical Industries, Inc., 26 Hanes Drive, Trenton, New Jersey 08625, producer of drycleaning and textile chemicals (accepted June 9, 1983); (26) Gary Lee Company, Inc., 932 East Boulevard, Box B, Alpha, New Jersey 08865, producer of women's blouses (accepted June 9, 1983); (27) Osmundson Manufacturing Company, P.O. Box 158, Perry, Iowa 50220, producer of agricultural equipment (accepted June 10, 1983); (28) Industrial Wire Products Corporation, P.O. Box 1710, Pomona, California 91769, producer of steel bars, wire and wire products (accepted June 10, 1983); (29) Mayhew Steel Products, Inc., Shelburne Falls, Massachusetts 01370, a producer of chisels, punches and other hand tools (accepted June 10, 1983); (30) Paul Sullivan Tennis Sportwear, Inc., 51 Osgood Street, Methuen, Massachusetts 01844, producer of men's and women's shirts, shorts and warmup suits (accepted June 14, 1983); (31) Johner Manufacturing Corporation, 11 Edgar Drive, Box S, West Milford, New Jersey 07480, producer of metal stampings (accepted June 14, 1983); (32) Edward D. Sultan Company, Ltd., 939 Kapiolani Boulevard, Honolulu, Hawaii 96814, producer of jewelry (accepted June 14, 1983); (33) Pineapple Hawaii, 2270 Kalakaua Avenue, Suite 1514, Honolulu, Hawaii 96815, processor of pineapple (accepted June 13, 1983); (34) Endicott Forging and Manufacturing Company, Inc., 1901 North Street, Endicott, New York 13760, producer of steel forgings (accepted June 14, 1983); (35) Tiffen Manufacturing Corporation, 90 Oser Avenue, Hauppauge, New York 11788, producer of photographic filters, lens accessories and audio-visual equipment (accepted June 14, 1983); (36) Pryor Novelty Company, Inc., P.O. Box 4, Tuscumbia, Missouri 65082, producer of wood giftware (accepted June 14, 1983); (37) Hyman Embroidery Works, Inc., 1201 Race Street, Philadelphia, Pennsylvania 19107, producer of apparel trim (accepted June 15, 1983); (38) Industrial Siderurgica, P.O. Box 516, Bayamon, Puerto Rico 00621, producer of steel bars (accepted June 16, 1983); (39) Scot Forge Company, Box 8, Spring Grove, Illinois 60081, producer of forgings (accepted June 16, 1983); (40) Kern Paper Company, Inc., 6070 Peachtree Street, Commerce California 90040, producer of berry baskets (accepted June 16, 1983); (41) Apache Shoe Company, Inc., 3701 South Broadway, Los Angeles, California 90007, producer of women's footwear (accepted June 16, 1983); (42) L. Hardy Company, 17 Mill Street, Worcester, Massachusetts 01603, producer of industrial knives (accepted June 17, 1983); (43) W & L Knitting Mills, Inc., 63–49 60th Place, Ridgewood, New York 11385, producer of women's and children's sweaters (accepted June 17, 1983); (44) The Brotherhood Corporation, 35 North Street, Washingtonville, New York 10992, producer of wine (accepted June 21, 1983); (45) Dakota Industries, Inc., P.O. Box 932, Sioux Falls, South Dakota 57101, producer of men's and women's coveralls, jackets, slacks, shorts, shirts and other sewn products (accepted June 21, 1983); (46) Harry Levine Corporation, 20 West 33rd Street, New York, New York 10001, producer of handbags (accepted June 21, 1983); (47) Coamo Fashions, Inc., Quisqueya 171, Hato Rey, Puerto Rico 00917, producer of women's blouses, dresses, skirts and slacks (accepted June 21, 1983); (48) Speeco, Inc., 15000 West 44th Avenue, Golden, Colorado 80401, producer of tractors, other farm equipment, parts and accessories (accepted June 21, 1983); (49) Electrical Precision Meter Corporation, 214 Franklin Street, Brooklyn, New York 11222, producer of electrical meters (accepted June 21, 1983); (50) Albany Hyatt Billiard Ball Company, Inc., 483 Delaware Avenue, Albany, New York 12209, producer of billiard balls (accepted June 21, 1983); (51) Gold's Touch of Class, 8437 Lankershein Boulevard, North Hollywood, California 91352, producer of men's shirts, slacks and robes and women's blouses (accepted June 23, 1983); (52) Treise Engineering, Inc., 1941 First Street, San Fernando, California 91341, producer of film processing machines and parts (accepted June 23, 1983); (53) Decor-Lite Corporation, 320 N.E. 60th Street, Miami, Florida 33137, producer of glass lighting shades, giftware and ceiling fans (accepted June 24, 1983); (54) Cahn Instruments, Inc., 16207 South Carmenita Road, Cerritos, California 90701, producer of electronic laboratory equipment (accepted June 24, 1983); and (55) J. H. Rutter-Rex Manufacturing Company, Inc., 145 Robert E. Lee Boulevard, New Orleans, Louisiana 70124, producer of men's, women's and boys' shirts and pants (accepted June 24, 1983).

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93–618) and § 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A

request for a hearing must be received by the Director, Certification Division, Office of Trade Adjustment Assistance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.309, Trade Adjustment Assistance. Inasfar as this notice involves petitions for the determination of eligibility under the Trade Act of 1974, the requirements of Office of Management and Budget Circular No. A-95 regarding review by clearinghouses do not apply.

Jack W. Osburn, Jr.

Director, Certification Division, Office of Trade Adjustment Assistance.

[FR Doc 83-18627 filed 7-8-83; 8:45 am]

BILLING CODE 3510-25-M

Texas A&M University; Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 1523, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No.: 83-59. Applicant: Texas A&M University, Department of Civil Engineering, Ocean Engineering Program, College Station, Texas 77843. Instrument: Waverider Buoy with Accessories. Manufacturer: Datawell Laboratoruim Voor Instrumentatie, The Netherlands. Intended use of instrument: See notice on page 55987 in the **Federal Register** of December 14, 1982.

Comments: No comments have been received with respect to this application.

Decision: Application denied. An instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States.

Reasons: The domestic Wave Track Type 949 buoy system manufactured by ENDECO of Marion, MA measures waves on a continuous basis and has the capability to do so in a manner substantially equivalent to that of the foreign buoy.

The applicant acknowledges that the performance characteristics of the foreign and domestic systems are "not significantly different." It already has two of the foreign buoys in use, however, and states that, since the data recording of the two systems "is not identical," it would be an "inconvenience" to purchase the domestic article and "desirable" to have buoys all the same type. Otherwise, it cannot be sure observed differences are due to wave climate differences or to differences in the instruments.

We note, however, that no two instruments will give identical results even if they are manufactured by the same company. We believe it is standard methodology to calibrate multiple instruments or otherwise compensate for such differences, and this methodology can be applied with equally satisfactory results to the domestic instrument. The Wave Track buoy can be equipped with a 27 MHz transmitter compatible with Waverider receivers.

In any event, even if it were shown the foreign buoys gave identical data under identical conditions, this would not mean that the domestic system could not be calibrated in the above manner. Further, the National Oceanic and Atmospheric Administration advises in its memorandum dated February 8, 1983 that uniformity of measuring equipment and uniformity of data collection method is not pertinent (within the meaning of § 301.2(s) of the regulations) to the applicant's program. We concur and note that the applicant admits its choice is a matter of convenience. Convenience may not be considered as a basis for duty-free treatment, also pursuant to § 301.2(s) of the regulations. Thus, based on our review of the record, comparison of relevant specifications and expert advice as detailed above, we find that ENDECO's type 949 (or other ENDECO equipment available at the time the foreign instrument was ordered) is of equivalent scientific value to the foreign instrument for its intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staffs.

[FR Doc. 83-18624 Filed 7-8-83; 8:45 am]

BILLING 3510-25-M

[A-427-010]

Certain Stainless Steel Sheet and Strip Products From France; Allowance of Security in Lieu of Estimated Duty Pending Early Determination of Antidumping Duty

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of allowance of security in lieu of estimated duty pending early determination of antidumping duty.

SUMMARY: The Department of Commerce has determined that it has a sufficient basis on which to conduct an expedited review of the antidumping duty order on certain French stainless steel sheet and strip products manufactured and exported by Union Siderurgique du Nord et de l'Est de la France. The Department will determine the appropriate foreign market values and the United States prices by September 20, 1983. We will permit Union Siderurgique du Nord et de l'Est de la France to post bonds or other security in lieu of the cash deposit of estimated antidumping duties for merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and on or before September 20, 1983.

EFFECTIVE DATE: July 11, 1983.

FOR FURTHER INFORMATION CONTACT: Philip Gallas, Maureen Flannery, or Robert Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-5253/5255.

SUPPLEMENTARY INFORMATION:

Background

On June 22, 1983, the Department of Commerce ("the Department") published in the **Federal Register** an antidumping duty order on certain stainless steel sheet and strip products from France (48 FR 28520). The Department announced that, in addition to deposits of estimated normal customs duties, Customs officers were to require a cash deposit of estimated antidumping duties on all merchandise entered, or withdrawn from warehouse, for consumption on or after June 22, 1983.

On June 21, 1983, Union Siderurgique du Nord et de l'Est de la France ("Usinor") requested that the Department waive the requirement for cash deposit of estimated antidumping duties and conduct an expedited review pursuant to section 736(c) of the Tariff Act of 1930, as amended ("the Tariff Act").

Before granting a waiver of cash deposits of estimated antidumping duties we must be satisfied that we will be able to determine the appropriate foreign market values and United States prices within 90 days after the date of publication of the order. The Department is satisfied that it will be able to do so.

Accordingly, the Department is instructing the Customs Service to waive cash deposits of estimated antidumping duties and accept bonds or other security for entries of certain stainless steel sheet and strip products manufactured by Usinor entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and/or before September 20, 1983.

Interested parties may submit written comments within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days after the date of publication. The Department will publish the results of this expedited review by September 20, 1983, including the results of its analysis of any such comments or hearing.

This notice is published in accordance with section 736(c)(2)(A) of the Tariff Act (19 U.S.C. 1675(c)(2)(A)).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

July 1, 1983.

[FR Doc. 83-18577 Filed 7-8-83; 8:45 am]

BILLING CODE 3510-25-M

Final Determination of Sales At Less Than Fair Value; Bicycles from Taiwan

AGENCY: United States Department of Commerce, International Trade Administration.

ACTION: Notice of Final Determination of Sales at Less than Fair Value: Bicycles from Taiwan.

SUMMARY: We have determined that bicycles from Taiwan are being, or are likely to be, sold in the United States at less than fair value. Therefore, we have notified the U.S. International Trade Commission (ITC) of our determination, and the ITC will determine whether these sales at less than fair value have caused injury to a U.S. industry. We have directed the U.S. Customs Service to continue to suspend the liquidation of all entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of our preliminary determination on April 29, 1983, and to require a cash deposit or bond for each such entry in an amount equal to the estimated dumping margin as described in the "Continuation of Suspension of Liquidation" section of this notice. We have determined that eleven Taiwanese bicycle producers should be excluded from this final determination. Those firms which are subject to suspension of liquidation and those firms which are excluded from this action are indicated in the "Continuation of Suspension of Liquidation" section.

EFFECTIVE DATE: July 11, 1983.

FOR FURTHER INFORMATION CONTACT: Steven Lim or Richard Rimlinger, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230 telephone: (202) 377-1279.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that bicycles from Taiwan are being sold, or are likely to be sold, in the United States at less than "fair value," as provided in section 735 of the Tariff Act of 1930, as amended (the Act). However, we have found either no sales or *de minimis* sales at less than fair value for bicycles produced by eleven of the firms investigated. Therefore, we are excluding imports from these eleven firms from this final determination. The concerned firms are indicated in the "Continuation of Suspension of Liquidation" section of this notice.

We have found that the foreign market value of bicycles exceeded the United States price on 11.5 percent of the sales we compared. These margins ranged from 0.03 to 29.1 percent. The overall weighted-average margin on all sales compared is 0.36 percent. The weighted-average margins for individual companies investigated are presented in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

On September 24, 1982, we received a petition in proper form from counsel for AMF Wheel Goods Division, Columbia Manufacturing Company, Huffy Corporation and Murray Ohio Manufacturing Company, on behalf of the U.S. industry producing bicycles. In accordance with the filing requirements of § 353.36 of the Commerce Department Regulations (19 CFR 353.36), the petition alleged that bicycles from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening to materially injure, a U.S. industry.

After reviewing the petition, we determined it contained sufficient grounds to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on October 14, 1982 (47 FR 46837). The ITC subsequently found, on November 8, 1982, that there is a reasonable indication that imports of bicycles from Taiwan are materially injuring, or are threatening to materially injure, a United States industry. We determined this case to be "extraordinarily complicated," as defined in section 733(c) of the Act. Therefore, we extended the period for making a preliminary determination by 50 days until April 22, 1983 (48 FR 4013).

On April 22, 1983, we preliminarily determined that bicycles from Taiwan are being, or are likely to be, sold in the United States at less than fair value (47 FR 19439). We excluded seven firms from this determination.

Scope of the Investigation

The merchandise covered by this petition are complete bicycles imported from Taiwan and classified under item numbers 732.02 through 732.26 of the *Tariff Schedules of the United States*. We investigated sales of these bicycles which were made by sixteen Taiwanese producers and sold to the United States during the period of investigation, April 1, 1982, through September 30, 1982.

The firms investigated were:

1. Asahi Enterprises Corporation (Asahi)
2. Ching Tong Shan Enterprise Co., Ltd. (Ching Tong Shan)
3. Dodsun Bicycle and Machinery Manufacturers (Dodson)
4. EE Company (EE Co.)
5. Fairly Bike Manufacturing Co., Ltd. (Fairly)
6. Giant Manufacturing Co., Ltd. (GMC)
7. Kung Hsue She Co., (KHS)
8. Liyang Co., Ltd. (Liyang)
9. Merida Industry Co., Ltd. (Merida)
10. Pacific Cycles Co., Inc. (Pacific)
11. Sheng Fa Industries Co., Ltd. (Sheng Fa)
12. Sony Cycle Industry Co., Ltd. (Sony)
13. Taiwan Hodaka Industrial Co., Ltd. (Taiwan Hodaka)
14. Wheeler Industrial Co., Ltd. (Wheeler)
15. Wheel King Corporation (Wheel King)
16. Willing Industry Co., Ltd. (Willing)

Sales by the above firms accounted for approximately 92 percent of all bicycle sales to the United States during the period of investigation.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value. In the cases of GMC, KHS, Merida and Wheel King we compared United States price based on purchase price with foreign market value based on home market price. In the case of KHS, there were some exporter's sales price transactions. We therefore compared exporter's sales price with foreign market value based on home market prices with respect to these particular transactions. In all other cases, we compared United States price based on purchase price with foreign market value based on the price to third countries (countries other than the United States).

United States Price

As provided in section 772(b) of the act, we used the purchase price of the subject merchandise to represent the United States price for sales by all Taiwanese producers because, except for certain transactions made by one producer, the merchandise was sold by these producers to unrelated purchasers prior to its importation into the United States. In the case of KHS, some bicycles were sold to a related U.S. purchaser, KHS Inc. For these particular transactions we used the exporter's sales price of the subject merchandise, as provided in section 772(c) of the Act, to represent the United States price.

We calculated the purchase price on the f.o.b. or c. & f. price to unrelated purchasers for sale in the United States. We made deductions, where appropriate, for inland freight, ocean freight, brokerage charges, bank charges, export promotion fees, and stamp tax. We made additions for import duties or taxes which were rebated, or not collected, by reason of the exportation of the merchandise to the United States, pursuant to sections 772(d)(1) (B) and (C) of the Act. Exporter's sales price was calculated in the same manner as purchase price, except that further deductions were made for handling and inland freight in the United States, U.S. customs duties, U.S. sales commissions, and indirect selling expenses in the United States.

Foreign Market Value

In the cases of GMC, KHS, Merida and Wheel King there were sufficient sales in the home market to allow us to use home market price as defined in section 773(a)(1)(A) of the Act, to determine foreign market value. We calculated home market price on the basis of the delivered or ex-factory prices to unrelated home market customers. Where appropriate, we deducted stamp taxes, shipping charges, discounts and rebates. We made circumstance of sales adjustments for differences between U.S. and home market payment terms, direct advertising, royalty, sales commissions and warranty expenses. We also adjusted for differences in packing and for physical differences in the merchandise.

GMC requested that we reduce the home market price to adjust for level of trade differences between the United States and the home market. GMC sells to the United States either directly to U.S. distributors or through unrelated trading companies. In the home market all sales are made to unrelated retailers through GMC's sole, related distributor, Giant Sales Co. (GSC). Since our fair value comparisons are based on GSC's prices to unrelated retailers, GMC has requested that a level of trade adjustment be made equal to GSC's entire mark-up.

For the purpose of this determination, we have made no level of trade adjustment because the company was unable to demonstrate that the prices it charged its distributor were arms-length prices or that there is an alternative, objective basis for quantifying a difference in the level of trade.

In the cases of all other Taiwanese producers, there were either no sales, or insufficient sales, in the home market to use as a basis for foreign market value. For these firms, we selected sales for export to a country other than the United States (third countries) as a basis for foreign market value pursuant to section 773(a)(1)(B) of the Act. Our selection of a particular third country to be used for fair value comparisons for each Taiwanese producer was made, in order of preference, on the following bases: (1) The comparability of the bicycles sold in each country to those sold in the United States, and (2) the third country with the largest sales volume to any country outside the home market or the United States. Using these bases the following third countries were selected for each Taiwanese bicycle producer with no sales, or insufficient sales in the home market:

Name of firm	Third Country selected
Asahi	Australia.
Ching Tong Shan	Panama.
Dodsun	Australia.
EE Co	Do.
Fairly	Do.
Liyang	Venezuela.
Pacific	Great Britain.
Sheng Fa	Venezuela.
Sony	Panama.
Taiwan Hodaka	Australia.
Wheeler	Do.
Willing Co	Do.

We calculated third country price on the basis of the f.o.b. or c. & f. price to unrelated purchasers for sale in the third country selected. We made deductions, where appropriate, for inland freight, ocean freight, brokerage charges, export promotion fee and stamp tax. We also made additions for import duties, which were rebated or not collected by reason of the exportation of the merchandise, equal to those amounts added to United States price. We made circumstance of sale adjustments for differences between U.S. and third country payment terms, selling commissions and direct advertising. We also adjusted for differences in packing and for physical differences in merchandise.

Verification

In accordance with section 776(a) of the Act, we verified all data used in making this determination in this investigation, by using standard verification procedures, including on-site inspection of the manufacturers' operations and examination of accounting records and randomly slected documents containing relevant information.

Submitted Coments

Petitioners' Comments

The following written comments were submitted by petitioners in response to our preliminary determination:

Comment 1. Petitioners object to the addition to the United States price of a duty rebate attributable to duties paid by domestic suppliers who imported components from abroad and sold bicycle parts to Taiwanese producers of finished bicycles. The Taiwan government has calculated the duty rebate to the bicycle manufacturer at the rate of 4.71 percent of the difference between the f.o.b. value of the finished bicycle and the c.i.f. value of components imported directly by the bicycle manufacturers themselves. The 4.71 percent rebate is paid to bicycle producers who export finished bicycles as compensation for that portion of the cost of its domestic parts attributable to passed-on import duties. The amount of rebate is determined by Taiwanese authorities based on their studies of the extent to which Taiwanese manufacturers use duty-paid imported raw materials in producing the bicycles.

Petitioners argue that there must be clear and reasonable evidence of the

amount and existence of the claimed expense and that under section 722(d) of the Act, the Department can only add back to United States price an amount for duties actually imposed. Petitioners further aruge that there must be sufficient linkage between the incidence of an actual duty and the actual amount rebated and cite the Department's disallowance of an "export restitution payment" involving an antidumping investigation of Sorbitol from France (47 FR 6459) as support for this position. Finally, petitioners assert that the 4.71 percent duty rebate is a subsidy and, since the bicycle producer's prices to third countries have been made lower by the payment of this subsidy, the Department should add the duty rebate to third country prices in order to properly reflect "fair value" for cases in which third country prices are used as the basis for foreign market value.

DOC Position

Under section 772(d)(1)(B) of the Act, the Department is required to increase purchase price and exporter's sales price by "the amount of any import duites imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the Unites States." Based on its own evaluation of data submitted from industrial sources, the authority of Taiwan has concluded that the 4.71 percent duty rebate formula fairly reflects what has, on a nationwide basis, been paid by importers of bicycle parts and is reflected in the export value of finished bicycles. In the context of an antidumping investigation, we feel that the official documents issued to the Taiwanese bicycle producers on individual shipments by the authorities of Taiwan and supplied to ITA personnel at verfication, and subsequent to verification, adequately establish that import duties have been imposed, reasonably quantified by the authority of Taiwan, and rebated. In the Sorbitol case, an adjustment was not made because linkage between the import payment and export payment was never established.

In the instant case, we believe that for antidumping purposes a sufficient link has been established between the import duties imposed and rebated to allow this adjustment to United States price. We also believe that the same adjustment must be made to foreign market value when foreign market value is based on third country prices. Our reasoning will be explained in response to respondents' comment 1 of this notice.

Comment 2. Petitioners contend that a four percent "harbor duty" assessed on bicycle parts imported directly by the bicycle producers under investigation and subsequently rebated to these producers upon exportation of finished bicycles is in reality a harbor usage fee and its remission should not be considered a rebated duty but an export subsidy. Petitioners further argue that, since the "harbor duty" is a subsidy and the bicycle producer's prices to third countries have been made lower by the payment of this subsidy, the Department should add the duty rebate to third country prices in order to properly reflect "fair value" for cases in which third country prices are used as the basis for foreign market value. Finally, petitioners argue that this adjustment is allowable, if at all, under section 772(d)(1)(C) of the Act (pertaining to the rebate of indirect taxes) rather than under section 772(d)(1)(B) of the Act (pertaining to import duties rebated) and cite the Department's treatment of this item in the antidumping investigation involving motorcycle batteries from Taiwan (47 FR 9264–5).

DOC Position. Our verification indicates that Taiwanese bicycle producers pay a total duty equal to 34 percent of the appraised retail value of all parts which are directly imported by these producers. This duty is rebated to these firms if the finished bicycles containing the imported parts are exported. Four percent of the duty rebate is attributable to "harbor dues." We believe that duties assessed on imported merchandise are subject to section 772(d)(1)(B) regardless of the purpose for which they are ultimately used by the Taiwan authorities. It is the right of the authority of Taiwan to finance its harbor services through import duties. Drawback of these import duties is not a subsidy under our countervailing duty statute.

In our antidumping investigation of motorcycle batteries from Taiwan we treated "harbor dues" as a "tax" under section 772(d)(1)(C) of the Act. However, whether the assessment is considered a "tax" or "duty" is immaterial to the outcome of this investigation. If we treat the assessment as a tax, we would add the rebate to United States price only to the extent that the tax is reflected in home market price. In this case, harbor dues would be included in home market price. The rebated tax would not be added to United States price in cases in which third country prices are used as the basis for foreign market value. If we treat the assessment as a duty we would add the rebated duty to both the United States price and the third country prices. (See respondent's comment 1 and our response.)

In this investigation we have considered "harbor dues" to be a duty since it is assessed in conjunction with other duties and administered in the same manner. If duty free merchandise is imported, then no harbor dues are paid. Therefore, we have added total duties rebated to United States price and have made the exact same addition to foreign market value when foreign market value is based on third country prices (see DOC response to respondent's Comment 1 of this notice).

Comment 3. Petitioners request that the Department commence a countervailing duty investigation of Taiwan's rebate of 4.71 percent of the value of components which are "domestically-sourced" imports, and of the rebate of harbor dues upon export.

DOC Position. The Department's investigation has not uncovered sufficient evidence that a subsidy is being received by producers, manufacturers or exporters of bicycles in Taiwan to initiate a countervailing duty investigation. If the petitioners have any additional information concerning alleged subsidies, they may file a countervailing duty petition.

Comment 4. Petitioners assert that the Department should not have included the value of customs duties paid on imported components in calculating adjustments for physical differences in merchandise compared. Petitioners argue that the focus must be on the actual differences in physical qualities of the merchandise and the real cost attributable to those physical differences. Petitioners further argue that any adjustment for the cost of duties actually paid would be attributable to discretionary sourcing decisions, not for physical differences in merchandise. Finally, petitioners assert that if the duties are rebated then an actual cost is not incurred.

DOC Position. In adjusting for physical differences in merchandise, the Department considers, among other cost factors the total material cost differences. These material cost differences include all costs incurred in bringing these materials to the factory. If duty is incurred on imported raw materials and passed on to the bicycle manufacturers, then it should be considered part of the material costs. The Department does not consider duties to be an expense merely attributable to sourcing decisions. In many cases raw materials which have the desirable characteristics for a particular bicycle model cannot be

purchased domestically and must be imported.

In cases in which the imported component was used on an export model and a duty rebate was received by the manufacturer upon exportation of the finished bicycle, we added the amount of rebate to home market price in adjusting for differences in merchandise. For example, if a U.S. export model had an imported saddle and the domestic model had a domestically produced saddle, we adjusted the home market price to reflect the differences in saddle costs including the duty which was rebated on the saddle of the exported model. This in effect replaces the domestic saddle on the domestically sold model with the imported saddle contained on the exported model being compared. This methodology of adding rebated duties to home market price for the purpose of calculating adjustments for physical differences allows us to make an equitable comparison, since we are required to add the same rebated duties to United States price pursuant to section 772(d)(1)(B) of the Act.

Comment 5. Petitioners contrast total sales reported by the 16 respondents during the investigative period, April 1, through September 30 1982, with department of Commerce import statistics and other import statistics for the same period, and conclude that there is a 30 percent short fall between U.S. imports and reported Taiwanese sales. Therefore, petitioners assert that there is substantial evidence that the Taiwanese producers have not reported all sales to the United States.

DOC Position. Respondents were asked to report all *sales* to the United States during the investigative period, not *exports.* It is likely that the 16 Taiwanese producers have exported a significant number of bicycles during the investigative period which were purchased *prior* to the period. We have reviewed all information which has been made available to us during the course of this investigation, and have found no evidence of unreported sales by the producers under investigation.

Comment 6. Petitioners have compared the difference between the prices, net of certain expense adjustments, of such or similar bicycles sold in Taiwan, or to third countries, and to the United States by each of several producers, and the overall operating performance for each particular producer as reported in the firm's most recent, available financial statement. Based on this comparison, petitioners allege that the net United States price is significantly higher than net home market price and that certain Taiwanese bicycle producers would have had to sell bicycles in the home market, or to third countries, at less than the cost of production when operating results as shown on their financial statements are considered. Petitioners therefore argue that the Department should have investigated each producer's cost of production to determine if home market or third country sales were made below cost.

DOC Position. Section 773(b) of the Act states:

> Whenever the administering authority has reasonable grounds to believe or suspect that sales in the home market of the country of exportation, or, as appropriate, to countries other than the United States, have been made at prices which represent less than the cost of producing the merchandise in question, it shall determine whether, in fact, such sales were made at less than the cost of producing the merchandise. If the administering authority determines that sales made at less than cost of production—
>
> (1) Have been made over an extended period of time and in substantial quantities, and
>
> (2) Are not at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade, such sales shall be disregarded in the determination of foreign market value.

The differences between net prices are not a reasonable yardstick for measuring recovery of all costs. Because the net prices are exclusive of some costs, it is the actual rather than net prices charged by each firm in the home market or to third countries which determine whether all costs are being recovered. Moreover, financial statements often reflect accounting adjustments which can distort operating performance significantly. Petitioners have not provided a credible basis for suspecting that substantial quantities of bicycles sold in the home market or to third countries have been made at prices which are less than the cost of production.

Comment 7. Petitioners argue that the Department should have suspended liquidation of entries by KHS Pacific, Taiwan Hodaka and Willing at the time of the preliminary determination and used a bonding rate equivalent to the highest margin found for any of the producers investigated—in this case the rate of 3.16 percent attributable to Fairly. Petitioners cite numerous other antidumping investigations in which the Department has used the highest margin found, as a bonding rate, for firms that did not supply complete information. Petitioners further assert that under section 733(d)(1) of the Act, the Department is required to suspend liquidation of all entries of merchandise subject to the determination which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the determination in the **Federal Register.** Therefore, the Department's failure to suspend liquidation for entries of bicycles produced by firms not excluded from the preliminary determination is said by petitioners to be unlawful.

DOC Position. In the cases of KHS, Pacific, Taiwan Hodaka, and Willing, the Department preliminarily found *de minimis* dumping margins but was unable to compare a sufficient percentage of each firm's sales to exclude these firms from the preliminary determination of sales at less than fair value. The firms in question were judged by the Department to be cooperating. They had submitted information concerning their total sales, which we verified before our preliminary determination. Therefore, we believe the information which they submitted was the best information available. However, additional data was needed from them to allow more extensive comparisions to be made. Since the four firms had only *de minimis* dumping margins on the sales we compared, we did not suspend liquidation.

Since section 737(a) of the Act prohibits the Department from collecting any duties in addition to those cash deposits received under section 733(d)(2) of the Act, suspension of liquidation would have served no practical purpose.

Comment 8. Petitioners have criticized the Department for selecting a single third country to make fair value comparisons for cases in which a firm has inadequate sales in the home market. Petitioners indicate that the Department should have adopted sales in multiple third countries as the basis for foreign market value where no one country accounted for all of the basic model types (e.g., 16-inch BMX, 20-inch BMX, 20-inch hi-rise, 24-inch 10-speed, 26-inch 10-speed, 27-inch 10-speed, etc.) sold in the United States.

DOC Position. Section 353.5(c) Commerce Regulations, directs that the Department select a single third country "meeting, in order of preference, the following criteria: (1) The product exported to such country has a greater degree of similarity to the product exported to the United States than does the product exported to other countries, provided the volume of sales to such country is deemed adequate; (2) the volume of sales to such country is the largest sales volume to any country outside the home market or the United States; and (3) the market in such country is, in terms of organization and

development, most like the United States market."

Once we have selected a third country market based on the above criteria, we generally do not resort to another third country market until we have exhausted all sales of such or similar merchandise in the first market selected. (For example, if we are comparing a 20-inch BMX model sold to the United States, we would compare it to a similar 16-inch BMX sold in the third country selected before we compare it to an identical 20-inch BMX sold to another third country.) However, if we have no sales of such or similar merchandise sold in the country selected, then we could select another third country where such or similar merchandise was sold. In our investigation of bicycles, we never exhausted sales of such or similar merchandise in the third country we initially selected as the basis for foreign market value.

Comment 9. In the case of Taiwan Hodaka, petitioners note that the Department verified sales prices of selected models from third countries not used for fair value comparisons but did not verify prices of a model from Australia, which was the third country selected by the Department for fair value comparisons. Petitioners therefore assert that the Department made comparisons based on unverified sales data.

DOC Position. In performing verification, the Department traces a sample of sales to company records. If the sample is successfully verified, then all sales are considered to have been verified. With respect to third country sales, the Department does not consider it necessary to verify all sales to all third countries. In this case, the sample of third country sales was successfully verified and therefore all third country sales were verified.

Comment 10. Petitioners contend that sales by Sony and Ching Tong Shan to Panama were entered in foreign-trade zones and were probably transshiped to other countries. Therefore, the Department acted improperly in basing foreign market value on sales to Panama for these two firms.

DOC Position. The Department has looked further into the Panamanian sales in question and has obtained information indicating that the bicycles sold to Panamanian purchasers did enter the commerce of that country for local consumption.

Comment 11. Petitioners argue that it is improper for the Department to allow a circumstance of sale adjustment for an expense incurred by Wheeler in securing a required license to sell bicycles in Australia. The expense in question, the Standards Association of Australia ("SAA") license, is incurred periodically by Wheeler and allows the firm to mark its bicycles as having met those standards. Petitioners submit that the expense in question is not directly related to sales of the bicycles in question and should be disallowed.

DOC Position. The Department agrees with petitioners and has disallowed this claim for both the preliminary and final determinations in this investigation.

Respondents' Comments. The following written comments were submitted by respondents in response to our preliminary determination:

Comment 1. Respondents argue that it is improper for the Department to add to third country sales prices an amount of duty rebate equal to that incurred on U.S. sales instead of the actual duty rebate attributable to third country sales.

DOC Position. In the case of duty rebate on sales to the United States and third countries, an expense is *not* incurred by the bicycle producer and the amount of duty rebated is not reflected in either the United States or third country prices. However, since we are required to add duty rebates to United States price pursuant to section 772(d)(1)(B), the prices would no longer be comparable after this adjustment unless we add the same rebate to third country prices as well. We have therefore made a circumstance of sale adjustment to third country prices pursuant to § 353.15, Commerce Regulations, to preserve the price comparability.

Comment 2. Respondents object to the disallowance of the SAA license expenses incurred by Wheeler on Australian sales as a circumstance of sale adjustment to third country prices.

DOC Position. The SAA expenses which are incurred on an annual or bi-annual basis by Wheeler are not directly related to particular sales under investigation and cannot be allowed.

Comment 3. Respondents cite examples in which the Department has used incorrect cost adjustment figures in making adjustments for differences in merchandise on certain models compared for Wheeler, Ching Tong Shan, and Fairly as well as other clerical errors.

DOC Position. The Department has reviewed its calculations and corrected any clerical errors.

Comment 4. With respect to Ching Tong Shan, respondent objects to the deduction, from individual U.S. transactions covered by a particular purchase order, of an amount paid by Ching Tong Shan to a trading company to offset expenses incurred by that trading company at two trade shows held in January and February 1982 in the United States. Ching Tong Shan indicates that for purposes of convenience it reimbursed the trading company by "discounting" a subsequent transaction. Respondent argues that inasmuch as the expenses were actually incurred prior to the period of investigation, no adjustment should be made to the unit price per bicycle covered by the particular purchase order. Respondent further argues that if an adjustment for this expense is deemed appropriate, the expense should be allowed over all bicycles sold in the United States for the year.

DOC Position. Ching Tong Shan discounted the purchase order in question without creating a document trail linking the discount to the alleged expenses incurred. Therefore, the Department has treated the adjustment as a simple discount from the prices being compared.

Comment 5. With respect to the Willing, respondent objects to a deduction made by the Department from prices to a particular U.S. customer. Willing claims that the discount is already reflected in the U.S. price.

DOC Position. Based on our verification and documents which are available to the Department concerning the transactions in question, we were unable to establish that the prices being compared are net of discounts.

Suspension of Liquidation

On April 29, 1983, we instructed the United States Customs Service to suspend liquidation of all entries of bicycles from Taiwan, with the exception of those bicycles produced by Asahi Dodsun, Fairly, GMC, KHS, Liyang, Merida, Sony, Taiwan Hodaka, Willing and Wheel King (476 FR 19441). As of the date of publication of this notice in the **Federal Register**, the liquidation of all entires, or withdrawals from warehouse for consumption of this merchandise will continue to be suspended for all firms previously subject to suspension with the exception of Fairly. Importers are no longer required to post a cash deposit or bond for entries of bicycles produced by Fairly, and all unliquidated entries of bicycles produced by Fairly may now be liquidated with any cash deposits refunded to importers. In addition, we are directing the United States Customs Service to suspend liquidation of all entries of bicycles produced by Pacific. The Customs Service shall require a cash deposit or the posting of a bond equal to the new estimated weighted-average amounts shown in this notice

for those firms not excluded from this final determination, by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer and status	Weighted average margin percentage
Ashai (excluded)	0.37
Ching Tong Shan (subject to suspension)	1.84
Dodsun (excluded)	0.37
EE Co. (subject to suspension)	1.65
Fairly (excluded)	0.01
GMC (excluded)	0.20
KHS (excluded)	0.24
Liyang (excluded)	0.00
Merida (excluded)	0.00
Pacific (subject to suspension)	1.83
Sheng Fa (subject to suspension)	1.90
Sony (excluded)	0.00
Taiwan Hodaka (excluded)	0.17
Wheeler (subject to suspension)	0.94
Wheel King (excluded)	0.00
Willing (excluded)	0.20
All others	0.36

ITC Notification

In accordance with Section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC conforms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports are materially injuring or threatening to materially injure to a U.S. industry, before the latter of 120 days after the Department made its preliminary affirmative determination or 45 days after the Department made its final affirmative determination.

If the ITC determines that material injury or the threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue an antidumping order, directing Customs officers to assess an antidumping duty on bicycles from Taiwan (with the exception of those bicycles produced by Asahi, Dodsun, Fairly, GMC, KHS, Liyang, Merida Sony, Taiwan Hodaka, Willing and Wheel King), entered, or withdrawn, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the United States prices.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

Dated: July 5, 1983.

Lawrence Brady,

Assistant Secretary for Trade Administration.

[FR Doc. 83-18603 Filed 7-8-83; 8:45 am]

BILLING CODE 3510-25-M

Numerically Controlled Machine Tool Technical Advisory Committee; Closed Meeting

Summary: The Numerically Controlled Machine Tool Technical Advisory Committee was initially established on January 3, 1973, and rechartered on September 18, 1981, in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

Time and Place: July 25, 1983, at 10:00 a.m., Herbert C. Hoover Building, Room 3708, 14th Street and Constitution Ave., NW., Washington, D.C.

Agenda: The Committee will meet only in executive session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM Control program and strategic criteria related thereto.

Supplementary Information: A Notice of Determination to close meetings of the Committee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on September 29, 1981, in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202-377-4217.

For further information contact: Mrs. Margareet A. Cornejo, telephone: 202-377-2583.

Dated: July 6, 1983.

Milton Baltas,

Director of Technical Programs, Office of Export Administration.

[FR Doc. 83-18579 Filed 7-8-83; 8:45 am]

BILLING CODE 3510-25-M

Tool Steel From the Federal Republic of Germany; Amendment to Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Commerce.

ACTION: Amendment to the final determination of sales at less than fair value.

SUMMARY: On June 6, 1983, we published a final affirmative antidumping duty determination on tool steel from the Federal Republic of Germany (FRG) (48 FR 25247). Due to a misunderstanding of computer data submitted, certain transactions were inadvertently counted twice when computing the weighted-average margins for sales of tool steel by Edelstahlwerke Buderus (Buderus). Due to a misinterpretation of the Buderus submissions which led the Department to believe that certain transactions had been deleted from the Buderus computer tape, the Department added these transactions to the Buderus tape before calculation of the weighted-average margin. The same transactions were subsequently discovered to be already included on the computer tape; we now correct the error that resulted from the double counting.

Due to a misunderstanding of the currency used in the reporting of costs of production, erroneous constructed values were employed when computing weighted average margins for sales of tool steel by Thyssen Edelstahlwerke (Thyssen). In the weighted average margin calculation for Thyssen, costs of production were treated as dollar denominations for U.S. sales, but were actually denominated in Deutsche marks. We now correct the error that resulted from the misinterpretation of the currency used for constructed values in the weighted-average margin computation.

In the "Continuation of Suspension of Liquidation" section of the notice, the posting of a cash deposit, bond, or other security will be based on the following revised weighted-average margins for Buderus and Thyssen. The other weighted-average margins remain the same.

Manufacturer/producer/exporter	Weighted-average margins
Buderus	5.65
Saarstahl	18.41
Thyssen	0.93
All other manufacturers/producers/exporters	7.06

This amendment corrects the section quoted. No other information in the June 6, 1983 determination is affected by this amendment.

EFFECTIVE DATE: July 11, 1983.

FOR FURTHER INFORMATION CONTACT: Charles Wilson or David Layton, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue,

N.W., Washington, D.C. 20230; (202) 377–5288 or (202) 377–0160.

Lawrence J. Brady,

Assistant Secretary for Trade Administration.

June 30, 1983.

[FR Doc. 83-18578 Filed 7-8-83; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Salmon and Steelhead Advisory; Commission Meeting

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Meeting of the Salmon and Steelhead Advisory Commission.

DATE: August 1 and 2, 1983. The meeting will commence at 10:00 a.m., August 1 and is scheduled to continue no later than 3:00 p.m. August 2. The meeting will be open to interested members of the public; a public comment period will be held at 11:00 a.m. August 2.

ADDRESS: Hyatt Hotel, 17001 Pacific Highway South, Seattle, Washington 98118; (206) 244–6000.

SUMMARY: The Commission will meet to review progress on the salmon and steelhead management structure report and to discuss issues which need to be resolved in order to provide coordinated management, research, enforcement, and enhancement. The Commission will also consider budgetary matters and other administrative items.

FOR FURTHER INFORMATION CONTACT: H. A. Larkins, Regional Director, National Marine Fisheries Service, 7600 Sand Point Way N.E., BIN C15700, Seattle, Washington 98115, telephone (206) 527–6150.

Dated: July 7, 1983.

Joe P. Clem,

Chief; Fees, Permits, and Regulations Division, National Marine Fisheries Service.

[FR Doc. 83-18605 Filed 7-8-83; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

President's Commission on Strategic Forces; Advisory Committee Meeting

The President's Commission on Strategic Forces will meet in closed session on July 8 and 9, 1983 at the Pentagon, Washington, D.C.

The mission of the Commission is to review the strategic modernization program for United States forces, with particular reference to the intercontinental ballistic missile system and basing alternatives for that system, and provide appropriate advice to the President, the National Security Council, and the Department of Defense.

Because of the signficance of the project to national security and the issues requiring the Commission's attention, the President has directed that the Commission submit its report to him at the earliest possible time. Because of the stringent deadline imposed by the President, timely notice of the meeting cannot be provided.

Discussions during the meeting will involve classified matters of national security concern throughout. Such discussion cannot reasonably be segregated into separate classified and unclassified categories without defeating the effectiveness and purpose of the overall meetings.

Accordingly, consistent with Section 10(d) of Pub. L. 92–463, the "Federal Advisory Committee Act," and Section 552b(c)(1) of Title 5 United States Code, this meeting will be closed to the public.

Dated: June 30, 1983.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 83-18569 Filed 7-8-83; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Revision

Military Health Care Survey. The survey will provide information on the utilization of military health benefits (including military clinics and hospitals, CHAMPUS and the CHAMPUS Choice prepaid demonstration project) by eligible DOD beneficiaries. It will provide data to evaluate access to care, satisfaction with care, and cost of care as well as the needs of the beneficiary population.

This information is required to help determine the management and benefit changes that will allow the Department of Defense to contain costs and improve quality and access in the worldwide military health care system.

Forward comments to Ed Springer, OMB desk officer, Room 3235, NEOB, Washington, D.C. 20503, and John V. Wenderoth, agency clearance officer, WHS, DIOR/ICD, Room 1C535, Pentagon, Washington, D.C. 20301, telephone (202) 694–0187.

A copy of the information collection proposal may be obtained from Ms. Carol Galaty, OASD (Health Affairs), Room 3E334, the Pentagon, Washington, D.C. 20301, telephone (202) 697–8973.

Dated: July 6, 1983.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 83-18718 Filed 7-8-83; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Task Force on the Role of C^3I in Strategic Deterrence will meet on July 26–27, 1983, from 9 a.m. to 5 p.m. each day, at 2000 North Beauregard Street, Alexandria, Virginia. All sessions will be closed to the public.

The entire agenda for the meeting will consist of discussions of key issues related to the role of DOD/JCS C^3I systems in stratetic deterrence and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Commander K. M. Cummings, Executive Secretary of the CNO Executive Panel Advisory Committee, 2000 North

Beauregard Street, Room 392, Alexandria, Virginia 22311. Phone (703) 756–1205.

Dated: July 7, 1983.

F. N. Ottie,

Lieutenant Commander, JAGC, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 83–18640 Filed 7–8–83; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Proposed Remedial Order to John M. Holland, Jr., et al.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Proposed Remedial Order.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA), of the Department of Energy (DOE) gives notice that a Proposed Remedial Order (PRO) was issued on June 10, 1983, to John M. Holland, Jr., whose address is Post Office Box H, Safford, Arizona or 815 Hillsborough Boulevard, Hillsborough, California; Jack Holland & Son whose address is Post Office Box H, Safford, Arizona or 815 Hillsborough Boulevard, Hillsborough, California; Jack Holland & Son, Inc. which is located at 799 Fletcher Lane, Room 204, Hayward, California 94544; and P.H.D. Corp., Inc. which is located at 570 "B" Street, Hayward, California 94541. Any aggrieved person may file a Notice of Objection to the Proposed Remedial Order in accordance with 10 CFR 205.193 on or before the fifteenth day after the publication of this Notice, or on the first federal workday thereafter.

In this Proposed Remedial Order, ERA sets forth proposed findings of fact and conclusions of law concerning sales of crude oil in the western United States, principally in California, Arizona and Nevada, by Jack Holland & Son; Jack Holland & Son, Inc.; and P.H.D. Corp., Inc. during the period November 1973 through December 1977. During that period Jack Holland & Son, Jack Holland & Son, Inc. and P.H.D. Corp., Inc., and John M. Holland, Jr. as a partner in Jack Holland & Son and as an officer and controlling shareholder of both corporations, are alleged to have overcharged purchasers of crude oil by $7,109,043.41, in violation of the price rules applicable to resales of crude oil set forth in 6 CFR Part 150, Subpart L and 10 CFR Part 212, Subpart F.

The Proposed Remedial Order alleges that Jack Holland & Son, Jack Holland & Son, Inc., and P.H.D. Corp., Inc. (1) sold crude oil at prices in excess of lawful prices in violation of 6 CFR 150.359 and 10 CFR 212.93 (2) failed to certify properly sales of crude oil in violation of 10 CFR 212.131 and (3) circumvented the pricing and certification regulations applicable to crude oil by selling crude oil as "fuel oil," thereby violating 10 C.F.R. 205.202 and 210.62(c), which prohibited activities resulting in the circumvention of DOE regulations.

Requests for copies of the Proposed Remedial Order, with confidential information deleted, should be directed to:

Raymond G. Gong, Chief Counsel, San Francisco Office, Economic Regulatory Administration, U.S. Department of Energy, 333 Market Street, Sixth Floor, San Francisco, CA 94105.

Aggrieved persons may object to this Proposed Remedial Order by filing a Notice of Objection to the Proposed Remedial Order. This notice must comply with the requirements of 10 CFR 205.193. To be considered, a Notice of Objections must be filed with:

Office of Hearings and Appeals, Department of Energy, 12th & Pennsylvania Avenue, NW., Washington, D.C. 20461.

The notice must be filed in duplicate, by 4:30 p.m. EDT on or before the fifteenth day after publication of this Notice, or the first federal workday thereafter. In addition, a copy of the Notice of Objection must, on the same day as filed, be served on John M. Holland, Jr., Jack Holland & Son, Jack Holland & Son, Inc. and P.H.D. Corp., Inc., and on each of the following persons pursuant to 10 CFR 205.193(c):

Raymond G. Gong, Chief Counsel, San Francisco Office, Economic Regulatory Administration, U.S. Department of Energy, 333 Market Street, Sixth Floor, San Francisco, Ca 94105

Theodore A. Miles, Assistant General Counsel for Administrative Litigation, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

No data or information which is confidential should be inculded in any Notice of Objection.

Issued in San Francisco, California on the twenty-first day of June 1983.

Raymond G. Gong,

Chief Counsel, Economic Regulatory Administration, San Francisco Office.

[FR Doc. 83–18521 Filed 7–8–83; 8:45 am]

BILLING CODE 6450-01-M

Gulf States Oil & Refining Co.; 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) announced that it has adopted a Consent Order with Gulf States Oil and Refining Company (Gulf States) as a final order of the Department.

EFFECTIVE DATE: (Date of publication of the notice.)

FOR FURTHER INFORMATION CONTACT: Donald A. Muncy, Deputy Chief Counsel, Dallas Office, Economic Regulatory Administration, Department of Energy, 1341 W. Mockingbird, Room 200E, Dallas, Texas 75247, (214) 767–7408.

SUPPLEMENTARY INFORMATION: On March 1, 1983, 48 FR 8532, the ERA published a notice in the **Federal Register** that it had executed a proposed Consent Order with Gulf States on February 1, 1983, which would 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 with Gulf States, a refiner with its home office located in Houston, Texas, resolves potential civil liability of Gulf States, arising out of Gulf States' compliance with the Mandatory Petroleum Allocation and Price Regulations during the period from January 1, 1973 through January 28, 1981. The Consent Order requires Gulf States to pay the sum of $700,000 to the U.S. Treasury as miscellaneous receipts.

Seven comments were received. All of the comments addressed the issue of the appropriate disposition of the $700,000 refund. Five comments asserted that the most suitable distribution of the funds could be accomplished through allotment of the funds to individual state governments for energy conservation programs and other energy-related programs directly benefiting consumers, by pro rata allotments based on a state's petroleum consumption. One commentor advocated direct refund of overcharged amounts to injured customers by Gulf States by DOE. Two comments made potential claims against the refund proceeds but did not furnish information upon which ERA could determine that they had been injured by Gulf States' actions. Rather, they merely indicated

that they had purchased products from Gulf States.

After having considered the comments, DOE has determined that the disposition of the refund amount should be as originally specified in the Consent Order, for the following reasons. The primary goal of DOE enforcement activities is to refund overcharges to those parties who actually suffered harm from them. The disputed issues resolved by this order involve entitlements, crude oil resales and the pricing of refinery products. Because of the balancing effect of the entitlements provisions and because of the ability of other refiners (which ultimately purchased the crude oil in question at allegedly improper prices) to bank, allocate and pass through crude oil costs to ultimate consumers under the refinery price regulations, it is virtually impossible to identify in what time period, to what product and to which purchasers the effects of the alleged crude oil violations were channeled. Moreover, the alleged overcharges relating to the sales of refinery products were small in relation to the total alleged violation amount, and the amount of overcharges applicable to specific customers and the extent of any injury to such customers cannot be determined. Because of these circumstances, DOE originally concluded, and now reaffirms its conclusion that depositing the sum paid by Gulf States in the U.S. Treasury (as miscellaneous receipts) is an appropriate remedy in this case.

Having considered all comments submitted, DOE has determined that the proposed Consent Order with Gulf States should be made final on (date of publication of notice).

Issued in Dallas, Texas, on the 5th day of May 1983.

Ben L. Lemos,

Director, Dallas Office, Economic Regulatory Administration.

[FR Doc. 83-18520 Filed 7-8-83; 8:45 am]

BILLING CODE 6450-01-M

O. M. Scott and Sons Co., et al.; Certifications of Eligible Use of Natural Gas to Displace Fuel Oil

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has received the following applications for certification of an eligible use of natural gas to displace fuel oil pursuant to 10 CFR Part 595 (44 FR 47920, Aug. 16, 1979). Notice of these applications, along with pertinent information contained in the application, was published in the **Federal Register** and an opportunity for public comment was provided for a period of ten calendar days from the date of publication. No comments were received. More detailed information is contained in each application on file and available for inspection at the ERA Fuels Conversion Division Docket Room, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Applicant and facility	Date filed	Docket No.	FR notice of application
O. M. Scott and Sons Co., Marysville, Ohio	May 25, 1983	83-CERT-078	48 FR 27424, June 15, 1983.
Arcata Graphics-Buffalo, Buffalo, N.Y.	May 16, 1983	83-CERT-095	48 FR 24186, May 31, 1983.
Roblin Industries, Inc., Dunkirk, N.Y., Tonawanda, N.Y.	May 18, 1983	83-CERT-103	48 FR 27131, June 13, 1983.
St. Elizabeth Medical Center, Inc., Edgewood, Ky., Covington, Ky.	May 19, 1983	83-CERT-104	48 FR 27126, June 13, 1983.
Twin Towers, United Methodist Home, Cincinnati, Ohio	May 20, 1983	83-CERT-107	48 FR 27127, June 13, 1983.
Timet Corp., Toronto, Ohio	May 23, 1983	83-CERT-109	48 FR 27127, June 13, 1983.
ITT Grinnell Corp., Columbia, Pa.	do	83-CERT-110	48 FR 26524, June 8, 1983.
Avon Products, Inc., Springdale, Ohio	do	83-CERT-115	48 FR 27816, June 17, 1983.
Verhoff Alfalfa Mills, Inc., Ottawa, Ohio	do	83-CERT-116	48 FR 27429, June 15, 1983.
Reilly Tar & Chemical Corp., Indianapolis, Ind.	do	83-CERT-117	48 FR 27427, June 15, 1983.
W. R. Grace & Co. (Davison Chemical Div), Baltimore, Md.	June 7, 1983	83-CERT-168	48 FR 28536, June 22, 1983.

The ERA has carefully reviewed the above applications for certification in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, Aug. 16, 1979). The ERA has determined that the applications satisfy the criteria enumerated in 10 CFR Part 595 and, therefore, has granted the certifications and transmitted those certifications to the Federal Energy Regulatory Commission.

Issued in Washington, D.C., on July 1, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-18518 Filed 7-8-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-074]

U.S. Gauge, Div. of Ametek, Inc.; Application for Certification of Eligible Use of Natural Gas To Displace Fuel Oil

The Economic Regulatory Administration (ERA) of the Department of Energy has received the following application for certification of an eligible use of natural gas to displace fuel oil pursuant to 10 CFR Part 595 (44 FR 47920, Aug. 16, 1979). End-users who have the capability to use natural gas in place of fuel oil at any of their facilities can arrange for direct purchases and transportation of the gas to those facilities under the Federal Energy Regulatory Commission's (FERC) fuel oil displacement program. The ERA certification is required by the FERC as a precondition to interstate transportation of fuel oil displacement gas in accordance with the procedures in 18 CFR Part 284, Subpart F.

Pertinent information regarding this application is listed below, while more detailed information is contained in the application on file and available for inspection at the ERA Fuels Conversion Division Docket Room, RG-42, Room GA-093, 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.

83-CERT-074

Applicant: U.S. Gauge, Div. of Ametek, Inc., Sellersville, Pa.

Date filed: May 9, 1983 and amended June 28, 1983.

Facility Location: Sellersville, Pa.

Gas Volume: 78,000 Mcf per year.

Oil Displacement: 500,000 gallons of No. 6 fuel oil (1.0% sulfur).

Eligible seller: Exxon U.S.A., Houston, Tex. Keystone Energy O. and G., Pittsburgh, Pa. Castle Gas Co., Inc., Pittsburgh, Pa.

Transporter: Columbia Gas Transmission Corp., Charleston, W. Va. UGI Corp., Gas Utility Div., Reading, Pa.

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 calendar days of the date of publication of this notice in the **Federal Register**. The docket number of the case should be printed on the outside of the envelope.

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-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 the applicant and any person filing comments in this case and will be published in the **Federal Register**.

Issued in Washington, D.C., July 1, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-18518 Filed 7-8-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-238]

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

On June 28, 1983, Husky Oil Co., Englewood, Colo., filed with the Administrator of the Economic Regulatory Administration (ERA), pursuant to 10 CFR Part 595, an application for certification of an eligible use of approximately 2,190,000 Mcf per year of natural gas at its refinery in Cheyenne, Wyo. The volume of natural gas is expected to displace the use of approximately 298,015 barrels per year of No. 6 fuel oil (2.0 percent sulfur).

The eligible seller of the natural gas is Mountain Fuel Supply Co., Salt Lake City, Utah. The gas will be transported by Colorado Interstate Gas Co., Colorado Springs, Colo., and Cheyenne Light, Fuel and Power, Cheyenne, Wyo.

Because of extreme financial hardship at its Cheyenne refinery, Husky Oil Co. has requested the certification be issued as expeditiously as possible to prevent a possible shutdown of refining operations that would affect up to 30,000 barrels per day of petroleum products. The refinery is the third largest employer in Cheyenne. If a shutdown occurs, the opportunity to maximize the refining and displacement of fuel oil will no longer exist.

The ERA has carefully reviewed Husky Oil Co.'s application for certification in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, Aug. 16, 1979). The ERA has determined that Husky Oil Co.'s application satisfies the criteria enumerated in 10 CFR Part 595 and, therefore, has granted the certification and transmitted that certification to the Federal Energy Regulatory Commission. More detailed information is contained in the application on file and available for inspection at the ERA Fuels Conversion Division Docket Room, RG–42, Room GA–093, 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.

The requested certification is being issued prior to the 10-day public comment period because it involves not only the refining of petroleum products, but also the displacement of large volumes of fuel oil. It is in the public interest to maximize the refining and displacement of fuel oil.

Given the authority of the Administrator to terminate a certification for good cause (10 CFR 595.08), it is not in the public interest to possibly lose 30,000 barrels per day of refining capacity nor the opportunity to displace large volumes of fuel oil while public comments are being solicited.

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 calendar days of the date of publication of this notice in the **Federal Register**. The docket number of the case should be printed on the outside of the envelope.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of any of the above applications may be requested by any interested person in writing within the ten-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 in a particular case, further notice will be given to the applicant and any person filing comments in that case and will be published in the **Federal Register**.

Issued in Washington, D.C., on July 1, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-18517 Filed 7-8-83; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Secondary and Tertiary Storage Task Group of the Coordinating Subcommittee of the National Petroleum Council's Committee on Petroleum Inventories and Storage Capacity; 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 advisory committee meeting:

Name: Secondary and Tertiary Storage Task Group of the Coordinating Subcommittee of the National Petroleum Council's Committee on Petroleum Inventories and Storage Capacity.

Date and time: Thursday, July 21, 1983—9:00 a.m.

Place: Price Waterhouse, Conference Room, One Federal Street, Boston, Massachusetts.

Contact: Jimmie L. Petersen, Director, Office of Oil and Gas, Energy Information Administration, U.S. Department of Energy, Forrestal Building—Room 2H–058, Washington, D.C. 20585, Telephone: 202:252–6401.

Purpose of Committee:

To provide advice, information and recommendations to the Secretary of Energy on matters relating to petroleum inventories and petroleum product storage capacities.

Tentative Agenda:

- Review proposed sample procedure for the secondary petroleum distribution system survey.
- Discuss methodologies for determining the storage capacity of the tertiary segment.
- Discussion of individual Task Group assignments for the next meeting.
- Discussion of any matters pertinent to the overall assignment of the Task Group.
- Public Comment.

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 Jimmie L. Petersen at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision 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.

Minutes of Meeting:

Minutes of subcommittee meetings are prepared and are available for review and copying at the Freedom of Information Public Reading Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on June 28, 1983.

J. Erich Evered,

Administrator, Energy Information Administration.

[FR Doc. 83-18518 Filed 7-8-83; 8:45 am]

BILLING CODE 6450-01-M

Southwestern Power Administration

Notice of Proposed System Transmission Rates; Opportunity for Public Review and Comment

AGENCY: Southwestern Power Administration (SWPA), Department of Energy.

ACTION: Notice of Proposed System Transmission Rates and Opportunity for Public Review and Comment.

SUMMARY: The Administrator, SWPA, has made a transmission rate study which shows the need for a $174,600 increase, as applied to existing wheeling customers, in annual transmission service (TDC) revenues. The proposed rates would increase the annual revenues 22 percent from $778,400 to $953,000. He also has developed a proposed system transmission rate schedule, supported by the rate study, reflecting the proposed rates and conditions of service. An opportunity is presented for customers and other interested persons to receive copies of the study and to submit written comments. Following review of the written comments and other information received, the Administrator will develop rates which the Assistant Secretary for Conservation and Renewable Energy will review and submit to the Federal Energy Regulatory Commission (FERC) for confirmation and approval on a final basis. SWPA is also requesting that the FERC extend the present rates past September 30, 1983, or until the proposed rates are confirmed and approved on a final basis.

DATES: Written comments on the proposed rate schedule are due on or before August 8, 1983.

ADDRESSES: Five copies of the written comments should be submitted to the Administrator, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101. Five copies should also be submitted to the Assistant Secretary for Conservation and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT:

Walter M. Bowers, Director, Power Marketing, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 581–7529;

John J. DiNucci, Office of Power Marketing Coordination, Conservation and Renewable Energy, Department of Energy, 12th Street and Pennsylvania Avenue, NW., Washington, D.C. 20461, (202) 633–8380.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy was created by an Act of the U.S. Congress, Department of Energy Organization Act, Public Law 95–91, dated August 4, 1977, and SWPA's activities were transferred from the Department of the Interior to the Department of Energy, effective October 1, 1977.

SWPA currently has marketing responsibility for 22 multiple-purpose reservoir projects, with power facilities constructed and operated by the U.S. Corps of Engineers, generally in all or portions of the six-state marketing area. By 1985, Clarence Cannon Project, presently under construction will be completed bringing the total to 23 projects with about 2 million kilowatts of power for which SWPA has marketing responsibility.

SWPA operates and maintains a federally-financed transmission system which includes about 1700 miles of lines, 32 substations and switching stations. Capacity is sometimes available in the transmission system in excess of that required to market power and energy pursuant to Section 5 of the Flood Control Act of 1944 (58 Stat. 890). To optimize usage of the transmission system, prevent potential duplication of facilities, and to meet the regional needs for transmission and/or displacement of non-federal power and energy, SWPA makes its surplus transmission system capacity available by rate schedule to its wholesale power customers and to other electric utilities whose transmission facilities interconnect with those of SWPA. The rate levels currently in effect will expire on September 30, 1983. The Administrator, SWPA, has prepared a transmission rate study to review the rate levels necessary to recover a proportionate share of the cost of the transmission system, which study concludes that a minor rate adjustment is necessary. A minor rate adjustment is defined in 10 CFR 903 as one which represents less than a 1 percent change in the annual revenues of the power system. As further provided by 10 CFR 903, the Administrator has determined that public information and comment forums are not necessary for adequate public participation due to the minor nature of the rate adjustment.

Copies of the Proposed Rate Schedule and the Rate Study are available by writing to the Administrator, Southwestern Power Administration, P.O. Box 1619, Tulsa, Oklahoma 74101. A summary of the proposed and existing transmission rates is presented here for comparison:

	Existing TDC-2	Proposed TDC-82
1. Transmission and/or displacement of non-federal power and associated energy to point or points of delivery from the System of SWPA at 138 kv or 161kv ($/kW/mo)	0.25	0.30
2. Transmission and/or displacement of non-federal power and associated energy to point or points of delivery from the System of SWPA at 69 kv ($/kW/mo)	.40	.50
3. Transmission and/or displacement of non-federal power and associated energy to point or points of delivery from the System of SWPA at voltages of less than 69 kv ($/kW/mo)	.55	.70
4. 5% of (1), (2), or (3) amounts above per kilowatt per day for the Interruptible Transmission Demand at a given delivery voltage as applicable		
5. Transmission and/or displacement of non-federal energy not associated with non-federal power to point or points of delivery from the System of SWPA (mills/kWh)	.8	1.0

Written comments on the Proposed Rate Schedule are due on or before August 8, 1983. Five copies of the written comments should be submitted to the Administrator, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101. Five copies should also be submitted to the Assistant Secretary for Conservation and Renewable Energy.

U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. Following review of the written comments and other information received, the Administrator will develop rates which the Assistant Secretary for Conservation and Renewable Energy will review and submit to the Federal Energy Regulatory Commission for confirmation and approval on a final basis.

Issued in Tulsa, Oklahoma, June 30, 1983.

Richard B. Risk, Jr.,

Administrator.

[FR Doc. 83-18519 Filed 7-8-83; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51470; TSH FRL 2379-7]

Certain Chemicals Premanufacture Notices; Substituted Heteromonocycle Sulfonyl Aniline, et al.

Correction

In FR Doc. 83-15435 in the issue of Friday, June 10, 1983, beginning on page 26884 make the following correction:

On page 26885, column one, paragraph **PMN 83-795** line two *"Chemical.* (S) 4-Methylumbelliferyl-B-D-glucuronide." should read *"Chemical.* (S) 4-Methylumbelliferyl-β-D-glucuronide."

BILLING CODE 1505-01-M

[OPRM-FRL 2396-2]

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, SW.; Washington, D.C. 20460; telephone (202) 382-2742 or FTS 382-2742.

SUPPLEMENTARY INFORMATION:

Air Programs

Title: Annual Motor Vehicle Tampering Survey (EPA ID 0114). Abstract: This annual survey of in-service motor vehicles will provide the data EPA needs to asses trends in tampering with emission controls and the degree and types of tampering.

Respondents: Motor vehicle owners/operators.

Title: Request for Emissions Data and General Plant Information—SOCMI Carrier Gas (EPA ID 1149).

Abstract: EPA will gather emission and general plant data from selected synthetic organic chemical manufacturers to determine pollution control costs and to asses the economic impact of potential new NSPS regulations.

Respondents: Selected synthetic organic chemical manufacturers.

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 SW., 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 NW., Washington, D.C. 20503.

Dated: July 1, 1983.

N. Phillip Ross,

Chief, Statistical Policy Staff.

[FR Doc. 83-18441 Filed 7-8-83; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51462A; BH-FRL 2396-7]

Certain Chemical Premanufacture Notice; Extension of Review Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is extending the review period for an additional 90 days for premanufacture notice (PMN) PMN 83-622, under the authority of section 5(c) of the Toxic Substances Control Act (TSCA). The review period for PMN 83-622 will now expire on October 3, 1983.

FOR FURTHER INFORMATION CONTACT: Rose Allison, Chemical Control Division (TS-794), Environmental Protection Agency, Rm. E-205, 401 M St., SW., Washington, D.C. 20460; (202-382-3735).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, anyone who intends to manufacture or import a new chemical substance for commercial purposes in the United States must submit a PMN to EPA 90 days before manufacture or import begins. Under section 5(c) EPA may, for good cause, extend the notice period for additional periods, not to exceed a total of 180 days from the date of receipt.

On April 7, 1983, EPA received PMN 83-622 for 1,3,6-naphthalenetrisulfonic acid, 7-[[4-[[4-[[4-[(4,8-disulfo-2-naphthalenyl)azo]-3-methylphenyl]amino]-6-[(4-sulfophenyl)amino]-1,3,5-triazine-2-yl]amino]-2-methylphenyl]azo]-, hexasodium salt. The submitter of the PMN claimed its identity and the import volume to be confidential business information. The PMN substance will be imported into the United States for use as a colorant for textile fibers. Notice of receipt of the PMN was published in the **Federal Register** of April 15, 1983 (48 FR 16332). The original 90-day review period is scheduled to expire on July 5, 1983.

EPA's detailed analysis of the substance described in the PMN addressed the following: effects on human health, metabolism, human exposure, environmental release, degree of risk relative to available commercial substitutes, potential marketability, and the identification of other information which may be required to resolve outstanding issues.

As a result of this analysis, EPA has reason to believe the following:

1. Human exposure to PMN 83-622 may result in carcinogenic effects.

2. Workers may be exposed to significant amounts of PMN 83-622 during commercial use of the chemical.

3. Consumer exposure to the PMN substance in drinking waters may result in carcinogenic effects.

4. Significant amounts of the PMN substance may be released to drinking waters during commercial use of the chemical.

Based on this analysis, EPA finds that there is a possibility that the substance submitted for review in PMN 83-622 may be regulated under section 5(e) of TSCA. The Agency requires an extension of the review period to further investigate potential health effects and use conditions, to examine its regulatory options and to prepare the necessary documents, should regulatory action be required. An administrative order under section 5(e) must be issued no later than 45 days prior to expiration of the review period. Therefore, EPA has determined that good cause exists to extend the review period for an additional 90 days. The review period for PMN 83-622 will now expire on October 3, 1983.

PMN 83-622 is available for public inspection in Rm. E-107, at the EPA Headquarters, address given above, from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

Dated: June 30, 1983.

Linda A. Travers,

Acting Director, Office of Toxic Substances.

[FR Doc. 83-18584 Filed 7-8-83; 8:45 am]

BILLING CODE 6560-50-M

[SA-FRL 2396-3]

Science Advisory Board, Executive Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given of a meeting of the Executive Committee of the Science Advisory Board (SAB). The meeting will be held on July 27-28, 1983, beginning at 9:15 am on each day, scheduled to be in Room 3906-08 Mall, EPA, 401 M Street, SW., Washington, D.C. The agenda for the meeting includes the following issues: Discussion of the final report of the SAB's Laboratory Organization Review Group's assessment of the reorganization proposals for the Office of Research and Development; report of the Environmental Effects Committee on Site Specific Water Quality Criteria; and other issues of member interest.

The meeting is open to the public. Any member of the public wishing to attend or receive further information should contact Terry F. Yosie or Cheryl B. Bentley on (202) 382-4126 by close of business on July 20, 1983.

Terry F. Yosie,

Staff Director, Science Advisory Board.

July 1, 1983.

[FR Doc. 83-18571 Filed 7-8-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Chuck Crisler, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Chuck Crisler	Hallsville/Missouri	BPH-811022AK	83-639
B. Clair Broadcasting Company, Inc.	Centralia/Missouri	BPH-811223AN	83-640
C. Southwest Communications, Incorporated.	Centralia/Missouri	BPH-820825AZ	83-641

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant(s)
1. (See Appendix)	A.
2. Air Hazard	A, C.
3. 307(b)	A, B, C.
4. Contingent Comparative	A, B, C.
5. Ultimate	A, B, C.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO is this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

Larry D. Eads,

Chief, Audio Services Division, Mass Media Bureau.

Appendix—Issue(s)

1. To determine with respect to the following applicant(s) whether, in light of the evidence adduced concerning the deficiency set forth above in paragraph 8*, the applicant(s) is financially qualified: A (Crisler)

* Paragraph 8 reads as follows:

The material submitted by the applicant(s) below does not demonstrate its financial qualifications. Accordingly, an issue will be specified concerning the following deficiency:

Applicant(s)	Deficiency
A (Crisler)	Analysis of the financial data submitted by Crisler reveals that $59,000 will be required to construct the proposed station and operate for three months. To meet this requirement, Crisler intends to rely on existing capital of $44,500 and deferred credit from the equipment manufacturer for the balance. However, Crisler has failed to provide a balance sheet to document the required funds.

[FR Doc. 83-18525 Filed 7-8-83; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; River Bend Radio, Inc. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. River Bend Radio, Inc.	North Mankato, Minnesota	BPH-810915AL	83-624
B. A Partnership: David F. Worthley, Abdiel Ortiz, and Richard Eichhorn d/b/a Eagle Broadcasting Company.	North Mankato, Minnesota	BPH-820520AU	83-625
C. North Mankato Communications Company	North Mankato, Minnesota	BPH-820524BH	83-626

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample

HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant(s)
1. (See Appendix)	B.
2. Air Hazard	A, C.
3. (See Appendix)	B.
4. Comparative	A, B, C.
5. Ultimate	A, B, C.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

Larry D. Eads,

Chief, Audio Services Division, Mass Media Bureau.

Appendix—Issue(s)

1. To determine with respect to the following applicant(s) whether, in light of the evidence adduced concerning the deficiency set forth above in paragraph 8 *, the applicant(s) is financially qualified: B (Eagle)

3. If a final environmental impact statement is issued with respect to B (Eagle) which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment,

(a) to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by §§ 1.1301-1319 of the Commission's Rules; and

(b) whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

*Paragraph 8 reads as follows:
The material submitted by the applicant(s) below does not demonstrate its financial qualifications. Accordingly, an issue will be specified concerning the following deficiency:

Applicant(s)	Deficiency
B (Eagle)	Has stated it does *not* have either sufficient net liquid assets or reasonable assurances that sources exist to furnish required funds.

[FR Doc. 83-18524 Filed 7-8-83; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Rohnert Park Radio, Inc. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Rohnert Park Radio, Inc.	Rohnert Park, Ca.	BPH-810921AM (Amended to BPH-820524BW, 5-24-82).	83-627
B. Anetha Baxter, Stephen Baxter, Morris Bradshaw, Jr. and James May dba Wattz Communications.	Rohnert Park, Ca.	BPH-820219AD	83-628
C. Ronald E. Castro	Rohnert Park, Ca.	BPH-820505AC	83-629
D. Alina Abramson	Rohnert Park, Ca.	BPH-820519AL	83-630
E. F. Robert Fenton	Rohnert Park, Ca.	BPH-820520AR	83-631
F. Lynn E. Handel dba Twin Oaks Broadcasting Company.	Rohnert Park, Ca.	BPH-820524AS	83-632
G. Frank S. Kilpatrick and Dawn Irene Soler dba California/Coast Communications.	Rohnert Park, Ca.	BPH-820524AT	83-633

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirely in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant(s)
1. (See Appendix)	B.
2. Air Hazard	A, D.
3. Comparative	All applicants.
4. Ultimate	All applicants.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

Larry D. Eads,

Chief, Audio Services Division, Mass Media Bureau.

Appendix—Issue(s)

1. To determine with respect to the following applicant(s) whether, in light of the evidence adduced concerning the deficiency set forth above in paragraph 8,* the applicant(s) is financially qualified: B (WATTZ)

*Paragraph 8 reads as follows:
The material submitted by the appliant(s) below does not demonstrate its financial qualifications. Acordingly, an issue will be specified concerning the following deficiency:

Applicant(s)	Deficiency
B (Wattz)	Balance sheets of the two principals providing new capital show insufficient liquid assets to meet required costs.

[FR Doc. 83-18523 Filed 7-8-83; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Shoblom Broadcasting, Inc. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Shoblom Broadcasting, Inc	Lahaina, Hawaii	BPH-820105AK	83-634
B. Charles R. Gardiner and L. E. Johnson, Jr. d/b/a Gardiner Broadcasting Co.	Lahaina, Hawaii	BPH-820402AG	83-635
C. Douglas Faigin and Mary Jane Pew d/b/a	Lahaina, Hawaii	BPH-820825AK	83-636
D. Lahaina Broadcasting Co., Ltd	Lahaina, Hawaii	BPH-820825BC	83-637
E. Abell Communications Corporation	Lahaina, Hawaii	BPH-820825BP	83-638

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant(s)
1. Main Studio	A.
2. (See Appendix)	A.
3. Comparative	A, B, C, D, E.
4. Ultimate	A, B, C, D, E.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street NW., Washington, D.C. 20554. Telephone (202) 632-6334.

Larry D. Eads,

Chief, Audio Services Division, Mass Media Bureau.

Appendix—Issue(s)

2. To determine with respect to the following applicant(s) whether, in light of the evidence adduced concerning the deficiency set forth above in paragraph 8*, the applicant(s) is financially qualified: A (Shoblom)

*Paragraph 8 reads as follows:

The material submitted by the applicant(s) below does not demonstrate its financial qualifications. Accordingly, an issue will be specified concerning the following deficiency:

Applicant(s)	Deficiency
(A) Shoblom..	Loan commitment letter expired 6-30-82.

[FR Doc. 83-18526 Filed 7-8-83; 8:45 am]

BILLING CODE 6712-01-M

[File No. 26009-CL-P-(14)-82 et al.]

Advanced Mobile Phone Service, Inc. et al.; Hearing

In re applications of Advanced Mobile Phone Service, Inc., File No. 26009-CL-P-(14)-82; GTE Mobilnet of Houston, Incorporated, File No 26046-CL-P-(9)-82; for a construction permit to establish a cellular system operating on frequency Block B in the Domestic Public Cellular Radio Telecommunications Service to serve the Houston, Texas, standard Metropolitan Statistical Area.

In re applications of, CC Docket No. 83-660; Metro Mobile CTS; File No. 26155-CL-P-(21)-82; Cellular Mobile Systems of Texas, Inc.; File No. 26187-CL-P-(20)-82; MCI Cellular Telephone Company, File No. 26095-CL-P-(17)-82; American Mobile Communications of Houston and the Gulf, File No. 26093-CL-P-(14)-82; Cellular Systems, Inc., File No. 26073-CL-P-(18)-82; LIN Cellular Communications Corp., File No. 26149-CL-P-(27)-82; Houston Cellular Corporation, File No. 26062-CL-P-(24)-82; Charisma Communications Corp. of the Southwest, File No. 26142-CL-P-(17)-82; for a construction permit to establish a cellular system operating on frequency Block A in the Domestic Public Cellular Radio Telecommunications Service to serve the Houston, Texas standard Metropolitan Statistical Area; designating applications for consolidated hearing on stated issues.

Memorandum Opinion and Order Granting Application and Designating Applications for Hearing

Adopted June 24, 1983
Released July 1, 1983.

By the Chief, Common Carrier Bureau:

1. Presently before the Chief, Common Carrier Bureau, under delegated authority are the captioned applications filed by Advanced Mobile Phone Service, Inc. (AMPS), GTE Mobilnet of Corporation (HCC), Cellular Systems, Inc. (CSI), American Mobile Communications of Houston and the Gulf (AMCOM),[1] MCI Cellular Telephone Company (MCI), Charisma Communications Corp. of the Southwest (Charisma), LIN Cellular Communications Corp. (LIN), Metro Mobile CTS (Metro Mobile) and Cellular Mobile Systems of Texas, Inc. (CMS). The applicants propose to construct cellular systems to serve the Houston, Texas, Standard Metropolitan Statistical Area (SMSA).[2] Petitions to deny were filed against all the nonwireline applications. Responsive pleadings were filed.

2. AMPS and GTE filed a Joint Request for Approval of Limited Partnership Agreement and a Limited Partnership Agreement for this SMSA on November 2, 1982. *See* Public Notice, Mimeo 737, Report No. CL-6, released November 10, 1982. Comments and replies were filed. Because we find that the public interest will be served thereby, we are approving the limited partnership agreement and granting the wireline application.

3. As discussed below, with regard to the nonwireline applications, we find that the petitions fail to raise any substantial and material issues requiring designation for hearing. These applications are electrically mutually exclusive; accordingly, we are designating them for a comparative hearing in accordance with the Commission's *Report and Order* in CC Docket No. 79-318, 86 FCC 2d 469 (1981), *modified*, 89 FCC 2d 58 (1982), and *further modified*, 90 FCC 2d 571 (1982), *appeal dismissed sub nom. U.S. v FCC*, Cir. No. 82-1526 (D.C. Cir., March 3, 1983). Finally, we are also requiring that LIN, CMS, AMCOM, HCC and Charisma modify their applications as set forth below.

I. Wireline Applications

4. AMPS and GTE filed applications for the wireline freguency block on June 7, 1982. On November 2, 1982 the wireline applicants and other wirelines operating in the Houston SMSA submitted a Joint Request for Approval of Limited Partnership Agreement and a Limited Partnership Agreement. This

[1] On September 2, 1982, this applicant submitted a minor amendment changing its name from "American Radio Telephone Communcations of Houston and the Gulf to AMCOM.

[2] As noted in the captions, AMPS, a wholly-owned subsidiary of the American Telephone and Telegraph Company (AT&T), and GTE requested the wireline allocation (frequency block B); the other 8 applicants requested the non-wireline allocation (frequency block A) in this market.

[3] CSI filed informal comments endorsing the ultimate conclusions of this report: that a headstart for GTE would have significant adverse effects on both cellular users and the nonwireline licensee in Houston.

agreement appeared on Public Notice, Mimeo 737, Report No. CL–6, dated November 10, 1982. Comments on the limited partnership agreement were filed by Telocator Network of America (Telocator), U.S. Department of Justice, MCI Cellular Telephone Company (MCI) and AMCOM. Informal comments were filed by Metro Mobile and CSI. Replies to the comments were filed.

5. The agreement provides that GTE, AMPS, Central Cellular Company, Lufkin Conroe Telecommunications, Inc., SLT Communications, Inc. and Fort Bend Telephone Company, Inc., will establish a limited partnership to provide cellular service in Houston. As a result of the agreement GTE's application, amended to substitute the limited partnership, will be prosecuted and AMPS' dismissed. GTE will be the general partner and also a limited partner in the partnership. The name of the partnership is GTE Mobilnet of Houston Limited Partnership. GTE will have an 80.76% interest, AMPS 2.20% interest, Centel Cellular Corp. 10.5%, Lufkin 2.8%, Fort Bend. 94% and SLT 2.8% interest. The agreement does not involve reimbursement to any party for expenses incurred, and each of the parties will bear its proportionate share of the expenses of the Limited Partnership. The general partner will control, manage and operate the cellular system on behalf of the partnership. The parties request, pursuant to the Commission's cellular policies and § 22.29 of the rules, approval of the agreement, permission to withdraw conditionally and without prejudice AMPS' application, and grant of GTE's application as amended. The parties move that the agreement be approved since it will eliminate costly and time consuming hearings and thus serve the public interest by permitting the early initiation of cellular service in Houston.

6. Metro Mobile in its informal comments addresses the wireline set-aside and the possible disadvantages to the nonwireline licensees in the particular markets if the wireline commences to provide service before the nonwireline. AMCOM filed a petition to dismiss or deny GTE's application alleging that the wireline agreements violate the Sherman Act and exacerbate the problems of the wireline set aside and headstart. It included a report prepared by Walter Hinchman Associates [3] which concluded that a wireline two-year head-start would permit GTE to entrench itself in the market and would seriously harm and perhaps exclude other prospective market entrants. Also, AMCOM alleges that the absence of the comparative hearing process deprives the public of the opportunity to receive cellular service from the wireline carrier most likely to provide the highest quality service at the lowest possible cost and that the Commission should deal with the headstart issue prior to awarding a construction permit. Turning from the general to the specific, AMCOM requests that the GTE application be dismissed because its CGSA (Cellular Geographic Service Area) extensions outside the SMSA are more than *de minimis* and include an important interstate highway. To permit this it is argued, would amplify the headstart problem. Next, AMCOM argues that GTE's schedule of charges for its resale service is incomplete since it only states that the "best way is by making blocks of numbers available to resellers at a per number rate less than that charged to individual subscribers." No dollar amounts were provided. Without these charges, according to AMCOM, neither the Commission nor potential competitors are able to determine the extent, if any, to which resale will be a realistic possibility for nonwireline applicants. Thus, concludes AMCOM, this lack of specificity warrants dismissal of the application. AMCOM further alleges that GTE failed to provide an itemized cost for each cell, in violation of § 22.913(a)(8) of the rules. AMCOM requests in the alternative if the Commission decides not to dismiss or deny the application, that a moratorium be imposed on the construction of the GTE system and on marketing of GTE services, to be lifted only when there has been a grant of the nonwireline allocation in the Houston market.[4]

7. The pleadings filed by Telocator, the Department of Justice and MCI are identical to those that they filed in the Los Angeles market. In *Advanced Mobile Phone Service, Inc.* (Los Angeles Wireline Order), FCC 83–124, released April 26, 1983, the Commission examined the arguments of these three parties and found that approval of an essentially identical wireline agreement was in the public interest.[5] We find the Commission's decision to be dispositive of all objections to the Houston Agreement itself. Accordingly, we here address only those objections to GTE's application not previously considered and resolved.

8. AMCOM, Metro Mobile and CSI raise objections concerning the wireline set-aside and potential head start which have already been fully considered by the Commission in its *Report and Order* and *Order On Reconsideration, supra.* We will not here address those policy arguments again. To the extent that AMCOM's petition alleges injury as a result of a wireline headstart specifically in the Houston market, we find that it is premature to rule on the merits of its petition for the reasons stated by the Commission in deferring action on similar petitions in the Chicago market. *Advanced Mobile Phone Service, Inc.* (Chicago Order), 91 FCC 2d 512 (1982), at para. 16. These arguments may be raised at such time as GTE files an application for a license to begin commercial service.

9. *CGSA Extension.* On September 13, 1982, GTE filed a Request for Declaratory Ruling or Waiver or Acceptance of Amendments, seeking, in the alternative, a declaration that its system extension into Chambers County, a non-SMSA area, is a *de minimis* permissible extension, or that Section 22.903(a) of the rules be waived, or that the accompanying amendment be accepted and exempted from the provisions of § 22.31 of the rules.[6] AMCOM and CSI filed Oppositions to the Request for Declaratory Ruling or Waiver or Acceptance of Amendments, arguing that GTE is trying to justify its more than *de minimis* incursions into Chambers County, which it did not do in its application as required by the rules; that GTE through its request is attempting to amend its application; that the Commission should not waive the rules to permit the extension, or permit the amendment; and that the petition does not involve a controversy or an uncertainty, and therefore, the issue is not a proper subject for a declaratory ruling. GTE filed replies.[7]

10. More than half of the Mont Belvieu cell extends into Chambers County, which is outside of the Houston SMSA. Clearly, the extension is more than *de*

[4] AMCOM raised several other points which we have considered and found not to raise substantial and material questions.

[3] CSI filed informal comments endorsing the ultimate conclusions of this report: that a headstart for GTE would have significant adverse effects on both cellular users and the nonwireline licensee in Houston.

[5] AMCOM raised several other points which we have considered and found not to raise substantial and material questions.

[6] Two other amendments were submitted by GTE on September 13, 1982 to reduce overall antenna heights for the La Porte and Addicks cell sites as required in accordance with an FAA aeronautical study. These two amendments will be accepted because they are minor.

[7] Although we are resolving the issues presented in the Petition for Declaratory Ruling in this Order, we will dismiss the Petition as a matter of procedure.

minus. The extension is designed to serve a population center outside the Houston SMSA, including Interstate Highway No. 10, and it covers a substantial portion of Chambers County. Because this extension is not permitted by our rules and in light of the Commission's holding in the *Chicago Order, supra*, at para. 17, we will accept the amendment tendered by GTE eliminating the Mont Belvieu cell, and grant the application as amended.[9]

11. *Resale*. AMCOM challenges GTE's provision for resale of its service based primarily on its alleged lack of specificity. GTE replies that its plans have been presented in sufficient detail and that the cellular rules do not require more. In *GTE Mobilnet of Portland Inc.*, (Portland Order), CC Mimeo 4027, released May 9, 1983, at para. 30, we rejected an identical argument by AMCOM and MCI regarding resale. Our findings there apply to the Houston market as well.

12. *Cost estimates*. Contrary to AMCOM's assertion, Section 22.913(a)(8) of the rules does not require a cell-by-cell itemization of costs. It merely requires "full particulars regarding the cost of construction." *See also* Section 22.917(a) and *Advanced Mobile Phone Service, Inc.* (Buffalo Order), CC Mimeo 1320, released December 14, 1982, at para. 9. Accordingly, GTE's cost estimates comply with our rules.

13. Based on the foregoing and our review of GTE's amended application, we find that the wireline applicants are fully qualified to construct and operate a cellular system in Houston and that grant of GTE's application, as amended and conditioned, is consistent with the public interest, convenience and necessity.

II. Nonwireline Applications

A. Metro Mobile Application

14. LIN, Charisma, CMS and AMCOM filed petitions to deny Metro Mobile's application. The issues raised in the petitions are the following:[9] (a) that the applicant failed to provide reasonable assurance of site availability; (b) Metro Mobile failed to demonstrate its financial qualifications, *inter alia*, it underestimated the construction costs by failing to account for the costs of acquiring cellular subscriber equipment and failed to give detailed costs for each cell site; (c) it failed to comply with the cellular design concepts because the proposed system does not provide continuous radio coverage of the service area inasmuch as the antenna towers for some cells in proximity to tall buildings in the downtown area are extremely short, with the probability that shadowing will result, and this problem is exacerbated by additional holes between some cell sites in the cellular configuration;[10] and (d) the applicant has not provided for adequate redundancy for its proposed system.

15. *Site availability*. Metro Mobile has demonstrated reasonable assurance that its proposed sites will be available. In its application Metro Mobile stated that it had received for each site proposed a commitment to lease or to negotiate a lease for land. On July 29, 1982, Metro Mobile tendered an amendment containing written evidence of site availability. The amendment was accepted as a minor amendment because it did not modify in any manner Metro Mobile's proposal but merely supplied the site lease commitments previously referenced in the application. Petitioners did not demonstrate or allege that any of the sites would not be available to Metro Mobile. An applicant need not have a binding agreement or absolute assurance of the availability of a proposed site but rather must show that it has obtained reasonable assurance that its proposed site is available. *See Advanced Mobile Phone Service, Inc.* (Philadelphia Order), CC Mimeo 1982, released January 31, 1983, at para. 11, and *Alabama Citizens for Responsive Public Television, Inc.*, 59 FCC 2d 1 (1976). Also, we note that the statements from the lessors submitted by Metro Mobile which indicate the sites would be available are dated prior to the June 7, 1982 filing date. Based on the application and the response, we find no reason to designate a site availability issue.[11] *See also Cellcom Inc.* (Minneapolis Order), CC Mimeo 1573, released December 30, 1982.

16. *Financial Qualifications*. Metro Mobile estimates its construction cost and first year operating expenses for Houston at $16,762,957. In the *Minneapolis Order, supra*, the Commission found Metro Mobile qualified to meet its financial commitments in nine markets in which it had applied, including Houston. The findings in the *Minneapolis Order, supra*, at para. 16, control the disposition of the arguments raised here against Metro Mobile's financial package and the letter of commitment from the First National Bank of Chicago. With respect to the allegations concerning Metro Mobile's cost estimates, the Commission has long found that the general allegation that an applicant's estimated costs are lower than another's is insufficient to warrant the addition of a financial issue in hearing. In addition Metro Mobile's cost estimates are not unreasonable on their face and the petitioners failed to raise any serious questions that have not been adequately explained by Metro Mobile in its reply. *See Chicago Order, supra*, at para. 13. Section 22.917 of our rules does not require that the cost of mobile equipment be included as part of an applicant's financial projections. *See Metrocom of St. Louis* (St. Louis Order), CC Mimeo 2045, released January 28, 1983. We have also stated that Section 22.917 does not require that an applicant demonstrate itemized costs for each cell. *See Buffalo Order, supra*, at para. 9. The last allegation concerning Metro Mobile's financial qualifications is directed to the fact that it filed a balance sheet dated March 17, 1982. Petitioner contends that this balance sheet is unacceptable because Metro Mobile was not organized until June 1982. We find this allegation without merit. As Metro Mobile states in its reply the balance sheet is current within ninety days of the filing of the application. It represents the capital contributions provided by the partners up to the filing of the application and reflects an agreement in January 1982 to form a business entity for the purposes of applying for a cellular radio system and to begin contributing capital well in advance of Metro Mobile's formal organization.

17. *Cellular Design Concepts*. We find the allegations that Metro Mobile's proposal does not give adequate assurance of continuous service and that it failed to provide for adequate redundancy for its proposed system without merit. Metro Mobile has submitted system design, expansion and

[9] The record before us does not indicate that there will be no other wireline companies applying for this area. Therefore, we are compelled not to permit GTE to serve this area at this time. *Compare* Advanced Mobile Phone Service, Inc. (New York Order), CC Mimeo 2418, released February 18, 1983, at para. 41.

[9] This represents all of the arguments raised in the petitions. For the sake of brevity, we have not identified which petitioner raises which argument.

[10] LIN submitted an affidavit from Bernard R. Segal, a professional engineer, in support of this allegation and an affidavit from Ronald E. Graiff to support the shadowing problems in downtown Houston.

[11] One of the sites was lost and new site negotiated, so this letter is dated after the filing date. Metro Mobile informed the Commission of this fact and subsequently filed a minor amendment in this regard. This amendment, as retendered on August 20, 1982, was accepted as minor amendment. *See* Section 22.31 of the Rules and Order, FCC 82-409, released September 3, 1982. As to site number 10, Metro Mobile in its July 29, 1982 amendment asserts it had an oral commitment from the property owner in May but he did not execute the letter until June 30.

maintenance exhibits which meet the requirements of our rules. See Application Exhibit 10. With regard to the shadowing problem, Metro Mobile submits an affidavit from its engineer, Jan David Jubon, which refutes the two affidavits submitted by petitioner. Jubon asserts that the allegations are inaccurate as a factual matter. Metro Mobile further alleges that it designed its system with full knowledge of the effect the urban structures would have on propagation, and has used these effects to its advantage. We find no significant gaps in the coverage area calling into question its cellular system design. In addition, Segal's affidavit (note 10, *supra*) provides conclusory statements with no engineering studies or data to support it. Under these circumstances we decline to designate a basic qualifying issue. The petitioners are free to argue in the comparative portion of this proceeding that Metro Mobile's design concept is relatively inferior. For present purposes, we find that it complies with the cellular rules. *See Buffalo Order, supra*, at para. 20.

B. CMS Application

18. Metro Mobile, Charisma, AMCOM, CSI and LIN filed Petitions to Deny CMS' application. The allegations in the petitions are as follows: [12] (a) that the applicant failed to comply with § 22.903(a) of the rules because its CGSA and 39 dBu contours extend into the central SMSA of Beaumont-Port Arthur-Orange, Texas [13] (b) that the CGSA and 39 dBu contours extend more than a *de minimis* amount into Galveston, a secondary SMSA; (c) that the applicant failed to demonstrate its financial qualifications [14] in that (1) it failed to furnish full particulars respecting the capital and operating costs of the system in violation of § 22.913(a)(8), (2) failed to provide itemized costs for each cell, (3) underestimated its costs inasmuch as it did not provide for the costs of the voice message storage and retrieval equipment, and the expense of the least cost routing switch, (4) understated the cost of sales tax, personal property taxes on equipment, employee payroll taxes and benefits, (5) and did not estimate the cost of acquiring mobile units; [15] (d) that gaps between cells will prevent continuous and uninterrupted service or handoff; [16] (e) that it failed to provide reasonable assurance of its sites, in particular cell #9, and that CMS misrepresented the availability of this site; [17] (f) that CMS failed to provide for maintenance of its proposed switching equipment and failed to provide adequate information about staffing and maintenance for its system; (g) that it failed to demonstrate the projected method for coordinated expansion of its system in violation of § 22.913.(a)(4), insofar as the plan submitted is for a mature system in the 5th year of operations, the channel plan proposed will not provide the grade of service proposed, [18] and CMS' subscriber demand estimates are not valid; [19] (h) that CMS did not provide adequate information on radiation characteristics of proposed base stations; [20] (i) that the character qualifications of CMS' parent are being investigated by the Commission; (j) that CMS could not apply for the nonwireline frequency block because its parent, Graphic Scanning Corp., is a wireline company; and (k) that CMS' proposed rates are anticompetitive, insofar as they are not compensatory or cost-based.

19. *Extensions of CGSA.* CMS' proposed CGSA extends into the Beaumont-Port Arthur-Orange central SMSA. Contary to CMS' assertions, the Commission's rules have always been clear in this regard. Section 22.903(a) provides that a CGSA may not extend into another central SMSA. In the *Chicago Order, supra*, at 519, the Commission allowed an applicant to cure this defect with a conforming amendment. Therefore, we will require here that CMS file a conforming amendment to bring the nonconforming CGSA and 39 dBu contours for cell #14 into compliance with the rules. [21] The amended 39 dBu contour shall not cover any area in the SMSA not previously covered by the nonconforming 39 dBu contour. This amendment should consider the effects, if any, that this change may have on other exhibits of the application. Due to this circumstance, brief extensions of time may be granted at the discretion of the administrative law judge (ALJ). [22]

20. *Extensions into Galveston.* CMS' OGSA and 39 dBu contours of cell site #3 extend into Galveston, a secondary SMSA. Petitoners allege that the extension is not permitted by our rules because it is more than *de minimis*. CMS replies that its extension is *de minimis* as demonstrated in the application and that on August 2, 1982, [23] it submitted an amendment which corrected Exhibit X and reduced the extension into Galveston. In its reply to the petitions to deny, CMS' tries to justify its extension by stating that the extension is "natural" for technical reasons, [24] i.e., to serve the Houston SMSA efficiently and comprehensively, and that CMS is fully prepared to engage in frequency coordination with system operators in adjacent systems. *De minimis* extension into secondary SMSA is permitted. *See* Section 22.903 and 89 FCC 2d at 87. However, after reviewing the maps submitted with the application, we have concluded that the overlap proposed by CMS is more than *de minimis*. We agree with petitioner CSI that under CMS' application approximately 30% of the Galveston SMSA is covered by the proposed cell. Based on our analysis, it appears that the extension into the Galveston market was not solely based on the applicant's efforts to serve the Houston market. Under these circumstances, we cannot conclude that this is the type of *de minimis* extension contemplated by the Commission. We will therefore require CMS to submit a confoming amendment to the ALJ, under the conditions

[12] See Footnote 9.

[13] Metro Mobile also filed a Motion to Dismiss on this ground against Houston Cellular, Charisma, LIN and CMS. Replies were filed.

[14] An affidavit of Morris Berkowitz, a certified public accountant, supported LIN's contention.

[15] AMCOM submitted an affidavit by Steven R. Dressler, Vice-President of Finance and Assistant Secretary of Ram Broadcasting in support of this contention.

[16] AMCOM included an affidavit by Harold A. Read, III, Vice-President of Ram Broadcasting in support of this allegation and the allegation concerning the incursions outside the Houston SMSA.

[17] John Inverson, an AMCOM representative, submitted an affidavit concerning this allegation.

[18] John H. Mullaney, P. E., submitted an affidavit in support of this allegation on behalf of Charisma.

[19] Submitted in support of this allegation were two affidavits, one of Benjamin Lipstein, a professor of marketing research, and of Ronald E. Graiff, Vice President Operations of LIN Cellular Communications and Vice President Engineering of LIN Broadcasting.

[20] CSI included an engineering statement by Raymond C. Trott, P.E. and George W. Weimer, concerning the radiation characteristics and CMS' incursions outside the Houston SMSA.

[21] On August 17, 1982 the staff returned an amendment submitted by CMS to modify its CGSA as drawn in Exhibit X. On September 13, 1982 CMS resubmitted the amendment, split into two amendments. One amendment sought to modify the CGSA to pull back from the Beaumont-Port-Arthur-Orange central SMSA. Two petitions to return or dismiss unauthorized amendment were filed, one by Metro Mobile, and one by AMCOM. The other amendment sought to amend Exhibit X also, but limited to the coverage area. Because we are directing a specific amendment to cover this problem, we are returning both amendments. Therefore, we are dismissing the petitions to return or dismiss the amendment.

[22] As a result of our disposition of this matter, Metro Mobile's June 25, 1982, Motion to Dismiss, note 13, *supra*, will be denied.

[23] This amendment was returned on August 17, 1982. CMS resubmitted the amendment. *See* note 21, *supra*.

[24] CMS refers to language in a Public Notice entitled Cellular Application Filing Procedures, Mimeo No. 2973, released March 24, 1983. The public notice referred to "natural markets lying just beyond an SMSA border."

described in the preceding paragraph, modifying the proposed OGSA and 39 dBu contours for cell site #3 so that they both comply with the cellular rules.[35]

21. *Financial Qualifications.* Petitioners raised various allegations concerning CMS' ability to finance the construction and operations of its proposed system. CMS estimates its construction costs and first year operating expenses at $10,381,000. It relies on a letter from its parent, Graphic, for $11,500,000 to finance its costs. The letter from Graphic to CMS specifically states that none of the funds have been committed to other projects. We find that this satisfies the requirement of Section 22.917(b) that resources used to demonstrate financial ability regarding one system may not include funds committed elsewhere. Next petitioners argued that Graphic has not demonstrated its ability to finance all the cellular systems for which it has applied. In the *Chicago Order, supra,* at 516–517, the Commission found that Graphic and its cellular subsidiaries have provided reasonable assurance that they will have sufficient funds available to cover construction of 30 cellular systems in the top 30 markets. The Commission further concluded that no financial issues should be designated for hearing against any Graphic subsidiary based on the ability of Graphic to finance the construction and operation for one year of 30 cellular systems. Those findings control the disposition of petitioner's arguments here.

22. Petitioners also challenged CMS' costs estimates. We find that these allegations are also without merit. CMS' estimates are not unreasonable on their face, and it has adequately responded to these allegations in its reply; thus, we find that a substantial and material issue has not been raised. As the Commission stated in the *Chicago Order, supra,* at 518, the general allegation that one applicant's estimated costs are lower than another's is insufficient to warrant the addition of a financial issue in hearing. With regard to CMS' failure to provide itemized costs for each cell, we reiterate that total construction costs and operating expenses for one year satisfy the requirements of our rules, and CMS is not required to demonstrate itemized costs for each cell. *See Buffalo Order, supra,* at para. 9. The allegations with regard to CMS' failure to include the costs of acquiring mobile equipment in its estimates is also without merit. As we stated in the *St. Louis Order, supra,* at para. 10, Section 22.917 of our rules does not require that the costs of mobile equipment be included in an applicant's financial projections. We therefore conclude that a financial issue need not be designated against CMS.

23. *Coverage of CGSA.* Petitioners contend that isolation or gaps between some cells will prevent continuous and uninterrupted service or handoff. CMS in its reply states that its system will permit transfer of calls between such cells. It submits an affidavit from J. Douglas Wells, Vice President, Network Design, CMS, to this effect. We will not designate an issue as to whether there will be handoff in an isolated cell. This is a matter which relates to system design, which is an issue that may be examined in the comparative portion of this proceeding. *Report and Order, supra,* at 502–503; *See Advanced Mobile Phone Service, Inc. New York Order,* CC Mimeo No. 2418, released February 18, 1983.

24. *Site Availability.* AMCOM alleges CMS misrepresented the availability of site #9 because the letter for this site attached to the application was not for the site CMS had described. AMCOM further alleges that upon contacting the representatives of the building where CMS had proposed to locate its antenna, they had informed AMCOM that no space would be leased on the premises for installation of radio transmitters. CMS has demonstrated reasonable assurance that its proposed sites will be available. With respect to cell site #9, CMS in its reply asserts that its application contained the wrong letter. CMS further states that it has verified the availability of the site and submits a letter dated August 4, 1982, from the Vice-President of the General Partner and Manager of the building, Mr. Michael D. Barker, confirming the availability of the site, and an affidavit by Albert F. Garner, an employee of Graphic who assisted in securing antenna sites for CMS in May 1982. Mr. Garner states that materials furnished to him in May 1982 had suggested that reasonable assurance of availability had been secured for this site. Mr. Garner also attests that in verifying the availability of the site, CMS discovered that a representative of AMCOM had confused Mr. Barker, and as a result he had executed a letter dated July 12, 1982, attached to AMCOM's petition to deny, which incorrectly stated that they were not leasing any space to a communications company for installation of radio transmitters. In view of the foregoing and the information contained in Mr. Barker's latest letter, we also find that no misrepresentation has occurred.

25. *Maintenance Proposals.* CMS' application adequately describes its maintenance proposal at Volume I, Exhibit VII. We will not designate an issue against CMS concerning this matter.

26. *System Expansion.* CMS application at Volume I, Exhibits III and IV, contains the system expansion plan and the frequency plan. A market analysis of Houston is contained in Exhibit II, Volume I. These documents comply with our requirements.

27. *Radiation Characteristics.* Petitioner CSI contends that CMS has not provided adequate information on radiation characteristics of proposed base stations. It contends that CMS has proposed to mount PD–1110 transmitting antennas in a number of varying configurations and that, therefore, there is no basis for CMS' assumption that the radiation pattern will be omnidirectional. In its reply, CMS submits an affidavit from J. Douglas Wells which refutes the affidavit submitted by CSI. Mr. Wells asserts that the re-radiation effects are minimal when compared to the factors which actually establish the transmitter's ERP as seen at the receiving point. He states that CMS has used these factors.

28. Upon review of the pleadings, we have determined that CMS has not supported its claim with engineering data that the effects are minimal. The omnidirectional patterns submitted by CMS are in fact technically incorrect. At locations #1, 2, 4, 5, 7, 8, 10, 14, 15, 16, 17, 18, 19, and 20, an omnidirectional pattern has been used for ERP calculations, even though the antennas have been side-mounted. CMS did not provide tower dimensions or spacing of the antenna from the tower. Therefore, CMS is directed to file an amendment containing the tower dimensions, antenna spacing and corrected antenna patterns based on manufacturer specifications for the given dimensions and any corresponding changes to the effective radiated power calculations.

[35] The CGSA and 39 dBu contours for two other cells go into Chambers County a non SMSA area. These extensions appear *de minimis* and are therefore allowed under the rules. As the Commission stated in its *Order on Reconsideration, supra,* at paragraph 63: "Since we view service beyond the SMSA as ancilliary and not material to the resolution of the critical licensing question, we do not consider such service to be of decisional significance in awarding a license." In addition, if as a result of the comparative portion of this proceeding, CMS should be awarded an authorization, the same shall be conditioned to the effect that it does not include any right to interference protection in any areas outside the Houston SMSA, and CMS must coordinate with future licensees of Chambers County and provide interference-free operation in this area. *See* Cellular Mobile Systems of Indiana, Inc., FCC 83–70, released March 3, 1983, at note 4.

This amendment should not cause any 39 dBu contours to cover an area not previously covered or affect CMS' comparative position. See *St. Louis Order, supra*, at paras. 34–35.

29. *Character Qualifications.* The Commission has already held that the qualifications of CMS Or its parent, Graphic, to the extent that such qualifications may be affected by the issues included in the Commission's order designating certain 35 and 43 MHz paging applications for hearing, *A.S.D. Answer Service, Inc. et al.*, (ASD) FCC 82–391, released August 24, 1982, will not be considered in the cellular proceedings. *See Chicago Order, supra*, at 520, n. 19. As set forth in the *Chicago Order*, the Commission reserves the right to reexamine and reconsider the qualifications of CMS to hold a cellular license should *ASD* be resolved adversely to any of CMS' affiliates or parent companies or to any of their principals. *See* para. 113, *infra*. This decision controls the disposition of petitioners' allegations in this regard.

30. *CMS' qualifications as a nonwireline company.* In *Cellular Mobile Systems of Indiana, Inc. (Indianapolis Order)* FCC 83–70, released March 3, 1983, the Commission addressed essentially the same allegations raised by petitioners here. In the *Indianapolis Order*, the Commission stated that Graphic is not a carrier that falls within the meaning of Section 22.902 of the Commission's rules referring to carriers engaged in the business of affording public landline telephone service. Therefore, its subsidiaries are eligible to apply for the nonwireline block of cellular frequencies. *Id.* at para. 8 and cases cited therein. These findings control the disposition of the issues raised here.

31. *Proposed Rates.* Charisma alleges that CMS' proposed rates are anticompetitive and predatory in nature in that they are not compensatory, and are not cost-based. It alleges that CMS should show the return projected for these rates over a period of time in excess of one year to clearly focus their anti-competitive nature. It further alleges that it was not clear from CMS' proposal when the rates will, if ever, produce a profit and that CMS proposed the rates for the sole purpose of gaining an advantage in the comparative process.

32. CMS, in its reply, asserts that it has calculated its rates carefully based on projected cost and demand, and that the rates will be compensatory. It alleges that its five-year projections show CMS making a profit in its third year of operations with the rates proposed in the application. CMS further contends that it expects an average annual return on investment for the first five years, including the first two money-losing years, of about 12 percent. It submits an affidavit from William S. Wheatley Jr., Executive Vice President of Graphic, in support of this assertion.

33. First, we find that Charisma fails to present data sufficient to make a *prima facie* case of anticompetitive rates; rather its allegations are general and speculative. *See United Telephone of Ohio*, 26 FCC 2d 417 (1970); *Bonduel Telephone Co.*, 68 FCC 2d 497 (1978). Second, we find that CMS has adequately responded to the allegations raised in the petition. Therefore, we conclude that Charisma has failed to raise a material and substantial question of fact requiring designation for hearing. In addition, it has been longstanding Commission practice to leave the question of rates for intrastate service to state jurisdictions absent specific and supported allegations of unfair competition or unreasonable discrimination. *See Buffalo Order, supra*, at para. 4, and cases cited therein.[26] We also note that an applicant's proposed rates is a comparative issue. *See Report and Order*, 86 FCC 2d at 503. *See also Cellular Communications of Cincinnati, Inc.* (Cincinnati Order), CC Mimeo No. 3268, released April 1, 1983.

C. MCI Application

34. Metro Mobile, CSI, CMS Charisma, AMCOM and LIN filed Petitions to Deny the MCI application. Petitioners individually allege various matters which, for the sake of brevity, we will discuss without identifying the particular applicant that raised the objection. The following allegations against the application were raised: (a) that MCI's service area does not cover 75% of its CGSA, and that CGSA and 39 dBu contours extend into the Beaumont central SMSA and more than a *de minimis* amount into Galveston, a secondary SMSA, and Chambers County, a non-SMSA area;[27] (b) that MCI failed to provide a projected method for coordinated expansion of its system, failed to adequately describe its basis for determining whether sufficient congestion exists to warrant cell splitting and failed to provide a frequency plan beyond the first year, in violation of Sections 22.913(a) (4), (5) and (6) of the rules; (c) that MCI is not financially qualified, in that it failed to provide a cell-by-cell breakdown of its costs, did not include the toll and message unit charges that will be incurred by virtue of the land line portion of cellular telephone calls, and underestimated its costs; (d) that MCI is not the real party-in-interest; (e) that MCI Communications Corp., MCI's parent, is a wireline carrier, and therefore, its subsidiaries cannot apply for the nonwireline block of frequencies; and (f) that MCI's rates are predatory and anticompetitive.

35. *CGSA Coverage.* MCI agrees with petitioners that its 39 dBu contours do not cover 74% of the CGSA,[28] in violation of Section 22.903(a) of our rules. It states that the wrong map was inadvertently filed with the application which included a CGSA based upon engineering judgment contours rather than upon Carey contours. MCI alleges that its consulting engineers, SRI International (SRI), took actual field strength measurements which tended to support the theory that the actual 39 dBu contours of a number of base stations in Houston would encompass more territory than would be predicted if Carey methodology were used, and as a result, the engineers defined the CGSA based upon their engineering judgment rather than upon Carey contours. MCI, upon reviewing the maps on May 31, 1982, instructed the engineers to redefine the CGSA so that it was based on Carey contours rather than judgment. MCI further asserts that a new set of CGSA overlays for Houston were hand-carried to its Washington office on the afternoon of June 3, 1982. Other exhibits, including a recitation of the area encompassed within the redrafted Houston CGSA, were also delivered to MCI. It is further alleged that the corrected CGSA maps were not filed with the application, and that it is not clear when the corrected map became misplaced. MCI attached several documents tending to corroborate the fact that the maps were corrected prior to June 7, 1982. First, there is an excerpt from a weekly progress report (#7)

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[26] Charisma argues that the principles enunciated in *AT&T, DDS Case* 62 FCC 2d 774 (1977), in reviewing proposed rates, should be followed with regard to rates that have been proposed in the comparative process for cellular. At this stage of the proceeding the *DDS* case is not applicable because the rates proposed in the cellular service are in the first instance a matter for state jurisdictions. The *DDS* case is clearly distinguishable. In it the Commission was investigating the lawfulness of the tariff for Dataphone Digital Service, an interstate offering.

[27] Petitioners allege that MCI used propagation studies other than Carey as required by Section 22.903(c) of our rules without justifying their use.

[28] MCI filed its replies and a Motion to Accept Late Filed Pleadings on August 9, 1982. Good cause having been shown, and because the pleadings were only one date late, we will grant the Motion.

prepared by SRI (covering the period from May 16 to June 5, 1982). At page 7, the report states "on Monday morning (5/31) we were directed to remove from the application all traces of the fact we had shown such excellent coverage (and these were supported by propagation predictions) that we had used them as the basis for defining the CGSA. We redefined the Houston CGSA to conform with the Carey contours and provided six new overlays for the 1:250,000 maps." These maps and exhibits were delivered to MCI on Friday, June 4. Second, there is a letter dated June 3, 1982, from John B. Lomax of SRI which states "the CGSA overlay for the Houston maps as originally delivered was incorrect; replacements are being hand carried today and will be delivered at approximately 8:30 a.m. Friday, June 4, 1982." Third, MCI submitted a copy of a prior draft of Exhibit 6 and an excerpt from Exhibit 2 of the application on file with the Commission. Exhibit 6 of the earlier draft states that the Houston CGSA is 6190 square miles in area. Exhibit 2, actually filed, states 5150 square miles, reflecting the redrafted CGSA.

36. On August 6, 1982, MCI tendered an amendment which sought to substitute the correct map with a reduced CGSA for the allegedly incorrect map filed with the application. On September 13, 1982, the staff returned the amendment because it modified the CGSA and was therefore a major amendment and unacceptable for filing pursuant to the Commission's *Order on Reconsideration, supra*, at para. 69 and Section 22.23(c)(1) of the rules. On October 13, 1982, MCI filed a Petition for Reconsideration of this action and resubmitted the August 6, 1982 amendment. In its petition for reconsideration MCI asserts that the amendment seeks to correct a mistake in the application and therefore should be accepted as minor, or that if deemed major, the cut-off rule be waived so as to permit its application to be amended and retain its position in the processing line.

37. We will dismiss MCI's petition but reconsider and accept the amendment on our own motion.[29] We have been persuaded that MCI apparently made a mistake and included the wrong map in the application. MCI's evidence corroborates this, especially Exhibit 2 of the application as filed, which estimated the Houston CGSA as being 5150 square miles, less than the area depicted in the map filed with the application. In accepting the amendment, we emphasize that we are not departing from our policies of not accepting major amendments to cellular applications.[30] *See Order on Reconsideration, supra* at para. 69 and *Report and Order, supra* at para. 97. However, in circumstances like the one in this case, inflexible application of our rules would not be in the public interest. *See Chicago Order, supra*, at para. 17. We also emphasize that acceptance of the amendment will not result in any comparative advantage to MCI. In addition, although it brings the application into compliance with our rules, acceptance of the amendment is not contrary to our policies of avoiding one-upmanship, as MCI's evidence tends to indicate the corrected map was prepared before the filing date for the top 30 markets.[31]

38. *CGSA Extensions.* MCI's CGSA and 39 dBu contours for the Cleveland site extend approximately 25 percent into San Jacinto County, a non-SMSA area, and the Channel View and Dayton sites extend into Chambers County, approximately 15 percent and 4 percent, also a non-SMSA area. These extensions appear *de minimis* and are, therefore, allowed under our rules.[32] However, as stated at note 25, *supra*, service beyond the SMSA is ancillary and not material to the resolution of the critical licensing question.[33]

39. *System Expansion.* MCI's application at Exhibits 4, 5 and 6 describe its cellular system design, its frequency plan and system expansion plan. The information contained in these exhibits meets the requirement of our rules. System design and system expansion are issues that may be examined in the comparative portion of this proceeding. Therefore, we will not designate a basic qualifying issue with respect to this matter. *See Advanced Mobile Phone Service, Inc.*, (Pittsburgh Order), CC Mimeo No. 1169, released December 6, 1982.

40. *Financial Qualifications.* MCI estimates its construction cost and first year operating expenses for Houston at $23,241,000. In the *Pittsburgh Order, supra*, at para. 5, we decided that MCI had demonstrated that it is financially qualified to construct and operate the twelve systems for which it applied in the top 30 markets. That decision controls the disposition of the issues raised here.

41. Petitioners also allege that MCI failed to give a cell by cell breakdown of its costs. This is not required by our rules. Therefore, we find no merit to this argument. *See Buffalo Order, supra*, at para. 9. Next, MCI includes in its reply an affidavit from William Zlotnick, Treasurer of MCI Communications Corporation, which indicates that MCI did take into account in its costs projections the toll and message unit charges and these were consolidated into the Telco interconnect category in MCI's financial model, Application Vol. 1, Exhibit 14. We conclude that MCI has adequately responded and that no substantial or material question of fact has been raised requiring designation for hearing.

42. *Real Party In Interest.* Petitioners allege that MCI in its application at Exhibit 9, indicated its intention that, once it acquires Western Union International (WUI) and Airsignal International, Inc., from Xerox Corporation, to substitute Airsignal as the applicant for the cellular licenses; thus, it is argued that MCI is not the real party-in-interest. MCI replied stating that it is the real party-in-interest and that once the reorganization required by MCI's purchase of WUI is completed, the application will be amended to substitute Airsignal for the applicant, which like MCI would be a wholly-owned subsidiary of MCI Communications Corp.

43. We find the allegations raised by petitioners to be without merit. MCI is the real party-in-interest and has complied with the requirements of our rules concerning the information required to be provided in the application. See Exhibit 9. In *Xerox Corporation*, 90 FCC 2d 547 (1982), the Commission approved the transfer of control of WUI and its subsidiaries from Xerox to MCI. Although MCI has

[29] Our rules provide that reconsiderations of interlocutory actions by delegated authority will not be entertained. *See* Sections 1.102, 1.106.

[30] The Commission recently amended Section 22.23(c)(1) to specify that an increase in the CGSA would be a prohibited major change. *Memorandum Opinion and Order*, FCC 83-161, released April 22, 1983.

[31] On September 13, 1982, MCI filed an amendment attempting to modify the coverage area of the base stations proposed in the application. This amendment was filed as an alternative to the August 6, 1982 amendment which had been returned. Because we are accepting the retendered August 6, 1982 amendment, and because the amendments are mutually exclusive, we will return the September 13, 1982 amendment. In so doing, we also note that we would have returned this amendment as major since it proposed substantial increases to the 39 dBu contours of certain cells and would have improved MCI's comparative posture. In light of our action the letter filed by Metro Mobile on September 21, 1982, requesting that the amendment be returned, the October 5, 1982 letter from MCI replying to Metro Mobile's, and the October 14, 1982 letter from Metro Mobile, in reply to MCI's will be dismissed.

[32] Almost all of the extension into San Jacinto County, covers the James Houston National Forest. Also, with the August 6, 1982, amendment the CGSA does not extend into Beaumont or more than *de minimis* into Galveston or Chambers County.

[33] If as a result of the comparative portion of this proceeding MCI should be awarded an authorization, the same shall be conditioned as prescribed for CMS at note 25, supra.

decided not to amend its application, there is no question that MCI is the real party-in-interest.

44. *Nonwireline frequencies.* Petitioners' allegations in this regard are without merit. *See Xerox Communications, supra,* at 554, where the Commission held that MCI is a carrier which does not provide public landline message telephone service and therefore is eligible to be assigned nonwireline frequencies. *See also Indianapolis Order, supra,* at para. 8.

45. *Rates.* Charisma alleges that MCI's proposed rates are noncompensatory. MCI responded stating that its rates are compensatory, it will experience improving earning ratios, and it will earn a profit. The Zlotnick affidavit supports this also. As we indicated in para. 33, *supra,* Charisma provided only general unsupported claims or speculation in objecting to competing applicants' rates. MCI adequately replied to the claims. Therefore, we find that petitioner has failed to raise a material or substantial question of fact requiring designation for hearing.

D. AMCOM Application

46. CSI, LIN, CMS and Charisma filed Petitions to Deny the AMCOM application. Petitioners allege that AMCOM: (a) failed to comply with Section 22.904 of the rules; (b) is not financially qualified; (c) failed to provide sufficient personnel to maintain, repair and operate the proposed system; and (d) has not complied with Section 310 of the Communications Act, 47 U.S.C. 310.

47. *Section 22.904.* Petitioner CSI alleges that AMCOM failed to comply with this section because its Houston-Downtown, Jacinto City and Pierce-Junction sites will exceed the 100 watt maximum effective radiated power limit in at least one direction. CSI submitted an engineering statement from Raymond G. Trott, P. E. and George W. Weimer in support of this allegation. The engineering statement is premised on the assumption that AMCOM is proposing a phased array of antennas at each site. The engineering statement further provides radiation patterns for antenna configurations and mounting positions, taken from AMCOM's pertinent Exhibits with the assumption that the antennas are fed in place through a power divider.

48. We have examined the application, pleadings and engineering statements submitted and we conclude that CSI's conclusions are unsupported. AMCOM has not claimed a phased array of antennas at the locations mentioned and no such equipment has been specified by AMCOM. Nothing in the AMCOM application supports even an inference that such equipment was proposed. At each base station site at issue, AMCOM has proposed a single, omnidirectional transmitting antenna for each 16-channel transmitter-combiner employed at the site. However, we are unable to determine whether the antenna pattern for the Phelps Dodge 1110 antenna submitted by AMCOM corresponds to the manufacturer's specifications for that antenna. Therefore, we are directing AMCOM to file an amendment with the Administrative Law Judge (ALJ) containing calculations based on the manufacturer's specifications for the mounting positions shown for the downtown, Jacinto City and Pierce Junction sites.[34]

49. *Financial Qualifications.* Petitioners allege that AMCOM has not demonstrated reasonable assurance of availability of funds to construct and operate for one year; that it failed to account for the cost of acquiring subscriber equipment and therefore underestimated its costs; and that it did not demonstrate that it has allocated funds to finance the costs of preparing, prosecuting and filing its application.

50. AMCOM proposes to finance construction and first year operation costs of its system of $20,022,000 with loan commitments from three of its principals, Western Union Telegraph Company (WU), Rapid-American Corporation (Rapid-American) and Stellar Communication Corporation (Stellar).[35] The application, Volume II, Section 1, Exhibit 5, contained letters of commitment from Manufacturers Hanover Trust Company to loan $10,763,000 to Rapid American and $13,900,000 to WU. A letter from D.C. National Bank states that it is willing to lend $3,471,850 to Stellar. The three letters contain conditions and terms under which the loans, amounting to more than $28 million, will be made. The letters specifically state they are for the Houston Cellular system. Under applicable precedents we conclude that the language in these letters evidence reasonable assurance that the loans will be available. *See Chicago Order, supra,* at 516. Petitioners' allegation that the letters for Stellar and Rapid American were addressed to AMCOM and not to Stellar or Rapid American is without merit. Both letters refer to loans to be provided to Stellar and Rapid American. We also find the allegation that the application does not contain evidence that Stellar will be able to repay its loan without merit. We have no basis to second guess the lending institution's judgment.

51. Petitioners' allegations with respect to AMCOM's cost estimates are also without merit. As we stated in *American Mobile Communications of Washington and Oregon (Seattle Order),* CC Mimeo No. 1739, released January 12, 1983, at para. 4, costs of preparing, filing and litigating an application are only relevant to the extent that they might deplete the resources available for construction and operation of the system. Due to the structure of AMCOM's joint venture, application costs will be provided from different funds than those committed to construction and system operation. As we stated above, AMCOM has demonstrated the availability of funds in excess of those necessary to finance construction and first year operating expenses, and there is a "contingency reserve" in excess of $1 million. The provision of an adequate surplus of funds in circumstances such as these obviates the need for a hearing issue. *Id.* at note 4, and cases cited therein. The allegation concerning the failure to adequately consider the cost of providing subscriber equipment is also without merit. Section 22.917 of our rules does not require that the cost of mobile equipment be included in an applicant's financial projections. *See St. Louis Order, supra.*

52. *Maintenance Proposal.* AMCOM's application, Volume II, Section II, describes its maintenance proposal. We find that its submission complies with our rules and thus an issue need not be designated for hearing.

53. *Section 310 of the Communications Act.* LIN alleges that AMCOM's application is in violation of the prohibitions of alien interests in radio facilities contained in Section 310 of the Communications Act of 1934, *as amended,*[36] because one of the joint venture's members, Ram Cellular Communications of Houston and the Gulf (RCC-Houston), is the subsidiary of Ram Cellular Communications (Ram Cellular), and the Executive Vice President of Ram Cellular, Cherill E. Shea, is a Canadian citizen. LIN further alleges that Ram Cellular will be

[34] If the amendment should cause any changes to the antenna patterns or the effective radiated power calculations, it should not cause any 39 dBu contours to cover an area not previously covered.

[35] The fourth partner in this joint venture is Ram Cellular Communications of Houston and the Gulf.

[36] Section 310(b)(3) of the Communications Act provides that: "no broadcast or common carrier station license shall be granted to or held by: * * * any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens * * * if the Commission finds that the public interest will be served by the refusal or revocation of such license."

exercising *de facto* control over RCC-Houston and AMCOM.

54. AMCOM replied asserting that Ram Cellular does not directly or indirectly control AMCOM and that Ms. Shea will not exercise any control or supervision over AMCOM. It included three affidavits in its reply attesting to Ms. Shea's character and reputation. Ram Cellular, a wholly owned subsidiary of Ram Broadcasting Corporation holds all the stock of RCC-Houston, which in turn holds a 20% interest in AMCOM. Thus, it appears that RCC-Houston or Ram Cellular do not either directly or indirectly exercise control over AMCOM. Even assuming RCC-Houston possesses such control, the Commission has found it in the public interest to allow the corporate parent of common carrier licensees to elect alien officers, where the parent has indicated that such officers will not exercise any control or supervision over the operation of the licensed facilities. AMCOM has explicitly stated Ms. Shea will not exercise any control or supervision over AMCOM. Moreover, since RCC-Houston owns only a 20% of AMCOM there is little likelihood that Shea will exercise even indirect control over AMCOM. Accordingly, we do not find that the public interest will be served by refusing to consider AMCOM's application in a comparative hearing and we therefore deny LIN's petition on this issue. *See Advanced Mobile Phone Service, Inc.*, (Denver Order), CC Mimeo 4779, released June 17, 1983 at para. 7. *See also A Plus Communications of P.R., Inc.*, Mimeo 4001, released May 13, 1982, and Mimeo 2487, released February 26, 1982.

55. There is one final matter we are raising on our own motion which concerns an antitrust suit pending against a subsidiary of Ram Broadcasting. By a Section 1.65 amendment filed on July 23, 1982, AMCOM informed us that a civil action has been filed in Texas against Ram Broadcasting of Texas, Inc., and others. The complaint alleges *inter alia*, a conspiracy in restraint of trade in violation of the Sherman Act. *Radio Relay Corporation-Texas v. D/FW Signal, Inc., et al.*, No. CA382-0877G (N.D. Tex., field June 7, 1982). The Bureau considered these matters in the *Atlanta Order, supra*, at para. 16, and concluded that cellular licenses should be conditioned on the outcome of this litigation. *Id.* at para. 9. This conclusion is controlling here. Accordingly, we will condition any authorization to AMCOM in Houston on the outcome of this antitrust litigation.

E. CSI Application

56. AMCOM, LIN, Metro Mobile, CMS and Charisma filed Petitions to Deny the CSI application. All of the petitioners except CMS allege that CSI is not financially qualified. CMS alleges that the application is defective because CSI has not filed applications for the microwave radio links it proposes for its system. LIN also alleges that CSI failed to provide the required information regarding maintenance and repair of its proposed system.

57. *Financial Qualifications.* Petitionrs allege that CSI has underestimated its cost because it has not included itemized costs for each cell and failed to account for the cost of microwave units, subscriber units, telephone lines, interconnection charges and sales and property tax expenses. Also, petitioners claim that CSI has failed to show it will have sufficient funds available to construct and operate its system because the bank commitment letters provided in the application do not provide reasonable assurance of the availability of the loans. Also petitioners argue that CSI's reliance on revenues cannot be credited since it failed to justify its revenue estimates.

58. CSI, in its reply, states that it projected construction costs and first year operating expenses total $11,755,275, about $200,000 less than the $11,975,000 figure in the application, Exhibit J. It also indicates that the cost projections included sales or property taxes and expense estimates for telephone line interconnection charges.[37] CSI application at Exhibit J included its financial projections.

59. To finance its costs and first year operating expenses, CSI relies on stock subscriptions from each of its four shareholders for $1.5 million each and a bank commitment in support of the subscriptions. The shareholders are Robert Franklin, Answer, Inc. of Houston, Loomis Mobile Systems, Inc. and Tel-Paging, Inc. CSI also relies on a commitment from First City Bank-New Orleans to lend it up to $6,000,000. In the alternative, CSI submitted a letter from Rotan-Mosle (Investment Bankers) agreeing to arrange up to $6 million in financing to be provided from their sources and by others. We have reviewed the evidence submitted by CSI in support of its financial showing and we find that CSI has shown reasonable assurance that it will have $12 million to finance $11,755,275 of construction costs and operating expenses of its proposed system for one year.

60. *Franklin.* CSI has demonstrated that Robert E. Franklin will have sufficient funds to meet its stock subscription obligations to CSI. The application contained a letter form University State Bank expressing its willingness to lend Franklin $1.5 million. This letter was subsequently clarified by a July 28, 1982 letter from the bank as to the terms and conditions of the loan. Attached to CSI's reply was an affidavit from Franklin agreeing to use a property he owns as collateral if necessary for the loan and including a letter indicating the fair market value of the property. There is also a letter from Franklin confirming that the financing will be used to meet its stock subscription obligations to CSI. We find that under applicable precedents CSI has demonstrated reasonable assurance of availability of these funds. *See Cincinnati Order, supra*, at para. 7; *Multi-State Communications Inc. v. FCC*, 590 F.2d 1117 (1978); *Merrimack Valley Broadcasting*, 82 FCC 2d 166 (1980); *Cf., Peoples Broadcasting Corporation*, 68 FCC 2d 1570 (1978).

61. *Loomis.* We also find that reasonable assurance has been demonstrated that Loomis Mobile Systems will have sufficient funds available to meet its stock subscription obligations to CSI. The application contained a letter from Jersey Village Bank agreeing to lend $1.5 million to Loomis Mobile Systems. However, Jersey Village Bank in its commitment letter stated that the amount was in excess of the bank's legal loan limit and it would have to obtain the participation of another financial institution. Attached to the reply was an additional letter from Mr. Tom Loomis stating that the Texas Commerce Bank indicated its willingness to participate with Jersey Village Bank or to cover the loan itself. In addition, Loomis confirmed that the financing will be used for the stock subscription obligations to CSI. While we will not credit Loomis with the additional funding from Texas Commerce Bank, we find that the Jersey Village Bank letter, as clarified in the Reply, demonstrates reasonable assurance. *Minneapolis Order, supra*, at para. 16; *Seattle Order, supra*, at para 9.

62. *Answer.* The application also contained a letter from Liberty Bank agreeing to lend Answer Inc. of Houston

[37] CSI also explains that subscribers will be billed individually for toll charges. Exhibit H application, therefore this did not have to be included in its costs projections as alleged by petitioners. We agree. CSI also asserts that since it proposes to interconnect its base stations by microwave links it will own and operate, it did not have to include telephone line charges as alleged by petitioners. While we do not necessarily agree with this analysis, we have previously found that the costs of these links do not have to be included in the application. *St. Louis Order, supra*, at para. 5.

$1.5 million to finance its proposed participation in CSI. The reply contained a letter from Answer, Inc. confirming the use of this fund to meet its stock subscription obligations.

63. *Tel-Paging.* A letter of commitment from First City Bank demonstrates reasonable assurance that Vern E. Easterling and William B. Barnett, principals of Tel-Paging Inc., will have $1.5 million available to finance their stock subscription obligations to CSI.

64. *First City.* Finally, CSI submitted a letter of commitment from First City Bank agreeing to lend it $6 million. This letter contains the minimum recitations and terms and conditions necessary to establish reasonable assurance, under the prevailing standards established by *Multi-State, supra.* Thus, we find that CSI has demonstrated reasonable assurance of the availablility of all of these funds.

65. The allegations concerning CSI's cost estimates are without merit. CSI has adequately responded to the allegations verifying it had estimated costs petitioners alleged it had not considered. We also find that the estimates do not appear unreasonable on their face, and petitioners have failed to raise any serious questions that have not been adequately explained by CSI in its reply. *See Chicago Order, supra* at 518. As we stated above, an applicant need not include in its application itemized costs for each cell. We have also found that applicants do not have to demonstrate the cost of acquiring mobile units in their financial projections. *See St. Louis Order, supra* at para. 10. [38] Therefore, we find that CSI has demonstrated it has sufficient funds available to finance the construction and first year operating expenses of its proposed system.[39]

66. *Maintenance proposal.* CSI's application contained an exhibit describing its maintenance proposal, which meets our requirements. *See* Application, Exhibit Q. The relative quality of its proposal may be examined in the comparative portion of this proceeding. *Report and Order, supra,* at 502–03. Accordingly, we will not designate a qualifying issue with respect to this matter.

F. LIN Application

67. AMCOM, CSI, Metro Mobile, Charisma and CMS filed petitions to deny LIN's application. Petitioners allege that: (a) LIN has not demonstrated its financial qualifications; (b) LIN's CGSA extends into Beaumont, a central SMSA in violation of Section 22.903(a) of the Rules; and (c) LIN has not complied with the rules concerning major environmental actions because the environmental impact statement submitted in the application is inadequate.

68. *Financial Qualifications.* Petitioners challenge LIN's financial package for the four systems [40] for which it applied, arguing *inter alia,* that it relies on projected revenues without supporting the projections and that its reliance on its parent's projected cash flow is speculative.

69. In the *New York Order, supra.,* at paras. 31–35, the Bureau examined essentially the same allegations raised by petitioners here and found them to raise a substantial and material question of fact about LIN's financial ability. The Bureau designated for hearing an issue concerning LIN's overall financial package in the *New York Order.* To avoid duplicative litigation, we will not designate a financial issue in this order. However, we will consider the ultimate finding as to LIN's financial qualifications in the *New York* proceeding to be dispositive of the issue, and we will reserve the right to reexamine and reconsider any authorization to LIN in the event that LIN's Houston application is granted as a result of the comparative hearing.

70. *Extension of CGSA.* LIN's proposed CGSA extends into the central Beaumont SMSA. Pursuant to Rule 22.903(a), a CGSA may not extend into another central SMSA. In accordance with the Commission's decision in the *Chicago Order, supra,* we will require that LIN file a conforming amendment to bring the nonconforming CGSA and contours for cells 15 (Moss Hill) and 16 (Devers) into compliance with the rules. The same terms appy to LIN's amendment that apply to other amendments required here.

71. *Major Environmental Action.* According to LIN, two of its proposed cell sites, #6 (Satsuma) and #22 (Bonney), constitute major actions under the National Environmental Policy Act of 1969.[41] In the application, LIN identified the towers and set forth the basis for its conclusion that neither tower's construction would have an adverse environmental impact. CSI contends that LIN's environmental impact statement is not comprehensive enough to comply with our rules. In its reply, LIN attempts to substantiate its environmental impact statement by an affidavit of Ronald E. Gaiff, Vice President for Operations of LIN. We have reviewed the environmental impact statement submitted with the application and as substantiated in the reply. LIN has addressed all the major factors to be considered in an environmental statement. Although the statement is succinct, absent any specific showing refuting LIN's statements,[42] we conclude that construction of the proposed towers would not have a significant adverse effect on the quality of the human environment. Therefore, an issue need not be designated with regard to this matter.

G. HCC Application

72. CSI, Metro Mobile, CMS, AMCOM, LIN and Charisma filed Petitions to Deny HCC's application. Petitioners assert that: [43] (a) HCC's CGSA extends into Beaumont, a central SMSA, in violation of § 22.903(a) of the rules; (b) HCC is not financially qualified; (c) HCC's proposed system will not permit hand-off between certain cells; (d) HCC did not demonstrate the availability of two of its proposed sites; and (e) HCC proposes noncompensatory and anticompetitive rates. Metro Mobile also alleges that a current proceeding in Texas may affect HCC's qualifications to be a Commission licensee. Charisma claims that HCC failed to disclose in its application that its parent is involved in a proceeding in which it is being accused of unfair competitive practices.

73. *Extension of CGSA.* HCC admits that its CGSA and contours extend into Beaumont, a central SMSA. This is prohibited by our rules.[44] Accordingly,

[38] We note that in response to these allegations CSI submitted a letter by Rotan-Mosle Leasing Corporation indicating that it could arrange a lease program for cellular subscriber equipment at no initial cost to CSI.

[39] We have not credited CSI with an additional loan commitment of $4,000,000 from Texas Commerce Bank evidenced by a letter of commitment from the bank dated August 5, 1982 attached to the reply or a letter from Rotan Mosle, increasing to $10 million its original $6 million offering. Both letters improve CSI's original financial showing and are contrary to our policies of not permitting applicants to improve their applications with major changes after the filing date. As to Rotan-Mosle's letters we have found CSI qualified independently from this showing; therefore, we do not reach the question whether this would meet the requirements of our rules. Because CSI did not rely on revenues for its financial showing, petitioners allegations in this regard need not be addressed.

[40] Besides Houston, LIN applied in New York, Los Angeles and Dallas-Ft. Worth.

[41] 42 U.S.C. 4321–4347.

[42] CSI did not present any evidence that the construction will cause an adverse environmental impact.

[43] See Footnote 9, supra.

[44] For purposes of Section 22.903(a) the fact that the extensions were into the Big Thicket National Preserve is irrevelant. The fact is the CGSA extends into a central SMSA in violation of the rules.

we will require that HCC file a conforming amendment to bring the nonconforming CGSA and 39 dBu contour for cells 21 and 23, into compliance with the rules. The amended 39 dBu contours shall not cover any area in the SMSA not previously covered by the nonconforming 39 dBu contour.

74. *Financial Qualifications.* Petitioners assert that HCC failed to provide itemized costs for each cell and that it excluded or understated various costs. As to HCC's financial showing, petitioners allege that the bank loan commitment letter does not demonsrtate reasonable assurance of the loan because essential terms of the loan are missing. Also, petitioners maintain that HCC's balance sheet is inadequate because it lists $3.75 million as temporary cash investments, but the liquidity cannot be ascertained, and that HCC cannot rely on its parent's financing because its parent is overextended in its financial commitments. Finally, petitioners challenge HCC's reliance on a public stock offering as a source of funding.

75. HCC replied that all the costs that petitioners challenge were considered and are reflected in HCC's financial projections. However, HCC did not include the costs of voice message retrieval equipment because Mobile Communications Corporation of America (MCCA) (the parent of American Cellular Communications Corporation (ACCC) who in turn owns HCC) already operates such equipment in Houston and will make this service available to HCC's cellular subscribers. HCC also included funds for the purchase and debt repayment of subscriber equipment in its financial projections. Thus, HCC argues that its projected cost of $19,341,484 stated in its application for its system is an accurate reflection of the realistic costs and expenses HCC will incur. Also, HCC filed an amendment to its application simultaneously with its reply listing expenses and clarifying the cost items to obviate confusion. This amendment was returned by the staff on August 24, 1982 on the grounds that it was a major amendment. On September 24, 1982, HCC filed a petition for reconsideration of the staff action returning the amendment and retendered the same. AMCOM filed an Opposition to the Petition for Reconsideration and HCC filed a reply. We will dismiss the petition for reconsideration,[45] but reconsider and accept the amendment on our own motion. Acceptance of the amendment will not prejudice any other party to the proceeding or give any comparative advantage to HCC. Acceptance of the amendment also eliminates the need to designate a qualifying issue for hearing.

76. *Cost.* We agree with HCC that it did not underestimate its costs. As HCC asserts in the reply all the challenged costs were estimated and included in its application. As we stated above, HCC did not have to provide itemized costs per cell. In addition, as we have stated before, an applicant need not incude in its costs projections the costs of acquiring subscriber equipment. HCC's costs estimates do not appear unreasonable on their face and, therefore, we conclude that petitioners have failed to raise any serious questions requiring designation in hearing.

77. *Bank letter.* HCC relies on an $18 million loan from Texas Commerce Bank. Petitioners allege tha the bank letter failed to include essential terms, such as interest and repayment schedules. Petitioners further contend that the bank has limited the assurance it provides by stating that the letter may not be used for the purpose of obtaining investment equity or otherwise as a means of influencing investors or prospective investors; that the letter is subject to certain conditions; and that the financial condition of HCC's parent makes it unlikely that the bank would loan the money.

78. The retendered amendment, filed on September 24, 1982, included a letter from the bank, dated July 28, 1982, which clarified the terms of the loan. The letter states that interest on similar loans is frequently calculated at approximately 1% above the prime lending rate and that repayment terms would be tailored to fit financial projections and may, if deemed advisable by the bank, include an initial moratorium on principal repayment with full amortization to be completed over seven to ten years. We find that under applicable precedents the initial bank letter, as further clarified, is acceptable as reasonable assurance of availability of the loan.[46] *See Chicago Order, Multi-State, supra.*

79. *Paid-in Capital.* HCC also relies on its initial capitalization of $3,750,000 to finance its estimated construction costs and first year operating expenses. HCC's balance sheet as of May 24, 1982, shows temporary cash investments of $3,750,000 as assets. The notes to the balance sheet state that these funds are currently invested on a short-term basis. Metro Mobile challenged this showing stating that the nature of the investments is not explained, and therefore, it cannot be determined whether they are liquid. We will credit HCC with this amount since the balance sheet refers to the funds as temporary cash investments and the notes explain that they are invested on a short term basis; therefore, we conclude that they are liquid or readily used or converted to provide funds to meet the proposed commitments. In other circumstances we have required the applicant to disclose the nature of the investments so that we could make a judgment as to their liquidity. *E.g. New York Order, supra,* at para. 33. However, in HCC's case, we will not require this showing for the following reason. HCC projects its construction costs at $12,743,484 and its first year operating expenses at $4,309,000, for a total of $17,052,484. In addition it plans to construct a mobile installation and maintenance center at a cost of $1,160,000 and purchase mobile telephones at a cost of $1,129,000. We include the cost of constructing the maintenance center but not the cost of the mobile themselves in the projections to bring the total up to $18,212,484. *See* para. 76, *supra.* Because we found HCC has demonstrated reasonable assurances of the availability of $18 million, it only needs an additional $212,484 of its $3,750,000 in short-term investments. This investment account is sufficiently in excess of the remaining among needed by HCC so that we can credit it with having the funds available.[47] *Cf. GTE Mobilnet of San Jose, Inc.* (San Jose Order), CC Mimeo 3974, releasd May 6, 1983, at para. 9. Therefore, we conclude that HCC has demonstrated it will have funds available to finance the construction and operation for one year of its proposed system and that a qualifying issue need not be designated for hearing.

80. *Coverage of CGSA.* HCC responds to the allegation that gaps between some of its cells will not permit hand-off by asserting that the worst gap in its coverage is no more than a mile and a half from the closest 39 dBu contour, and

[45] Our rules provide that reconsiderations of interlocutory actions by delegated authority will not be entertained. *See* Sections 1.102, 1.106.

[46] We find the allegations concerning MCCA's financial condition without merit. The fact that the letter stated it could not be used for the purpose of obtaining investment equity does not diminish the bank's commitment or demonstrate that the loan will not be available.

[47] Petitioners raised the following additional allegations: that HCC had not demonstrated the financial qualifications of ACCC or MCCA and that it had not demonstrated the availability of an additional public stock offering. Because we find that HCC has demonstrated its financial qualifications independently from these sources, we need not reach these questions.

each gap is surrounded by the coverage of at least two other cells. In such areas, HCC asserts, the probability of coverage would exceed 90%. HCC further asserts that the gaps in its coverage do not present such substantial concern to warrant an evidentiary exploration. While it is unclear whether HCC's proposed cellular system will permit "hand-off" of mobile units in the alleged areas, there is no need to designate for hearing a basic qualifying issue on this matter because this question relates to system design, which is a comparative issue. *Report and Order, supra,* at 502–503; *New York Order, supra,* at para. 10.

81. *Site availability.* Charisma alleges that HCC has not demonstrated the availability of two of its sites, #7 and #3. As to site #3, it is alleged that construction of the tower to be located at the site, upon which HCC will mount its antenna, has not begun, and there is no evidence that the tower will be constructed and finished. HCC responds that the group who will construct the site, Senior Road Tower Group, had indicated to Charisma that the tower would be finished by January 1, 1983. HCC's application contains a letter from Senior Road Tower Group agreeing to make space available on the tower to HCC. As to site #7, Charisma alleges that the property is subject to an option for sale, and it is thus unavailable to HCC. Even if available, it is alleged to be subject to use restrictions which may prevent the proposed use. HCC responds that it has a letter dated March 29, 1982, from a real estate broker, stating that the land was available for sale and that HCC proposed to purchase the land. Upon investigating Charsima's allegations, HCC became aware that LIN obtained an option to purchase the land in early June 1982, and that the option specifically states that LIN will buy the property only if granted the cellular license. HCC indicated that it is currently in the process of negotiating a similar option to purchase the land.

82. As to site #3, we find that HCC has demonstrated reasonable assurances of availability of this site. As to site #7, we also find that HCC has demonstrated reasonable assurances of availability of this site. In its application, HCC submitted a letter dated March 29, 1982, from Douglas P. Cloud, a broker for Century 21. This letter states that the site is presently available for sale. HCC in Exhibit 1.7F of the application stated its intention to buy the land. We conclude that under applicable precedents HCC demonstrated the availability of this site.[48] In considering the question of site availability, we have held that neither absolute assurance nor legal control is necessary, but only that when an applicant proposes a site, it must have done so in good faith that the site would be available to it. We find that at the time of filing the application, HCC could reasonably conclude that the site would be available to it. *See Alabama Citizens, supra* at note 47. In addition, petitioner has not demonstrated that the site is not available because of prior sale or because of impossibility. Therefore, we will not designate a site availability issue. We also conclude that petitioner has not provided any evidence or made a reasonable showing that the land use restrictions will in any way prevent HCC from using the site; therefore, we will not designate an issue with respect to this matter.[49]

83. *Proposed Rates.* HCC has adequately responded to Charisma's allegations that HCC's proposed rates are anticompetitive. As we stated at paragraph 33, concerning CMS's rates, rates are subject to state jurisdiction in the first instance, absent *prima facie* evidence of unfair competition or unreasonable discrimination. Therefore, we will not designate an issue with regard to this matter.

84. *Court proceedings.* Metro Mobile alleges that a current proceeding in Texas may affect HCC's qualifications to be a licensee. This is the same proceeding in which a principal of AMCOM is involved. *See* para 55, *supra.* We will include the same condition for HCC that we include for AMCOM.

85. Charisma also alleges that HCC did not disclose in its application another court proceeding against MCCA wherein it is alleged that MCCA is involved in unfair competitive practices.[50] HCC, in its reply, submitted affidavits from attorneys Champ Lyons, Rainer Sautermeister and Leonard G. Kriss. The affidavits attest the following facts: that this is a civil action for money damages wholly unrelated to MCCA's licensee activities; that it was considered of no decisional significance with respect to HCC's character or financial qualifications; and that the lawsuit was not disclosed primarily because it was overlooked in the rush to finalize the application.[51]

86. We believe applicants statements that their failure to disclose this suit was inadvertent. Therefore, we will not designate a character issue in this proceeding. The claim of unfair competition is always of potential decisional significance with respect to MCCA's character. Accordingly, consistent with our action in paras. 55 and 84, *supra,* we will include a condition with regard to this matter also.

H. Charisma Application

87. CMS, LIN, CSI, AMCOM, and Metro Mobile filed Petitions to Deny Charisma's application. Petitioners individually or as a group raise the following allegations: (a) Charisma's CGSA extends into a central SMSA in violation of Section 22.903(a) of the rules; (b) Charisma's CGSA extends more than *de minimis* into Galveston, a secondary SMSA, and into Chambers County, a non-SMSA area; (c) continuous and uninterrupted service will not be provided to the CGSA; (d) Charisma failed to depict specifically the location of four sites or demonstrate their availability; (e) Charisma is not financially qualified; and (f) Charisma improperly proposes to provide mobile equipment under tariff.

88. *Extension of CGSA.* Charisma's CGSA and contours extend into the central Beaumont SMSA. A CGSA may not extend into another central SMSA. *See* Section 22.903(a). Charisma must, therefore, bring cells #8 and #15 into compliance with the rules under the terms prescribed above for the other nonconforming applicants.[52]

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[48] *See, Alabama Citizens for Responsive Public Television, Inc.,* 59 FCC 2d 1 (1976); *Sampson Broadcasting Co., Inc.,* 52 FCC 2d 954 (1975); *Silver Beehive Telephone Company,* 35 FCC 2d 333, (Rev. Bd. 1972).

[49] Zoning requirements should be left to local zoning authorities and addition of issues inquiring into such matters is not warranted absent a reasonable showing that the applicant will not be able to obtain prior authorization for its plans. There is an assumption that local zoning authorization will be forthcoming. *See Gainesville Media Inc., et al.,* 59 FCC 2d 382 (Rev. Bd. 1976); *See also Grace Broadcasting Systems, Inc.,* 48 RR 2d 936 (1980).

[50] Mobile Communications, Inc. and Rene A. Steigler, III v. Gulf Mobilephone Alabama, Inc. *et al.,* Civ. No. 79-000994 (Mobile County, Ala-Circuit Court). The case arises from a commercial dispute over sums owed in connection with the acquisition by MCCA of certain subscribers of a defunct telephone answering service formerly operated by the plaintiff. A motion for dismissal with prejudice for lack of prosecution was filed by MCCA on August 3, 1982, because the case has lain dormant since July 10, 1961.

[51] The Affidavit of Leonard G. Kriss, partner in a law firm which serves as legal counsel to MCCA, attests that the complaint alleges that the defendants misrepresented their intention to purchase the plaintiffs telephone answering service accounts in order to obtain the use of the plaintiffs customer list and business name. The plaintiff charges breach of contract, unfair competition, and wrongful conversion of plaintiff's property and demands total damages in the amount of $450,000.

[52] Charisma requested waiver of Section 22.903(a) of the rules. Because, based in Commission policy, we are requiring Charisma to amend its application to bring it into conformance with the rule, we will deny its waiver request.

89. *De minimis extensions.* Petitioners also allege that Charisma's CGSA and 39 dBu contours for cell site #10 extend more than a *de minimis* amount into Chambers County. The extension of cell #10 into Chambers County is impermissible because the base station for that cell is located in Chambers County, outside the Houston SMSA. Although our rules do not specifically prohibit the location of base station cell sites in a market outside of the market for which service is proposed, such a practice is not consistent with the Commission's requirements to design a system to serve a particular market. *See Order on Reconsideration, supra* at 87. Charisma has not shown that it was not possible to engineer its system to avoid locating a cell outside of the Houston SMSA. In fact, Charisma in its replies admits that it engineered the site specifically to serve Interstate Highway 10, a major cross-country route which connects Houston and Beaumont. Therefore, we will require Charisma to relocate or delete cell site #10 in order to comply with our rules. If Charisma chooses to relocate the cell within the Houston SMSA, the 39 dBu contour coverage shall not cover any more or different area inside the SMSA than that presently covered by the nonconforming cell. The conforming amendment shall be submitted to the ALJ within 15 days of the publication of this order in the Federal Register.

90. Petitioners also alleged that cell site #5 extends more than *de minimis* into Galveston. We have reviewed the application and we find that the extension is allowed under the rules. The antenna is directionalized to the west; therefore, it was obviously designed to serve Alvin, within the Houston SMSA and not areas outside the SMSA. Cell sites 4, 12 and 14 also extend a small amount outside the Houston SMSA. These extensions also are permissible under the rules. Therefore, we will not require Charisma to amend its application with regard to the above cells. However, we remind applicants that the areas outside the SMSA will not be considered for comparative purposes and may not be served in a manner that causes interference to the services of the ultimate licensees in these areas. *See Indianapolis Order, supra,* at n. 4, and note 25, *supra.*

91. *Continuous Service.* Petitioners allege that the gaps between Charisma's proposed cell sites 8, 10, 12, 14, 15 and 16, will not permit continuous or uninterrupted service or that "hand-off" will not be possible between these cells. Charisma in its reply asserts that its system is in full compliance with the Commission's cellular design concept, that its plans to conduct field intensity measurements in order to establish the actual service provided by the installed system; that the system can be affected by several factors that the Carey curves do not take into account; and that Charisma does plan to add more cells once the system is in operation. While it is unclear whether Charisma's proposed cellular system will permit "hand-off" or mobile units between cells, there is no need to designate for hearing a qualifying issue on this matter because, as stated above, this question relates to system design which is a comperative consideration.

92. *Antenna Locations.* Petitioners contend that Charisma located cells 14–17 by means of street addresses in general terms, and that the geographic coordinates are rounded off to the nearest minute, representing an obvious attempt to estimate rather than specifically depict the locations of the cells. On September 2, 1982, Charisma filed an amendment changing the addresses for sites 14, 15 and 16. We accepted the amendment as minor since the amendment involved changing the addresses to correspond to the coordinates in the application or to correct discrepancies. No engineering changes were made. The change to Site 16 involved a minor relocation of 0.2 mile with no change to the 39 dBu contours. No changes were made for site 17, since all the information was correct as originally filed. Since the amendment corrected minor discrepancies in the application, these allegations regarding site locations are now moot and there is no need to designate a qualifying issue in this regard.

93. *Financial Qualifications.* Petitioners challenge Charisma's financial qualification on various grounds. They assert that Charisma understated its costs; that its bank letter does not show reasonable assurance of availability of the loan; and that Charisma is relying on $6,064,000 revenues to finance its proposal without supporting its revenue estimates.

94. *Costs.* Petitioners allege that Charisma has underestimated its cost because it underestimated salary expenses for maintenance personnel, excluded sales tax on capital equipment, understated charges for line interconnection, and failed to include cost of sales commissions. They also allege that Charisma did not provide itemized costs for each cell. Charisma replied[33] and stated that it has included all the necessary cost items and that they are realistic and prudent estimates.

95. We have reviewed the pleadings, reply and affidavits submitted by the parties, and we conclude that petitioners have failed to raise any serious questions that have not been adequately explained by Charisma in its reply. Moreover, the costs do not appear unreasonable on their face. In addition, as we have stated before, applicants do not have to provide itemized costs for each cell. Therefore, we will not add an issue with respect to Charisma's cost estimates.

96. Charisma estimates its total construction costs and first year operating expenses to be $24,727,360. It relies on $100,000 in net liquid assets, a $20,000,000 bank loan and $6,064,000 anticipated revenues from first year operations to finance construction and operation of its system. However, we note that included in the cost estimates is $8,216,000 for acquisition of subscriber equipment. Pursuant to the *New York* and *St. Louis Orders, supra,* we will deduct this amount from Charisma's costs projections. Thus, Charisma's construction costs projection amounts to $9,879,000. Charisma also includes license application costs totaling $158,000, and states that $18,100 of the total has been paid; therefore, we will increase the total costs projections to a total of $10,018,900. Charisma estimates its first year operating expenses to be $6,474,360. Included in this expense item is $193,000 for a mobile installation/repair center. Since this amount is related to the acquisition of subscriber equipment, and as we stated above, this did not have to be included in the applicant's cost projection, we will deduct this amount from the first year operating costs. Thus, the total for first year operting expenses amounts to $6,281,360, and our estimate of total construction costs and first year operating expenses is $16,300,260.

97. *Bank Letter.* To finance construction of its proposed system Charisma submitted a commitment letter from the Commerce Union Bank agreeing to loan it $20 million dollars. We have reviewed this letter and find that under applicable precedents it demonstrates reasonable assurance of this loan. We therefore conclude that Charisma has demonstrated it is financially qualified to construct and operate its proposed system for one year.[34]

[33] Charisma filed a Motion to Accept Late Filed pleadings relating to its reply to Metro Mobile's Petition to Deny. Good cause having been shown, we will grant the motion and accept the reply.

[34] Metro Mobile implied that the $20 million loan would exceed the bank lending limit. We have no

98. *Tariff Issue.* We find that CMS' argument that Charisma improperly proposes to provide mobile equipment under tariff is without merit. In its reply, Charisma asserts that it has no intention to offer mobile equipment under tariff and that it included the rental fee of mobile equipment in its schedule of proposed charges Exhibit 4, Application, only for informational purposes. Accordingly, we need not designate a qualifying issue with regard to this matter.

Conclusions

99. Based on our analysis of the applications and our resolution of the contested issues in this order, we find the applicants to be legally, technically, financially and otherwise qualified to construct and operate their proposed cellular systems except to the extent discussed here. As indicated in our previous discussions, the CMS, AMCOM, HCC, LIN and Charisma applications do not comply with some of the cellular rules. In the *Chicago Order*, at para. 17, the Commission determined that inflexible application of the rules to applications in the 30 largest markets would not be in the public interest. Accordingly, we are requiring CMS, AMCOM, LIN, HCC and Charisma to bring their applications into conformance with the rules as specified in this order. We emphasize that the amendments ordered here may not be used to give CMS, AMCOM, HCC, LIN and Charisma a comparative advantage in the hearing proceeding.

100. Accordingly it is ordered, pursuant to Section 22.29 of the Commission's Rules that the Joint Request for Approval of Limited Partnership agreement filed by GTE, AMPS, Centel Cellular Company, Lufkin Conroe Telecommunications, Inc., SLT Communications Inc. and Fort Bend Telephone Company, Inc., IS GRANTED, and the Limited Partnership Agreement IS APPROVED as consistent with the public interest, convenience and necessity.

101. It is further ordered, that the amendment to the GTE application IS ACCEPTED, the amendment is exempted from the cut-off provisions of under Section 22.31(e)(3) and (4); and the amended GTE application, hereinafter GTE Mobilnet of Houston Limited Partnership, File No. 26046-CL-P-(9)-82 IS GRANTED.[55]

102. It is further ordered that the authorization is conditioned upon GTE filing an amendment to the Limited Partnership Agreement which eliminates the language contained in Section 11.1 of the agreements which imposes restraints on the alienation of partnership interests.[56]

103. It is further ordered that the request for withdrawal of the application filed by AMPS IS GRANTED.

104. It is further ordered that, except to the extent granted here, the Petitions to Deny filed by AMCOM and MCI against the GTE application ARE DENIED.

105. It is further ordered that the Request for Declaratory Ruling filed by GTE and AMCOM's and CSI's Oppositions are dismissed.

106. It is further ordered, pursuant to Section 309 of the Communications Act of 1934, as amended that the applications of Houston Cellular Corporation; Cellular Systems, Inc.; American Mobile Communications of Houston and the Gulf; MCI Cellular Telephone Company; Charisma Communications Corp.; LIN Cellular Communications Corp; Metro Mobile CTS; and Cellular Mobile Systems of Texas, Inc.; are designated for hearing in a consolidated proceeding upon the following issues:[57]

(a) To determine on a comparative basis the geographic area and population that each applicant proposes to serve;[58] to determine and compare the relative demand for the services proposed in said areas; and to determine and compare the ability of each applicant's cellular system to accommodate the anticipated demand for both local and roamer service;

(b) To determine on a comparative basis each applicant's proposal for expanding its system capacity in a coordinated manner within its proposed CGSA in order to meet anticipated increasing demand for local and roamer service;[59]

(c) To determine on a comparative basis the nature and extent of the service proposed by each applicant, including each applicant's proposed rates, charges, maintenance, personnel, practices, classifications, regulations and facilities (including switching capabilities);[60] and

(d) To determine, in light of the evidence adduced under the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience and necessity.

107. It is further ordered, That the Separated Trial Staff (the Hearing Division and other individuals specifically designated) of the Common Carrier Bureau is made a party to the proceeding.[61]

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evidence in the record to support this allegation; therefore, we find it without merit.

[55] The authorization will be conditioned upon the Limited Partnership obtaining the appropriate antenna structure clearances. GTE will not be authorized to render service to the public during service tests even after it files FCC Form 403 for a license to cover. Service to the public cannot commence until the covering license becomes effective. Equipment tests, however, may be conducted. The authorization (FCC Form 463) will reflect these conditions.

[56] Issuance of GTE's authorization will be withheld until the amendment is received. We also remind the partners that pursuant to Section 212 of the Communications Act, officers or directors of more than one carrier are required to have authorizations to hold interlocking directorships.

[57] There are two issues that are not to be considered in the comparative hearing. The first is the financial qualifications of all applicants, except LIN. Financial ability is a basic rather than a comparative qualification for cellular licensing. Cellular Communications Systems, 86 FCC 2d 469, 501-02 (1981). With the exception of LIN, we have found the applicants included in the comparative hearing to be financially qualified. The second issue not to be considered is the qualifications of Cellular Mobile Systems of Texas, Inc. or its parent Graphic, to the extent that such qualifications may be affected by the issues included in the Commission's order designating certain 35 and 43 MHz paging applications for hearing, A.S.D. Answer Service, Inc. *et al.* (*ASD*), FCC 82-391, released August 24, 1982. Those issues will be thoroughly reviewed in that separate proceeding and should not be reargued in the context of a cellular hearing. As set forth in para. 113, *infra*, the Commission reserves the right to reexamine and reconsider the qualifications of Cellular Mobile Systems of Texas, Inc. to hold a cellular license should *ASD* be resolved adversely to any of CMS' affiliate or parent companies or to any of their principals. *See* Chicago Order, at n. 19.

[58] For purposes of comparison, the geographic area that an applicant proposes to serve includes that area within the proposed 39 dBu contours which, in turn, falls within the proposed Cellular Geographic Service Area and the relevant Standard Metropolitan Statistical Area. Consideration should be given to the presence of densely populated regions, highways, and areas likely to have high mobile usage characteristics as well as indications of a substantial public need for the services proposed. *See* 86 FCC 2d at 502.

[59] In making this comparison, preference should be given to designs entailing efficient frequency use, including not only the applicant's plans with regard to cell-splitting and additional channels, but also the degree of frequency reuse the system will be capable of, and the applicant's ability to coordinate the use of channels with adjacent or nearby cellular systems. *See* 86 FCC 2d at 502-503.

[60] *See* 86 FCC 2d at 503 for a discussion of the relative importance of the evidence submitted under this issue.

[61] Members of the separated trial staff are non-decision making personnel and they will not participate in decision making or agency review on an *ex parte* basis in this case, either directly or through contact with other Common Carrier Bureau personnel. Any investigative or prosecuting functions will be performed by the Separated Trial Staff in connection with its role as a party to the adjudication of these cellular radio applications. All other personnel of the Common Carrier Bureau, unless identified in a subsequent order as required to be separated, are designated as decision-making and they may advise the Commission as to the ultimate disposition of any appeal of an Initial Decision in this proceeding. *See* Communications

108. It is further ordered, That the applicants shall file written notices of appearances under Section 22.916(b)(3) of the Commission's Rules within 10 days after publication of this order in the **Federal Register.**

109. It is further ordered, That the hearing shall be held according to the procedures specified in Section 22.916 of the Rules, except as otherwise noted here, at a time and place and before an Administrative Law Judge to be specified in a later order.

110. It is further ordered, That exceptions to the initial decision of the Administrative Law Judge under Section 1.276 of the Commission's Rules shall be taken directly to the Commission.

111. It is further ordered, That CMS, AMCOM, LIN, HCC, and Charisma are directed to file the conforming amendments specified in this order within 15 days after publication of this order in the **Federal Register** and that the date for filing rebuttal cases under Section 22.916(b)(4) of the Rules is deferred pending establishment of procedural dates by the Administrative Law Judge.

112. It is further ordered, That, except to the extent granted in this order, the Petitions to Deny filed against the applications ARE DENIED; Metro Mobile's Motion to Dismiss IS DENIED; AMCOM's and Metro Mobile's Petition to Dismiss or Return Unauthorized Amendment ARE DISMISSED; MCI's Motion to Accept Late Filed Pleading IS GRANTED; MCI Petition for Reconsideration and Metro Mobile's letter ARE DISMISSED; the Petition for Reconsideration filed by HCC and Opposition filed by AMCOM ARE DISMISSED; Charisma's waiver request is denied; and Charisma's Motion to accept Late File Pleading is granted.

113. It is further ordered, That any authorization granted to CMS as a result of the comparative hearing shall be conditioned on, and without prejudice to, reexamination and reconsideration of the company's qualifications to hold a cellular license following a decision in the hearing designated in *A.S.D. Answering Service, Inc., et al.*, FCC 82-391, released August 24, 1982, and shall be specifically conditioned upon the outcome of that proceeding.

114. It is further ordered, That any authorization granted to LIN as a result of the comparative hearing shall be conditioned on, and without prejudice to, reexamination and consideration of that company's financial qualifications as determined in *Advanced Mobile Phone Service, Inc., et al. (New York Order)*, CC Mimeo 2418, released February 18, 1983.

115. It is further ordered, That any authorization granted as a result of this proceeding shall be conditioned upon obtaining the appropriate antenna structure clearances.

116. It is further ordered, That any authorization granted to AMCOM and HCC shall be conditioned on, and without prejudice to, reexamination and reconsideration of the company's qualifications to hold a cellular license following final disposition of the litigation cited in para. 55 and 84-86, *supra*, and shall be specifically conditioned on the outcome of these proceedings.

117. This order is issued under Section 0.291 of the Commission's Rules and *Order Delegating Authority*, FCC 82-435, released October 6, 1982, and is effective on its release date. Petitioners for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Rules, insofar as it grants the GTE application, may be filed within the time limits specified in those sections. *See also* Rule 1.4(b)(2).

118. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

Gary M. Epstein,

Chief, Common Carrier Bureau.

[FR Doc. 83-18527 Filed 7-8-83; 8:45 am]

BILLING CODE 6712-01-M

[File No. 26019-CL-P-(5)-82 et al.]

Advanced Mobile Phone Service, Inc. et. al; Hearings

In re Application of Advanced Mobile Phone Service, Inc., File No. 26019-CL-P-(5)-82, For a construction permit to establish a cellular system operating on frequency Block B in the Domestic Public Cellular Radio Telecommunications Service to serve the Miami/Fort Lauderdale, Florida, modified Standard Metropolitan Statistical Area. In re Applications of American Mobile Communications of Florida; CC Docket No. 83-661, File No. 26100-CL-P-(6)-82; Cell-Tel Network, File No. 26059-CL-P-(11)-82; Cellular Telephones of Florida Corporation, File No. 26151-CL-P-(6)-82; Charisma Communications Corp. of America, File No. 26138-CL-P-(6)-82; Cellular Mobile Systems of Florida, Inc., File No. 26170-CL-P-(19)-82; Florida Cellular Telephone Company, File No. 26141-CL-P-(16)-82; Maxicom, Inc., File No. 26077-CL-P-(5)-82; MCI Cellular Telephone Company, File No. 26094-CL-P-(9)-82; Metro Mobile CTS, File No. 26140-CL-P-(12)-82; MRTS-POE of Miami, File No. 26081-CL-P-(6)-82; Unity Telecommunications Systems, Inc., File No. 26123-CL-P-(9)-82; For a construction permit to establish a cellular system operating on frequency Block A in the Domestic Public Cellular Radio Telecommunications Service to serve the Miami/Fort Lauderdale, Florida modified Standard Metropolitan Statistical Area; designating applications for consolidated hearing on stated issues.

Memorandum Opinion and Order granting Application and Designating Applications for Hearing

Adopted June 27, 1983.
Released July 1, 1983.
By the Commission:

1. Presently before the Commission are the captioned applications of American Mobile Communications of Florida (Amcom), Cell-Tel Network (CTN), Cellular Telephones of Florida Corporation (CTFC), Charisma Communications Corporation of America (Charisma), Cellular Mobile Systems of Florida, Inc. (CMS-F), Florida Cellular Telephone Company (Florida Cellular), Maxicom, Inc. (Maxicom), MCI Cellular Telephone Company (MCI), Metro Mobile CTS (Metro), MRTS-POE of Miami (MRTS-POE), and Unity Telecommunications Systems, Inc. (Unity) to construct a cellular radio system to serve the Miami-Fort Lauderdale, Florida, modified Standard Metropolitan Statistical Area (SMSA) on frequency Block A; the captioned application of Advanced Mobile Phone Service, Inc. (AMPS) to construct a cellular radio system to serve the Miami-Fort Lauderdale, Florida, SMSA on frequency Block B; and various motions, petitions, pleadings and amendments related to the applications.

2. Because we find that the public interest would be served thereby, we are granting the AMPS application.[1] Except with respect to the applications of Maxicom and MRTS-POE, we find that the petitions fail to raise any substantial and material issues requiring designation for hearing. These applications are electrically mutually exclusive; accordingly, we are designating them for a comparative hearing in accordance with the Commission's special hearing procedures for cellular radio applications announced in the Commission's *Report and Order* in CC

Act of 1934, *as amended* section 409(c) (47 U.S.C. 409(c)); Administrative Procedure Act section 554(d) (5 U.S.C. 554(d)); section 1.1221 of the Commission's Rules.

[1] Section 22.901 of our rules requires that cellular service be provided by an AT&T affiliate only through a separate subsidiary. AMPS has demonstrated in its application that it has met this requirements. Our rules also require that AMPS submit a cellular capitalization plan for Commission approval. AMPS did submit its plan on May 25, 1982, and the plan was approved by the Commission on March 31, 1983. Memorandum Opinion and Order, FCC 83-126, released April 15, 1983. We recognize that further approval may be required when ownership in AMPS in Miami is changed pursuant to the AT&T reorganization.

Docket No. 79-318, 86 FCC 2d 469 (1981), *modified*, 89 FCC 2d 58 (1982), *further modified*, 90 FCC 2d 571 (1982). We are accepting the partial settlement proposed by CMS and Unity,[2] with the resultant name change and the dismissal of the Unity application. We are designating certain basic qualifying issues against Maxicom and MRTS-POE to be considered in the comparative hearing. Finally, we are requiring that all applicants except AMPS, MCI, Florida Cellular and Metro modify their applications as set forth below.

AMPS

3. Petitions to defer Commission action on the AMPS application have been filed by florida Cellular and CMS. For the reasons stated in the Commission's decision in *Advanced Mobile Phone Service, Inc. (Chicago Order*, 91 FCC 2d 512 (1982), at para. 16, we find that it is premature to rule on these petitions at this time.

4. Amcom and MCI petition to deny the AMPS application, arguing against the wireline set-aside, headstart, and the wireline agreements. These arguments constitute an untimely request for reconsideration of the *Report and Order, supra*, and are rejected. Florida Cellular objects that AMPS has failed to indicate with specificity its plans to assure adequate interconnection of the nonwireline's cellular system with the landline telephone network. On the contrary, AT&T has submitted an interconnection proposal,[3] and both AT&T and AMPS are presently participating with many nonwireline applicants, among other parties, in Commission sponsored meetings to establish reasonable interconnection standards. Both petitioners object that AMPS has not shown itself to be financially qualified, but this objection was rejected in *Advanced Mobile Phone Service, Inc. (Los Angeles Wireline Order)*, FCC 83-124, released April 26, 1983, at para.

Amcom

5. *Financial.* To fund construction and first-year operating expenses of $18,574,000, Amcom [4] relies on bank loans totalling $23,050,000. There were four petitions to deny Amcom's application on the basis of lack of financial qualification;[5] we find, however, that Amcom's application gives reasonable assurance of the availability of funds.[6] CMS and Florida Cellular object to the lack of information on RAM finances, since RAM is responsible for all pre-grant expenses; both petitioners also object to the fact that pre-grant expenses are not included here. When this issue arose regarding Amcom's application in the Seattle market, we decided that the objection was without merit. *American Mobile Communications of Washington and Oregon (Seattle Order)*, FCC 83-3, released January 12, 1983, at para. 4. The Commission's primary concern regarding financial qualification is that the applicant show availability of funds sufficient for construction and first-year operation; pre-grant costs are relevant only as they might deplete these resources. The structure of Amcom's joint venture is such that these funds come from discrete sources, so we do not require further information regarding RAM's meeting of pre-grant expenses.

6. Both Charisma and MRTS-Poe raise the question of collateral with regard to Amcom's bank letters. Both petitions assert that Section 22.917(f) has not been complied with, as the bank terms do not include the ten-day notice provision for repossession. This provision, however, applies only when the loan is secured or collateralized; the fact that no requirement of security or collateral is mentioned in one letter indicates that the bank had no such requirement, and that the provision was therefore unneeded.[7] This state of affairs is confirmed by the clarifying letters appended to Amcom's reply.

7. *Broadcast Interests of Applicant.* Charisma objects to Amcom's response to items 38 and 39 of FCC Form 401 as incomplete; petitioner notes that Stellar, a joint venturer in Amcom, has unexercised warrants in various broadcast licenses which are not listed here.[8] We agree with Amcom that unexercised warrants indicate potential or contingent interests only, and do not possess the incidents of ownership or control that would require their inclusion in this application. Further, as stated in Public Notice, Mimeo No. 1060, released November 26, 1982, the entities to be listed in Public Mobile Radio Services (PMRS) applications "are only those entities which have financial interests in PMRS licenses, permittees or applicants." Syncom's broadcast and cable interests therefore need not be mentioned in this application.

8. *Site Availability.* MRTS-Poe petitions to deny Amcom's application on the basis that Amcom does not hold leases or options on two of its antenna sites. As is well established, an applicant need not show a legal certainty of site availability; it must show that it has received reasonable assurance that the site is or will be available. *Marvin C. Harry*, 21 FCC 2d 420, 423 (Rev. Bd. 1970); *Advanced Mobile Phone Service, Inc. (Pittsburgh Order)*, CC Mimeo 1169, released December 6, 1982, at para. 8. The letters and the assignment of an option to buy [9] meet this standard of reasonable assurance.

9. *CGSA Extension.* Amcom's cell no. 6, Ft Lauderdale, has a 39 dBu contour which extends beyond the Miami SMSA boundary. Although Amcom argues that the affected geographic area is small (10.1 square miles) and the population involved is less than 1% of the West Palm Beach SMSA population, the applicant has failed to show that this extension is *de minimis*.[10] While the

[2] By letter and amendment of May 13, 1983, Cellular Mobile Systems of Florida, Inc. (CMS-F) and Unity Telecommunications Systems, Inc. (Unity) formed a new general partnership, Cellular Mobile Systems of Miami (CMS). CMS-F will be 70% owner, Unity 30%; management wil be effected by a Partners' Committee consisting of two representatives appointed by each partner and having a Chairman chosen by one partner, initially CMS-F and after one year alternating annually between (or among) the partners so long as each maintains an ownership interest equal to at least 33% of that held by the partner having the largest ownership interest. The Partners' Committee shall have "complete and exclusive power to direct and control the Partnership," and shall act (with some exceptions) upon a simple majority vote. Day-to-day authority and responsibility will be vested in a General Manager to be contracted with by the Partnership.

[3] The interconnection proposal is described in two documents submitted by AT&T: Bell System Technical Reference, PUB 43303, December 1981, and AT&T Technical Advisory No. 76, April 13, 1982.

[4] Amcom is a joint venture consisting of RAM Cellular Communications of Florida, Inc. (RAM); The Western Union Telegraph Co. (WU); Rapid-American Corporation (RAC); Stephen H. Muss (Muss); and Stellar Communications Corp. (Stellar). By amendment of August 6, 1982 the applicant's name was changed from American Radio Telephone Communications of Florida (Artcom).

[5] Petitions to deny were filed by Charisma, CMS, Florida Cellular and MRTS-Poe. One issue raised was the absence of balance sheets for the joint venturers. No balance sheets of the joint venturers are required, as their funds are not being relied upon for construction and first-year operation.

[6] A letter from District of Columbia National Bank specifies the amount of the loan, the interest rate, the term and number of payments; a letter from Bank of America contains a similarly detailed statement of commitment.

[7] The Bank of America letter specifically states that its loan will not be collateralized.

[8] The interests discussed in Charisma's petition are actually held by Syndicated Communications, Inc. (Syncom), a 20% shareholder in Stellar.

[9] Amcom's site availability for cell site 4, at Pennsuco, is supported by an assignment of an option to buy. The option paper is provided in the application (volume II, Section III, part 4), but is accompanied only by an unexecuted assignment form. The executed assignment, dated May 20, 1982, is appended to Amcom's reply.

[10] The extension proposed by Amcom appears to be geographically quite small, though the exaction percentage of the cell which extends outside the SMSA is impossible to determine due to the absence of a 1:250,000 map. See para. 14, *infra*.

physical extent of the affected geographic area is one consideration is the determination of whether a CGSA extension is *de minimis*, it is neither the only nor the most important consideration. In *Public Notice—Cellular Application Filing Procedures*, Mimeo No. 2973, released March 24, 1982, the Commission stated that no rigid rule determination would apply, but that the characterization of an extension as *de minimis* would depend on an analysis of the particular circumstances in each case. This notice suggests that size of geographical area affected, avoidance of interference conflicts, and public interest concerns are among the circumstances to be considered. It also noted that the "[r]ules permit post-licensing requests to combine adjacent systems." *Id.* at 3. Subsequent cellular designation orders have developed still further this ad hoc determination process. In *Advanced Mobile Phone Service, Inc. (Philadelphia Order)* CC Mimeo 1882, released January 21, 1983, at para. 33, we determined that an extension into a populous area, covering a major highway which offered substantial potential roamer service, and apparently not designed primarily to offer service to the SMSA of application, would not be termed *de minimis*. That order emphasizes the necessity of examining the market area at issue in each such determination. Again in *Advance Mobile Phone Service, Inc. (New York Order)*, CC Mimeo 2418, released February 18, 1983, we examined the purpose of the proposed extension, and whether the extension was necessary to serve the applicant's own SMSA. An extension was allowed when it was into an area which was non-SMSA and not populous, when the extension was over an irregular boundary line, and when it was innate to the system designed to serve the subject SMSA. *Id.* at para. 15. Additional considerations, such as the absence of irregularity of terrain or boundary, and the ease of correction of the extended CGSA, were also determinative. In the *New York Order*, we stated: " [a]lthough these figures represent a small amount when compared to the . . . SMSA . . ., we still cannot allow such a substantial intrusion into an adjacent [secondary] SMSA." *Id.* The order further points out that allowance of an extension in these circumstances "would be unfair to potential cellular applicants for that SMSA." *Id.*

10. When SMSA boundaries bisect highly populated areas, it is expected that eventually the markets will be served by combined or cooperative systems, *Public Notice, supra*, at 3, and that agreement will be reached among the carriers involved to achieve this, *Memorandum Opinion and Order on Reconsideration, (Reconsideration Order)*, 89 FCC 2d 58 (1982), at para. 63. Because of the filing procedures adopted by the Commission, the two Miami SMSA authorizations may well be awarded before the West Palm Beach SMSA applicants are even designated for comparative hearing; thus no coordination or mutually satisfactory arrangements can be undertaken at this stage of system development, although cooperation will be encouraged at the appropriate time. Meanwhile, however, the acquisition by a Miami carrier of a substantial customer base in what is acknowledged to be a populous, fast-growing, and affluent segment of the West Palm Beach market (*i.e.*, Boco Raton) would be a misapplication of the Commission's intention regarding *de minimis* extensions.

11. Any extension beyond the SMSA boundary is to be avoided if possible; if an extension is proposed, it must be justified.[11] Here there is no irregularity of boundary or terrain to support such an extension. It certainly cannot be argued that absent this extension the population in question is unlikely to be served. The extension here cannot be seen as a necessary and inadvertent by-product of system design requirements peculiar to this market; in fact, by Amcom's own statement, the extension is a planned and deliberate objective of its system design. Since the extension is unnecessary to service of this SMSA, is easily avoided,[12] and is not justified under the Commission's standards, Amcom will be required to file, within 15 days of the publication of this Order in the **Federal Register**, a conforming amendment to bring its nonconforming CGSA and 39 dBu contour for cell 6/Fort Lauderdale into compliance with the rules.[13] The amended 39 dBu contour shall not cover any area in the SMSA not previously covered by the nonconforming 39 dBu contour. This amendment should consider the effects, if any, that this change may have on other parts of the application. Due to this circumstance, brief extensions of time may be granted at the discretion of the Administrative Law Judge (ALJ).

12. *Undisclosed Interest.* MRTS-Pope charges that Amcom's joint venturer, Stellar, may have an undisclosed interest in Unity Telecommunications Systems, Inc., because an officer of Stellar is a law partner of counsel for Unity. We find MRTS–Poe's charge unsubstantiated and without merit. As to MRTS–Poe's concerns regarding professional ethics and the possibility of conflict of interests, this is not the proper initial forum for such considerations.

13. *CGSA Coverage.* Petitioners Charisma, MRTS-Poe, and Florida Cellular argue that Amcon's coverage of its CGSA is 50–55% rather than the 75% required by Section 22.903(a). Amcom admits this and explains that it is the fault of its engineering consulting firm, which erroneously included over-water coverage in its calculation to arrive at 75%.[14] This is confirmed by a statement which is provided by the engineering firm's vice president and attached to Amcom's reply.[15] Based on Amcom's reply and the affidavit attached thereto, we conclude that Amcom's coverage deficiency resulted from an error by Amcom's engineering consultants which resulted in an over-estimation of CGSA coverage through the inclusion of water areas. In order to cure this error, Amcom proposes to reduce its CGSA by drawing in the western boundary. We will accept Amcom's proposed correction and direct Amcom to file an appropriate amendment with the ALJ.[16] This amendment may not improve Amcom's comparative standing or result in any comparative advantage in the overall design of its cellular system.

14. *Technical.* Section 22.903(a), as modified by the *Reconsideration Order*, requires that the application include a map on a scale of 1:250,000, and that this map clearly portray the SMSA, the CGSA, and the 39 dBu contour of the proposal. The Amcom application does not include such a map.[17] For the

[11] Section 22.903(a) and Public Notice of March 24, 1982.

[12] We note that other applicants proposing to serve the same portion of the Miami SMSA have engineered systems, using directionalized antennas, which avoid incursion into the neighboring SMSA.

[13] Other applicants in this market have also proposed extensions, of various sizes, into the West Palm Beach SMSA. Each is discussed individually, *infra*, but all will be bound by the discussion here.

[14] Amcom's application, at Vol II, Section II, p. 10, states: "In calculating the area afforded reliable coverage, [Amcom] has included only land masses and has not included coverage of water areas. As a consequence, [Amcom's] CGSA is smaller than would have been realized had coverage over water been included." Apparently this decison was never made known to Compucon, the engineering firm involved, because a different calculation was used in the preparation of this application.

[15] Affidavit of Charles D. Yost, Vice President and Manager of New Business Development of Campucon, Inc.

[16] The amendment order here will not affect the proposed 39 dBu coverage of land areas.

[17] The Amcom application includes only an 8"x10" photograph of a properly scaled map; such a reduction is a convenient reference, but fails to provide the clarity and detail that the rules require.

reasons stated in paragraph 14, *supra*, we will permit Amcon to amendm its application in this regard, to bring it into accord with the rules.

15. MRTS-Poe alleges that the Amcom application contains various errors ineffective radiated power (ERP) for proposed cell sites 1, 3 and 6. MRTS-Poe argues that the correct antenna gain was not used for all radials when computing ERP. For site 1, MRTS-poe says the maximum antenna gain is actually more than 9db, which would result in an ERP greater than the required maximum 100 watts. Amcom does not respond to these allegations in its reply comments. Upon review of the pleadings, we have determined that although the effect on Amcom's engineering and overall system coverage is minimal, Amcom's EPP calculations are not precisely correct. Therefore, Amcom will be required to file, within fifteen days of the publication of this order in the **Federal Register**, an amendment correcting its ERP calculations. This amendement should not cause any 39 dBu contours to cover any area not previously covered. *See Metrocom of St. Louis (St Louis Order)*, CC Mimeo 2045, released January 28, 1983, at para. 35.[18]

Cell-Tel Network (CTN)

16. *Financial Qualification.* CTN estimates its construction and first-year operating costs at $8.1 million, and relies on a variety of sources to provide it with funding in the amount of $9 million. Petitions to deny CTN's application on the basis of lack of financial qualification were submitted by Amcom, Charisma, CMS and Metro. The three funding sources relied upon by CTN are discussed below:

17. *Capital Bank of Miami loan.* The Capital Bank letter, which commits $6 million, includes a condition that CTN possess net worth of at least $2 million at the time of closing. Amcom interprets this condition as continuing throughout the term of the loan, and suggests that CTN might will fall short of this net worth threshold at some time during that period. We reject Amcom's argument, as it is clear from the language of the bank letter that this condition lapses at the time of closing on the loan, before any major expenses will have fallen due. Charisma objects to the absence of the NEC equipment contract upon which this funding commitment relies, and to the absence of a ten-day notice provision regarding collateral, as required by Section 22.917(f). The NEC contract, however, is found in the direct case, exhibit 8, attachment C, and the Section 22.917(f) requirement is met by a statement in the bank's clarifying letter, which is attached to CTN's Reply. [19] The terms and details provided are sufficient, and the availability of $6 million from Capital Bank is therefore reasonably assured under *Mulit-State Communications v. FCC*, 590 F. 2d 1117 (D.C. Cir. 1978), *cert. denied*, 440 U.S. 959 (1979).

18. *Inleasing Corporation.* Inleasing [20] has agreed to extend $6 million in credit. Both Amcom and Metro object to the language of Inleasing's letter as restricting use of its funds to mobile equipment, which is not included in estimating costs or establishing financial qualification. Because Cell-Tel shows financial resources providing a cushion of $950,000 without inclusion of the Inleasing funds, we do no reach this question.

19. *NEC credit/sales contract.* CTN has arranged with NEC [21] that on its purchase of $7,400,000, $3,000,000 credit will be extended until the end of the third year of operation of the system. The executed contract is included as Attachment C to exhibit 8 of CTN's direct case. Charisma protests that the equipment specified in this agreement is insufficient to achieve CTN's proposed system. This objection goes to the comparative issue of the service proposal, not to the issue of financial qualification. CTN has given reasonable assurance of the availability of $3 million in credit from NEC. [22]

20. We conclude that CTN has reasonable assurance of the $9 million on which it relies. [23] As to CTN's cost estimates, though they may differ from other applicants' estimates, they are certainly not unreasonable on their face, and so will be accepted here. *Advanced Mobile Phone Service, Inc. (Buffalo Order)*, CC Mimeo 1320, released December 14, 1982, at para. 9 and n. 7. We therefore find CTN to be financially qualified.

21. *CGSA Extension.* CTN says that the extension of the 39 dBu contour of cell no. 1 into the neighboring West Palm Beach SMSA is *de minimis*, but offers no support for its statement other than the fact that West Beach is not a central SMSA. [24] As discussed above, [25] the extension into Boca Raton will not be permitted. Accordingly, CTN will be required to modify its cell to achieve a 39 dBu contour which remains within the Miami SMSA boundary. The amended 39 dBu contour shall not cover any area in the SMSA not previously covered by the nonconforming 39 dBu contour. This amendment should consider the effect, if any, that this change may have on other parts of the application. Due to this circumstance brief extensions of time may be granted at the discretion of the ALJ.

22. *Technical.* Charisma and CMS object to the lack of clarity with which CTN describes its interconnection proposal and, specifically, its microwave use. This question has arisen before. In the *St. Louis Order, supra*, at para. 5, we said:

> Common Carrier Public Notice, Mimeo 567, November 1, 1982, at page 3, stated that applicants need not include in their applications microwave applications and/or authorizations to connect the cell sites with the system control station to meet the required basic qualifications * * *. The Public Notice reflects the absence of any requirements in the cellular rules, specifically, or in Part 22 of the Rules, generally, that applicants specify the method of connecting transmitter sites with switches and control points.

CMS further objects to an inadequate discussion of system congestion determination, but we find that CTN's referenced incorporation of its direct case exhibit 4 is sufficient in this regard.

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[18] MRTS/Poe also alleges that Amcom improperly omitted the 135° radial from the average terrain calculations for cell site #3. MRTS-Poe states that the radial is not entirely over water, but actually crosses Virginia Key from the 2.6 to the 3.4 mile mark. While this may be true, the .8 mile strip of Virginia Key under consideration is at or barely above sea level, and therefore has a negligible effect on the service contour calculation along the 135° radial. We find MRTS-Poe's raising of this issue frivolous, requiring no further comment.

[19] CTN's clarifying statement from Capital Bank is herewith accepted as a minor amendment to its application, since the additional information merely clarifies or supports, but does not add to, information originally contained in the application. Reconsideration Order at 92. We will not accept the amendment to the direct case, however, as any amendment to a direct case must be proffered to the ALJ.

[20] Inleasing Corporation, a division of INB Financial Corporation, has for some time been involved in credit arrangements with the radio common carrier industry.

[21] NEC America proposes to "design, construct, install and optimize" a turnkey system for CTN's proposed cellular service in Miami.

[22] CMS' objection that funds committed to equipment are not the "otherwise uncommitted funds" required in a cellular application is an argument without substance.

[23] Objections to CTN's revenue projections were made by Amcom and Metro. Because CTN does not rely on revenue for its funding, we need not address these objections.

[24] The extensions covers 7 percent of the population of the neighboring SMSA, or some 42,500 full-time residents. The demographic information on this CGSA extension was included in an amendment submitted by CTN, which is herby accepted as a minor amendment to CTN's application but is not accepted for inclusion in CTN's direct case, for the reasons given in note 19, *supra*.

[25] See paras. 9–11, *supra*.

Cellular Telephones of Florida Corp. (CTFC)

23. *Financial.* CTFC [24] estimates its construction and first-year operation costs at $9.5 million, and has shown availability of this amount from its parent, Metromedia. Petitions from Amcom, Charisma, CMS, and Florida Cellular assert that CTFC's financial showing is inadequate in its reliance on this is funding. They charge that Metromedia's showing in the CTFC application does not demonstrate reasonable assurance that Metromedia will be able to meet all of its cellular commitments, including its $9.5 million commitment to finance its Miami cellular venture.

24. In *Advanced Mobile Phone Service, Inc. (Boston Order),* CC Mimeo 896, released November 19, 1982, at paras. 8–13, we found that Metromedia has provided reasonable assurance that it has suffficient funds available to cover $133 million committed to its nine cellular applications. The surplus of available funds over estimated costs ($92 million) is sufficient even if Metromedia absorbs the entire expense of the Miami System rather than sharing it with its partner Beep Communications. *See* note 26, *supra.* Accordingly, we concluded that no financial issue should be designated for hearing against any Metromedia subsidiary based on Metromedia's ability to finance its commitments for nine cellular applications. That determination will be followed here. Because no new financial issues specific to the Miami application have been raised, we conclude that CTFC has provided reasonable assurance of the availability of $9.5 million for its construction and first-year operating costs as proposed. Accordingly, we conclude that no financial issue should be designated for hearing against CFTC.[27]

25. *Cost estimates.* Although Amcam, CMS and Florida Cellular all protest that CTFC's cost estimates are inacurate in one or more respects, we find that the costs projected by CTFC are not unreasonable on their face. We therefore hold, as we have before, that a discrepancy between the projected cost estimates of the applicants is not sufficient to warrant the addition of a financial issue in hearing.[28]

26. *Site Availability.* MRTS–Poe objects to CTFC's site availability showing, pointing out that CTFC has no lease or option for sites 5 and 9. CTFC has included in its application letters specifying exact addresses, facilities, access, and rental fees, and these letters satisfy our requirement of reasonable assurance of the availability of antenna sites.[29]

27. *Coverage of 75% of CGSA.*[30] CTFC's exhibit SFA–2, outlining its proposed CGSA, is unclear because it shows no eastern boundary.[31] CTFC's calculation that its 39 dBu contour covers 75% of its proposed CGSA indicates the applicant's intention to extend the CGSA eastward over the Atlantic, making it coterminous with the 39 dBu contour.[32] The 75% coverage of CGSA required by Section 22.903(a) of the Commission's rules requires that the proposed CGSA be within the SMSA, and the U.S. Bureau of Census has determined that the SMSA does not include extended lake or ocean areas.[33] In a case such as this, where the matter is one of first impression,[34] and the applicant has made a good faith effort to design an acceptable system coverage area, we are willing to extend to the applicant the opportunity to amend its showing in such a way as to comply with our rules. CTFC will therefore be required to submit a map showing a new CGSA which provides 75% coverage without including area beyond the SMSA.[35] All applicants in this market should note that service coverage outside the SMSA is not protected from interference. *Cellular Mobile Systems of Indiana, Inc.; (Indianapolis Order),* FCC 83–70, released March 3, 1983, at n. 4, nor credited in comparative hearing.[36] *Further Order Prior to First Hearing Session, (Chicago),* FCC 82M–3931, released December 10, 1982, and *Reconsideration Order* at para. 03.

28. *Technical.* MRTS–Poe argues that CTFC does not adequately describe system design concepts and criteria as required by Section 22.913(a) of the Commission's rules, nor the methodology utilized in determining its 39 dBu service contours as required by Section 22.903(c) of the rules. MRTS–Poe also argues that the engineering for cell #3 is defective, because a directional antenna pattern is specified, but no tower dimensions or antenna mounting distances are given. Finally, MRTS–Poe argues that minimum transmitter output powers for some of CTFC's proposed facilities would be 4 watts, while CTFC indicates output powers of 3 or 3.1 watts.

29. MRT–Poe's objections fail to raise a substantial question which would require designation of specific issues for hearing. Exhibits SFA–4(A) and (B), along with other engineering exhibits in CTFC's application, indicate compliance with the Commission's cellular design concepts and describe a projected method for system expansion, therefore satisfying the requirements of Section 22.913(a)(4) of the rules. CTFC specifies

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[24] CTFC is a Florida corporation which, when organized, was owned by Beep Communications Systems, Inc. and Metromedia, Inc. in equal shares. In Beep Communications Systems, Inc., FCC 82T–26, released November 8, 1982, the Commission approved Metromedia's acquisition of Beep, leaving Metromedia sole owner of CTFC. In addition to CTFC's February 1983 amendment reflecting this ownership change, we have accepted amendments from CTFC clarifying bank letters and making minor technical corrections.

[25] Charisma petitions to deny CTFC's application on the ground that Form 401 item 38 (regarding radio interests of the applicant) is answered incompletely. While we agree that this information should be included in full in the application, because the information can be found in CTFC's direct case at exhibit 2, page 5, we decline to dismiss CTFC's application on this ground.

[26] Chicago Order, *supra,* at para. 13.

[27] MRTS–Poe again insists on a standard of legal certainty for site availability that the Commission has never used. See para. 8, *supra.*

[28] Maxicom has submitted a "Supplement to Petition to Dismiss" on this issue. Because Section 22.916(b)(2) clearly states that petitions to deny and replies are the only pleadings that we will accept, we reject Maxicom's submission, and the CTFC response to it, along with Maxicom's counter-response.

[29] Neither the SMSA nor the CGSA has an eastern boundary line drawn on this map. The 39 dBu contour, which is clearly indicated, is the only line on the eastern side of the area. If the water area in the 39 dBu contour is included in CGSA calculations, 75% coverage is achieved; if the water area is excluded, coverage is less than 70%.

[30] Maxicom objects to CTFC's extending service into international waters, but gives no basis for its concern. The Commission exercises jurisdiction over international waters to a distance of 12 miles from the shoreline, and at no point does CTFC's proposed service contour exceed this distance.

[31] *See* U.S. Department of Commerce, Bureau of the Census, 1980 Census of Population, Volume I, Chapter A, Part 15; *see also* Further Order Prior to First Hearing Session, FCC 82M–3931, CC Docket No. 82–721, released December 10, 1982.

[32] The CTFC proposal without inclusion of ocean area offers at least 69% coverage of the CGSA, according to the calculatins of its petitioner Maxicom. Since the question of ocean area coverage has not arisen before, CTFC's belief that such coverage could be included in its CGSA was not unreasonable.

[33] The cellular rules state that "base stations must also render service to properly licensed roamers." 47 CFR 22.911(b). The rule continues, noting that service "may" be offered to mobile units on vessels. Each application here proposes coverage extending beyond the coastline, in apparent recognition that the provision of marine service may be a significant part of Miami's cellular service system. Because the Miami-Fort Lauderdale area includes the Intracoastal Waterway and outlying keys, much traffic (and, presumably, much communication) is waterborne. It is foreseeable, and the applicants have apparently taken into consideration, that a large segment of the customer population will expect and desire marine applications of cellular service. the ALJ may wish to consider this factor in the comparative portion of this proceeding.

[34] The ALJ emphasized the point already made in the Chicago Order at n. 20, that "for purposes of comparison, the 'geographic area' that an applicant proposes to serve includes the area within the proposed 39 dBu contours which, in turn, falls within the proposed * * * CGSA and the relevant * * * SMSA."

the distances to the 39 dBu contours for each of its proposed cell sites, calculated in accordance with Part 22 of the Commission's rules. Further details concerning the methodology used in determining service contours are required only when utilizing propagation studies other than that specified in the rules. Regarding CTFC's engineering for cell site #3, the antennas used are mounted on the roof of a building, so supporting tower dimensions and antenna mounting distances are not relevant to this site. The antennas are equipped with a specially designed reflector assembly which results in the directional pattern indicated in the application. Finally, the minimum transmitter output powers of 3 and 3.1 watts proposed by CTFC at various sites, and questioned by MRTS–Poe, are valid. The Commission's Radio Equipment List indicates that the output power for the proposed transitters at the sites in question is continuously variable from 3 to 30 watts.

Charisma

30. *Estimated Costs.* Both Amcom and CMS state that Charisma underestimates and/or understates its costs, but as we have already held, the general allegation that one applicant's estimated costs are lower than another's is insufficient to warrant the addition of an issue in hearing. Because Charisma's cost estimate does not appear on its face to be unreasonable, we will not designate a costs issue. *See Buffalo Order, supra,* at para. 9 and note 7; *New York Order, supra,* at para. 6.

31. *Financial Qualification.* Petitions to deny Charisma's application for want of financial qualification were filed by Amcom, CMS, Metro and MRTS-Poe. Charisma estimates its construction and first-year operating expenses at $18 million. To finance that amount, Charisma relies on a $14 million loan from Commerce Union Bank and operating revenues of $5 million. Both Metro and MRTS-Poe attack the Commerce Union Bank letter as setting forth a ball on repayment, and we agree with petitioners that the proposed repayment schedule is at best unclear. However, since Charisma expects to complete system construction within 27 weeks of a grant, the first loan payment—for whatever amount—which falls due at the end of the third year after closing is beyond the purview of this inquiry. In considering applicants' financial qualification to build and operate a cellular radio system, we confine ourselves to the period of construction and first year operation. *Buffalo Order, supra,* at paras. 15–19. By the time Charisma owed a loan payment under the terms given by the Commerce Union Bank, it would have been in operation for some two and a half years. Because the Union Bank letter is otherwise satisfactory, offering sufficient details regarding terms and conditions, we find that it gives reasonable assurance of the availability of $14 million.

32. Charisma's reliance on projected revenues for nearly $5 million of a budget just under $18 million faces objections from Amcam, Metro and CMS. We have previously decided that we cannot allow reliance on projected revenues because we cannot accept untested methodologies used by applicants. *New York Order, supra,* at para. 34. In this case, there is no need to include operating revenues when we delete the cost of acquiring, maintaining, and repairing mobile equipment. Section 22.917 does not require that the cost of mobile equipment be included, because mobile equipment costs are presumed to be recoverable in revenue. We calculate Charisma's costs as follows:

Licensing costs	$118,000
Construction costs	12,999,000
Less, for mobile equipment	−6,534,000
1st-year operation	4,857,780
Less, for mobile equipment maintenance and repair	−156,850
Corrected total	11,283,930

Charisma's projected construction and first-year operating expenses therefore total $11,283,930, not, as initially stated, $17,969,780. The $14 million discussed above adequately covers these expenses, and allows a cushion of nearly $3 million, without any reliance on projected revenues. Therefore we do not reach here the question of reliance on revenues.

33. *Impermissible Tariff.* CMS raises an objection to Charisma's inclusion of a tariff for mobile equipment, noting that the Commission has determined that mobile units would be made available on an unbundled and detariffed basis. *Reconsideration Order* at para. 57. We find that Charisma's application, specifically at exhibit 5, number 3, lists proposed charges for the optional rental of mobile equipment, but does not include these charges in a tariff. Furthermore, Charisma states unequivocally in its reply to CMS that mobile equipment will be made available on a detariffed basis. *See Buffalo Order, supra,* at para. 23.

34. *Technical.* Both Amcom and MRTS-Poe state that the Charisma application is unacceptable for technical reasons. Amcom argues that it is unable to verify the 39 dBu contour calculations for Charisma's cell site #4, because Charisma neglected to include the required antenna pattern for the directional antenna proposed at the site. In its reply comments, Charisma says that site #4 will utilize an omni-directional antenna, and therefore no antenna pattern is required. In an attached affidavit, however, Charisma's engineer acknowledges the fact that a directional antenna will be used, but says that Figure F–2 of the application contains the required antenna pattern. We agree that Charisma did supply the required antenna data; therefore, we need not discuss this issue further.

35. MRTS-Poe argues that Charisma's frequency plan is in error because Charisma incorrectly interchanged the cellular transmit and receive frequencies. Charisma acknowledges this error, characterizing it as typographical, and has filed a minor amendment correcting it. MRTS-Poe also alleges that Charisma's frequency plan is incomplete because it does not assign individual frequencies to specific cells. While Charisma does not respond to this argument, our examination of Charisma's application shows that the applicant did list specific frequency assignments in Exhibit I, Figure C of its application. MRTS-Poe further argues that the 39 dBu contours for sites 2, 5, 6, 7 and 8 of Charisma's application are incorrect, because Charisma erroneously utilized an omni-directional antenna pattern when a directional antenna pattern should have been used. MRTS-Poe says that omni-diretional antennas side-mounted on towers, as depicted for each of the aforementioned sites, would result in a directional pattern. In its reply Charisma argues that its proposed side-mounted antennas would produce omni-directional coverage within the normal tolerance of plus or minus 3 db. Upon review of the pleadings, we have determined that the omni-directional patterns submitted by Charisma are in fact technically incorrect. In addition, at those sites where the proposed effective radiated power is at the maximum level of 100 watts, as required by Section 22.904 of the Commission's rules, the use of side-mounted omni-directional antennas may cause this power limit to be exceeded, in violation of the rules. Therefore, Charisma will be required to file, within fifteen days of the publication of this Order in the Federal Register, an amendment containing corrected antenna patterns and any corresponding changes to the effective radiated power calculations. This amendment should not cause any 39 dBu contour to cover any area not previously covered. See para. 15, *supra.*

36. Finally, MRTS-Poe argues that the antenna vertical profile sketches submitted by Charisma for cells 2 through 8 are incomplete and do not meet the requirements of the Commission's rules. However, since Charisma does indicate the highest point on the antenna structure and the radiation center heights of their transmitting antennas, Charisma is in compliance with standard Commission practice with regard to antenna site sketches.

MCI

37. *Financial Qualification.* Amcom petitions to deny MCI's application on the basis that its financial showing is inadequate. We held in the *Pittsburgh Order, supra,* at para. 5, that MCI had shown reasonable assurance of the availability of funds for all twelve of its top-30 cellular applications. Because no new issues or facts are presented, the *Pittsburgh Order* finding is determinative here.

38. *Cellular System Design.* Amcom objects to MCI's proposed system as failing to meet the requirements of cellular design because one cell is isolated and thus and thus no hand-off can occur.[38] MCI replies, as stated in its application pages 3–8 to 3–25, that the Carey analysis, which is specified in the *Report and Order* and which MCI used, yields a conservative and not necessarily an accurate determination of the 39 dBu contour. Further, says MCI, even accepting the conservative Carey contour, the distance involved is too small to qualify as "isolating" the Homestead cell. No petitioner has challenged MCI's 75 percent coverage of its CGSA, which is the coverage requirement established by Section 22.903(a). There is no language in the rule to indicate that the coverage must be geographically continuous. Further, while the service contours of the Homestead and Sweetwater cells as determined by a Carey analysis do not abut, they are close enough to lend credence to MCI's argument that overlap, and therefore hand-off, actually will occur.[39] While the question of continuity of service and possibility of hand-off is thus an open one at this point, we will not designate an issue on this matter. System design may be examined during the comparative portion of this proceeding. *See New York Order, supra,* paras. 9 and 10.

39. *Cost Estimate.* Amcom objects to MCI's failure to provide individual cell cost estimates. As we stated in the *Buffalo Order, supra,* at para. 9, no cell-by-cell cost analysis is required.

40. *MCI as Wireline Carrier.* Charisma petitions to deny the MCI application on the grounds that MCI is a wireline carrier and is therefore ineligible to apply for cellular service on frequency Block A. MCI replies that this issue was settled in *Xerox Corporation and MCI Communications Corp.,* 90 FCC 2d 547 (1982) (*Xerox and MCI*), where the Commission stated that "MCI furnishes interstate, intercity telecommunications services: It has access to, but does not own, local exchange facilities. Accordingly, MCI is a carrier which does not provide public landline message telephone service." *Id.* at 554.[40] Based on the Commission's decision in that case, we find this question to be settled.[41]

41. *Anticompetitive Pricing.* Charisma charges that MCI's pricing is noncompensatory and anticompetitive. MCI, noting that Charisma's charge is unsupported by any factual allegations, replies that its prices are in fact compensatory, and points to its exhibit 32, a four-year projection, for support. A difference in the applicants prices, like a difference in their estimated costs, is insufficient, standing alne, to warrant designation of an issue. Where, as here, the pricing policies are, on their face, neither unreasonable nor anticompetitive, no issue will be found. Rates and prices are properly the concern of the state public utilities commission in the first instance, and our consideration of them here is at best premature. *Buffalo Order, supra,* at para. 4; *Cellular Communications of Cincinnati, Inc. (Cincinnati Order),* CC Mimeo 3268, released April 1, 1983, at paras. 15 and 40–42.

42. *System Congestion Determination.* CMS objects to MCI's proposals for determination of system congestion as being "a generalized, textbook discussion," and failing to meet the requirements of Section 22.913(a)(5). MCI responds that it has given all the information required by the rules. Exhibit 6 in MCI's application contains the proposal, including a discussion of the various congestion thresholds required to trigger different forms of system expansion. Exhibit 6 adequately outlines proposed methods of ascertaining congestion levels, and states that these data will be evaluated "against defined expansion thresholds." These thresholds are predicated upon an overall grade of service of 0.02, as stated in exhibit 5. We have stated previously [42] that system expansion proposals will meet our qualifying requirements if they present a considered plan, and that evaluation of the quality and practicability of the proposal will occur at the comparative stage. MCI's congestion determination and system expansion proposals meet the requirements of Section 22.913(a) (4) and (5).

43. *Site Availability.* MRTS–Poe opposes MCI's site availability showing as inadequate due to the absence of legally binding documentation. Our established standard for site availability showings is not legal certainty, but reasonable assurance. *Pittsburgh Order,* para. 8. MCI's showing provides the required reasonable assurance.

44. *Real Party in Interest.* Charisma objects to MCI's applicaiton as failing to specify that the real party in interest in these applications is Airsignal.[43] At the time of filing, June 7, 1982, an application for transfer of control of WUI, Inc., Western Union International, Inc., Airsignal International, Inc.,*et al.* from Xerox Corporation to MCI Communications Corporation was pending before the FCC. Until this transfer was approved, MCI could not file any application in the name of Airsignal. By FCC order released June 28, 1982, the transfer was approved. *Xerox and MCI, supra,* para. 38. However, unless and until MCI amends this application to name Airsignal, MCI is the applicant, and the application will be considered on that basis.[44]

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[38] The cell in question is the Homestead site, MCI's southernmost site, located in Homestead/Florida City. A review of MCI's exhibit 2.1–1 shows that the 39 dBu contour of this cell is less than a mile from the contour of the Sweetwater cell, and is within three miles of the Kendall cell contour.

[39] MCI's exhibit 3 provides a thorough analysis of the determination of actual service contours, with the result that MCI projects significant overlap of the three cells under discussion as well as the Miami cell.

[40] This decision was made in full realization that it would be drawn upon in cellular determinations as well. *Id.* at 553–554.

[41] A similar argument was made against two applicants in the Milwaukee market. There, under facts similar to those in the present case, the Commission held that the carriers in question were nonwireline carriers, citing Section 222 of the Communications Act of 1934, as amended, 47 U.S.C. 222, the Chicago Order, and the two cases relied upon here. Cellular Mobile Systems of Indiana, Inc. (Indianapolis and Milwaukee Order), FCC 83–70, released March 3, 1983, at para. 8.

[42] *See* Buffalo Order, *supra,* para. 20; Cellcom, Inc. (Minneapolis Order), CC Mimeo 1573, released December 30, 1982, at para. 13; Cellcom Communications Corp. of Georgia (Atlanta Order), CC Mimeo 1986, released January 26, 1983, at paras. 17–18.

[43] Charisma also objects to MCI's response to item 45 on FCC Form 401 (applicant's relation to station), which Charisma finds incomplete. We find that MCI has answered this item adequately.

[44] MCI Cellular, the applicant here, is a wholly-owned subsidiary of MCI Communications. Airsignal was, at the time of filing, a wholly-owned subsidiary of Xerox Corporation. Upon approval of the transfer discussed above, Airsignal became a wholly-owned subsidiary of MCI Communications. Corporate reorganizations since that time have

CMS

45. The CMS application [45] is attacked on several issues which have been settled in previous orders. Briefly, these issues are as follows:

46. *Cost estimates.* CMS's estimates are challenged by Amcom and Florida Cellular. The fact that one applicant's costs estimate are lower than another's is insufficient to warrant designation of an issue. *Chicago Order, supra,* para. 13. Where the estimate is not unreasonable on its face, it will be accepted, and will be used as a basis of comparison in hearing. *Id.*

47. *Financial qualification.* Amcom, CTFC, Charisma, Florida Cellular, Maxicom and Metro petition to deny CMS' application on the basis of an inadequate financial showing. The financial qualification of CMS, a subsidiary of Graphic Scanning, was dealt with in the *Chicago Order, supra,* at para. 6. The Commission stated that CMS's financial showing met our standards to qualify the applicant, and that this holding would apply, absent new or distinctive factual showings, to CMS's applications in all the top-30 markets. Here, no such showing has been made.[46]

48. *Character.* MRTS-Poe and Charisma attack CMS' application on the basis of legal and character qualification due to the hearing designated in *A.S.D. Answering Service, Inc., et al. (ASD),* FCC 82-391, released August 24, 1982. The Commission determined that the qualifications of Cellular Mobile Systems, of its parent Graphic Scanning, or of any Graphic subsidiaries will not be an issue in the context of any cellular proceedings. *Chicago Order, supra,* at n. 19. Any grant to CMS will, however, be open to review depending on the outcome of the ASD proceeding. *Id.*

49. *Direct Case Deficiencies.* Maxicom points out certain alleged shortcomings in CMS' direct case, including defective affidavits and improper or absent pagination. As we have said before, these are evidentiary matters to be dealt with in the comparative hearing; they are not proper subjects of a petition for denial or issue designation. *Minneapolis Order, supra,* at para. 9.

50. *CMS as Wireline Carrier.* Charisma petitions to deny the CMS application on the basis that CMS, through its parent Graphic Scanning and its co-subsidiary Graphnet, is a wireline common carrier, and thus applies improperly for authority to operate on the Block A cellular frequencies. This issue has been discussed in the MCI review, *supra* para. 40; that determination applies to CMS as well. Because CMS is "a carrier which does not provide public landline message telephone servce," [47] it is not a wireline common carrier.

51. *Site Availability.*[48] Amcom and Florida Cellular have petitioned for denial of the CMS application on the basis that it fails to give reasonable assurance of the proposed antenna sites. Of the nineteen site letters provided, ten contain no site coordinates, three contain coordinates different from those included with the engineering studies, seven are partially or totally illegible, and six contain addresses different from those given on the engineering pages. In addition, the sites are numbered according to two different systems, one an eight character (letter and number) system, and one a city-name and cell-number system; and these two systems of identification are never explained or cross-referenced. Furthermore, at no place in the application or direct case are the cell sites identified (by either system) on a map. Despite multiple amendments by CMS, many of these problems remain. Through a diligent study of the three sources (site letters, engineering studies, and information regarding distance from airports) on sites, it is possible to discern some assurance of their availability, but the CMS showing is still confusing and difficult to follow.[49] Nonetheless, as has been stated previously, for applicants in the first 30 markets an inflexible application of the rules would not be in the public interest.[50] Accordingly, we will require CMS to bring its application into conformance with the rules as specified in this order by submitting amendments to resolve the following problems:

FLO81001 (F1) Discrepancy in coordinates
FLO82001 (M1) Discrepancies in addresses and coordinates
FLO81002 (F2) Illegible signature
FLO82003 (M3) Replace letter; illegible
FLO81004 (F4) Provide full address
FLO81005 (F5) Discrepancies in address and coordinates, illegible letter
FLO82005 (M5) Give address and coordinates
FLO81007 (F7) Discrepancies in address and coordinates
FLO82008 (8) Correct address, including town or city
FLO82009 (9) Illegible signature; unclear assurance of availability
FLO82010 (10) Supply address; illegible description and signature
FLO82011 (11) Illegible letter
FLO82012 (12) Discrepancy in address

Each site letter should clearly indicate the site location. In addition, a unified numbering system should be developed, to resolve the confusion described above, and a map labeling the sites according to that system should be provided. CMS will be directed to submit these corrections and clarifications of its site availability showing to the ALJ within 15 days of the publication of this order in the **Federal Register.**

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resulted in MCI Airsignal's present status as a direct subsidiary of MCI Cellular Telephone, the applicant. There is now some question that the named applicant will be changed to Airsignal, although the MCI Cellular reply stated (at page 2) that this substitution would be forthcoming. Given the status of MCI and of Airsignal, such an amendment would be minor, and thus no question of real party in interest arises.

[45] The CMS application has been amended, on May 13, 1983, to include Unity Telecommunications System, Inc. as 30 percent owner/general partner. Under the terms of the partnership agreement, the CMS application will be retained and the Unity application dismissed. *See* note 2, *supra.* The CMS application remains virtually unchanged, the partnership having requested no consolidation of finances and no modification of personnel or management proposals except as noted above. The Commission held, in American-Radio Telephone Service, Inc., FCC 83-179, released May 9, 1983 (ARTS Order), that the public interest is served by accepting such a partial settlement agreement as a minor amendment, and allowing settling parties to amend financial, management, ownership and personnel portions, but not the basic cellular plan, of the surviving application. That Memorandum Opinion and Order also establishes the procedure to be followed in case of a partial settlement; we find that the appliants here have materially complied with those procedural guidelines, and that their exceeding by one day the 30-day post-agreement period within which to file such amendment does not, in the circumstances, negatively affect their settlement. Although Unity's financial qualification was designated an issue in Philadelphia, that does not affect our approval of this merger. We said in Metrocom of St. Louis (St. Louis Order), CC Docket No. 83-44, released January 28, 1983, at paras. 15-16, that a shortage of funding from one source could be covered from another source to qualify the applicant. Here, because CMS' financial qualification has been established and is adequate to cover all the proposed costs of construction and first-year operation, we find examination of Unity's financial qualification unnecessary. The remaining applicants, should they have objections or comments, may express their views in the rebuttal phase of the hearing. Accordingly, the CMS-Unity merger will be accepted, the Unity application dismissed, and the CMS application (as amended) reviewed and designated.

[46] The combination of the CMS and Unity proposals effected by their merger could, by the terms of the ARTS Order, *supra,* include consolidation of their financial showings. Although the applicants do not expressly request such consolidation, the CMS amendment and its attachments indicate that they expect to combine the financial portions of the two applications. Because Unity's financial qualification was designated in the Phildelphia Order, at paras. 5-8, however, and because CMS has shown the availability of the requisite $13 million, we will not consider such combination here.

[47] Xerox and MCI, *supra,* at 554.

[48] The site showing of the CMS application is unaffected by CMS' merger with Unity.

[48] 47 CFR 22.15(a) and 22.20(b)(5).

[50] Chicago Order, *supra,* at para. 17.

52. *CGSA Extension.*[51] Two cells of the CMS proposed Cellular Geographic Service Area extend north into the West Palm Beach SMSA. At no point in its application does CMS attempt to defend or justify this extension. Florida Cellular and MRTS-Poe petition to deny on the grounds that this extension is more than *de minimis*. Florida Cellular states that the incursion amounts to 39.75 square miles and 27,356 people, or 2% of the Palm Beach SMSA area and 4.7% of its population. CMS in its reply states that the incursion involves only 1.8% of the area, and 2.7% of the population, of its neighboring SMSA. By either account, however, a sizeable area and population is affected, and the extension is void of any of the justifying characteristics we have deemed acceptable to support *de minimis* extensions. By reference to the discussion at paras. 9–11, *supra*, CMS' proposed extension is found to be more than *de minimis*, and the applicant will therefore be ordered to amend the CGSA and the 39 dBu contours of cell sites FLO81006 and FLO81007, at Deerfield Beach and Margate, to bring them into compliance with the rules. The amended 39 dBu contour shall not cover any area in the SMSA not previously covered by the nonconforming 39 dBu contour. This amendment should consider the effects, if any, that this change may have on other parts of the application.

53. *Anticompetitive Rates.* Charisma challenges CMS' proposed rates as unrealistically low and anticompetitive. This issue was raised against MCI and was disposed of at para. 41, *supra*. We reach the same conclusion here.

54. *Major Amendment.* The amendment of cell number 82005's 39 dBu coverage area has been submitted twice. CMS argues that the proposed change does not affect its CGSA, and that the gain to its system-wide 39 dBu coverage is only 5 square miles. The point remains however, that the coverage of *this cell* would double, from 176 to 391 square miles, and that such a change would be major. This amendment is therefore rejected.[52]

Florida Cellular

55. *Cost estimates.* Amcam objects to Florida Cellular's cost estimate as not providing a cell-by cell breakdown. As we have stated previously, no per-cell cost analysis is required. *Buffalo Order, supra*, at para. 9. CMS petitions against Florida Cellular's cost projections as failing to separate construction from first-year operating costs. Florida Cellular's application does give a cost projection with five categories of expenses, plus miscellaneous;[53] the expenses stated appear reasonable. Although Section 22.917(a) specifies: (1) Construction and (2) operation, the failure of this applicant to disaggregate these categories does not under the circumstances render this application defective.

56. *Execution of Application.* Charisma points out that the applicant's supporting affidavit is dated prior to completion of some sections of the application; in other words, the affidavit supports and swears to the accuracy of exhibits which, at the time of its execution, were not yet in existence.[54] In its reply Florida Cellular explains how this happened; by amendment of August 5 the situation was corrected.[55] MRTS-Poe objects to the absence of separate 401 forms for each cell. A single 401 form for the system as a whole is adequate, as long as all necessary information is available and readily accessible within the application.[56]

57. *Bundled Terminal Equipment.* CMS declares that Florida Cellular's application must be dismissed because the applicant has violated Commission policy by tariffing equipment. It is clear from exhibit D, page 10, however, that this is not so. Service costs and mobile equipment costs are given; there is no reason to believe that mobile equipment costs will be included in a tariff. Florida Cellular states in its reply to CMS that rental charges were included with service charges only for convenience, and that mobile equipment will be made available on a detariffed basis, thereby complying with the Commission's mandate that equipment be unbundled and detariffed.

58. *CGSA Coverage.*[57] MRTS-Poe objects to Florida Cellular's coverage calculation of 75.2 percent as being "too close for comfort." MRTS-Poe alleges that too little allowance for error is included here, and that any slight miscalculation could result in Florida Cellular's failure to meet the Section 22.903(a) requirement. MRTS-Poe offers no example or support for its doubts of the accuracy of the coverage calculations, and we have no reason to question the correctness of Florida Cellular's figures.

59. *Site Availability.* MRTS-Poe objects that some of the applicant's site letters may not be legally binding. As has been stated previously, *supra* para. 8, the applicable standard is not legal certainty but reasonable assurance. Florida Cellular's site letters meet this standard.

60. *Technical.* CMS raises two objections to the technical presentation of Florida Cellular. First, CMS says, the applicant has not shown the availability of the microwave links upon which it depends. As we have stated previously, such a showing is not necessary, nor will it earn a comparative advantage. *St. Louis Order, supra*, at para. 5. Second, CMS objects to Florida Cellular's congestion determination plan as too vague and as lacking in detailed information. Florida Cellular argues in its reply that its Exhibit EE, page 27 fully

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[51] The cellular system proposed by CMS, including CGSA extensions, is unaffected by CMS' merger with Unity.

[52] The Unity application, though it is now dismissed and is thus reflected only in the amendment to the CMS application, was reviewed and evaluated by other applicants and by the Commission's staff, and bears some mention here. The application was characterized by discrepancies, inconsistencies and shortcomings, and was subject to numerous objections in petitions to deny from Amcam, Charisma, CMS, Florida Cellular, Maxicom, MCI, Metro, and MRTS-Poe. Among the most seriously challenged portions of the Unity application were the following: (1) Financial showing—Unity's financial qualification was designated in the Philadelphia Order, that hearing to be dispositive in all five markets of application. (2) Site availability—the weight of evidence, including Unity's own showing, and bolstered by various petitioners' findings, suggests that Unity did not have reasonable assurance that its proposed sites were available in Miami/Fort Lauderdale when it submitted its application on June 7, 1982. (3) Major environmental actions—Unity identified four of its proposed sites as major actions; four others should also have been so identified. Further, the required Section 1.311 statements provided by Unity were inadequate, as they were vague and noncommittal. (4) Technical—the technical portions of Unity's application were attacked by petitioners. There appeared to be inconsistencies and defects such as would require amendment and/or resubmission with regard to antenna profile sketches, effective radiated power calculations, service proposal (including grade of service to roamers), and CGSA design and 75% coverage. Because CMS will retain responsibility for, and operational control over, the system, we have decided not to consider these shortcomings in detail here.

[53] Application Exhibit E, page 2.

[54] Charisma also objects to Florida Cellular's response to Form 401 item 39 (interest in ownership of other stations) as incomplete. This was corrected by amendment of August 5, 1982.

[55] The August 5th amendment seeks to amend both the application and the direct case, contrary to the policy established in the Commission's Order, FCC 82-409, released September 3, 1982. Only that portion of the amendment pertaining to the application is accepted.

[56] MRTS-Poe's petition to deny on the basis that applicant should have ignored the Public Notice of March 24, 1982 (which petition is repeated against other applicants as well) is frivolous and does not merit serious response.

[57] On April 8, 1983, Florida Cellular submitted an amendment correcting its previously-amended map and its channel listings. According to the September 3, 1982 Order, *supra* note 55, this amendment is untimely filed. It is therefore being returned to the applicant; Florida Cellular may submit it to the ALJ who will determine whether the amendment is acceptable for good cause.

meets the requirements of Section 22.913(a)(5). We agree. MRTS-Poe raises a technical objection, stating that Florida Cellular has failed to provide a polar diagram for each cell cite. The clear requirement of Form 401, item 18 is that polar diagrams be submitted for directional antennas only. Because the Florida Cellular antennas are omnidirectional, MRTS-Poe's objection is without merit.

61. *Major Actions.* MRTS-Poe charges that sites B and H are major environmental actions according to Section 1.1305, as they are located in a water conservation area and in Everglades National Park, respectively, and that Section 1.1311 statements are therefore required. MRTS-Poe offers no facts to support this charge. Florida Cellular explains in its reply to MRTS-Poe, at pages 8 and 9, that neither site is a major action. MRTS-Poe has apparently miscalculated the locations of these sites, as neither of them is within a recognized environmentally sensitive area.

Maxicom

62. *System Congestion.* Amcom, Charisma, CMS, MRTS-Poe, and Florida Cellular object to Maxicom's response to the requirements of Section 22.9139(a)(5) as to system congestion. Maxicom offers no explanation of the basis of its determination of system congestion; furthermore, it offers only the most perfunctory statement as to grade of service.[58] This argument was also raised against the Maxicom application in Atlanta, where the applicant made the same showing as here. We held in the *Atlanta Order*, at paras. 17–18, that Maxicom's congestion determination standards were inadequately described. We therefore agree with petitioners here that Maxicom has failed to meet the requirements of Section 22.913(a)(5), and that information regarding congestion determination is an essential part of the application. A technical issue on system congestion will therefore be designated against Maxicom.

63. *System Expansion.* Section 22.913(a)(4) requires than an applicant indicate its method for coordinated system expansion. Amcom, CMS and Charisma object to Maxicom's cell-splitting diagrams as inadequate, imprecise and crude. On July 20, 1982, Maxicom submitted an amendment which included a detailed description of its cell-splitting proposal, but this was returned on August 10, 1982 as a major amendment. We have reviewed Maxicom's application and the associated pleadings, and we conclude that the applicant has provided sufficient information concerning its proposed method of system expansion. However, because Maxicom's application does not sufficiently describe its criteria for cell-spitting, and the July 20 amendment was returned as unacceptable, we conclude that Maxicom has failed to provide the information required by Section 22.913(a)(5) of the rules. Accordingly, we will designate an issue on whether Maxicom's application provides criteria for cell-splitting. If either or both of the two issues designated in this order are decided against this applicant, the effect on Maxicom's technical qualification must be considered. The ALJ may use our summary procedures to resolve this issue.

64. *Frequency Plan.* MRTS-Poe, Charisma and Florida Cellular point out that Maxicom's application contains no frequency plan or channel assignments, and that Maxicom explains its frequency use in only the most general terms in Exhibit A, part 4, "General Description." On July 20, 1982, Maxicom submitted two tables as part of a collection of proposed amendments; table 1 is a chart of the 312 voice channels, and is proposed as a cross-reference to table 2. Table 2 is a channel assignment chart for the first two years of operation. These amendments were returned as major, and were resubmitted by the applicant, with a petition for reconsideration, on September 9, 1982. Maxicom argues that these two tables were prepared in time for the June 7, 1982, filing, and were omitted inadvertently from the application. We conclude that these tables constitute a major amendment and cannot be accepted.[59] While Maxicom correctly points out that the application does refer to some tables (at p. 39A), their inadvertent omission is belied by the consecutive numbering of the pages which were included. The application as submitted gives a basic, minimum indication of the frequency plan; this showing is sufficent to qualify this applicant as regards the requirements of Section 22.913(a)(6). To allow a major amendment such as the provision of detailed channel assignments could give this applicant an undeserved comparative advantage. Therefore Maxicom's amendment, together with the petition for reconsideration and the memorandum in support of amendment, will be denied; its frequency plan as filed on June 7, 1982 will be appraised in the comparative proceeding.

65. *Tariff Proposal.* CMS objects to Maxicom's Exhibit E, Proposed Tariff Policies and Schedules, as impermissible under the terms of our *Report and Order*, which requires that equipment be unbundled and detariffed. Maxicom's proposal clearly indicates, however, that its equipment rental cost is a separable item, and that customers will have the option of renting or buying various kinds of equipment from Maxicom. CMS' objection is thus without merit.

66. *Extension of CGSA.* Cell No. 5, the northernmost cell in Maxicom's proposed system, extends from Pampano Beach into the neighboring West Palm Beach SMSA. Florida Cellular and MRTS-Poe object to this extension as more than *de minimis*, and as impermissible.[60] By reference to our discussion at paras. 9–11, *supra*, Maxicom will be ordered to reengineer its Cell No. 5 at Pampano Beach in such a way as to avoid overlap into the West Palm Beach SMSA.

67. *Site Availability.* Florida Cellular objects to Maxicom's site availability showing, pointing out that the coordinates and/or addresses given in the site letters are in some cases different from those given in the engineering exhibit.[61] Although Maxicom's reply indicated that these discrepancies would be cured by amendment, no such amendment was ever submitted. Nonetheless, the discrepancies are not of a disqualifying nature, and Maxicom may tender its curative amendment to the ALJ.

68. *Financial Qualifications.* Maxicom states that it plans to fund its Miami cellular system from three sources—revenue, shareholders' contributions,[61a]

[58] Maxicom's statement is: "The design grade of service for the system is equal to that of the switched public landline network." Ex. A, page 37. Maxicom later proposed an amendment to explain and delineate this grade, justifying the amendment as clarification of information already given. We are rejection this amendment as major, as it gives additional information not previously included. (If Maxicom is right that the "grade of service of the switched public landline network" is a term of art with a specific meaning understood and accepted by all, it has no need of this amendment anyway.)

[59] Other amendments in this collection are also again rejected as major, as these proposals contain new information which would substantially expand upon the description of the system development plan submitted in the original application.

[60] Amendment 4, submitted September 3, 1982 with minor and technical changes, draws the 39 dBu contour back slightly, though the CGSA is unchanged.

[61] Sites 1, 3, 4, and 5 have differences in the addresses given; site 3 has a slight difference in the coordinates. (Letters for sites 2, 3, and 5 give no coordinates.) In addition, sites 3 and 4 were reversed in exhibit F, the collection of site letters; this was corrected by amendment.

[61a] By amendment of June 2, 1983, Maxicom proposes an ownership change which results in no change in control of Maxicom and involves a small

and-third party financing—but that the latter alone is sufficient to meet its projected costs. Maxicom's proposed costs total $9,423,000, and Pittsburgh National Bank has made $30 million available. Charisma objects to the Pittsburgh National Bank letter as establishing a security arrangement without includng the 10-day notice provision mandated by Section 22.917(f). Maxicom replies that the provision need not be included in this letter, as this is merely a letter of commitment and not an actual credit agreement. Section 22.917 deals with the showing required of an applicant, in its application, to establish financial qualification. Any proposed credit arrangement which includes a security interest in any proposed radio station facility *must* include the 10-day notice provision. Maxicom will therefore be ordered to amend its financial showing in order to bring it into conformity with the rules.

Metro Mobile CTS (Metro)

69. *Financial Qualification.* Metro's financial showing is challenged by Amcon, Charisma, CMS, and Florida Cellular. Florida Cellular and Charisma point out that the 10-day notice provision required by Section 22.917(f) is missing, but we find that the reference in the letter from First National Bank of Chicago to a security interest "as allowed by law" adequately provides for this restriction. Charisma objects to the drawing up of the balance sheet at a time antedating the actual formation of the corporation. Metro replies that the planning and organization, and the partners' contributions, all took place before the balance sheet was drawn up and are accurately reflected therein, and we accept this explanation. Other objections to the adequacy of Metro's financial showing were resolved in the *Minneapolis Order, supra,* at para. 16, where we found that Metro has demonstrated reasonable assurance of the availability of funds to finance its nine cellular applications, including its Miami proposal.

70. *Estimated Costs.* Amcon and Florida Cellular charge that Metro's cost estimate is too general, is understated, and fails to provide a cell-by-cell analysis. As stated in the *Buffalo Order, supra,* at para. 9, no cell-by-cell cost analysis is required. As long as the cost estimate provides an indication of projected expenses and is not unreasonable on its face, no issue will be designated. *Chicago Order, supra,* para. 13. Metro's cost estimate is acceptable by this standard.

71. *Site Availability.* Amcon, Charisma and MRTS-Poe attack Metro's site availability showing as inadequate because of the complete lack of documentation. Metro's application, Table A, lists the proposed sites, with specific addresses and coordinates for each; Tables 1–12 give specific information on each site. No information is included in that section of the application, however, regarding ownership or availability of any of the sites. The final sentence of the application, in the public interest statement, notes that the applicant has commitments regarding the availability of each site. This statement is buttressed by the submission on July 29, 1982 of an amendment containing written evidence of site availability. The amendment was accepted as a minor amendment because it does not in any way modify Metro's proposal, but only supplies the site lease commitments previously referenced in the application. An applicant need not have a binding commitment or absolute assurance of the availability of a proposed site, but rather must show that it has obtained reasonable assurance that its proposed site is available. *See Alabama Citizens for Responsive Public Television, Inc.,* 59 FCC 2d 1 (1976). Also we note that all the site availability statements submitted by Metro in its July 29 amendment are dated prior to the June 7 filing date. *See Pittsburgh Order, supra,* at para. 8. Based on the foregoing, we conclude that Metro has demonstrated reasonable assurance of the availability of its proposed sites.

72. *Continuity of Service.* CMS objects to Metro's proposed system as failing to assure continuous service. CMS states that the failure to provide redundant equipment, and the apparent willingness of Metro to accept system breakdowns,[48] indicate that Metro may permit gaps in service. Metro responds that its system as proposed is highly reliable, and that to provide for more equipment would unnecessarily increase the cost of service. This is a comparative issue, not a qualifying issue, and may be examined in the comparative aspect of this proceeding.

73. *75% Coverage of CGSA.* MRTS-Poe alleges that Metro's engineering is defective in multiple respects, including "significant errors and omissions" such as an absence of polar diagrams, and inaccurate transmission line loss figures. MRTS-Poe further alleges that Metro's proposed 39 dBu contour for cell site #1 was incorrectly calculated, resulting in less than 75% coverage of Metro's CGSA.

74. We have reviewed Metro's engineering and the relevant pleadings, and we conclude that the allegations do not warrant the designation of an issue. Metro filed an amendment, accepted as minor, which supplied the necessary antenna polar diagram and corrected minor typographical errors in transmission line losses.[49] With regard to the allegation that Metro does not provide coverage to 75% of its CGSA, MRTS-Poe says that the antenna gain for the top-mounted PD–1110 antenna used to cell #1 is 9 db omni-directional, rather than the 12 db directional gain used by Metro. As a result MRTS-Poe alleges that the 39 dBu contour for cell site #1 is incorrect, resulting in less than 75% coverage of Metro's proposed CGSA. However, while the PD–1110 antenna at cell #1 is indeed top-mounted, Metro Mobile clearly indicated that the antenna is mounted ¼ wavelength from a 2" pipe, resulting in a directional antenna pattern with a maximum gain of 12 db. Therefore we have no reason to doubt that the percentage of CGSA coverage stated by Metro is correct.

MRTS-Poe

75. *Financial Qualification.* MRTS-Poe[50] has applied in two top-30 markets, Miami and Tampa. Its costs of construction and first-year operation are estimated at $9,978,719 for Miami and $15.4 million for Tampa. It relies on several sources of funding, as discussed below. Amcom, Charisma, CMS, Florida Cellular and Metro challenge the credibility of the Southeast Bank loan letter, the ability of the partners to contribute, the adequacy of the funding proposed, and the applicant's reliance on projected revenue.

76. The Southeast Bank letter meets the standard of reasonable assurance set forth in *Multi-State, supra,* in that it states an amount ($15 million), interest rate (1% above prime), a pay-back schedule (16 quarterly installments), and

indirect nonvoting alien ownership interest of 12%. We accordingly accept Maxicom's amendment. *See* 47 U.S.C. §§ 310(b)(4) and 22.918(d); Advanced Mobile Phone Service, Inc. (Denver Order), CC Mimeo 4779, released June 17, at paras. 6 and 7.

[48] CMS refers to Metro's direct case exhibit 4, Maintenance Proposal (pages 20–27). The direct case is not a part of this portion of the evaluation, but will be considered during the comparative hearing.

[49] By amendment of July 28, 1982 Metro submitted a polar diagram for cell #1. All other cells are omni-directional, and thus require no polar diagrams. The July 28 amendment also corrected typographical errors, and was accepted as a minor amendment.

[50] MRTS-Poe is a Florida partnership formed in December, 1981, and composed of three general partners: Poe Associates, a Florida independent insurance corporation; Metropolitan Radio Telephone Systems, Inc., a District of Columbia corporation; and Poe Radio Television of Miami, Ltd., a Florida limited partnership.

a term (beginning no more than three months after final take down of the agreement). It does not apparently rely upon any security interest, so the 10-day notice provision of Section 22.917(f) is not needed. The bank letter does state requirements or conditions, but they are standard and reasonable terms. We therefore find that MRTS-Poe has given reasonable assurance of the availability of this $15 million loan, to be shared equally between its Miami and Tampa proposed systems. The partners' contributions are a far less reliable source of funding, according to the showing made in its application. Our well-established criterion for financial qualification is net liquid assets, determined by subtracting current liabilities from current assets, *Chicago Order, supra*, at para. 8. On this calculation, MRTS-Poe fails to show adequate available funds. Metropolitan Radio Telephone Systems, Inc. (MRTS) lists current assets as follows:

Cash	$183,314
Accounts receivable	1,025,685
Prepaid expenses	84

Properly aged accounted receivable must be discounted by 25%;[65] MRTS makes no showing as to the proper aging of these accounts receivable, and we are unable to draw any conclusions as to their collectability. We are therefore unable to credit MRTS with anything beyond cash and prepaid expenses. Substracting current liabilities of $493,936, MRTS is left with a net liquid deficit of $310,548. Poe Associates, Inc., upon whom the applicant relies for the majority of its non-loan funding, lists current assets as follows:

Cash	$843,000
Short-term investments	2,254,000
Premiums receivable	17,638,000
Other current assets	558,000

The cash is credited in full, but short-term investments, otherwise unidentified, can be allowed no credit at all.[66] Properly aged premiums receivable, like other accounts receivable, will be credited at 75% of their stated value.[67] A listing of "other current assets" cannot be given any credit, since it is impossible to determine the identity, liquidity or value of such assets. Poe & Assoc., Inc. has thus presented a showing of current assets of $14,071,500. Its current liabilities are listed at $23,558,000, leaving this partner with a net liquid deficit of $9,486,500. The applicant's fourth source of funds is projected revenues. Although MRTS-Poe has presented a market study upon which it relies to estimate its first-year revenues, without the benefit of a hearing we are unable to determine the validity of the methodology used by MRTS-Poe to arrive at this figure. *New York Order, supra*, at para. 34. MRTS-Poe has thus shown availability of $15,500,000 from Southeast Bank to meet costs which it estimates at $9,978,719 for Miami and $15.4 million for Tampa. (Reply to Amcom petition, at 3). We will therefore designate an issue as to whether MRTS-Poe is financially qualified. Because the applicant has applied in the Tampa SMSA as well as here, and relies on the same sources of funding for that application (including a half share of the $15 million loan from Southeast Bank), we will consider its financial qualification for both applications in the same proceeding.[68]

77. *Cost Estimate.* Amcom, CMS, Charisma and Florida Cellular petition to deny the MRTS-Poe application on the basis that omissions, oversights and understatements result in unrealistically low projected expenses. As stated in the *Chicago Order, supra*, at para. 13, discrepancies in cost estimates among applicants will not warrant designation of an issue, as long as the estimate is not unreasonable on its face. Florida Cellular objects that MRTS-Poe's estimate includes only part of the total system proposed, yet MRTS-Poe asks comparative credit for its entire system. Our *Report and Order* as modified and further modified requires information on system development and expansion (*Report and Order* at para. 77), but requires financial information only for construction and first-year operation (*Reconsiderqtion Order* at n. 43). Therefore it may often occur that an applicant's total system, which will be the basis of comparative evaluation, will include facilities and services to be added after the first year of operation, and thus to be excluded from projected costs. The same consideration applies to Florida Cellular's comments about MRTS-Poe's loan paybacks, which begin just after the first year of operation. MRTS-Poe replies that post-first year expenses are irrelevant to the financial qualification and cost estimate showings to be made in its application. We agree. *Buffalo Order, supra*, at paras. 15–18.

78. *System Congestion and Expansion.* CMS charges that MRTS-Poe's application gives inadequate information regarding its method of determining system congestion and the need for system expansion, as well as failing to describe adequately the applicant's plans for proposed expansion. Volume 6, exhibit 31 details the proposed grade of service, applicant's intention to monitor traffic, and five proposed methods to expand the system. This showing meets the requirements of Section 22.913(a) (4) and (5).

79. *Other Allegations.* Charisma and CMS have petitioned to deny the MRTS-Poe application on several grounds which we find to be without merit. Charisma's arguments include: (a) The adequacy of a § 1.1311 environmental impact statement which we have accepted as meeting our requirement; (b) an allegation of possible trafficking, which we have determined to be based upon no more than a *pro forma* dissolution clause in MRTS-Poe's partnership agreement; (c) an objection to execution of certifications before completion of engineering studies, which has been corrected by affidavit; and (d) a charge that MRTS-Poe's system is inadequate to provide its proposed grade of service, which is a comparative rather than a qualifying issue. CMS charges that MRTS-Poe has included a provision tariffing mobile equipment, in violation of the Commission's determination[69] that cellular services equipment will be unbundled and detariffed. We have already addressed this issue several times.[70]

Conclusions

80. Based on our analysis of the applications and our resolution of the contested issues in this order, we find that, except for MRTS-Poe and Maxicom, against whom issues have been designated, the applicants are legally, technically, financially and otherwise qualified to construct and operate their proposed cellular systems. As indicated in our previous discussions, the captioned applications of Amcom, CTN, CTFC, Charisma, CMS, and Maxicom do not comply with one or more of the cellular rules. In the *Chicago Order, supra*, at para. 17, the Commission determined that inflexible

[65] In the Atlanta Order, *supra*, at para. 13, we indicated that 75% of properly aged accounts receivable may be credited toward net liquid assets.

[66] In order to determine the liquidity and value of short-term investments they should be identified by the type of investment, name of issues, name of the market or exchange on which they are traded (if any), and their current market value.

[67] The Poe Associates balance sheet, an SEC Form 100 for the quarter ending March 31, 1982, shows premiums receivable less allowance.

[68] Any Tampa market applicant whose proposal is electrically mutually exclusive with MRTS-Poe's application there may file a motion for limited intervention on the financial issue in this proceeding.

[69] Reconsideration Order, para. 54.

[70] MRTS-Poe offers its customers the option of renting or leasing mobile equipment from MRTS-Poe; the cost of such leasing is not included in the service tariff.

application of the rules to applications in the 30 largest markets would not be in the public interest. Accordingly, we are requiring these applicants to amend their applications to bring them into conformance with the rules as specified in this order. The applicants who filed mutually exclusive applications may address these amendments in their rebuttal cases. We emphasize that the amendments ordered here may not be used to give applicants a comparative advantage in the hearing proceeding. As the Commission stated in the *Chicago Order*, in markets for which applications have not yet been filed, strict conformance with the rules will be required, and absent unusual circumstances, the applicants will not be allowed to amend nonconforming applications.

81. Accordingly, IT IS ORDERED, pursuant to Section 309 of the Communications Act of 1934, as amended, that the applications of American Mobile Communications of Florida, Cell-Tel Network, Cellular Telephones of Florida Corporation, Charisma Communications Corporation of America, Cellular Mobile Systems of Miami, Maxicom, Inc., MCI Cellular Telephone Company, Metro Mobile CTS, and MRTS-Poe of Miami, are designated for hearing in a consolidated proceeding upon the following issues: [71]

(a) to determine whether Maxicom's aplication provides criteria for cell-splitting required by Section 22.913(a)(5) and, if not, the effect on Maxicom's technical qualifications;

(b) to determine whether Maxicom's application provides criteria and methodology for system congestion determination required by Section 22.913(a)(4) and, if not, the effect on Maxicom's technical qualifications;

(c) to determine whether MRTS-Poe is financially qualified to construct and operate for one year its proposed cellular system;

(d) to determine on a comparative basis the geographic area and population that each applicant proposes to serve; [72] to determine and compare the relative demand for the services proposed in said areas; and to determine and compare the ability of each applicant's cellular system to accommodate the anticipated demand for both local and roamer service;

(e) to determine on a comparative basis each applicant's proposal for expanding its system capacity in a coordinated manner within its proposed CGSA in order to meet anticipated increasing demand for local and roamer service; [73]

(f) to determine on a comparative basis the nature and extent of the service proposed by each applicant, including each applicant's proposed rates, charges, maintenance, personnel practices, classifications, regulations and facilities (including switching capabilities); [74] and

(g) to determine, in light of the evidence adduced under the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience and necessity.

82. It is further ordered, That the burden of proceeding with the introduction of evidence upon the cell-splitting issue (para. 81(a)) and the congestion determination issue (para. 81(b)), and the burden of proof, shall be upon Maxicom; and that the burden of proceeding with the introduction of evidence upon the financial qualification issue (para. 85 (c)) and the burden of proof, shall be upon MRTS-Poe.

83. It is further ordered, That the application of Advanced Mobile Phone Service, Inc. IS GRANTED.

84. It is further ordered, That the partial Settlement involving Cellular Mobile Systems of Florida, Inc. and Unity Telecommunications Systems, Inc. IS APPROVED, and that, pursuant to that agreement, the application of Unity Telecommunications Systems, Inc. IS DISMISSED.

85. It is further ordered, That the Separated Trial Staff (the Hearing Division and other individuals specifically designated) of the Common Carrier Bureau is made a party to the proceeding. [75]

86. It is further ordered, That the applicants shall file written notices of appearance under Section 22.916(b)(3) of the Commission's rules within 10 days after publication of this order in the **Federal Register.**

87. It is further ordered, That the hearing shall be held according to the procedures specified in Section 22.916 of the rules, except as otherwise noted here, at a time and place and before an Administrative Law Judge to be specified in a later order.

88. It is further ordered, That exceptions to the initial decision of the Administrative Law Judge under Section 1.276 of the Commission's rules shall be taken directly to the Commission.

89. It is further ordered, That Amcom, Cell-Tel, CTFC, Charisma, CMS, and Maxicom are directed to file the conforming amendments specified in this order within 15 days after publication of this order in the **Federal Register**, and that the date for filing rebuttal cases under Section 22.916(b)(4) of the rules is deferred pending establishment of procedural dates by the Administrative Law Judge. Procedures for deciding the qualifying issues designated against Maxicom and MRTS-Poe shall be determined by the Judge in his or her discretion.

90. It is further ordered, That except to the extent granted in this order, the Petitions to Deny filed by Amcom, Cell-Tell, CTFC, Charisma, MCI, CMS,

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[71] There are two issues that are not to be considered in the comparative hearing. The first is the financial qualifications of all applicants except MRTS-Poe. Financial ability is a basic rather than a comparative qualification for cellular licensing. Cellular Communications Systems, 86 FCC 2d 469, 501–02 (1981). With the exception of MRTS-Poe, we have found the applicants included in the comparative hearing to be financially qualified. The second issue not to be considered is the qualifications of Cellular Mobile Systems of Florida, Inc. or its parent Graphic, to the extent that such qualifications may be affected by the issues included in the Commission's order designating certain 35 and 43 MHz paging applications for hearing. A.S.D. Answer Service, Inc. *et al.* (ASD), FCC 82–391, released August 24, 1982. Those issues will be thoroughly reviewed in that separate proceeding and should not be reargued in the context of a cellular hearing. As set forth in para. 48, *supra*, the Commission reserves the right to reexamine and reconsider the qualifications of Cellular Mobile Systems of Florida, Inc. to hold a cellular license should *ASD* be resolved adversely to any of CMS' affiliate or parent companies or to any of their principals. *See* Chicago Order, at n. 19.

[72] For purposes of comparison, the georgraphic area that an applicant proposes to serve includes that area within the proposed 39 dBu contours which, in turn, falls within the proposed Cellular Geographic Service Area. Consideration should be given to the presence of densely populated regions, highways, and areas likely to have high mobile usage characteristics as well as indications of a substantial public need for the services proposed. *See* 86 FCC 2d at 502.

[73] In making this comparison, preference should be given to designs entailing efficient frequency use, including not only the applicant's plans with regard to cell-splitting and additonal channels, but also the degree of frequency reuse the system will be capable of, and the applicant's ability to coordinate the use of channels with adjacent or nearby cellular systems. *See* 86 FCC 2d at 502–503.

[74] *See* 86 FCC 2d at 503 for a discussion of the relative importance of the evidence submitted under this issue.

[75] Members of the separated trial staff are non-decision making personnel and they will not participate in decision making or agency review on an *ex parte* basis in this case, either directly or through contact with other Common Carrier Bureau personnel. Any investigative or prosecuting functions will be performed by the Separated Trial Staff in connection with its role as a party to the adjudication of these cellular radio applications. All other personnel of the Common Carrier Bureau, unless identified in a subsequent order as required to be separated, are designated as decision-making, and they may advise the Commission as to the ultimate disposition of any appeal of an Initial Decision in this proceeding. *See* Communications Act of 1934, as amended, section 409(c) [47 U.S.C. 409(c)]; Administrative Procedure Act § 554(d) [5 U.S.C. 554(d)]; Section 1.122* of the Commission's rules.

Florida Cellular, Maxicom, Metro and MRTS-Poe ARE DENIED.

91. It is further ordered, That any authorization granted to CMS as a result of the comparative hearing shall be conditioned on, and without prejudice to, reexamination and reconsideration of that company's qualifications to hold a cellular license following a decision in the hearing designated in *A.S.D. Answering Service, Inc., et al.*, FCC 82-391, released August 24, 1982, and shall be specifically conditioned upon the outcome of that proceeding.

92. It is further ordered, That any authorizaton granted as a result of this proceeding shall be conditioned upon obtaining the appropriate antenna structure clearances.[*]

93. This Order is issued under Section 0.291 of the Commission's Rules and *Order Delegating Authority*, FCC 82-435, released October 6, 1982, and is effective on its release date. Petitions for reconsideration under Section 1.106 of the rules may be filed within the time limits specified therein. Applications for review shall be deferred according to the provisions of the amended Section 1.115(e)(3) of the rules. See *Order*, FCC 83-90, released March 14, 1983; see also Section 1.4(b)(2).

94. The Secretary shall cause a copy of this order to be published in the **Federal Register.**

Federal Communications Commission.

Gary M. Epstein,

Chief, Common Carrier Bureau.

[FR Doc. 83-18532 Filed 7-8-83; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 83-615; File No. BPH-811120AP et al.]

Christian Life Broadcasting Co. et al.; Hearing

Hearing Designation Order

In re Applications of MAXINE MOORE d/b/a CHRISTIAN LIFE BROADCASTING CO., Tioga, Louisiana; MM DOCKET NO. 83-615, File No. BPH-811120AP; Req: 98.3 MHz, Channel 252A, 3.0 kW(H&V), 298 feet; TIOGA BROADCASTING CORPORATION, Tioga, Louisiana; MM DOCKET NO. 83-616, File No. BPH-820331AC; Req: 98.3 MHz, Channel 252A, 3.0 kW(H&V), 300 feet; CAVANESS BROADCASTING, INC., Tioga, Louisiana; MM DOCKET NO. 83-617, file No. BPH-820624BA; Req: 98.3 MHz, Channel 252A, 3.0 kW(H&V), 300 feet; For a Construction Permit for a New FM Station; Designating Applications for Consolidated Hearing on Stated Issues.

Adopted: June 3, 1983.

Released: June 29, 1983.

By the Chief, Mass Media Bureau:

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications filed by Maxine Moore d/b/a Christian Life Broadcasting Co., Tioga Broadcasting Corporation (Tioga) and Cavaness Broadcasting, Inc., (Cavaness).

2. *Tioga.* Section 73.1125 of the Commission's Rules requires that the main studio of an FM station be located within the city of license, but that on a showing of good cause may be located outside that community. In its response to Question 13, Section V-B, Page 2, Form 301, concerning main studio location, applicant does not specify the location of its proposed main studio site but merely indicates that "Tioga is unincorporated." Accordingly, Tioga will be required to file with the presiding Administrative Law Judge within 30 days of the release of this Order an amendment specifying the proposed main studio location, and if the location is outside the city of license, an adequate showing of good cause for such location.

3. *Cavaness.* In accordance with its response to Question 10, Section II, Page 4, Revised Form 301, regarding the pledge of stock, applicant has not attached the required explanation. Applicant shall amend its application by submitting the required exhibit to the presiding Administrative Law Judge within 30 days of the release of this Order.

4. Since no determination has been reached that the antenna proposed by Cavaness would not constitute a menace to air navigation, an issue regarding this matter is required.

5. Data submitted by the applicants indicate that there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any one of the applicants.

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Cavaness, whether there is a reasonable possibility that the tower height and location proposed by Cavaness would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications, if any, should be granted.

8. It is further ordered, That the Federal Aviation Administration is made a party to the proceeding with respect to the air hazard issue only.

9. It is further ordered, That Cavaness shall submit the amendment to the Presiding Administrative Law Judge as specified in Paragraph 3 above, within 30 days of the release of this Order.

10. It is further ordered, That Tioga shall submit the amendment to the Presiding Administrative Law Judge as specified in Paragraph 2 above, within 30 days of the release of this Order.

11. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

12. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Audio Services Division.

[FR Doc. 83-18530 Filed 7-8-83; 8:45 am]

BILLING CODE 6712-01-M

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[*] AMPS will not be authorized to render service to the public during service tests even after it files FCC Form 403 for a license. Service to the public cannot commence until the covering license becomes effective. Equipment tests, however, may be conducted. AMPS' authorization (FCC Form 463) will reflect these conditions.

[MM Docket No. 83-612; File No. BPCT-821207KE et al.]

The Mad River Broadcasting Co., Inc. et al.; Hearings

Hearing Designation Order

In re applications of The Mad River Broadcasting Company, Inc., Arcata, California; MM DOCKET NO. 83-612, File No. BPCT-821207KE; Women's Broadcasting OF Arcata, Arcata, California, MM Docket No. 83-613, File No. BPCT-830217KI; Herb Pentzer, Bill J. Tunnell, Dolly Reed and Donna Reed, d.b.a. Pentreed, Ltd., Arcata, California; MM Docket No. 83-614, File No. BPCT-830218KI, for construction permit; designating applications for consolidated hearing on stated issues.

Adopted: May 31, 1983.
Released: June 30, 1983.

By the Chief, Mass Media Bureau:

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of The Mad River Broadcasting Company, Inc. (Mad), Women's Broadcasting of Arcata (Women's), and Herb Pentzer, Bill J. Tunnell, Dolly Reed and Donna Reed d.b.a. Pentreed, Ltd. (Pentreed) for authority to construct a new commercial television station on Channel 23, Arcata, California.

2. The effective radiated visual power, antenna heights above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would be served by each of the proposals. Consequently, for the purpose of comparison, the areas and populations which would be within the predicted 64 dBu (Grade B) contours, together with the availability of other television service of 64 dBu (Grade B) or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

3. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

4. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the areas and populations that would receive Grade B or better service from the proposals and the availability of other Grade B services to such areas and populations.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

5. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

6. It is further ordered, That, the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the rules.

Federal Communications Commission.

Roy J. Stewart,

Video Services Division, Mass Media Bureau.

[FR Doc. 83-18531 Filed 7-8-83; 8:45 am]

BILLING CODE 6712-01-M

Advisory Committee for the 1985 ITU World Administrative Radio Conference on the Use of the Geostationary Satellite Orbit and the Planning of the Space Services Utilizing It (Space WARC Advisory Committee); Meeting Change

June 29, 1983.

Change of meeting date for Task Group A-2 from Wednesday, July 13, 1983 to Thursday, July 21, 1983.

Task Group A-2 of Working Group A: Facilities and Technology.

Chairman: Jeffrey Binckes; (202) 863-6864.

Time: 9:30 a.m.—2:30 p.m.

Location: Federal Communications Commission, 2025 M Street, NW., Room 7317, Washington, D.C. 20554.

Agenda:

(1) Review a Draft Executive Summary of the Committee's Report.

(2) Update of Orbit Capacity Model.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-18529 Filed 7-8-83; 8:45 am]

BILLING CODE 6712-01-M

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 a meeting of the Telecommunications Industry Advisory Group's (TIAG) Expense Accounts Subcommittee scheduled to meet on July 18 and 19, 1983. The meeting will begin at 9:00 a.m. on July 18 and will be open to the public. The meeting location is: GTE Service Corporation, Suite 900, 1120 Connecticut Ave., NW., Washington, D.C.

The agenda is as follows:

I. General Administrative Matters
II. Discussion of Assignments
III. Other Business
IV. Presentation of Oral Statements
V. Adjournment

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 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. 83-18528 Filed 7-8-83; 8:45 am]

BILLING CODE 6712-01-M

Radio Advisory Committee Meeting

September 28, 1983.

The next meeting of the Advisory Committee on Radio Broadcasting has been scheduled at 9:30 a.m., Wednesday, September 28, 1983, in Room 330, 1200 19th Street, NW., Washington, D.C.

The Committee will consider recommendations to the FCC concerning:

—The development of a new bilateral agreement between the United States and Canada on AM broadcasting which will implement the Final Acts of the 1981 Rio De Janeiro Conference on AM broadcasting in Region 2 and supersede the North American Regional Broadcasting Agreement (NARBA).

—The development of similar revisions to the U.S. Mexican AM Radio Broadcasting Agreement; and
—Other Business.

The meetings of the Committee are public, and are open for participation by all interested persons. The meeting scheduled for September 28, 1983 may, if the participants so decide, be recessed for resumption at such other time and place as they may designate.

For further information please contact the Committee Chairman, Louis C. Stephens or in his absence Jonathan David at FCC Headquarters, (202) 632-7792.

William J. Tricarico,

Secretary, Federl Communications Commission.

[FR Doc. 83-18533 Filed 7-8-83; 8:45 am]

BILLING CODE 6712-01-M

Telecommunications Industry Advisory Group Plant Accounts Subcommittee Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Telecommunications Industry Advisory Group (TIAG) Plant Accounts Subcommittee scheduled to meet on Wednesday and Thursday, July 27 and 28, 1983. The meeting will be on July 27 at 10:00 a.m. in the offices of United Telephone Systems, Inc., 2330 Johnson Drive, Westwood, Kansas, and will be open to the public. The agenda is as follows:

I. General Administrative Matters
II. Discussion of Plant Accounts Assignments
III. Other Business
IV. Presentation of Oral Statements
V. Adjournment

With prior approval of Subcommittee Chairman Gyles Norwood, 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 objectives. Anyone not a member of the subcommittee and wishing to make an oral presentation should contact Mr. Norwood (202/887-3266) at least five days prior to the meeting date.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-18534 Filed 7-8-83; 8:45 am]

BILLING CODE 6712-01-M

Meeting of the Telecommunications Industry Advisory Group Steering Committee

Pursuant to Section 10(a)(2) of The Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Telecommunications Industry Advisory Group Steering Committee scheduled to meet on Wednesday, July 27, 1983. The meeting will be held at 9:30 a.m. in Conference Room 438 of the FCC offices located at 1919 M Street, NW., Washington, D.C. and will be open to the public.

The agenda is as follows:

I. Review of Minutes of Previous Meeting
II. General Administrative Matters
III. Expense Accounts Subcommittee's December 1982, report on Capital Recovery/Cost of Removal/Salvage
IV. Proposed Expense Accounts Matrix Concept
V. Status of each subcommittee's progress to date and future work plans
VI. Other Business
VII. Presentation of Oral Statements
VIII. Adjournment

With prior approval of the Chairman, Gerald P. Vaughan, oral statements, while not favored or encouraged, may be allowed if time permits and if the Chairman determines that an oral presentation is conducive to the effective attainment of Steering Committee objectives. Anyone not a member of the Steering Committee and wishing to make an oral presentation should contact Stephen T. Duffy, Group Vice-Chairman (202/634-1509), at least five days prior to the meeting date.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-18535 Filed 7-8-83; 8:45 am]

BILLING CODE 6717-01

National Industry Advisory Committee Long Range Planning Committee; Meeting

Pursuant to the provisions of Pub. L. 92-463, announcement is made of a public meeting of the Long Range Planning Committee of the National Industry Advisory Committee (NIAC) to be held Tuesday, July 26, 1983. The Committee will meet at 9:30 A.M. in the Continental Room of the Embassy Row Hotel, 2015 Massachusetts Avenue, N.W., Washington, D.C.

Purpose

To consider emergency communications matters.

Agenda

1. Opening remarks by Chairman and approval of minutes—C. J. McLean.
2. Report on National Security Telecommunications Advisory Committee (NSTAC) meeting of July 19/20 at SAC Omaha—C. J. McLean.
3. Report of the NIAC Emergency Broadcast Subcommittee—J. Summers.
4. National Communications System (NSC) briefing on NATO Civil Communications Planning Committee (CCPC) meeting of October 1983—G. L. Engelbrake.
5. Report of the NIAC Radio Communications Subcommittee—M. E. Crosby, J. W. Gallelli.
6. Other business.
7. Adjournment.

Any member of the public may attend or file a written statement with the Committee either before or after the meeting. Any member of the public wishing to make an oral statement must consult with the Committee prior to the meeting. Those desiring more specific information about the meeting may telephone the NIAC Executive Secretary in the FCC Emergency Communications Division at (202) 634-1549.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-18798 Filed 7-8-83; 9:56 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Form Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection packages for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Revision of OMB Number 3067-0036.

Title: Pre-Placement Interview.

Abstract: For victims of Presidentially-declared disasters, this information ascertains changes to the Application, clarifies missing data, determines and identifies type of temporary housing assistance disaster victims are to receive.

Type of Respondents: Individuals or Households.

Number of Respondents: 12,000.

Burden Hours: 2,000.

Type: Revision of OMB Number 3067-0008.

Title: Application for Temporary Housing Assistance.

Abstract: Used to establish the request and need of a victim of a Presidentially-declared disaster for temporary housing assistance.

Information is used in contact and identification of damaged residence, to assist in developing an individual temporary housing plan, to establish priority processing, in making determinations regarding availability of adequate alternate housing, duplication of benefits, and overall workload planning.

Type of Respondents: Individual or Households.

Number of Respondents: 19,000.

Burden Hours: 4,750.

Type: New.

Title: Request of Loan Information.

Abstract: Used to obtain information required to determine a fair and equitable sales price of a mobile home unit to a disaster victim. The ability to borrow money commercially is an important factor in determining the final sales price.

Type of Respondents: Individuals or Households, Small Businesses or Organizations.

Number of Respondents: 500.

Burden Hours: 85.

Type: New.

Title: Eligibility Determination—Part B, Duplication of Benefits.

Abstract: Used to document the determination regarding duplication of benefits and serves as the record for the final eligibility of the disaster victim. The information is obtained from the applicant (on the Temporary housing application) and when necessary, from the insurance company.

Type of Respondents: Individuals or Households, Small Businesses or Organizations.

Number of Respondents: 4,500.

Burden Hours: 375.

OMB Desk Officer: Ken Allen (202) 395–3786.

Copies of the above information collection clearance packages can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley (202) 287–9906, Federal Plaza Center, 500 C. St., SW, Washington, D.C. 20472.

Written comments and recommendations for the proposed information collection packages should be sent to Linda Shiley, REMA Reports Clearance Officer, Federal Plaza Center, 500 C Street, SW, Washington, D.C. 20472 and to Ken Allen, Desk Officer, OMB Reports Management Branch, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: July 1, 1983.

Walter A. Girstantas,

Assistant Associate Director, Administrative Support.

[FR Doc. 83-18546 Filed 7-8-83; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-686-DR]

Arizona; 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 Arizona (FEMA–686–DR), dated July 1, 1983, and related determinations.

DATED: July 1, 1983.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287–0501.

Notice: Notice is hereby given that, in a letter of July 1, 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 Arizona, resulting from flooding beginning on or about June 20, 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 Arizona.

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.

You are authorized to provide Individual Assistance in the affected areas. You also are authorized to provide Public Assistance in the affected areas if requested and necessary, and an acceptable State commitment for these purposes is provided. 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.

Pursuant to Section 408(b) of Pub. L. 93–288, you are authorized to advance to the State its 25 percent share of the Individual and Family Grant program, to be repaid to the United States by the State when it is able to do so.

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 Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Robert J. Adamcik 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 Arizona to have been affected adversely by this declared major disaster:

LaPaz, Mohave and Yuma Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

[FR Doc. 18545 Filed 7-8-83; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-687-DR]

California; 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 California (FEMA–687–DR), dated July 1, 1983, and related determinations.

DATE: July 1, 1983.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287–0501.

Notice: Notice is hereby given that, in a letter of July 1, 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 California, resulting from flooding beginning on or about June 20, 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 California.

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.

You are authorized to provide Individual Assistance in the affected areas. You also are authorized to provide Public Assistance in the affected areas if requested and necessary, and an acceptable State commitment for these purposes is provided. 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.

Pursuant to Section 408(b) of Pub. L. 93–288, you are authorized to advance to the State its 25 percent share of the Individual and Family Grant program, to be repaid to the United States by the State when it is able to do so.

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 Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Robert J. Adamcik 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 California to have been affected adversely by this declared major disaster:

Imperial, Riverside and San Bernardino Counties for Individual 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. 83-18544 Filed 7-8-83; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Listing of Controlled Carriers

AGENCY: Federal Maritime Commission.

ACTION: Listing of Controlled Carriers.

SUMMARY: The Federal Maritime Commission is adding Pharonic Shipping Company (S.A.E.) and Empresa Maritima del Estado (Empremar Line) to the list of "controlled carriers" subject to the regulatory requirements of section 18(c) of the Shipping Act, 1916. The previous list was published in the Federal Register September 1, 1982 (47 FR 38633).

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573; (202) 523-5725.

SUPPLEMENTARY INFORMATION: Section 18(c) of the Shipping Act, 1916 (the Act) (46 U.S.C. 817(c)) provides for the regulation of rates or charges of certain state-owned carriers in the foreign commerce of the United States. However, not all controlled carriers are subject to these regulatory requirements. Section 18(c)(6) of the Act sets forth two categories of controlled carriers which are exempt from these regulatory requirements and three conditions under which controlled carriers are exempt in certain trades areas. The relevant exemption here has been "The provisions of this subsection shall not apply to: * * * rates, charges, classifications, rules, or regulations governing the transportation of cargo by a controlled carrier between the country by whose government it is owned or controlled * * * and the United States * * *" 46 U.S.C. 817(c)(6)(iv).

In order to identify controlled carriers that are not exempt from the provisions of the Act, the Commission periodically issues section 21 Orders to carriers who could meet the definition of a controlled carrier under the Act. The Orders require the carriers to answer questions concerning ownership, flag of their vessels, operating areas, United States trades served, and their opinion as to possible exemptions.

The Commission has reviewed the response to its section 21 Order issued to Pharaonic Shipping Co. (S.A.E.) (Pharaonic) and found that Pharaonic meets the definition of a controlled carrier set forth in the Act. Through a letter dated April 20, 1983, Pharaonic was notified that it has been found to be a controlled carrier, subject to the regulatory requirements of section 18(c).

The Commission also reviewed the response to its section 21 Order issued to Empresa Maritima del Estado (Empremar Line) and found that the Empremar Line meets the definition of a controlled carrier set forth in the Act. Through a letter dated October 10, 1980 Empremar Line was notified that it had been found to be a controlled carrier. Since Empremar Line's service, at that time, was limited to our bilateral trades, the Commission advised the line that it "is exempted from the requirements of section 18(c) as long as its service is limited to the trade between our two countries, * * *" Late in 1982 Empremar Line gave some indication that they would be entering United States cross-trades. However, on May 24, 1983 Empremar Line filed with the Commission its tariff FMC-4 indicating intermodal rates from interior points in the United States to ports in Chile, Costa Rica, Dominican Republic, Guatemala, Haiti, Honduras, Jamaica, Leeward and Windward Islands, Nicaragua, Peru, Trinidad and Tobago.

Therefore, the Commission is adding Pharaonic Shipping Company (S.A.E.) (Pharaonic) and Empresa Maritima del Estado (Empremar Line) to the list of controlled carriers subject to the regulatory provisions of section 18(c) of the Act, which list was previously published in the Federal Register on September 1, 1982.

The process of identification and classification of controlled carriers is continuous. The list as shown will be amended as such carriers enter and leave the United States trades or under any other circumstances become exempt from the regulatory requirements of section 18(c) of the Act.

The amended list is shown below:

Baltic Shipping Co.—U.S.S.R.
Bangladesh Shipping Corp.—Bangladesh
Black Sea Shipping Company—U.S.S.R.
Black Star Line—Ghana
China Ocean Shipping Co. (COSCO)—People's Republic of China
Compagnie Maritime Zairoise (CMZ)—Zarie
Compagnie Nationale Algerienne de Navigation—Algeria
Companhia de Navegacao Loide Brasileiro—Brazil
Compania Chilena De Navegacion Interoceanica, S.A.—Chile
Djakarta Lloyd, P.T.—Indonesia
Egyptain National Line—Egypt
Empresa Maritima del Estdo (Empremar Line)—Chile
Far Eastern Shipping Co. (FESCO)—U.S.S.R.
Flota Mercante Gran Centro Americana S.A. (Flomerca)—Guatemala
Galleon Shipping Corporation and/or National Galleon Shipping Corporation—Philippines
Murmansk Shipping Co. (Arctic Line)—U.S.S.R.
Neptune Orient Lines (NOL)—Singapore
Pakistan National Shipping Corporation—Pakistan
Peruvian State Line—Peru
Pharaonic Shipping Co. (S.A.E.) (Pharaonic)—Egypt
Polish Ocean Lines—Poland
Shipping Corporation of India—India
South African Marine Corp. Ltd.—South Africa
Transportes Navieros Ecuatorianos (Transnave)—Ecuador

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 83-18615 Filed 7-8-83; 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 § 3(c) of the Act (12 U.S.C. § 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a

statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Banc One Corporation*, Columbus, Ohio; to acquire 100 percent of the voting shares or assets of First National City Bank of Alliance, Alliance, Ohio. Comments on this application must be received not later than August 2, 1983.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. **Princeton Banc Holding Company**, Princeton, West Virginia; to acquire 52 percent of the voting shares of The Castle Rock Bank of Pineville, Pineville, West Virginia. Comments on this application must be received not later than August 5, 1983.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *GL & ML, Limited*, Aplington, Iowa; to acquire 51 percent of the voting shares or assets of Aplington Insurance, Inc., Aplington, Iowa. Comments on this application must be received not later than August 2, 1983.

2. *Hawkeye Bancorporation*, Des Moines, Iowa; to acquire 100 percent of the voting shares or assets of Tipton Company, Inc., Tipton, Iowa, and indirectly acquire 50.03 percent of the voting shares of Tipton State Bank, Tipton, Iowa, and directly acquire 49.97 percent of the voting shares of Tipton State Bank, Tipton, Iowa. Comments on this application must be received not later than August 5, 1983.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First American Bancshares, Inc.*, Baytown, Texas; to acquire 100 percent of the voting shares or assets of First American Bank and Trust of Manvel, Manvel, Texas. Comments on this application must be received not later than August 2, 1983.

2. *Southwest First Community, Inc.*, Beeville, Texas; to acquire 80 percent or more of the voting shares or assets of Commercial State Bank, Sinton, Texas. Comments on this application must be received not later than August 2, 1983.

E. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *Comerica, Incorporated*, Detroit, Michigan; to acquire 25 percent or more of the voting shares or assets of Pontiac State Bank, Pontiac, Michigan. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Chicago. Comments on this application must be received not later than August 5, 1983.

2. *First Arkansas Bankstock Corporation*, Little Rock, Arkansas; to acquire 100 percent of the voting shares or assets of First National Bank of Camden, Camden, Arkansas. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Chicago. Comments on this application must be received not later than August 5, 1983.

Board of Governors of the Federal Reserve System, July 5, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-1855 Filed 7-8-83; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in 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 Boston** (Richard E. Randall, Vice President), 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Profile Financial Corporation*, Plaistow, New Hampshire; to become a bank holding company by acquiring 100 percent of the voting shares of Plaistow Bank & Trust Company, Plaistow, New Hampshire. Comments on this application must be received not later than August 3, 1983.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President), 701 East Byrd Street, Richmond, Virginia 23261:

1. *Old National Bancorp, Inc.*, Martinsburg, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of The Old National Bank of Martinsburg, Martinsburg, West Virginia. Comments on this application must be received not later than August 5, 1983.

2. *Republic Bancorp of S.C., Inc.*, Columbia, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Republic National Bank, Columbia, South Carolina. Comments on this application must be received not later than August 3, 1983.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Cypress Banks, Inc.*, Wesley Chapel, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of the South, Wesley Chapel, Florida. Comments on this application must be received not later than August 5, 1983.

D. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Alliance Financial Corporation*, Dearborn, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of the successor by consolidation to Dearborn Bank and Trust Company, Dearborn, Michigan. Comments on this application must be received not later than August 3, 1983.

E. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President), 400 Sansome Street, San Francisco, California 94120:

1. *National InterCity Bancorp*, Santa Clara, California; to become a bank holding company by acquiring 100 percent of the voting shares of National InterCity Bank, Santa Clara, California. Comments on this application must be received not later than August 3, 1983.

F. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary), Washington, D.C. 20551:

1. *Spur Bancshares, Inc.*, Spur, Texas; to become a bank holding company by acquiring at least 80 percent of the voting common stock of Ranco Bancshares, Inc., Spur, Texas and Spur Security Bank, Spur, Texas. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Dallas. Comments on this application must be received not later than August 5, 1983.

2. *United Bancshares, Inc.*, Lincoln, Nebraska; to become a bank holding

company by acquiring 80 percent of the voting shares of Gateway Bank & Trust Company, Lincoln, Nebraska. 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 August 5, 1983.

Board of Governors of the Federal Reserve System, July 5, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-18558 Filed 7-6-83; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed De Novo Nonbank Activities

The oraganizations identified in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.4(b)(1) of the Board's Regulation Y (12 CFR § 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to these applications, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any comment that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearing should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Old Stone Corporation,* Providence, Rhode Island (mortgage banking and insurance activities; Arizona): To engage through a new office of its indirect subsidiary, UniMortgage Corporation of Arizona, in the origination, sale and servicing of first and second mortgage loans; and to engage through its subsidiary, American Standard Insurance Agency, in the sale of credit life and credit accident and health insurance, which insurance would be reinsured by an affiliate, The Motor Life Insurance Agency, Jacksonville, Florida. These activities would be conducted in the metropolitan area of the cities of Tempe, Chandler, Gilbert and Apache Junction and the county of Maricopa, Arizona. Comments on this application must be received not later than August 2, 1983.

2. *Old Stone Corporation,* Providence, Rhode Island (mortgage banking and insurance agency activities; California): To engage through a new branch office of its existing indirect subsidiary, UniMortgage Corporation of CA, in the origination, sale and servicing of first and second mortgage loans; and to engage through its subsidiary, American Standard Insurance Agency, in the sale of credit life and credit accident and health insurance offered in connection with extensions of credit, which insurance would be reinsured by an affiliate, The Motor Life Insurance Agency, Jacksonville, Florida, and in the sale of casualty insurance on property mortgaged in connection with extensions of credit by UniMortgage Corporation of CA through American Standard Insurance Agency. The sale of casualty insurance in connection with the extensions of credit by UniMortgage Corporation of CA is grandfathered under section 601(D) of the Garn-St Germain Depository Institutions Act and was approved on July 6, 1981. These activities would be conducted in the metropolitan area of the city of Santa Ana and the county of Orange, California, as well as the contiguous counties of Riverside and Los Angeles, California. Comments on this application must be received not later than August 1, 1983.

3. *RIHT Financial Corporation,* (formerly Hospital Trust Corporation), Providence, Rhode Island (mortgage banking and servicing activities; Nationwide): to engage through its subsidiary, RIGH Mortgage Corporation, in the origination, sale and servicing of residential and commercial mortgage loans. The activities would be conducted from an office to be located in Palm Beach Gardens, Florida. The service area for the mortgage banking activities would be Florida; the servicing activity would be offered on a nationwide basis. Comments on this application must be received not later than August 2, 1983.

B. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Citicorp,* New York, New York (consumer finance and credit-related insurance activities; Virginia): To establish a *de novo* office of Citicorp Homeowners, Inc. and a *de novo* office of Citicorp Person-to-Person Financial Center, Inc. at a share location in Newport News, Virginia. The activities in which both the *de novo* offices of Citicorp Homeowners, Inc. and Citicorp Person-to-Person Financial Center, Inc.propose to engage at the shared office location are: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the sale of credit related life and accident and health insurance by licensed agents or brokers, as required; the making acquiring, and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area for the *de novo* office of Citicorp Homeowners, Inc. and the *de novo* office of Citicorp Person-to-Person Financial Center, Inc. is the State of Virginia. Comments on this application must be received not later than August 3, 1983.

2. *European American Bancorp,* New York, New York (mortgage banking, loan sevicing, and real estate appraisal activities; Connecticut): To retain a *de novo* office of its subsidiary, Dorman & Wilson, Inc to engage in mortgage banking, loans servicing, and real estate appraisal activities. These activities will be conducted from an office in Stamford, Connecticut, serving the State of Connecticut. Comments on this application must be received not later than August 3, 1983.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Firstbank of Illinois Co.,* (mortgage banking and insurance activities; Illinois): To engage, through its subsidiary, Firstbank Mortgage Co., in the mortgage banking business.

including originating, acquiring and servicing mortgage loans to commercial and consumer customers, and selling as agent credit life, accident and health insurance directly related to such extensions of credit, such as mortgage life insurance. These activities would be conducted in Illinois. Comments on this application must be received not later than July 22, 1983.

D. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Central Corporation*, Searcy, Arkansas (real estate appraisal: Arkansas): To directly engage in appraisal services. These services would be performed from an office in Searcy, Arkansas, serving White County, Arkansas, and the surrounding area. Comments on this application must be received not later than July 29, 1983.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Bancshares of Muskogee, Inc.*, Muskogee, Oklahoma (insurance activities; Oklahoma): To engage through its subsidiary, First of Muskogee Insurance Corp., in the activity of selling credit life and credit accident and health insurance in connection with credit transactions of the First National Bank & Trust Co. of Muskogee, Oklahoma. These activities would be performed from an office in Muskogee, Oklahoma, serving the State of Oklahoma. Comments on this application must be received not later than August 3, 1983.

2. *Liberty National Corporation*, Oklahoma City, Oklahoma (real estate construction financing, Oklahoma): To establish an office in Tulsa, Oklahoma for its subsidiary, Liberty Financial Corporation, to engage in real estate construction financing in Tusla and throughout the State of Oklahoma. Comments on this application must be received not later than August 5, 1983.

3. *Omnibancorp*, Denver, Colorado (insurance activities: Colorado): To act as agent, through its subsidiaries, Omnibank Louisville, Omnibank University Hills, N.A., Omni Bank Parker road, N.A., and Omnibank Arapahoe, N.A. (information), for sale of credit life insurance and credit accident and health insurance directly related to its extensions of credit. This activity would be conducted in the State of Colorado. Comments on this application must be received not later than August 2, 1983.

F. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *Wells Fargo & Company*, San Francisco, California (finance, leasing, investment advisory and data processing activities; United States and abroad): To engage, through its subsidiary, Wells Fargo realty Advisors, in making or acquiring for its own account or for the account of others loans and other extensions of credit; servicing loans for the account of others; leasing real and personal property; acting as investment or financial advisor; acquiring and servicing such investments for the account of others, including acting as an agent, broker or advisor in leasing real and personal property; and providing bookkeeping and data processing services for its internal operations and for the processing and transmission of financial, banking and economic data for its clients in connection with and related to its advisory services for such clients, in accordance with the Board's Regulation Y. These activities would be conducted from offices in San Francisco, California, and in the Washington, D.C. metropolitan area (which area includes the District of Columbia and its Maryland and Virginia suburbs), serving commercial borrowers throughout the United States and abroad. Comments on this application must be received not later than August 3, 1983.

2. *Wells Fargo & Company*, San Francisco, California (Finance, leasing and insurance activities; Texas, Arkansas, Louisiana, New Mexico and Oklahoma): To engage, through its subsidiary, Wells Fargo Credit Corporation, in making or acquiring loans and other extensions of credit, including consumer installment loans originated by others and commercial loans secured by a borrower's or guarantor's assets; servicing loans for the account of others; making full pay-out leases of personal property; and acting as agent for credit life or accident and health insurance related to its extensions of credit in accordance with the Board's Regulation Y and Title VI of the Garn-St. Germain Depository Institutions Act of 1982. These activities would be conducted from an office in Fort Worth, Texas, seving Texas, Arkansas, Louisiana, New Mexico, and Oklahoma. Comments on this application must be received not later than August 3, 1983.

Board of Governors of the Federal Reserve System, July 5, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-18558 Filed 7-8-83; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Jewel Bearings and Related Items Certificate Requirements; Certification of Independent Price Determination and Parent Company and Identifying Data; Statement of Contingent or Other Fees (Representation and Agreement)

AGENCY: General Services Administration.

ACTION: Notice of Information Collections: Existing, Revision.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the General Services Administration plans to request the Office of Management and Budget to review and approve the continued use of the above information collections.

DATE: Comments on the information collection requests must be submitted on or before July 29, 1983.

ADDRESSES: Send comments to Franklin S. Reeder, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to John Gilmore, GSA Clearance Officer, GSA (ORAI), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Victoria Moss, GSA (703-696-5180).

SUPPLEMENTARY INFORMATION:

a. The jewel bearings and related items information ensures compliance with contract clauses regarding the required use of government sources of supplies.

b. The certification provisions ensure that contracts are not awarded to firms violating antitrust laws.

c. The representation and agreement provisions ensure that a firm has not illegally employed another firm or person to obtain a contract.

d. A copy of the information collection proposals may be obtained from the Directives and Reports Management Branch (ORAI), Room 3015, GS Building, Washington, DC 20405, telephone (202-566-0666).

Dated: June 30, 1983.

Clarence A. Lee, Jr.,

Director of Administrative Services.

[FR Doc. 83-18621 Filed 7-8-83; 8:45 am]

BILLING CODE 6820-34-M

Qualified Products Identification; Organizational Conflict of Interest

AGENCY: General Services Administration.

ACTION: Notice of Existing Information Collections.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the General Services Administration plans to request the Office of Management and Budget to review and approve the above information collection requests.

DATE: Comments on these information requests must be submitted on or before August 3, 1983.

ADDRESSES: Send comments to Franklin S. Reeder, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and John Gilmore, GSA Clearance Officer, GSA (ORAI), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Victoria Moss, GSA (202-696-5180).

SUPPLEMENTARY INFORMATION: The products identification information is necessary to ensure that only qualified items are purchased and to determine eligibility requirements. The conflict of interest requirement is necessary to identify, evaluate, or resolve potential organizational conflicts. A copy of the information collection proposals may be obtained from the Directives and Reports Management Branch (ORAI), Room 3015, GS Building, Washington, DC 20405, telephone (202-566-1164).

Dated: June 30, 1983.

Clarence A. Lee, Jr.,

Director of Administrative Services.

[FR Doc. 83-18620 Filed 7-8-83; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Functions, Organization, and Delegations of Authority

Part A (Office of the Secretary) Chapter AML4 (Division of Budget Policy and Management) (44 FR 28730, May 16, 1979) of the Department of Health and Human Services is amended. This Notice deletes those portions of Chapter AML4 not required by Department policy to be included in the Statement of Organization, Functions, and Delegations of Authority. The deletion is as follows:

1. Delete in its entirety Part A, Chapter AML4 (Division of Budget Policy and Management), Section AML4.10 Organization and Section AML4.20 functions.

Dated: June 30, 1983.

Dale W. Sopper,

Assistant Secretary for Management and Budget.

[FR Doc 83-18804 filed 7-8-83; 8:45 am]

BILLING CODE 4150-04-M

Health Resources and Services Administration

General Notice of Funding Levels and Priorities for the National Health Service Corps (NHSC) Scholarship Program; Retention Special Pay (RSP) for NHSC Personnel

AGENCY: Public Health Service, HHS.

ACTION: General Notice.

SUMMARY: Due to a reduced level of appropriations for the NHSC Scholarship Program (section 338A *et seq.*, of the Public Health Service (PHS) Act) in Fiscal Year (FY) 1983, the Health Resources and Services Administration (HRSA) is issuing this notice to describe certain reductions in the scholarships awarded to students under the NHSC Scholarship Program and to establish priorities for making the scholarship awards for the 1983-84 school year.

This notice will also clarify new statutory language regarding RSP for NHSC personnel.

FOR FURTHER INFORMATION CONTACT: James H. Daugherty, Director, Division of Health Sevices Scholarships, Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, Parklawn Building, Room 7-34, 5600 Fishers Lane, Rockville, Maryland 20857, Phone (301) 443-3744.

SUPPLEMENTARY INFORMATION:

Reduced Stipends

The NHSC Scholarship Program legislation provides that students who enter into a contract with the Secretary will receive a scholarship consisting of tuition, all other reasonable educational expenses, and a stipend of $400 per month adjusted in accordance with the rates of pay under the General Schedule (section 338A(g) of the PHS Act). (Applying such an adjustment for the 1982-83 school year, the stipend is now $556.) Section 338A(f)(2) of the PHS Act and the scholarship contract provide that any financial obligation of the United States arising from such contract is contingent on the availability of funds being appropriated. Since the level of appropriations under the Further Continuing Appropriations Act, 1983 (Pub. L. 97-377) is insufficient to make the full section 338(A)(g) award, the awards for the 1983-84 school year will consist of tuition and direct fees (as determined by the institution and transmitted to the program by the established closing date) and a stipend reduced by approximately one-half. Payments for other reasonable expenses will be eliminated.

The program's decision to distribute available funding to the components of a section 338A(g) award as described above is consistent with Congressional intent. The Senate Committee on Appropriations stated that it concurred "with the House action in reducing the stipend portion of the scholarship and in eliminating the financing of indirect educational costs" and further explained that "this will enable the program to fully fund the tuition and direct fees expense which represents the most critical element of a student's education" (S. Rep. No. 97-680, 97th Cong., 2d Sess. 21 (1982)). Scholarship participants who previously entered multi-year contracts beginning with the 1982-83 school year are funded from a different appropriation and will continue to receive full scholarship awards as previously provided for in their contracts.

Priority for Award

Section 338A(d)(1) states that in determining which applications for scholarships to approve, priority will be given to individuals who have previously received scholarships under the NHSC Scholarship Program or the Exceptional Financial Need (EFN) Scholarship Program (section 758 PHS Act). The EFN Scholarship Program provides funds to accredited schools for scholarships to full-time students who are of exceptional financial need and are in their first year of study. The HRSA has determined that for Fiscal Year (FY) 1983, priority will be given to applications made by individuals who have previously received scholarships under the NHSC Scholarship Program because of the statutory commitment for continued support subject to the availability of appropriated funds (section 338A(f)(1)(a)).

The HRSA is also considering the possibility of reprogramming funds from the NHSC field staff budget. Should this occur, these funds would be available for NHSC scholarships to former EFN students, including full tuition and direct fees expense, but at the reduced stipend level and with no funds for other educational expenses. In determining which former EFN applicants will receive scholarships, HRSA will consider the factors used in selecting first time NHSC scholarship recipients, namely, year of graduation, work experience, community background, career goals, and faculty recommendation. Special consideration will be given to individuals who indicate an intent to pursue types of clinical practice or specialized training for which the NHSC has a particular need.

Retention Special Pay

Pub. L. 97–377 also provides that FY 1983 funds made available under that Act are not available to provide RSP (37 U.S.C. 302(a)) to NHSC personnel who are serving a period of obligated service, unles such service was covered by an agreement entered into before December 21, 1982. The Senate Committee on Appropriations stated that they intended "to exclude new Corps personnel from receiving special retention pay if they are serving a period of obligated service" (S. Rep. No. 97–680, 97th Cong., 2d Sess. 21 (1982)). Virtually identical language is found in the House Committee on Appropriations action (H. Rep. No. 97–894, 97th Cong., 2d Sess. 19 (1982)). It is clear that the intent was to bar payment of RSP to officers newly entering the program after the effective date of Pub. L. 97–377. Those NHSC personnel currently receiving RSP and whose contracts were in effect on or before December 20, 1982, but which terminate prior to the full period of obligated service, will have their contracts extended and the RSP will continue to be paid.

This notice does not apply to scholarships awarded under authority of section 338G of the PHS Act, Indian Health Scholarship Program.

Dated: June 30, 1983

Robert Graham,

Administrator, Assistant Surgeon General.

[FR Doc. 83-18540 Filed 7-8-83; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Privacy Act of 1974; Notification of New System of Records

AGENCY: Public Health Service, Health and Human Services Department.

ACTION: Notification of New System of Records, "Health Resources and Services Administration Loan Repayment/Debt Management Records System, HHS/HRSA/OA, 09–15–0045."

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing notice of a proposal to establish a new system of records entitled "Health Resources and Services Administration Loan Repayment/Debt Management Records System, HHS/HRSA/OA," 09–15–0045.

PHS invites interested persons to submit comments on the proposed routine use established for the new system of records on or before August 10, 1983.

DATES: PHS has sent a Report of New System to the Congress and to the Office of Management and Budget (OMB) on June 28, 1983. PHS has requested that OMB grant a waiver of the usual requirement that a system of records not be put into effect until 60 days after the report is sent to OMB and Congress. If this waiver is granted, PHS will publish a notice to that effect in the **Federal Register**, and the system will be effective on the date of the waiver. The routine uses will be effective 30 days after the date of publication unless PHS receives comments which would result in a contrary determination.

ADDRESS: Address comments to the HRSA Privacy Act Coordinator, Department of Health and Human Services, Parklawn Building, Room 14A–20, 5600 Fishers Lane, Rockville, Maryland 20857. We will make comments received available for public inspection at the above address during the normal business hours, 8:30 a.m.–5 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra L. Perry, Privacy Act Coordinator, Health Resources and Services Administration, Parklawn Building, Room 14A–20, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–3780. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: HRSA is proposing to establish this system of records to include individuals who are receiving and have received student loans, scholarships, traineeships, or grant funds, *and* who are delinquent in repaying either loans or funds owed in lieu of a service obligation under the following HRSA-funded programs:

1. National Health Service Corps Scholarship Program
2. Indian Health Scholarship Program
3. Health Education Assistance Loan (HEAL) Program
4. Health Professions Student Loan Program
5. Physician Shortage Area Scholarship Program
6. Nurse Practitioner Traineeship Program
7. Professional Nurse Traineeship Program
8. Nursing Student Loan Program
9. Cuban Loan Program

The purpose of the proposed system of records is to protect the programmatic and financial integrity of Federal funds awarded to individuals through student loans, scholarships, traineeships, and educational grants administered by HRSA. The system is maintained to reduce the amount of outstanding debts owed to the Federal Government.

The proposed system will include a list—supplied by the Office of the Inspector General, DHHS—of 690 individuals who are both delinquent borrowers and who are employed by the Federal Government. Future plans call for enlargement of the number of individuals included as new debt management and collection activities are initiated by the HRSA programs listed above.

Records in the system will be indexed and retrieved by name, Social Security number (SSN), and other identifying information, such as educational loan status, amount of student indebtedness, and schools of attendance of borrowers. The use of an individual's SSN is in compliance with the Debt Collection Act of 1982, Pub. L. 97–365, which provides for the disclosure of the individual's name, address, taxpayer identification number (*SSN*), and other information necessary to establish the identity of the individual; the amount, status, and history of the claim; and the agency or program under which the claim arose. The Debt Collection Act specifically authorizes disclosure of personal information from agency systems of records in order to promote the more efficient collection of debts owed to the Federal Government. HRSA is responsible for reviewing all claims and validating that claims are overdue, and for notifying the debtor in writing of the following: (1) That a claim is overdue, (2) that the agency intends to disclose information about the debtor to the Federal agencies employing them, (3) what that disclosure will consist of, and (4) what the debtor's rights are with respect to the claim. HRSA will only disclose information to other Federal agencies when it has fully determined that the debtor has both failed to repay the debt and has failed either to agree in writing to reschedule the debt for repayment, or to file for a review of the claim. Access to records will be strictly limited to authorized users who are aware of their responsibilities under the provisions of the Privacy Act and are required to maintain Privacy Act safeguards with respect to such records.

The Privacy Act of 1974 allows disclosure of information without the consent of the individual for "routine uses," that is, disclosure for purposes which are compatible with the purposes for which the data are collected. Accordingly, we have established five routine uses for information in this system. They are as follows:

1. Records may be disclosed to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

This routine use is proposed to allow subject individuals to obtain assistance

from their representative in Congress, should they so desire. This routine use is compatible with the purpose of the system because such disclosure would be made only pursuant to a request of the individual.

2. Records may be disclosed to authorized persons employed at educational institutions where the recipient received a loan, scholarship, or grant. The purpose of this disclosure is to assist institutions in identifying delinquent borrowers and to enforce the conditions and terms of such loans, scholarships, and grants.

This routine use is proposed to permit educational institutions the opportunity to collect from subject individuals outstanding debts owed to the Federal Government, and, therefore, is compatible with the purpose of the system.

3. Records may be disclosed to other Federal agencies where an applicant for employment, or a current employee of that agency, is delinquent in repaying his/her Federal financial obligation. The purpose of this disclosure is to enlist the agency's cooperation in facilitating repayment.

This routine use is proposed to alert Federal agencies to the fact that delinquent borrowers are included among their employees/applicants, and to provide the opportunity to collect from subject individuals outstanding debts owed to the Federal Government. For this reason, the proposed routine use is compatible with the purpose of the system.

4. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, such as the General Accounting Office, the Office of Management and Budget, the Department of Justice, and State agencies charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

This routine use is proposed to allow Federal and State agencies the opportunity to investigate violations and potential violations of laws. Therefore, the proposed routine use is compatible with the purpose of the system.

5. In the event of litigation where the defendant is: (a) The Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to provide an effective defense.

This routine use is proposed to allow the Department of Justice to defend the Federal Government and the Department of Health and Human Services in the event of lawsuits in which individuals may claim to have been harmed as a result of Federal debt collection efforts to accomplish the purpose of the system. We believe that the proposed routine use is compatible with the purpose of the system because of the Federal Government's need to defend itself when undertaking an authorized function.

The following notice is written in the present rather than the future tense to avoid the expenditure of public funds to republish the notice after the system has become effective.

Dated: June 29, 1983.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

09-15-0045

SYSTEM NAME:

Health Resources and Services Administration Loan Repayment/Debt Management Records Systems, HHS/HRSA/OA.

SYSTEM LOCATION:

Division of Fiscal Services, Office of the Administrator, HRSA, Parklawn Building, Room 16-05, 5600 Fishers Lane, Rockville, MD 20857.

Bureau of Health Professions, HRSA, Parklawn Building, Room 6-05, 5600 Fishers Lane, Rockville, MD 20857.

Indian Health Service, HRSA, Parklawn Building, Room 6A-23, 5600 Fishers Lane, Rockville, MD 20857.

Bureau of Health Care Delivery and Assistance, HRSA, Parklawn Building, Room 7-05, 5600 Fishers Lane, Rockville, MD 20857.

Washington National Records Center, 4205 Suitland Road, Washington, DC 20405.

Division of Computer Research and Technology, NIH Building 12, 9000 Rockville Pike, Bethesda, MD 20205.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have received student loans, scholarships, traineeships, or grant funds under Titles III, VII, and VIII of the Public Health Service Act, as amended, *and* who are delinquent in repaying either loans or funds owed in lieu of a service obligation under such programs. The individuals covered by this system include health professionals and students in various health professions: physicians, dentists, pharmacists, optometrists, podiatrists, veterinarians, public health personnel, audiologists, speech pathologists, health care administration personnel, medical technologists, chiropractors, clinical psychologists, and other health personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains loan repayment status, amounts of student indebtedness, schools of attendance of borrowers, lending institutions of borrowers, tax identification numbers (Social Security numbers), and demographic information pertaining to borrowers funded by HRSA.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Subpart II, Part D, Title III of the Public Health Service Act, as amended (42 U.S.C. 254d-294y), National Health Service Corps Program which includes the Indian Health Scholarship Program;

Subpart I, Part C, Title VII of the Public Health Service Act, as amended (42 U.S.C. 294-294*l*), Federal Program of Insured Loans to Graduate Students in Health Professions Schools;

Subpart II, Part C, Title VII of the Public Health Service Act, as amended (42 U.S.C. 294m-294q), Health Professions Student Loans;

Section 822 of the Public Health Service Act, as amended (42 U.S.C. 296m), Nurse Practitioner Programs;

Section 830 of the Public Health Service Act, as amended (42 U.S.C. 297), Traineeships for Advanced Training of Professional Nurses;

Subpart II, Part B, Title VIII of the Public Health Service Act, as amended (42 U.S.C. 297a-297h), Nursing Student Loans;

Health Professions Educational Assistance Act of 1976, Pub. L. 94-484 Section 409(b) (42 U.S.C. 295g);

Migration and Refugee Assistance Act of 1962, Pub. L. 87-510 (22 U.S.C. 2601);

Indian Health Care Improvement Act, Pub. L. 94-437, as amended (25 U.S.C. 1601 *et seq.*); and

Debt Collection Act of 1982, Pub. L. 97–365 (5 U.S.C. 5514 note).

PURPOSE(S):

The purpose of the system is to protect the programmatic and financial integrity of Federal funds awarded to individuals through student loans, scholarships, traineeships, and educational grants administered by the Health Resources and Services Administration (HRSA). This system is maintained to reduce the amount of outstanding debts owed to the Federal Government.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSE OF SUCH USES:

1. Records may be disclosed to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. Records may be disclosed to authorized persons employed at educational institutions where the recipient received a loan, scholarship, or grant. The purpose of this disclosure is to assist institutions in identifying delinquent borrowers and to enforce the conditions and terms of such loans, scholarships and grants.

3. Records may be disclosed to other Federal agencies where an applicant for employment, or a current employee of that agency is delinquent in repaying his/her Federal financial obligation. The purpose of this disclosure is to enlist the agency's cooperation in facilitating repayment.

4. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule of order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, such as the General Accounting Office, the Office of Management and Budget, the Department of Justice, and State agencies charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued prusuant thereto.

5. In the event of litigation where the defendant is: (a) The Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to provide an effective defense.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, ledgers, magnetic tapes, and electronic word processing diskettes.

RETRIEVABILITY:

Records are retrievable by name, Social Security number (SSN), award number, and by school of attendance.

SAFEGUARDS:

1. *Authorized Users:* Employees and officials directly responsible for programmatic or fiscal activity, including administrative and staff personnel, financial management personnel, computer personnel, and managers who have responsibilities for implementing HRSA-funded programs.

2. *Physical Safeguards:* file folders, reports and other forms of personnel data, and electronic diskettes are stored in areas where fire and life safety codes are strictly enforced. All documents and diskettes are protected during lunch hours and nonworking hours in locked file cabinets or locked storage areas. Magnetic tapes and computer matching tapes are locked in a computer room and tape vault.

3. *Procedural Safeguards:* Password protection of automated records is provided. All authorized users protect information from public view and from unauthorized personnel entering an office.

The safeguards described above were established in accordance with DHHS Chapter 45–13 and supplementary Chapter PHS.hf: 45–13 of the General Administration Manual; and the DHHS ADP Systems Manual Part 6, "ADP Systems Security."

RETENTION AND DISPOSAL:

Records are retained by the responsible organizations listed under "System Location" for two years after completion of the repayment of the loan. The records are then sent to the Federal Records center for a four-year retention period, and are subsequently disposed of in accordance with the HRSA Records Control Schedule. The records control schedule and disposal standards for these records may be obtained by writing to the System Manager at the address below.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Administrator for Operations and Management, Health Resources and Services Administration, Parklawn Building, Room 14A–03 5600 Fishers Lane, Rockville, MD 20857.

NOTIFICATION PROCEDURE:

To find out if the system contains records about you, contact the System Manager.

Requests in person: A subject individual who appears in person at a specific location seeking access to or disclosure of records relating to him/her shall provide his/her name, current address, and at least one piece of tangible identification such as driver's license, passport, voter registration card, or union card. Identification papers with current photographs are preferred but not required. If a subject individual has no identification but is personally known to an agency employee, such employee shall make a written record verifying the subject individual's identity. Where the subject individual has no identificaton papers, the responsible agency official shall require that the subject individual certify in writing that he/she is the individual who he/she claims to be and that he/she understands that the knowing and willful request or acquisition of records concerning an individual under false pretenses is a criminal offense subject to a $5,000 fine. In addition, the following information is needed: (1) The name of the student assistance program that he/she participated in, (2) dates of enrollment in the program, and (3) school(s) of attendance.

In addition, be informed that provision of the SSN may assist in the verification of your identity as well as the identification of your record. Providing your SSN is voluntary and you will not be refused access to your record for failure to disclose your SSN.

Request by mail: Written requests must contain the name and address of the requester, his/her date of birth, and his/her signature which is either notarized to verify his/her identity or a written certification that the requester is who he/she claims to be and understands that the knowning and willful request or acquisition of records concerning an individual under false pretenses is a criminal offense subject to a $5,000 fine. In addition, the following information is needed: (1) The name of the student assistance program that he/she participated in, (2) dates of

enrollment in the program, and (3) school(s) of attendance.

In addition, be informed that provision of the SSN may assist in the verification of your identity as well as the identification of your record. Providing your SSN is voluntary and you will not be refused access to your record for failure to disclose your SSN.

Requests by telephone: Since positive identification of the caller cannot be established, telephone requests are not honored.

RECORD ACCESS PROCEDURES:

Same as notifcation procedures. Requesters should also provide a reasonable description of the record being sought.

CONTESTING RECORD PRECEDURES:

Contract the System Manager, provide a reasonable description of the record, specify the information you want to contest, and state the corrective action sought, with supportng justification.

RECORD SOURCE CATEGORIES:

Individual whose records are contained in the system; Federal organizations including but not limited to the Office of Inspector General/DHHS, and the Office of the Administrator, the Bureau of Health Professions, the Indian Health Service, and the Bureau of Health Care Delivery and Assistance—all of which administer HRSA-funded programs; participating schools; and lending institutions.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 83-18581 Filed 7-6-83; 8:45 am]
BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Ute Mountain Ute Tribe; Plan for the Use and Distribution of Ute Mountain Ute Tribe Judgment Funds in Dockets 342-70, 343-70, Before the United States Court of Claims 523-71 and 524-71

June 28, 1983.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

The Act of October 19, 1973 (Pub. L. 93-134, 87 Stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use or distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on April 14, 1981, in satisfaction of the award granted to the Ute Mountain Ute Tribe in United States Court of Claims Dockets 342-70, 343-70, 523-71 and 524-71. The plan for the use and distribution of the funds was submitted to the Congress with a letter dated March 3, 1983, and was received (as recorded in the Congressional Record) by the House of Representatives on March 11, 1983, and by the Senate on March 15, 1983. The plan became effective on May 25, 1983, as provided by Section 5 of the 1973 Act since Congress did not adopt a resolution disapproving it.

The plan reads as follows:

"The entirety of the funds appropriated on April 14, 1981, in satisfaction of the judgment granted to the Ute Mountain Ute in Dockets 342-70, 343-70, 523-71 and 524-71 before the United States Court of Claims, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be utilized by the tribal governing body to supplement the 1983 tribal fiscal year budget for social and economic development programs as adopted by the tribal governing body under Resolution No. 2881, dated October 1, 1981, subject to the approval of the Secretary of the Interior."

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 83-18617 Filed 7-8-83; 8:45 am]
BILLING CODE 4310-02-M

Colorado River Indian Tribes; Plan for the Use and Distribution of the Colorado River Indian Tribes Judgment Funds in Docket 283-B Before the United States Court of Claims

June 28, 1983.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

The Act of October 19, 1973 (Pub. L. 93-134, 87 Stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use and distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on October 30, 1979, in satisfaction of the award granted to the Colorado River Indian Tribes in United States Court of Claims Docket 283-B. The plan for the use and distribution of the funds was submitted to the Congress with a letter dated February 17, 1983, and was received (as recorded in the Congressional Record) by the Senate on March 10, 1983, by the House of Representatives on March 15, 1983. The plan became effective on May 25, 1983, as provided by Section 5 of the 1973 Act since Congress did not adopt a resolution dissapproving it.

The plan reads as follows: "The funds appropriated on October 30, 1979, in satisfaction of the award in favor of the Colorado River Indian Tribes in Docket 283-B before the United States Court of Claims, including all interest and investment income accrued, less attorney fees and litigation expenses, shall be used and distributed as herein provided.

Per Capita Aspect

Eighty (80) percent of the funds shall be distributed by the Secretary of the Interior (hereinafter "Secretary") in the form of per capita payments, in a sum as equal as possible, to all persons duly enrolled as members of the Colorado River Indian Tribes and born on or prior to and living on the effective date of this Plan. The Secretary's determination concerning eligibility to share in the per capita payment shall be final. Any amount remaining after the per capita payment to the enrollees shall revert to the Colorado River Tribal Council for use in ongoing programs.

The per capita shares of living competent adults shall be paid directly to them. Shares of deceased individual beneficiaries shall be determined and distributed in accordance with 43 CFR Part 4, Subpart D. Per capita shares of legal incompetents and minors shall be handled as provided in regulations established and promulgated by the Secretary.

Programing Aspect

Twenty (20) percent shall be invested by the Secretary for the Colorado River Indian Tribes. These funds, including investment income accrued, shall be utilized by the Colorado River Tribal Council, after formulating appropriate guidelines approved by the Secretary, for Social and Economic programs. Such program funds shall be utilized on an annual budgetary basis and may include, but are not limited to the following: Education; development of economic enterprises; social programs, such as a burial fund, child care and senior citizens centers; improvement of community facilities; and an agriculture development; industrial park development; tribal legal needs; development of a tribal credit union, a tribal store and/or on a tribal newspaper.

General Provision

None of the funds distributed per capita or made available under this plan for progaming shall be subject to Federal, State or local income taxes or be considered as income or resources in determining either eligibility for or the amount of assistance under the Social Security Act or any Federal or federally assisted programs."

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 83-18574 Filed 7-8-83; 8:45 am]

BILLING CODE 4310-02-M

Confederated Tribes of Colville Reservation; Plan for the Use and Distribution of Confederated Tribes of Colville Reservation Judgment Funds in Docket 178-A Before the United States Court of Claims

July 1, 1983.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

The Act of October 19, 1973 (Pub. L. 93-134, 87 Stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use or distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on October 28, 1982, in satisfaction of the award granted to the Confederated Tribes of the Colville Reservation in United States Court of Claims Docket 178-A. The plan for the use and distribution of the funds was submitted to the Congress with a letter dated February 25, 1983, and was received (as recorded in the Congressional Record) by the Senate on March 9, 1983, and by the House of Representatives on March 10, 1983. The plan became effective on May 20, 1983, as provided by Section 5 of the 1973 Act since Congress did not adopt a resolution disapproving it.

The plan reads as follows: "The funds appropriated on October 28, 1982, in satisfaction of an award granted to the Confederated Tribes of the Colville Reservation in Docket 178-A before the United States Court of Claims, including all interest and investment income accrued, less attorney fees and litigation expenses, shall be distributed as herein provided.

Per Capita Aspect

The Colville Confederated Tribes' latest approved membership roll shall be brought current to include all eligible members born on or prior to and living on the effective date of this plan.

Subsequent to the preparation and approval of this roll, the Secretary shall make a per capita distribution of eighty (80) percent of the funds, in a sum as equal as possible, to each enrollee. Any amount remaining after the per capita payment to the enrollees shall revert to the Colville Business Council for use in ongoing programs.

The per capita shares of living competent adults shall be paid directly to them. Shares of deceased individual beneficiaries shall be determined and distributed in accordance with 43 CFR, Part 4, Subpart D. Per capita shares of legal incompetents and minors shall be handled as provided in the Act of October 19, 1973, 87 Stat. 466, as amended January 12, 1983, by Pub. L. 97-458.

Programing Aspect

Twenty (20) percent of the funds shall be utilized in a Land Purchase Program under the Land Consolidation Ordinance of the tribe, subject to the approval of the Secretary.

General Provision

None of the funds distributed per capita or made available under this plan for programing shall be subject to Federal, State or local income taxes or be considered as income or resources in determining either eligibility for or the amount of assistance under the Social Security Act or any Federal or federally assisted programs."

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 83-18575 Filed 7-8-83; 8:45 am]

BILLING CODE 4310-02-M

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

July 1, 1983.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Mowa Band of Choctaw Indians, c/o Mr. Framon Weaver, P.O. Box 268, McIntosh, Alabama 36553, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs on May 27, 1983. The petition was forwarded and signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d) (formerly § 54.8(d)) of the Federal regulations, interested parties may submit factual or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the Bureau of Indian Affairs files.

The petition may be examined by appointment in the Division of Tribal Government Services, Bureau of Indian Affairs, Department of the Interior, 18th and C Streets, N.W., Washington, D.C. 20242.

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 83-18573 Filed 7-8-83; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Reorganization of the Field Structure of the Eastern States Office

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice

SUMMARY: The Bureau of Land Management (BLM) hereby announces changes in the field structure of the Eastern States Office. Field offices in Duluth, Minnesota and Tuscaloosa, Alabama will close permanently on Friday, July 22, 1983. New district offices in Milwaukee, Wisconsin and Jackson, Mississippi will open officially on Monday, July 25, 1983. The location of Eastern States Office headquarters, Alexandria, Virginia, will not change.

The reorganization of the Eastern States Office is a result of Secretarial Order 3087, dated December 3, 1982, which merged the onshore minerals activities of the Minerals Management Service into BLM. The Milwaukee District Office will administer BLM programs in Connecticut, Delaware, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampsire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, West Virginia and Wisconsin. The Jackson District Office will administer BLM programs in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee and Virginia.

Locations: The address of the Milwaukee District Office is as follows: Bureau of Land Management, Milwaukee District Office, 310 West Wisconsin Avenue, Suite 220, Milwaukee, Wisconsin 53203. Office

hours and public room hours are 7:30 a.m. to 4:15 p.m., Mondays through Fridays. Inquiries should be directed to Chuck Steele, Milwaukee District Manager.

The address of the Jackson District Office is as follows: Bureau of Land Management, Jackson District Office, Jackson Mall Office Center, 300 Woodrow Wilson Drive, Suite 3495, Jackson, Mississippi 39213. Office hours and public room hours are 7:30 a.m. to 4:15 p.m., Mondays through Fridays. Inquiries should be directed to Donald Libbey, Jackson District Manager. Telephone: (601) 960–4405.

G. Curtis Jones, Jr.,

Eastern States Director.

[FR Doc. 83-18572 Filed 7-8-83; 8:45 am]

BILLING CODE 4310-84-M

Section 303 Royalty Management of Leasable Solid Minerals on Federal and Indian Lands Study

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings, request for public comments.

SUMMARY: This notice sets forth a schedule of public meetings to obtain comments on the adequacy of royalty management for coal, uranium, and other energy and nonenergy minerals on Federal and Indian lands.

DATES AND ADDRESSES: The meetings will be held as follows:

Holiday Inn West, 14707 West Highway 40, Golden, Colorado 80401, July 21, 1983, 1:00 p.m.

Department of the Interior Auditorium, 18th and C Streets NW., Washington, D.C. 20240, July 26, 1983, 9:30 a.m.

SUPPLEMENTARY INFORMATION: Section 303 of the Federal Oil and Gas Royalty Management Act of 1982 (Act) provides that the Secretary of the Interior shall study the adequacy of royalty management for coal, uranium, and other energy and nonenergy solid minerals on Federal and Indian lands. This study will include proposed legislation if the Secretary determines that such legislation is necessary to ensure prompt and proper collection of revenues owed to the United States, the States, and Indian Tribes or Indian allottees from the sale, lease, or other disposal of such minerals.

Joint Bureau of Land Management/Minerals Management Service task forces are studying the following aspects of royalty management for solid minerals: production verification, inspection and enforcement, royalty systems compatibility, and legislative authority.

Purpose of the Meetings

The purpose of these meetings is to provide a forum for public comments on the adequacy of royalty management for leasable solid minerals and to ensure that the comments are evaluated for inclusion in the study. Recommendations from States, Indian tribes or allottees, industry, and other interested parties will be a factor for the development of the study. Any interested party may make an oral presentation, not to exceed 15 minutes, on any aspects of the study mandated under Section 303 of the Act.

Those wishing to make a presentation at either public meeting should contact Mr. Paul Sternberg, Chairman, Steering Committee, Solid Minerals Royalty Management Study, Mail Stop 660, National Center, Reston, Virginia 22091; Telephone: (703) 860–7506, or FTS 928–7506. Persons making an oral presentation should bring 10 copies of their testimony to the public meeting. Interested parties not wishing to make an oral presentation may file a written statement with the Chairman of the Steering Committee.

A transcript of each meeting will be available within 30 days for public inspection at the following locations: Department of the Interior, Room 3411, 18th and C Streets NW., Washington, D.C. 20240; Bureau of Land Management, Colorado State Office, Public Room, First Floor, 1037 20th Street, Denver, Colorado 80202.

Dated: July 5, 1983.

Robert F. Burford,

Director.

[FR Doc. 83-18582 Filed 7-8-83; 8:45 am]

BILLING CODE 4310-84-M

[C-37495]

Colorado; Invitation For Coal Exploration License Application; Empire Energy Corporation

Members of the public are hereby invited to participate with Empire Energy Corporation in the exploration of unleased Federal coal in Section 23, T. 6 N., R. 92 W., 6th P.M. in Moffat County, Colorado. Any party electing to participate in this program must share all costs on a pro rata basis with the applicant and with any other party or parties who elect to particiapte. Written Notice of Intent to Participate must be addressed to the following and received by them within thirty (30) days after the publication of this Notice of Invitation in the Federal Register:

Chief, Mineral Leasing Section,
Colorado State Office, Bureau of Land Management, 1037 20th Street, Denver, Colorado 80202.
and
Empire Energy Corporation, P.O. Box 68, Craig, Colorado 81625.

The exploration plan as submitted to the Bureau of Land Management, is available for public review during normal business hours under serial number C-37495 at the Colorado State Office, 1037 20th Street, Denver, Colorado. Additional copies of the plan are available for review at the BLM Craig District Office, 455 Emerson Street, Craig, Colorado, and at the BLM Grand Junction Branch of Solid Minerals, Dept. of Energy Bldg., B-3/4 Road, Grand Junction, Colorado.

Evelyn W. Axelson,

Acting Chief, Mineral Leasing Section.

[FR Doc 83-18618 Filed 7-8-83; 8:45 am]

BILLING CODE 4310-84-M

Management Framework Plan Amendment for the Cassia County MFP

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Decision, I-20088, Management Framework Plan Amendment for the Cassia County MFP.

SUMMARY: Notice is hereby given that the Cassia County MFP is being amended to allow for the public sale of a parcel of land located in Sec. 6: SW¼SW¼, T. 13 S., R. 29 E., B.M.

Specifically, the following language will be incorporated into the MFP:

"Multiple Use Recommendation L-9 (Disposals) is hereby modified to include that parcel of land, located in Sec. 6: SW¼SW¼, T. 13 S., R. 29 E., as suitable for transfer from Federal ownership upon satisfaction of the sale/exchange criteria of FLPMA."

Any person who has participated in the planning process and who has an interest which is, or may be adversely affected by this amendment, may protest this decision. Protests may raise only those issues which have been submitted for the record during the planning (amendment) process.

Protests must be filed within thirty days of the date of this notice. Protests are to be in writing and must be filed with the Idaho State Director at the following address: State Director (930), Bureau of Land Management, Idaho State Office, 3380 Americana Terrace, Boise, ID 83706.

Protests must contain:

—The name, mailing address, telephone number, and interest of the person(s) filing the protest

—A statement of the issue or issues being protested
—A statement of the part or parts of the amendment being protested
—A copy of all documents addressing the issue(s) submitted during the planning process or an indication of the date they were discussed for the record
—A concise statement explaining why the District Manager's decision is wrong.

For further information on this matter contact Jimmie Pribble, Raft River Area Manager, or Sharon LaBrecque, Raft River Realty Specialist, Burley District Office, Route 3, Box 1, Burley, Idaho 83318.

Dated: July 1, 1983.

Jimmie L. Pribble,

Acting District Manager.

[FR Doc. 83-18618 Filed 7-8-83; 8:45 am]

BILLING CODE 4310-84-M

Wyoming; Availability of Coal Core Analyses; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Public notice of availability of four coal analyses within the Thunder Basin National Grasslands, Campbell County, Wyoming; Correction.

SUMMARY: This document corrects the telephone number for the Bureau of Land Management contact contained in a public notice of availability, which appeared on page 27607 of Volume 48, No. 177 of the **Federal Register** for June 16, 1983. The action is necessary due to changes caused by the merger of the Bureau of Land Management and Minerals Management Service. The telephone number, which is currently listed as "(307) 261-5181", should read "(307) 261-5320".

Dated: June 24, 1983.

Paul W. Arrasmith,

District Manager.

[FR Doc. 83-18019 Filed 7-8-83; 8:45 am]

BILLING CODE 4310-84-M

INTERSTATE COMMERCE COMMISSION

Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3 These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the Federal Register. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F-274

The following applications were filed in Region I: Send protests to: Interstate Commerce Commission, Regional Authority Center, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 2835 (Sub-1-3TA), filed June 29, 1983. Applicant: ADIRONDACK TRANSIT LINES, P.O. Box 1758, Kingston, NY 12401. Representative: Lawrence E. Lindeman, P.C., 4660 Kenmore Ave., No. 1203, Alexandria, VA 02304. *Passengers* between Watertown and Albany, NY as follows: From Watertown over NY Hwy 12 to NY Hwy 3, then over NY Hwy 3 to NY Hwy 3A, then over NY Hwy 3A to Fargo, then over NY Hwy 3 to Carthage, then over NY Hwy 26 to Lowville, then over NY Hwy 12 to Boonville, then over NY Hwy 294 to West Layton, then over NY Hwy 26 to Rome, then over NY Hwy 49 to Utica, then over NY Hwy 5S to NY Hwy 28, then over NY Hwy to NY Hwy 5, then over NY Hwy 5 to Albany, and return, serving all intermediate points. Applicant seeks to tack in present docket (Sub 45) and interline with another carrier at Watertown, Utica and Albany, NY. Existing carrier terminating service. Support: One support statement which may be examined at the I.C.C. Regional Office, Boston, MA.

MC 145378 (Sub-1-1TA), filed June 28, 1983. Applicant: DON ANDERSON HAULAGE LIMITED, Lot 1, Concession 8, Box 490, Stouffville, Ontario, CD L0H 1L0. Representative: Robert D. Gunderman, Esq., Can-Am Bldg., 101 Niagara Street, Buffalo, NY 14202. *Contract carrier:* irregular routes: *Cement, in bulk, in pneumatic tank trailers,* between ports of entry on the International Boundary line between the U.S. and CD in MI, on the one hand, and, on the other, Detroit, MI and points within its Commercial Zone under continuing contract(s) with Custom Concrete Limited. Supporting shipper: Custom Concrete Limited, 7655 Woodbine Ave, Markam, Ontario, CD L3R 2N4.

MC 168761 (Sub-1-1TA), filed June 20, 1983. Applicant: THOMAS L. ARMSTRONG & SONS, LTD., P.O. Box 59, Apohaqui, Kings County, New Brunswick, CD E0G 1A0. Representative: John F. O'Donnell, P.O. Box 238, 60 Adams Street, Milton, MA 02187. *Salt* between points on the International Boundary between ME and CD, on the one hand, and, on the other, points in ME. Supporting shipper: W. H. Shurtleff Company, One Runway Road, South Portland, ME 04106.

MC 168950 (Sub-1-1TA), filed June 28, 1983. Applicant: B. M. S. TRUCKING, INC., Route 28, Kingston, NY 12401. Representative: Jack L. Schiller, 111-56 76th Drive, Forest Hills, NY 11375. *Cement and cement products* from Belchertown, MA, Greene County, NY, and Copley, PA to the facilities of Farmington Readi Mix Inc., Farmington, CT, and the facilities of Defalco Concrete Corporation, Millbury, MA. Supporting shipper(s): Farmington Readi Mix Inc., P.O. Box 344 Farmington, CT 06032; Defalco Concrete Corporation, Route 22A, Millbury, MA 01527.

MC 121016 (Sub-1-2TA), filed June 28, 1983. Applicant: ENGLANDER COACH LINES, INC., 148 American Legion Drive, North Adams, MA 01247. Representative: Robert B. Walker, 915 Pennsylvania Building, 425 13th Street, NW., Washington, DC 20004. *Common carrier:* regular route: *Passengers* between Bennington, VT and Williamstown, MA from Bennington, VT on U.S. Route 7 to Williamstown, MA and return. Applicant intends to tack with existing authority and interline with Vermont Transit in Bennington, VT, Greyhound Lines in Albany, NY, and Greyhound Lines in Boston, MA. Supporting shipper(s): There are ten

statements of support with this application which may be examined at the Regional Office of the I.C.C. in Boston, MA.

MC 168901 (Sub-1–1TA), filed June 27, 1983. Applicant: FROST LEASING COMPANY, INC., 145B Allen Blvd., Farmingdale, NY 11735. Representative: Jack L. Schiller, 111–56 76th Drive, Forest Hills, NY 11375. *Contract carrier:* irregular routes: *Electrical conduit fittings and materials and supplies used in the production of electrical conduit fittings* (1) from East Brunswick, NJ to Boston, MA; Chicago, IL; Dallas, TX; Denver, CO; Los Angeles, CA; Norcross, GA; Seattle, WA, and points in CT, DE, MD, NJ, NY, PA; (2) from Bedford Heights, OH to Boston, MA; Chicago, IL; Dallas, TX; Denver, CO; Los Angeles, CA; Norcross, GA; Seattle, WA; and (3) from Brooklyn, NY; Port Newark and Port Elizabeth, NJ to Farmingdale, NY under continuing contract(s) with Efcor Inc. of East Farmingdale, NY. Supporting shipper: Efcor Inc., 123 Smith Street, Farmingdale, NY 11735.

MC 148141 (Sub-1–8TA), filed June 27, 1983. Applicant: GOODY PRODUCTS, INC., 969 Newark Turnpike, Kearny, NJ 07032. Representative: William Jacobs (same as applicant). *Contract carrier:* irregular routes: *Fiberglass bathtub and shower units* from Adamsville, TN, to points in AL, FL, GA, LA, MS, NC, SC, and TX, under continuing contract(s) with Aqua Glass Corporation, Adamsville, TN. Supporting shipper: Aqua Glass Corporation, P.O. Box 412, Adamsville, TN 38310.

MC 168407 (Sub-1–1TA) (republication), filed June 10, 1983. Applicant: HANNON LUMBER TRANSFER INC., 121 Overdale Avenue, Hamilton, Ontario, CD L9J 1G6. Representative: William J. Hirsch P. C., 64 Niagara Street, Buffalo, NY 14202. *Lumber and lumber products,* between points on the International Boundary Line between the U.S. and CD, on the one hand, and, on the other, points in CT, DE, FL, GA, IL, IN, KY, MA, MD, NC, NJ, NY, OH, PA, SC, TN, VT, VA, WV, DC. Supporting shipper(s): Tall Tree Lumber Corp., 86 Wilson Street, Oakville, Ontario, CD L6K 3G5; G. A. Grier Inc., 2 Place Ville Marie, Suite #663, Montreal, Quebec, CD H3B 3Y3; Buehler Lumber Company, West Main Street, Ridgeway, PA 15853. Sole purpose of this republication is to show IN after IL and NJ after NC. (This application previously published on June 24, 1983).

MC 168912 (Sub-1–1TA), filed June 27, 1983. Applicant: WILLIAM C. KOLIAS, d.b.a. KOLIAS BROTHERS TRUCKING, 62 North Main Street, Newton, NH 03858. Representative: William C. Kolias (same as applicant). *Lumber, wood products, building materials, clay, concrete, glass and stone products,* between points in CT, ME, MA, NH, NY, RI and VT. Supporting shipper(s): East Coast Lumber and Building Supply Co., Inc., Emerson Ave., Hampstead, NH; Geo. McQuesten Co. Inc., Iron Horse Park, No. Billerica, MA 01862.

MC 123050 (Sub-1–1TA), filed June 24, 1983. Applicant: MICHEL TRANSPORT INC., 4 Union Street, Athabaska, Quebec, CD G6P 6M1. Representative: Robert D. Gunderman, Esq., Can-Am Building, 101 Niagara Street, Buffalo, NY 14202. *Contract carrier:* irregular routes: *Paper, printed matter, and related products,* between ports of entry on the International Boundary line between the U.S. and CD in ME, NH, VT and NY on the one hand, and, on the other, points in CT, DE, MA, ME, MD, MI, NH, NJ, NY, OH, PA, RI, VT, and DC, under continuing contract(s) with Domtar Pulp & Paper Products, Montreal, Quebec, CD. Supporting shipper: Domtar Publp & Products, 395 de Maisonneuve Blvd. West, P.O. Box 7211, Montreal, Quebec, CD H3C 3M2.

MC 147242 (Sub-1–11TA), filed June 27, 1983. Applicant: PLAZA FREIGHT TRANSPORT, INC., 12–90 Plaza Road, Fair Lawn, NJ 07410. Representative: Arthur Liberstein, P.C., 888 Seventh Avenue New York, NY 10106. *Contract carrier:* irregular routes: *General commodities, except household goods, Classes A and B explosives and commodities in bulk* between all points in the U.S., under continuing contract(s) with Rome Cable Corp., Rome, NY. Supporting shipper: Rome Cable Corp., Ridge Street, Rome, NY 13440.

MC 110729 (Sub-1–1TA), filed June 24, 1983. Applicant: MICHAEL ZALUZNY, Pond Road, Vernon, VT 05354. Representative: David M. Marshall, Marshall and Marshall, Sixth Floor—95 State Street, Springfield, VA 01103. *General commodities (except Classes A and B explosives and household goods),* between points in Windham County, VT, and Franklin County, MA, on the one hand, and, on the other, Carlisle, Phildelphia and York, PA. Supporting shipper(s): D.J. Inc., Putney Road, Brattleboro, VT 05301; Mohawk Plastics, Inc., Industrial Road, Bernardston, MA 01337.

The following applications were filed in Region 2. Send protests to: ICC, Fed. Res. Bank Bldg., 101 North 7th St. Rm. 620, Philadelphia, PA 19106.

MC 168629 (Sub-II–1TA), filed June 23, 1983. Applicant: A&E LEASING SERVICE, P.O. Box 92, Callaway, MD 20620. Representative: Thomas E. Guy (same as applicant). *Contract carrier:* irregular routes: *Beer,* from Eden, NC to Upper Marlboro, MD, under continuing contract(s) with Buck Distributing Company, Inc. of Upper Marlboro, MD. Supporting shipper(s): Buck Distributing Company, Inc., P.O. Box 490, 4606 Largo Rd., Upper Marlboro, MD 20772.

MC 150511 (Sub-2–17TA), filed June 21, 1983. Applicant: BETTER HOME DELIVERIES, INC., 3700 Park East Dr., Cleveland, OH 44122. Representative: Carla T. Novak, 1101 31st St., Downers Grove, IL 60515. Contract Irregular: *Such commodities as are dealt in or used by retail department stores,* from Baltimore and Hagerstown, MD to points in PA and WV, under continuing contract(s) with Montgomery Ward & Co., Inc. for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Montgomery Ward & Co., Inc. 1900 Washington Blvd, Baltimore, MD 21230.

MC 128598 (Sub-II–1TA), filed June 20, 1983. Applicant: BEVARD BROTHERS, INC., 4714 St. Barnabas Rd, Silver Hill, MD 20748. Representative: Edward T. Love, 4401 East West Highway, Suite 404, Bethesda, MD 20814. *Sewage sludge,* between points in DC, MD and VA, for 270 days. An underlying eta seeks 120 days authority. Supporting shipper(s) Washington Suburban Sanitary Commission, 4017 Hamilton St., Hyattsville, MD 20781.

MC 157809 (Sub-II–4TA), filed June 20, 1983. Applicant: JOHN LAHOTSKI, STEPHEN LAHOTSKI, WILLIAM LAHOTSKI, AND PAUL LAHOTSKI, d.b.a BLUE AND WHITE TRUCKING, 181 Phillips St., Throop, PA 18512. Representative: Raymond Talipski, 121 S. Main St., Taylor, PA 18517. *Pulp, paper and related products,* between Lackawanna and Luzerne Counties, PA, on the one hand, and, on the other, points in NY, NJ and DE. Supporting shipper: Diamond K., Inc., 897 Providence Road, Scranton, PA.

MC 86690 (Sub-II–15TA), filed June 21, 1983. Applicant: BOND TRANSFER CO., INC., 1301 Towson Street, Baltimore, Md. 21230. Representative: Leonard W. Smith III (same address as above). Contract, irregular: *Foam Rubber: cellular, expanded; material, equipment, and supplies used in the manufacture of foam rubber,* between: Baltimore, MD and all points in: CT, ME, MA, NH, NJ, NY, PA, and RI, under continuing contract(s) with William T. Burnett & Co., Inc. for 270 days. An underlying eta seeks 120 days authority. Supporting shipper: William T. Burnett & Co., Inc., 2112 Montvideo Road, Jessup, Md. 20794.

MC 167227 (Sub-II–1TA), filed June 23, 1983. Applicant: ROBERT P. CARLIN, Box 301, Snow Shoe, PA 16874. Representative: Dwight L. Koerber, Jr., 110 North Second St., P.O. Box 1320, Clearfield, PA 16830. *Coal and coal products* from Snow Shoe Township, PA, to Johnson City, NY. An underlying ETA seeks 120 days authority. Supporting shipper: O'Day Coal Sales, Box 403 Snow Shoe, PA 16874.

MC 168781 (Sub-II–1TA), filed June 21, 1983. Applicant: DESIGN FREIGHT SYSTEMS, INC., 303 Belvidere, P.O. Box 2341, Columbus, OH 43216. Representative: Michael L. Moushey, 1200 West Fifth Ave., Columbus, OH 43212. Contract, irregular: Iron and Steel and Iron and Steel Articles between points in AL, IL, IN, MI, OH, PA, and TN under a continuing contract(s) with Mor-Flo Industries, Inc., of Cleveland, OH, for 270 days. Supporting shipper: Mor-Flo Industries, Inc., 18450 South Miles Rd., Cleveland, OH 44128.

MC 1745 (Sub-II–2TA), filed June 21, 1983. Applicant: INTERSTATE VAN LINES, INC., 5801 Rolling Rd., West Springfield, VA 22152. Representative: Marshall Kragen, 1919 Pennsylvania Ave., NW., Suite 300 Washington, DC 20006. Contract, irregular: *Household goods, as defined by the Commission,* between points in the U.S. (except AK & HI). Under continuing contract(s) with Galler Associates. An underlying ETA seeks 120 days authority. Supporting shipper: Galler Associates, Inc., 1000 Wilson Blvd., Arlington, VA 22202.

MC 1745 (Sub-II–3TA), filed June 21, 1983. Applicant: INTERSTATE VAN LINES, INC., 5801 Rolling Rd., West Springfield, VA 22152. Representative: Marshall Kragen, 1919 Pennsylvania Ave., NW., Suite 300 Washington, DC 20006. Contract, irregular: *Household goods, as defined by the Commission.* between points in the U.S. (except AK & HI). Under continuing contract(s) with U.S. Olympic Games Committee. Supporting shipper: U.S. Olympic Games Committee, 1750 Boulder, Colorado Spring, CO 80901.

MC 167034 (Sub-II–2TA), filed June 21, 1983. Applicant: JA-MARC TRANSPORT, INC., 2117 Knollwood Dr., Findlay, OH 45840. Representative: J. W. Jackson, P.O. Box 2631, Bath, OH 44210. Contract irregular *Petroleum products,* from Cleveland, OH; Toledo, OH; and Woodhaven, MI, to points in DE, IL, KY, MD, MI, NJ, NY, OH, IN, PA, TN, VA, WV, and IA, under continuing contract(s) with Mobil Oil Corporation of Dallas, TX for 270 days. An underlying eta seeks 120 days authority. Supporting shipper(s): Mobil Oil Corp., 5151 Belt Line Rd No. 600, Dallas, TX 75240.

MC 168834 (Sub-II–1TA), filed June 22, 1983. Applicant: L/T CARTAGE, INC., 901 Eastern Ave., Baltimore, MD 21202. Representative: Joan M Cook, 5816 Church Lane, Hydes, MD 21082. Contract irregular: Newly fabricated wooden pallets, between Millersburg, PA & Richmond, VA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Leagve Lumber Co., Inc., 721 S. Caroline St., Baltimore, MD 21231.

MC 168779 (Sub-2–1TA), filed June 20, 1983.Applicant: LANCO CARRIERS, INC., P.O. Box 281, New Holland, PA 17557. Representative: Joseph Seifrit (same address as applicant). *Pulp, Paper and Allied Products* between Chester county PA, on the one hand, and on the other, points CT, IL, MA, NC and NY, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: DOPACO, Inc., Boot Rd & Chestnut St, Downingtown, PA 19335.

MC 156719 (Sub-II–1TA), filed June 20, 1983. Applicant: LEE TRANSPORT, INC., P.O. Box 39185, Solon, OH 44139. Representative: Ignatius B. Trombetta, One Public Sq. No. 1001, Cleveland, OH 44113. *Contract, Irregular,* metal, plastic and related products from points in OH, NJ, FL, and TX on the one hand and on the other hand to points in IL, OH, TX, MO, AL, FL, GA, NC, MD, NJ, PA, MN, MA, VT, KY, NY, and TN under a continuing contract with Van Dorn Company of Cleveland, OH for 270 days. Supporting shipper(s): Davies Can Div Van Dorn Company, 30301 Carter St., Cleveland, OH.

MC 168775 (Sub-II–1TA), filed June 20, 1983. Applicant: MURRAY MOTORS, INC., P.O. Box 146, Dagsboro, DE 19939. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 Fifteenth St., NW., Washington, D.C. 20005. Contract, irregular: *General commodities, (except household goods, classes A & B explosives and commodities in bulk),* between points in MA, CT, RI, NY, PA, OH, DE, MD, DC, VA, SC, GA, and FL under continuing contract(s) with Barcroft Company, Inc. An underlying ETA seeks 120 days authority. Supporting shipper: Barcroft Company, Inc., P.O. Box 481, Lewes, DE 19958.

MC 107012 (Sub-II–318TA), filed June 20, 1983. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same as applicant). Contract irregular: *household goods* between points in the US, under continuing contract(s) with Dean Witter Reynolds, Inc., of New York, NY, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Dean Witter Reynolds, Inc., 130 Liberty Street, New York, NY 10006.

MC 107012 (Sub-II–319TA), filed June 20, 1983. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same as applicant). Contract irregular: *household goods* between point in the US, under continuing contract(s) with Johnson Controls, Inc., of Milwaukee, WI, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Johnson Controls, Inc., 5757 North Green Bay Avenue, Milwaukee, WI 53201.

MC 107012 (Sub-II–320TA), filed June 20, 1983. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same as applicant). Contract irregular: *household goods* between points in the US, under continuing contract(s) with Jack Eckerd Corp., of Largo, FL for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Jack Eckerd Corp., 8333 Bryan Dairy Rd., Largo, FL.

MC 110683 (Sub-II–24TA), filed June 20, 1983. Applicant: SMITH'S TRANSFER CORPORATION, P.O. Box 1000, Staunton, VA 24401. Representative: Harry J. Jordan, 1090 Vermont Avenue, NW., Washington, DC 20005. Contract, irregular: *general commodities except Class A and B explosives, household goods, and commodities in bulk,* between all points in the U.S., (except AK and HI), under contract with the General Tire and Rubber Company. An underlying ETA seeks 120 days authority. Supporting shipper: The General Tire and Rubber Company, One General St., Akron, Ohio 44329.

MC 156879 (Sub-II–2TA), filed June 21, 1983. Applicant: STOWERS & SONS TRUCKING COMPANY, Rte. 1, Box 348, West Hamlin, WV 25571. Representative: John M. Friedman, 2930 Putnam Ave., P.O. Box 426, Hurricane, WV 25526. *Construction and mining machinery and equipment* between points in WV, on the one hand, and, on the other, points in PA, TN, IN, IL, and IA. An underlying ETA seeks 120 days authority. Supporting shipper(s): Rish Equipment Co., P.O. Box 429, St. Albans, WV 25177.

MC 150522 (Sub-II–11TA), filed June 20, 1983. Applicant: VIRGINIAN POWER TRANSPORT CO., INC., P.O. Box 537, Parkersburg, WV 26101.

Representative: John M. Friedman, 2930 Putman Ave., P.O. Box 426 Hurricane, WV 25526. *General commodities, except household goods, commodities in bulk and class A and B explosives* between points in the U.S. in the east of MN, IA, MO, OK and TX, for 270 days. Supporting shipper(s): Heck's, Inc., Industrial Park, Nitro, WV 25143; The Kroger Co., 4450 Poth Road, Columbus, OH 43213; Faygo Beverages, Inc., 1365 Jarvis, Ferndale, MI 48220.

The following applications were filed in Region 6. Send protests to: Interstate Commerce Commission, Region 6 Motor Carrier Board, 21 Main St., Suite 501, San Francisco, CA 94105.

MC 168745 (Sub-6–1TA), filed June 20, 1983. Applicant: ARROW LEASING COMPANY, 5381 Fox St., Denver, CO 80216. Representative: Russell R. Sage, P.O. Box 11278, Alexandria, VA 22312. *Contract carrier,* Irregular routes, *parts and accessories for automobiles, motorcycles, generators, engines, roto-tillers, outboard motors, snowblowers and lawnmowers,* between points in CA, on the one hand, and, on the other, points in CO, UT, and WY, for 270 days. Supporting shippers: American Honda Motor Co., Inc., 100 W. Alondra Blvd., Gardena, CA 90247.

MC 168939 (Sub-6–1TA), filed June 28, 1983. Applicant: LEROY D. BALDWIN, d.b.a. BALDWIN FREIGHT CO., 1315 View Ave., Centralia, WA 98531. Representative: Kenneth R. Mitchell, 2320A Milwaukee Way, Tacoma, WA 98421. *(1) Paper and Paper Products, (2) Machinery, (3) Printed Matter, (4) Ink, (5) Plastic Articles, and (6) Leather articles,* between points in WA on the one hand, and, on the other hand, points in AR, AZ, CA, CO, IA, IL, MI, MO, MS, NV, OH, OR, TN, TX, and WI, for 270 days. An underlying ETA seeks 120 day authority. Supporting shipper: Interschecks/Bank Check Supply Division, 1315 Tower Ave., Centralia, WA 98531.

MC 168765 (Sub-6–1TA), filed June 20, 1983. Applicant: JAMES B. F. BURNETT, d.b.a. BURNETT TRUCKING, 12125 SE Sequoia Ave., Milwaukie, OR 97222. Representative: (same as applicant). *Building materials, i.e., roofing, insulation, and related items* between points in OR, WA, and ID, for 270 days. Supporting shippers: Zellerbach Paper Co., 55 Hawthorne St., San Francisco, CA 94105.

MC 168891 (Sub-6–1TA), filed June 24, 1983. Applicant: A. CAMPILLO ENTERPRISE, INC., P.O. B 3362, Calexico, CA 92231. Representative: Alexander O. Campillo (same address as applicant). *Contract Carrier,* irregular routes: *(1) Iron and steel products, such as I-beams, angles, strip, sheet and plate, re-bar, wire, pipe, and coils; (2) Plywood; (3) Baled cotton; (4) Automobile wheel rims,* between points in the Calexico, CA international border area and points in the Lost Angeles, CA Metropolitan area, for 270 days.

MC 41098 (Sub-6–34TA), filed June 21, 1983. Applicant: GLOBAL VAN LINES, INC., One Global Way, Anaheim, CA 92803. Representative: Alan F. Wohlstetter, 1700 K Street NW., Washington, D.C. 20006. *Contract Carrier,* irregular routes, *household goods* between points in the U.S. for 270 days. Supporting shipper: National Railroad Passenger Corporation, 400 N. Capitol Street, Washington, D.C. 20001.

MC 41098 (Sub-6–35TA), filed June 21, 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, *household goods* between points in the U.S. for 270 days. Supporting shipper: Intergraph Corporation, 1 Madison Industrial Park, Huntsville, AL 35807.

MC 168946 (Sub-6–1TA), filed June 28, 1983. Applicant: HOKSBERGEN HAY CO., 8971 Guide Meridian Rd., Lynden, WA 98264. Representative: George LaBissoniere, 15 S. Grady Way, Suite 239, Renton, WA 98055. *Contract,* irregular: *lumber and wood products,* between points in Multnomah County, OR, and Whatcom County, WA, for Creative Fence for 270 days. Underlying ETA seeks 120 days authority. Supporting shipper: Creative Fence, 5300 N.E. 101st Ave., Portland, OR 97208.

MC 153481 (Sub-6–2TA), filed June 23, 1983. Applicant: JAMES R. CHRISTOPHER, d.b.a. J AND I TRUCKING, 4736 18th N.E. No. A–2, Seattle, WA 98105. Representative: Same as applicant. *Contract Carrier:* Irregular routes: (1) *lumber and lumber products,* (2) *building materials,* (3) *commodities as maybe dealt in or used by construction supply companies,* between AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, and WY for 270 days for the account of Tyee Lumber & Mfg. Co. Supporting shipper: Tyee Lumber & Manufacturing Company, P.O. B 80285, Seattle, WA 98108.

MC 161701 (Sub-6–2TA), filed June 28, 1983. Applicant: INTERNATIONAL LIQUID TRANSPORT INC., 18281 Colville St., Fountain Valley, CA 92708. Representative: Donald B. Dixon (same address as applicant). *Contract,* irregular: *Residual fuel oil, to be used as fuel,* from the Ports of Entry on the International Boundary line between the U.S. and the Republic of MX located in CA and AZ, and between points in CA and AZ for 270 days. Supporting shippers: J & E Distilleries, P.O.B. 15627, Santa Ana, CA 92705.

WC 1376 (Sub-6–1TA), filed June 28, 1983. Applicant: JOHNSON DRILLING COMPANY, P.O. Box 202, King Salmon, AK 99613. Representative: Ronald C. Chauvel, 100 Pine St., #2550, San Francisco, CA 94111. *Water Common Carrier, general commodities (except Classes A and B explosives, and household goods)* between points in AK, for 180 days. Supporting shippers: R. S. Bowers Construction Company, P.O.B. 22103 A.M.F., Salt Lake City, UT 84122.

MC 168894 (Sub-6–1TA), filed June 23, 1983. Applicant: ROBERT J. KILLION, D.B.A. KILLION ENTERPRIZES, P.O. Box 486, Brigham City, UT 84302. Representative: Jack H. Molgard, P.O. Box 461, Brigham City, UT 84302. *Mobile Homes* between points in WA, OR, CA, ID, NV, VT AZ, MT, WY, CO, NM, ND, SD, NE, KS, OK and TX for 270 days. Supporting shippers(s): "There are 5 shippers. Their statements may be examined at the Regional Office listed above.

MC 162655 (Sub-6–1TA), filed June 20, 1983. Applicant: LOUTEX, INC., 989 Terrace Place, Ontario, OR 97914. Representative: Barney L. Hardin, 3573 Rugby Drive, Boise, ID 83704. *Fertilizer,* from Adams, Penton, Cowlitz, Franklin, Grant, and Walla Walla Counties, WA; Columbia and Umatilla Counties, OR to points in ID, Humbolt County, NV, and Malheur County, & Harney County, OR for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: Riechold Chemical Co., Box 810, St. Helens, OR 97051, Consumers Co-op, Assoc., 265 E. Commercial, Weiser, ID 83672, Farmers Supply Co-op, 514 S.W. 4th Ave., Ontario, OR 97914, Producers Supply Co-op, Inc., 1302 Caldwell Blvd., Nampa, ID 83651.

MC 156936 (Sub-6–3TA), filed June 24, 1983. Applicant: MTA FREIGHT CO., INC., 19010 13th Pl. S., Bldg. #3, Seattle, Wa 98148. Representative: Michael D. Duppenthaler, 211 S. Washington St., Seattle, WA 98104. *Contract carrier,* irregular routes, *Wearing Apparel,* between points in WA and OR, for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: Klopfensteins, Inc., 600 Pine St., Seattle, WA 98101.

MC 145356 (Sub-6–1TA), filed June 23, 1983. Applicant: MARKLAND TRUCKING INC., 655 Lion Ct., Casper, WY 82609. Representative: Sandra K. Markland (same as applicant). *Bentonite, cement additives/drilling muck* from points in CO and WY on the

one hand to points on OK, TX, NM, WY, NE, KS, MN, WI, IL, LA, AZ, CA, OR, WA, ID, VT, MT, ND, SD and AR on the other for 270 days. Supporting shipper: Black Hills Bentonite Company, POB 9, Mills, WY 82644.

MC 168893 (Sub-6–1TA), filed June 23, 1983. Applicant: RICHARD W. MOLL, 695 Berry St., Sublimity, OR 97385. Representative: (same address as applicant). *Contract Carrier*, Irregular routes: *Lumber and wood products*, between points in OR and WA for the account of Cedar Lumber, Inc., for 270 days. Supporting shipper: Cedar Lumber, Inc., P.O.B., 1446 Mill City, OR 97360.

MC 110149 (Sub-6–5TA), filed June 20, 1983. Applicant: PAN AMERICAN VAN LINES, INC., POB 923, Long Beach, CA 90801. Representative: W.C. Fogle (same as applicant). *Contract carrier*, irregular routes, *Household goods*, Between points in the U.S. (except AK and HI), for 270 days. Supporting shippers: Mattel, Inc., 5150 Rosecrans Ave., Hawthorne, CA 90250.

MC 146724 (Sub-6–6TA), filed June 20, 1983. Applicant: DEAN RAPPLEYE, INC., 7444 South 2200 West, West Jordan, UT 84084. Representative: Daniel O. Hands, 104 South Michigan Ave., Chicago, IL 60603. *Bleached and unbleached woodpulp* from the ports of entry along the US–CD International Boundary at East Port, ID, and Raymond and Sweetgrass, MT to points in AZ, CO, ID, MT, NM, NV and UT, 270 days. Supporting shipper: St. Regis, (Alberta) Ltd., Hinton, Alberta, CD T0E 1B0.

MC 168207 (Sub-6–1TA), filed June 23, 1983. Applicant: SOUTH COAST MEDICATION SUPPLY, 446 Commercial Ave., Coos Bay, OR 97420. Representative: Kenneth H. Lawrence, 3640 Pine St., North Bend, OR 97459. *Prescription and non-prescription medication*, between points in OR and CA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Northwestern Drug Co., 801 C St., N.W., Auburn, WA 98002; South Coast Medication Supply, 446 Commercial Ave., Coos Bay, OR 97420.

MC 168819 (Sub-6–1TA), filed June 22, 1983. Applicant: UNIQUE EXPRESS INC., P.O.B. 207, Seal Beach, CA 90740. Representative: Marshall Tomie Rastedt, 10046 Pioneer Blvd., Santa Fe Springs, CA 90670. *General Commodities* (except, Household Goods, Perishables, articles and property of extra ordinary value or monetary coins) from points in CA to points in the U.S. except AK and HI, for 270 days. Corresponding ETA is applied for. Supporting shippers: Sun Valley Shippers Association Inc., P.O. Box 3264, Santa Fe Springs, CA 90670.

MC 168766 (Sub-6–1TA), filed June 20, 1983. Applicant: VENTRAN INCORPORATED, POB 9, Brooks, CA 95606. Representative: Donald R. Hedrick, POB 4334, Santa Ana, CA 92702. *Contract Carrier*, Irregular routes: *Building materials*, between points in the U.S. (except AK and HI); and, *Iron and steel articles*, between points in CA on the one hand, and, on the other, points in PA and VA, for 270 days. Supporting shippers: Broadview Lumber Company, P.O.B. 26781, Albuquerque, NM 87125, and J.M.K. Transportation Corporation, 606 N. Terminal St., Santa Ana, CA 92701.

MC 141768 (Sub-6–2TA), filed June 24, 1983. Applicant: WESTERN ASPHALT (1972) LTD., P.O.B. 3195, Sherwood Park, Alberta T8A 2A6. Representative: H. Barney Firestone, 180 North Michigan Ave., Suite 1700, Chicago, IL 60601. *Petroleum and Petroleum products*, between the ports of entry on the International Boundary Line between the U.S. and CD located in MT, on the one hand, and, on the other, points in MT, for 270 days. Supporting shipper: Farstad Oil County Road 19, Minot, N.D. 58701.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83–18586 Filed 7–8–83; 8:45 am]

BILLING CODE 7035–01–M

Motor Carrier Permanent Authority Decisions; Decisions-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 intrastate certificate also must comply with 49 U.S.C. 10922(c)(2)(E). Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E. In addition to fitness grounds, these applications may be opposed on the grounds that the transportation to be authorized is not consistent with the public interest.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations.

We make an additional preliminary finding with respect to each of the following types of applications as indicated: common carrier of property—that the service proposed will serve a useful public purpose, responsive to a public demand or need; water common carrier—that the transportation to be provided under the certificate is or will be required by the public convenience and necessity; water contract carrier, motor contract carrier of property, freight forwarder, and household goods broker—that the transportation will be consistent with the public interest and the transportation policy of section 10101 of chapter 101 of Title 49 of the United States Code.

These presumptions shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly

noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract." Applications filed under 49 U.S.C. 10922(c)(2)(B) to operate in intrastate commerce over regular routes as a motor common carrier of passengers are duly noted.

Please direct status inquiries to Team 2, (202) 275-7030.

Volume No. OP-2-298

Decided July 1, 1983.

By the Commission, Review Board Members Fortier, Dowell, and Carleton.

FF-712, filed June 24, 1983. Applicant: PROGRESSIVE FREIGHT FORWARDERS, INC., One United Drive, Fenton, MO 63026. Representative: B. W. LaTourette, Jr., 11 South Meramec-Suite 1400, St. Louis, MO 63105, 314-727-0777. *As a freight forwarder,* in connection with the transportation of *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S.

MC 2473 (Sub-26), filed June 27, 1983. Applicant: BILLINGS TRANSFER CORP., INC., Green Needles Rd., Lexington, NC 27292. Representative: Homer M. Curry, (same address as applicant), (704) 956-1111. Transporting *textile mill products,* between points in AL, on the one hand, and, on the other, points in DE, GA, MD, NC, NJ, NY, PA, SC, TN, VA, and DC.

MC 64932 (Sub-623), filed June 27, 1983. Applicant: ROGERS CARTAGE CO., 10735 South Cicero Ave., Oak Lawn, IL 60453. Representative: Carl L. Steiner, 135 South LaSalle St., Chicago, IL 60603, (312) 236-9375. Transporting *commodities in bulk,* between points in the U.S. (except AK and HI), under continuing contract(s) with Rogers Services, Inc., of Oak Lawn, IL.

MC 107012 (Sub-836), filed June 24, 1983. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant) 219-429-2110. Transporting *household goods,* between points in the U.S., under continuing contract(s) with Dean Witter Reynolds, Inc., of New York, NY.

MC 107012 (Sub-837), filed June 24, 1983. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, Fort Wayne, IN 46818. Representative: David D. Bishop (same address as applicant), 219-429-2110. Transporting *household goods,* between points in the U.S., under continuing contract(s) with NBI, Inc., of Boulder, CO.

MC 114632 (Sub-294), filed June 24, 1983. Applicant: APPLE LINES, INC., P.O. Box 267, 212 S.W. Second St., Madison, SD 57042. Representative: David E. Peterson (same address as applicant), (605) 256-6661. 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 Kraft, Inc., of Glenview, IL.

MC 134262 (Sub-23), filed June 23, 1983. Applicant: FARMERS FEED AND SUPPLY TRANSPORTATION, INC., P.O. Box 385, Boyden, IA 51234. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501-2028, (402) 475-6761. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI).

MC 167183, filed June 23, 1983. Applicant: CONVOY SYSTEMS, INC., 6716 Berger, Kansas City, KS 66111. Representative: Clyde N. Christey, 1010 Tyler, Suite 110-L, Topeka, KS 66612, (913) 233-9629. Transporting *pulp, paper and related products,* between Kansas City, KS, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 168572, filed June 9, 1983. Applicant: EUGENE WOODS, Union Hill Rd., Joppa, AL 35088. Representative: Eugene Woods (same address as applicant), (205) 586-5589. Transporting *lumber and wood products,* between points in AL, MS, GA, TN, KY, IN, MI, IL, and OH.

MC 168812, filed June 21, 1983. Applicant: RED LINE TRANSFER, INC., 7000 Chicago Ave., Gary, IN 46406. Representative: Stephen H. Loeb, Suite 4-2777 Finley Rd., Downers Grove, IL 60515, 312-953-0330. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

For the following, please direct status inquiries to Team 1, (202) 275-7030.

Volume No. OP-1-265

Decided: June 28, 1983.

By the Commission, Review Board Members Dowell, Fortier, and Krock.

MC 65941 (Sub-69), filed June 17, 1983. Applicant: TOWER LINES, INC., P.O. Box 6010, Wheeling, WV 26003. Representative: J. Walter Morgan (same address as applicant), (304) 277-1000. Transporting *general commodities:* (except classes A and B explosives, household goods and commodities in bulk), between points in the US. (except AK and HI).

MC 127840 (Sub-175), filed June 10, 1983. Applicant: MONTGOMERY TANK LINES, INC., P.O. Box 425, Summit, IL 60501. Representative: William H. Towle, 180 North La Salle St., Chicago, IL 60601, (3120 332-5106. Transporting (1) *chemicals and related products,* (2) *petroleum and petroleum products,* and (3) *food and related products,* between points in the U.S. (Except AK and HI), under continuing contract(s) with manufacturers, distributors, and dealers of (a) chemicals, in (1) above, (b) petroleum, in (2) above, and (c) foods, in (3) above.

MC 161600 (Sub-1), filed June 16, 1983. Applicant: DOUBLE C ENTERPRISE, INC., 950 Crestwood Circle, Lewisville, TX 75028. Representative: Carl Coleman (same address as applicant), (214) 247-5514. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Long Mile Rubber Company, of Dallas, TX.

MC 164100 (Sub-2), filed June 3, 1983. Applicant: HANNAFORD TRUCKING COMPANY, 54 Hannaford St., South Portland, ME 04106. Representative: Beth Dobson, P.O. Box 586, Portland, ME 04112 (207) 774-4000. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Hannaford Bros. Co., of South Portland, ME.

MC 164561, filed June 14, 1983. Applicant: GLENN HARVEY KEENAN, 960 U.S. Highway 12, Chehalis, WA 98532. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 239, Renton, WA 98055, (206) 228-3807.

Transporting (1) *food and related products, and paint and paint products,* between points in WA, OR, CA, AZ, NV, and ID, (2) *lumber and wood products,* between points in WA, on the one hand, and, on the other, points in AZ, CA, NV, and OR, and (3) *paper and paper products and printed matter,* between points in WA, CA, AZ, IL, MS, TN, and AR, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 167201, filed June 17, 1983. Applicant: BIG RED L.T.L. TRANSPORT, INC., P.O. Box 157, Great Meadows, NJ 07838. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904, (201) 572–5551. Transporting *food and related products,* between points in CT, MA, NJ, NY, and PA, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, NE, KS, OK, and TX.

MC 168520, filed June 8, 1983. Applicant: COMMISSION DE TRANSPORT DE LA COMMUNAUTE URBAINE DE MONTREAL, 159 St. Antoine St. West, Montreal, QC, CD (H2Z 1H3). Representative: Adrien R. Paquette, 200 St. James St., West Montreal, QC, CD (H2Y 1M1), (514) 842–1864. Transporting *passengers,* in charter operations, beginning and ending at ports of entry on the International Boundary line between the U.S. and Canada at points in ME, NH, VT, and NY, and extending to points in the U.S. (except HI).

Note.—Applicant receives governmental financial assistance for the purchase or operation of buses, or is an operator for such a recipient.

MC 168630, filed June 13, 1983. Applicant: OXFORD HIGH SCHOOL BAND BOOSTERS CLUB, INC., 310 Second Street East, Oxford, AL 36203. Representative: Billy W. Prestridge, 3100 Friendship Court, Oxford, AL 36203, (205) 237–9451. Transporting *passengers,* in charter operations, beginning and ending at points in Calhoun County, AL and extending to those points in the U.S. on and east of a line beginning at the mouth of the Mississippi River and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, then northward along the western boundaries of Itasca and Koochiching Counties, MN, to the international boundary line between the U.S. and Canada.

Note.—Applicant seeks to provide privately-funded charter transportaiton.

MC 168631, filed June 13, 1983. Applicant: ALPHA FREIGHT LINES, INC., 100 Maltese Dr., Totowa, NJ 07512. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904, (201) 572–5551. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between New York, NY, on the one hand, and, on the other, points in CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT, and DC.

Volume No. OP–1–267

Decided: June 29, 1983.

By the Commission, Review Board Members Williams, Joyce, and Fortier.

FF 710, filed June 17, 1983. Applicant: MISSION FOREIGN SERVICE, INC. 2420 Industry Rd., Suite B, Oceanside, CA 92054. Representative: Bernard A. Schulman (same address as applicant) (619) 757–9381. As a *freight forwarder* in connection with the transportation of *household goods, unaccompanied baggage and used automobiles,* between points in the U.S.

MC 113170 (Sub-10), filed June 20, 1983. Applicant: PEET FRATE LINE, INC. P. O. Box 529, Woodstock, IL 60098. Representative: Anthony E. Young, 29 LaSalle St., Suite 350, Chicago, IL 60603, (312)–782–8880. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in IL, IN, IA, MI, MN, MO, OH and WI.

MC 115331 (Sub-557), filed June 17, 1983. Applicant: TRUCK TRANSPORT INCORPORATED, 11040 Manchester Rd., St. Louis, MO 63122. Representative: Laura C. Berry (same address as applicant) (800) 325–3051. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with CPC International Inc. of Englewood Cliffs, NJ.

MC 121520 (Sub-2), filed June 15, 1983. Applicant: ALMOND FREIGHT LINES, INC., 2243 N Central Ave., Rockford, IL 61103. Representative: Michael S. Varda, 121 S Pinckney St., Madison, WI 53703, (608) 255–8891.Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in Boone, Cook, DeKalb, DuPage, Kane, Kendall, Lake, McHenry, Ogle, Stephenson, Will, and Winnebago Counties, IL, on the one hand, and, on the other, points in WI.

Note.—Applicant intends to tack this authority with existing authority in MC-121520 Sub 1, issued June 3, 1981.

MC 129410 (Sub-35), filed June 20, 1983. Applicant: BONCOSKY TRANSPORTATION, INC., 1301 Industrial Dr., Algonquin, IL 60102. Representative: Carl L. Steiner, 135 So. LaSalle St., Chicago, IL 60603, (312) 236–9375. Transporting *chemicals and related products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Sicalco, Ltd., of Oak Brook, IL.

MC 168740, filed June 16, 1983. Applicant: CAPITOL TRANSPORT CORPORATION, 5713 Arrow Dr., Oklahoma City, OK 73129. Representative: Wilburn L. Williamson, Suite 107, 50 Classen Center, 5101 North Classen Blvd., Oklahoma City, OK 73118. Transporting *mobile homes, modular or sectional building units, and wheeled undercarriages for such units,* between points in AR, CO, KS, LA, MO, NM, OK, and TX.

MC 168741, filed June 17, 1983. Applicant: TIBOLDO MITCHELL, 4005 Jewell Ave., Middletown, OH 45042. Representative: Tiboldo Mitchell (same address as applicant), (513) 423–7196. Transporting *lumber and wood products,* between points in Lamar County, AL, on the one hand, and, on the other, points in KY, IN, MI, OH, PA, MS and GA.

MC 168770, filed June 21, 1983. Applicant: FORREST E. BRYANT, JR., d.b.a. NOR. WOOD TRUCKING CO., Bangor Rd., Clinton, ME 04927. Representative: Forrest E. Bryant, Jr. (same address as applicant), (207) 426–3941. Transporting *general commodities* except classes A and B explosives, household goods and commodities in bulk), between points in ME, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Please direct status inquiries about the following to Team Three (3) at (202) 275–5223.

Volume No. OP3–299

Decided: June 30, 1983.

By the Commission, Review Board Members Parker, Krock, and Williams.

MC 2934 (Sub-158), filed June 13, 1983. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 998 North Michigan Road, Carmel, IN 46032. Representative: W. G. Lowry (same address as applicant), (317) 875–1142. Transporting *household goods,* between points in the U.S. (except AK and HI), under continuing contract(s) with Federal Mogul Corporation, of Southfield, MI.

MC 113855 (Sub-551), filed June 21, 1983. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Road SE, Rochester, MN 55903. Representative: Thomas J. Van Osdel, 15 Broadway, Suite 502, Fargo, ND 58102, (701) 235–4487. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in

the U.S. (except HI), under continuing contract(s) with Cammacorp of El Segundo, CA.

MC 144715 (Sub-23), filed June 15, 1983. Applicant: ANDERSON & WEBB TRUCKING CO., INC., P.O. Box 1523, 770 W. Lebanon, Mt. Airy, NC 270301523. Representative: Michael Dean Corder (same address as applicant), (800) 334–9187. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between points in the U.S. (except AK and HI).

Volume No. OP3–303

Decided: July 1, 1983.

By the Commission, Review Board Members Carleton, Parker, and Fortier.

MC 112595 (Sub-101), filed June 21, 1983. Applicant: FORD BROTHERS, INC. P.O. Box 727, Ironton, OH 45638. Representative: James W. Muldoon, 50 W. Broad St., Columbus, OH 43215, (614) 464–4103. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Union Carbide Corporation, of Danbury, CT.

MC 113855 (Sub-550), filed June 15, 1983. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Rd. S.E., Rochester, MN 55903. Representative: Leonard L. Bennett (same address as applicant), (507) 288–3331. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except HI), under continuing contract(s) with Lockheed Corporation, of Burbank, CA.

MC 152245 (Sub-7), filed June 17, 1983. Applicant: ARMOUR FOOD EXPRESS COMPANY, a corporation, P.O. Box 466, Fort Worth, TX 76101. Representative: A. S. Pavich, Greyhound Tower—1130, Phoenix, AZ 85077, (602) 248–5932. Transporting (1) *such commodities* as are dealt in or used by grocery and food business houses, between points in the U.S. (except AK and HI), under continuing contract(s) with Hunt-Wesson Foods, Inc., of Fullerton, CA, and (2) *meats, meat products and meat byproducts, dairy products,* and *articles distributed by meatpacking houses,* as described in Sections A, B, and C of Appendix 1 to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766, between points in the U.S. (except AK and HI), under continuing contact(s) with Armour Food Company, of Phoenix, AZ.

MC 159744 (Sub-1), filed June 6, 1983. Applicant: W. J. WHITE, d.b.a. W. J. WHITE TRUCKING, 133 East Parker, Houston, TX 77076. Representative: Charles E. Munson, 500 West Sixteenth Street, P.O. Box 1945, Austin, TX 78767, (512) 478–9808. Transporting (1) *metal products,* between point in the U.S. (except AK and HI), and (2) *machinery,* between points in TX and CA.

MC 162614 (Sub-3), filed June 21, 1983. Applicant: KENDALL TRUCKING AND GRADING, INC., Route 2, Box 18E, Wadesboro, NC 28170. Representative: Barry Weintraub, 7700 Leesburg Pike, Suite 403, Falls Church, VA 22043, (703) 442–8330. Transporting *building materials and commodities in bulk,* between points in NC, on the one hand, and, on the other, points in SC.

MC 168654, filed June 13, 1983. Applicant: BLUE DARTER, INC., Box 1016, Lees Summit, MO 64063. Representative: Tom B. Kretsinger, Jr., 20 E. Franklin, Liberty, MO 64068, (816) 781–6000. Transporting (1) *food and related products* and (2) *such commodities* as are dealt in or used by manufacturers and distributors of food and related products, between points in the U.S. (except AK and HI).

MC 168735, filed June 16, 1983. Applicant: MARK GRIFFIN, d.b.a. GRIFFIN ENTERPRISES, 1432 Ingra St., Anchorage, AK 99501. Representative: Robert C. Holmes, Law Office of Arthur R. Hauver, 750 West Second Ave., Suite 200, Anchorage, AK 99501, (907) 276–6354. Transporting *transportation equipment,* between ports of entry on the International Boundary line between the U.S. and Canada in AK, on the one hand, and, on the other, points in AK, WA, OR, and CA.

MC 168744, filed June 17, 1983. Applicant: ROBERT RALPH RENFROE JR., Rt. 2, Fayette, AL 35555. Representative: Robert Ralph Renfroe Jr. (same address as applicant) (205) 932–4740. Transporting *lumber and wood products,* between points in AL, MS, GA, TN, KY, OH, MI, IL, IN and WI.

MC 168745, filed June 17, 1983. Applicant: ARROW LEASING COMPANY, 5381 Fox St., Denver, CO 80216. Representative: Russell R. Sage, P.O. Box 11278, Alexandria, VA 22312 (703) 750–1112. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with American Honda Motor Co., Inc., of Gardena, CA.

MC 168784, filed June 17, 1983. Applicant: JASONS MOVING SERVICE, INC., 6600 Baltimore National Pike, Baltimore, MD 21228. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110, (215) 561–1030. Transporting (1) *household goods,* (2) *furniture and fixtures, and* (3) *pianos and organs,* between points in VA, MD, DE, PA, NJ, and DC.

Volume No. OP3–304

Decided: June 30, 1983.

By the Commission, Review Board Members Carleton, Parker, and Joyce.

FF–705, filed June 13, 1983. Applicant: ABLE FORWARDING, INC., 647 Terry Lynn Pl., Long Beach, CA 90807. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202, (904) 632–2300. As a *freight forwarder,* in the connection with the transportation of *used household goods, unaccompanied baggage and used automobiles,* between points in the U.S.

MC 144285 Sub 1, filed January 4, 1983, and previously noticed in the **Federal Register** issue of January 27, 1983. Applicant: BAY HAVEN MARINA INC., 1862 Ottawa Beach Rd., Holland, MI 49423. Representative: Robert R. Linn, Jr. (same address as applicant) (616) 399–9440. Transporting *boats,* between points in MI, KY, IN, IL, TN, GA and FL.

Note.—The purpose of this republication is to correctly reflect the territorial description.

Note.—The grant of authority is subject to coincidental cancellation of Certificate No. MC–144285 Sub 1, issued March 24, 1983.

MC 167174, filed June 20, 1983. Applicant: HAROLD ESTES TRUCKING, Box 410, Arab, AL 35016. Representative: Harold Estes (same address as applicant), (205) 586–1919. Transporting *metal tubing, mufflers and parts, exhaust pipes,* and *coiled steel,* between points in Winston County, AL, on the one hand, and, on the other, points in IL, IN, OH, KY, TX, IA, AR, MS, LA, FL, GA, MO, SC, WI, TN, AL and MI.

MC 168445 (Sub-1), filed June 16, 1983. Applicant: DOT LINES, INC., P.O. Box 27, East Syracuse, NY 13057. Representative: Raymond A. Richards, 35 Curtice Pk., Webster, NY 14580, (716) 265–9510. Transporting *food and related products,* between points in Onondaga County, NY, on the one hand, and, on the other, points in PA.

MC 168575, filed June 20, 1983. Applicant: POPKO TRUCKING CO., INC., P.O. Box 1073, 253 Union St., Westfield, MA 01086. Representative: David M. Marshall, Sixth Floor, 95 State St., Springfield, MA 01103, (413) 732–1136. Transporting (1) *building materials,* (2) *pulp, paper and related products,* and (3) *metal products,* between those points in the U.S. in and east of MN, IA, MO, AR, and LA.

Please direct status inquiries about the following to Team Four at (202) 275–7669.

Volume No. OP4–419

Decided: July 1, 1983.

By the Commission, Review Board, Members: Parker, Dowell, and Carleton.

MC 20196 (Sub-2), filed June 27, 1983. Applicant: CLARK'S TRANSFERRING SERVICE, INC., 107 N. Seminary St., Barre, VT 05641. Representative: Albert J. Cirone, Jr., 23 Bank St., Lebanon, NJ 03766, (603) 448–1330. Transporting *granite, marble and stone products,* between points in CT, NJ, ME, MA, RI, CT, NY, PA, NJ, and OH.

MC 150556 (Sub-2), filed June 27, 1983. Applicant: KLOTH TRUCK & EQUIPMENT CO., P.O. Box 234, Sparta, IL 62286. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701, (217) 544–5468. Transporting *road oil, asphalt and asphalt products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Bitucote Products Company, of St. Louis, MO.

MC 159026 (Sub-4), filed June 27, 1983. Applicant: U.S. CONTRACT TRUCKING, INC., 1230 Carl Rd., Irving, TX 75062. Representative: Bill W. Huie, (same address as applicant), (214) 438–0550. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 159627 (Sub-4), filed June 27, 1983. Applicant: TRANSPORTERS, INC., 450 Seventh St., Suite 1804, New York, NY 10123. Representative: C. Jack Pearce, 1000 Connecticut Ave., NW., Suite 1200, Washington, DC 20036, (202) 785–0048. Transporting *transportation equipment,* between points in the U.S. (except AK and HI).

MC 168886, filed June 24, 1983. Applicant: WICKES CORPORATION, d.b.a. WICKES HOME LUMBER & SUPPLY CO., P.O. Box 6777, Reno, NV 89513. Representative: Randall M. Faccinto, P.O. Box 7740, 3000 N. Lake Blvd., Suite 8, Tahoe City, CA 95730, (916) 583–8542. Transporting (1) *forest products,* (2) *lumber and wood products,* (3) *building materials,* and (4) *machinery,* between points in NV, CA, OR, WA, ID, and UT.

MC 168887, filed June 24, 1983. Applicant: McCONNELL'S TRUCKING, 1035 S. 174th, Seattle, WA 98148. Representative: George LaBissoniere, 15 S. Grady Way, Suite 239, Renton, WA 98055, (206) 228–3807. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of furniture, between points in the U.S. (except AK and HI), under continuing contract(s) with Harmon Cabinets, Division of Coastcraft, Inc., of Tacoma, WA.

Volume No. OP4–421

Decided: July 5, 1983.

By the Commission, Review Board, Members: Parker, Joyce, and Fortier.

MC 164587 (Sub-2), filed June 28, 1983. Applicant: CIRCLE W TRANSPORTATION, INC., 290 Leger Rd., North Huntingdon, PA 15642. Representative: John A. Vuono, 2310 Grant Bldg., Pittsburgh, PA 15219, (412) 864–2000. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with McGrath Sales Associates, of Nashua, NH.

MC 168917, filed June 28, 1983. Applicant: DONALD W. HILL AND LOLA HILL, d.b.a. DON HILL TRUCKING, 31876 Dowd Road, St. Helens, OR 97051. Representative: Donald W. Hill (same address as applicant), (503) 397–5349. Transporting *general commodities* (except classes A and B explosives and household goods), between points in AZ, CA, ID, NV, OR, and WA.

MC 168926, filed June 28, 1983. Applicant: RWAY, INC., P.O. Box 7296, Fredericksburg, VA 22404. Representative: Dennis Y. Ruby, 206 Twin Lakes Dr., Fredericksburg, VA, 22401, (703) 371–0301. Transporting *general commodities* (except household goods and classes A and B explosives), between points in the U.S. (except AK and HI).

MC 168936, filed June 27, 1983. Applicant: D. GRENALDO, INC., 1311 Morrell Ave., Connellsville, PA 15425. Representative: Donald Grenaldo (same address as applicant), (412) 628–4650. Transporting *passengers,* in special and charter operations, beginning and ending at points in PA, and extending to points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

Volume No. OP4–423

Decided: July 5, 1983.

By the Commission, Review Board, Members: Williams, Dowell, and Carleton.

MC 112617 (Sub-480), filed May 24, 1983, previously noticed in the FR issue of June 9, 1983, and republished this issue. Applicant: LIQUID TRANSPORTERS, INC., P.O. Box 21395, Louisville, KY 40221. Representative: Larry W. Thompson (same address as applicant), (502) 964–3351. Transporting *commodities in bulk, chemicals and related products, petroleum and petroleum products,* and *cement,* between points in the U.S. (except HI), under continuing contract(s) with that class of persons, as defined in Section 10923 of the Act, that are engaged in the business of manufacturing, distributing or dealing in bulk commodities.

Note.—The purpose of this republication is to correct the commodity description.

For the following, please direct status calls to Team 5 at 202–275–7289.

Volume No. OP5–328

Decided: June 29, 1983.

By the Commission, Review Board Members Fortier, Carleton and Parker.

MC 19919 (Sub-1), filed June 3, 1983. Applicant: JOHNSTON BROS. CONTRACTING CO., 51 N.E. Wielder St., Portland, OR 97232. Representative: Albin Edward Johnston (same address as applicant), 503–281–4409. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in OR and WA.

MC 41638 (Sub-9), filed June 9, 1983. Applicant: DELUXE TRAILWAYS, INC., 1718 S. Clark St., Chicago, IL 60616. Representative: Lawrence E. Lindeman, 4660 Kenmore Ave., Suite 1203, Alexandria, VA 22304, (703) 751–2441. Transporting *passengers,* between Kankakee, IL, and St. Louis, MO: from Kankakee over Interstate Hwy 57 to junction Interstate Hwy 72, then over Interstate Hwy 72 to junction Interstate Hwy 55, then over Interstate Hwy 55 to St. Louis, and return over the same route, seving all intermediate points, and the off-route points of Rantoul, Champaign, Urbana, Decatur, Springfield, and Litchfield, IL by available access routes.

Note.—Applicant seeks to provide regular route service in interstate or foreign commerce and in intrastate commerce under 49 U.S.C. 10922 (c)(2)(B) over the same route.

MC 148199 (Sub-5), filed June 16, 1983. Applicant: T. G. & J. C. GARLAND, d.b.a. AQUARIAN LINES, Rt 1, Box 261, Van Alstyne, TX 75095. Representative: T. G. Garland (same address as applicant), 214–482–6304 or 1–800–854–3436. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 141589 (Sub-3A), filed June 17, 1983. Applicant: AMERICAN COACH LINES, INC., d.b.a. AMERICAN TRAILWAYS OF GEORGIA, 486 Fairmont Dr., Norcross, GA 30071.

Representative: Gene Bryson (same address as applicant), 404–449–1806. Transporting *passengers* (1) between Carrollton, GA and Atlanta, GA: from Carrollton over GA Hwy 166 and 61 to junction U.S. Hwy 78 at or near Villa Rica, GA, then over U.S. Hwy 78 to junction Interstate Hwy 285, then over Interstate Hwy 285 to junction Interstate Hwy 20, then over Interstate Hwy 20 to Atlanta, GA, and (2) between Atlanta, GA and Asheville, NC: from Atlanta, GA over Interstate Hwy 85 to junction GA Hwy 365, then over GA Hwy 365 to Gainesville, GA, then over GA Hwy 365 to junction GA Hwy 441 at or near Cornelia, GA, then over GA Hwy 441 to junction NC Hwy 23 at or near Franklin, NC, then over NC Hwy 23 to junction NC Hwy 19–A at or near Dillsboro, NC, then over NC Hwy 19–A to Asheville, NC; and in (1) and (2) above return over the same routes and serving all intermediate points.

Note.—Applicant seeks to provide regular-route service in interstate or foreign commerce and in intrastate commerce under 49 U.S.C. 10922(c)(2)(B) over the same route.

Note.—Applicant also seeks authority in MC 141589 (Sub-3B), published in this same issue.

MC 161458 (Sub-1), filed June 10, 1983. Applicant: STEVEN L. ARMSTRONG, d.b.a. ARMSTRONG TRANSPORTATION, 1001 Rolling Glen Dr., Marion, IA 52302. Representative: Donald S. Mullins, 1033 Graceland Ave., Des Plaines, IL 60016, (312) 298–1094. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AL, AZ, AR, CA, CO, CT, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NY, NM, NC, OH, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WY, and WI.

MC 163508, filed June 17, 1983. Applicant: NORRIS TRANSPORT, INC., White Horse Road, Devault, PA 19432. Representative: James H. Sweeney, P.O. Box 9023, Lester, PA 19113, (215) 365–5141. Transporting *food and related products*, between those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 166368, filed March 22, 1983. Published initially in the **Federal Register** on April 12, 1983. Applicant: BROWN CHEMICAL CO., INC., Box 427 Junction Hwys 6 & 61, Imperial, NE 69033. Representative: Lavern R. Holdeman, 1610 South 70th, Suite 200, Lincoln, NE 68506, 402–488–0985. Transporting *such commodities* as are used or dealt in by agricultural supply houses, between points in CO, IA, KS, MO, NE, NM, OK, SD, TX and WY.

Note.—This republication shows the authority as originally requested.

MC 168728, filed June 15, 1983. Applicant: FASTWAY TRANSPORT LINES, INC., 4382 Mackey Ave., Edina, MN 55424. Representative: L. M. Rocheford (same address as applicant), 612–922–7181. Transporting *general commodites* (except classes A and B explosives household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 168729, filed June 16, 1983. Applicant: CHARTER CONTRACT CARRIER, INC., P.O. Box 4389, Dearborn, MI 48126. Representative: Anthony E. Young, 29 South LaSalle Street, Suite 350, Chicago, IL 60603, (312) 782–8880. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Traffic Management, Inc., of Harper Woods, MI.

MC 168739, filed June 17, 1983. Applicant: DONALD CHULUFAS, d.b.a. D&B TRUCKING, Route #1, Box 321 G, Harrisonville, MO 64701. Representative: Donald Chulufas (same address as applicant), (816) 884–2804. Transporting *lumber, plywood and steel*, between points in OK, TX, MO, KS, CO, WY, IA, NE, LA, MS, AL, GA, FL, SC, AR, MN, IL, WI, MI, IN, OH, and TN.

Volume No. OP5–329

Decided: June 29, 1983.

By the Commission, Review Board Members Carleton, Krock and Dowell.

FF 709, filed June 20, 1983. Applicant: ALL WORLD FORWARDERS, INC., 329 West Second St., South Boston, MA 02127. Representative: Joseph Wine, 54 Devonshire St., Boston, MA 02109, 617–523–0087. As a freight forwarder in connection with the transportation of *used household goods, unaccompanied baggage* and *used automobiles*, between points in the U.S.

MC 808 (Sub-69), filed June 20, 1983. Applicant: ANCHOR MOTOR FREIGHT, INC., 30800 Telegraph Rd., Suite 4900, Birmingham, MI 48010. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114, (216) 566–5639. Transporting *transportation equipment* between points in the U.S. (except AK and HI), under continuing contract(s) with persons as defined in section 10923 of the Motor Carrier Act of 1980 who are engaged in business as manufacturers, distributors or dealers of transportation equipment.

MC 8768 (Sub-41), filed June 20, 1983. Applicant: SECURITY VAN LINES, INC., P.O. Box 830, Kenner, LA 70062. Representative: Marshall Kragen, 1919 Pennsylvania Ave., NW, Suite 300, Washington, DC 20006, (202) 466–3778. Transporting *household goods* between points in the U.S. (except AK and HI), under continuing contract(s) with the Administration of the Tulane Educational Fund, of New Orleans, LA.

MC 79658 (Sub-87), filed June 20, 1983. Applicant: ATLAS VAN LINES, INC., 1212 St. George Rd., P.O. Box 509, Evansville, IN 47711. Representative: Michael L. Harvey (same address as applicant), (812) 424–2222. Transporting *household goods* between points in the U.S. (except AK and HI), under continuing contract(s) with Reichold Chemicals, Inc., of White Plaines, NY.

MC 79658 (Sub-88), filed June 21, 1983. Applicant: ATLAS VAN LINES, INC., 1212 St. George Rd., P.O. Box 509, Evansville, IN 47711. Representative: Michael L. Harvey (same address as applicant), 812–424–2222. Transporting (1) *household goods*, between points in the U.S. (except AK and HI) and (2) *health food and pharmaceutical products*, between Evansville and Mt. Vernon, IN and Springfield, MO, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with Mead Johnson and Company of Evansville, IN.

MC 108119 (Sub-290), filed June 21, 1983. Applicant: E. L. MURPHY TRUCKING COMPANY, P.O. Box 43010, St. Paul, MN 55164. Representative: Clellan G. Ahrens (same address as applicant), 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 Minnesota Mining and Manufacturing Company of St. Paul, MN., and its subsidiaries.

MC 159299 (Sub-2), filed June 21, 1983. Applicant: LEACH BROTHERS BROKERAGE, INC., 683 East Third St., Forest, MS 39074. Representative: Douglas C. Wynn, P.O. Box 1295, Greenville, MS 38701, 601–335–3576. Transporting (1) *metal products* and (2) *rubber and plastic products*, between Shreveport, LA and points in MS, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 165689, filed June 10, 1983. Applicant: TRANSPORT I. BIJEAU LTD., 237 7th Ave., Deux Montagnes, Quebec, Canada J7R–3H7. Representative: Issac Bijeau (same address as applicant), (514) 437–9336. Transporting *lumber and wood products, and glass*, between ports of entry on the International Boundary line between the U.S. and Canada at

Champlain, NY and Highgate Springs, MT, on the one hand, and, on the other, points in CT, DE, MA, MD, NH, NJ, NY, PA, RI, TN, VA, WV, VT, and DC.

MC 168668, filed June 13, 1983. Applicant: NEW TRAFFIC CONCEPTS, INC., 524 Lowell St. Lexington, MA 02173. Representative: Joseph T. Bambrick, Jr., P.O. Box 216, Douglassville, PA 19518, (215) 385-6086. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in CT, ME, MA, NH, RI, and VT.

[FR Doc. 83-18585 Filed 7-8-83; 8:45 am]
BILLING CODE 7035-01-M

Motor Carrier Finance Applications; Decision-Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsideration; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1181.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 20 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

Agatha L. Mergenovich,

Secretary.

Please direct status inquiries to Team 3, (202)275-5223.

Volume No. OP3-FC-317

MC-FC-81524. By decision of July 1, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, the Review Board, Members Dowell, Parker, and Joyce, approved the transfer to AMERICAN INTERSTATE TRUCKING, INC., of Cincinnati, OH, of Certificate No. MC-119654 Sub 93, issued August 4, 1981, to HI-WAY DISPATCH, INC., of Marion, IN, authorizing the transportation of *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), between points in IL, IN, OH, MI, MO, KY, WI, and PA. Representative: Norman R. Garvin, 1301 Merchants Plaza, East Tower, Indianapolis, IN 46204.

Note.—Transferor is retaining duplicating authority in MC-119654 Sub 98, to transport *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special handling and equipment), between those points in the United States in and east of MN, IA, MO, AR, and LA (except points in CT, ME, MA, NH, NY, RI, and VT).

For the following, please direct status calls to Team 5 at 202-275-7289.

Volume No. OP5-FC-325

MC-FC-81276. Be decision of June 30, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, the Review Board, Members Williams, Carleton and Parker, approved the transfer to MINARET, INC., Rock Falls, IL, of Certificate No. MC-114829 Sub 31, issued February 17, 1983, to GENERAL CARTAGE COMPANY, Sterling, IL, authorizing the transportation of general commodities, with exceptions, between points in the U.S. (except AK and HI). Temporary authority was granted March 14, 1983. Representative: Daniel C. Sullivan, 180 N. Michigan Ave., Suite 1700, Chicago, IL 60601.

MC-FC-81334. By decision of June 29, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, the Review Board, Members Joyce, Fortier and Krock authorized the transfer to R. E. "GENE" NUNN, d.b.a. SCOTTY TRUCKING COMPANY, of Amarillo, TX, of Certificate No. MC 2229 Subs 81, 87, 88, and 196F issued May 31, 1957, January 27, 1959, March 18, 1958, and May 2, 1979, respectively, and a portion of Sub 197F(c) on sheet 3 issued May 30, 1979 to SPECTOR RED BALL, INC., of Dallas, TX, authorizing the transportation of *general commodities* with exceptions, over specified regular and irregular routes in NM. An application for temporary authority has been filed. Representative: J. Raymond Chesney, P.O. Box 47407, 3177 Irving Blvd., Dallas, TX 75247 for transferor, and R. E. "Gene" Nunn, 1001-B No. Forrest, P.O. Box 9331, Amarillo, TX 79105 for transferee.

Note.—The authority above duplicates that being retained in No. MC 2229 Sub 248F which authorizes the transportation of general commodities with exceptions, between points in the U.S. (except AK and HI).

MC-FC-81400. By decision of June 30, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, The Review Board, Members Joyce, Krock and Williams, approved the transfer to JOYCE MOVING & STORAGE, INC., of Stamford, CT, of Certificate No. MC-8028 Sub 5 issued November 7, 1980, to BARRIEAU EXPRESS, INC., of Hartford, CT, authorizing the transportation of household goods, between Chicago, IL, and points within 50 miles thereof, on the one hand, and, on the other, points in 33 States. Representative: Robert J. Gallagher, 1435 G Street, NW. Suite 848 Washington, DC 20005.

Note.—The authority above duplicates that being retained by the transferor in the following Certificates which authorize the transportation of household goods, (A) radially (1) No. MC-8028 between various points in CT, MA, NY, and NJ, and points in IL and IN, and (2) MC-8028 Sub 3 (a) between points in CT, ME, MA, NH, NJ, NY, PA, RI, and VT, and points in IL, IN and WI, and (b) between described points in MA, CT, NY and NJ, and points in IL, IN, and WI, and (B) non-radially MC-8028 Sub 6 between points in the United States (except Alaska and Hawaii).

MC-FC-81464. By decision of June 27, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, the Review Board, Members Carleton, Fortier, and Krock, approved the transfer to WOOLFOLK CHEMICAL WORKS, INC., Fort Valley, GA, of Certificate Nos. MC-143908 Sub 1 MC-143908 Sub 2F, and MC-143908 Sub 3, issued November 17, 1978, May 15, 1980, and August 26, 1982, respectively, to GEORGE F. GREEN TRANSPORT, INC., Fort Valley, GA, authorizing the transportation of (1) pesticides and agricultural chemicals, between points in Peach, Turner, Dougherty, and Worth Counties, GA, on the one hand, and, on the other, points in AL, FL, SC (except Greenville), and Tennessee (except Chattanooga and Copperhill); (2) clay from points in Gadsden County, FL, to

points in Peach County, GA; (3) agricultural chemicals, between points in AL and GA, on the one hand, and, on the other, points in NC; (4) pyrophyllite between points in Peach County, GA, and points in Moore County, NC; (5) sulphur between Atmore, AL, on the one hand, and, on the other, points in FL, GA, MS, SC, NC, and TN; (6) clay, lime, and talc, between Atmore, AL, on the one hand, and, on the other, points in GA and FL; and (7) minerals, chemicals and related products (with exceptions), between points in AL, FL, GA, TN, and SC, on the one hand, and, on the other, points in AL, AR, FL, GA, IL, IN, IA, KS, KY, LA, MO, MS, NC, OK, SC, TN, and TX. Representative: K. Edward Wolcott, 235 Peachtree St., NE, Suite 1200, Atlanta, GA 30303.

MC-FC-81468. By decision of June 30, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1161, the Review Board, Members Parker, Fortier, and Krock, approved the transfer to G.L.K. INC., Lansdale, PA, of Certificate No. MC-113119 Sub 17, issued January 13, 1983, to C.S.I., INC., DOING BUSINESS AS CONTRACT SERVICE, INC., Colmar, PA, authorizing the transportation of general commodities, with exceptions, between points in the U.S. (except AK and HI). Representative: Raymond Talipski, 211 South Main Street, Taylor, PA 18517.

Note.—The authority above duplicates that being retained in No. MC-113119 Subs 2, 9, 10, 11, 14, 15X, and 16, authorizing the transportation of specified commodities between named points.

[FR Doc. 83-18560 Filed 7-6-83; 8:45 am]
BILLING CODE 7035-01-M

[Decision-Notice OP5MCF-324]

Motor Carriers; Finance Applications

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1 of the Commission's Rules of Practice. See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register**. Failure seasonably to oppose will be constructed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1182.2(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisidictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: June 28, 1983.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

MC-F-15318, filed June 10, 1983. AARON SMITH TRUCKING CO., INC. (Aaron) (U.S. Highway 117 South Dudley, NC 28333)—purchase (portion)—UNITED SHIPPING COMPANY (UNITED) (2104 Lower St. Dennis Rd., St. Paul, MN 55121). Representatives: James E. Ballenthin, 1016 Conwed Tower, 444 Cedar St., St. Paul, MN 55101; and Tommy W. Jarrett, 100 North William St., Goldsboro, NC 27530.

Aaron seeks authority to purchase a portion of the interstate operating rights and property of United. Aaron Smith, the sole stockholder of Aaron, seeks authority to acquire control of said rights through the transaction.

Aaron is seeking to acquire that portion of United's operating rights contained in Certificate No. MC-153829 Sub-No. 1, authorizing the transportation of general commodities (with exceptions), between points in the U.S. (except AK and HI).

Aaron is authorized to operate as a motor common carrier in No. MC-126139, and as a motor contract carrier in No. MC-143510.

Note.—Duplicate authority exists between the authority proposed for sale and the authority proposed for retention by United. Applicants have presented statements specifying the duplicating authority and evidence in the form of shipper support statements as indication of the absence of public harm as a result of the instant transaction.

[FR Doc. 83-18561 Filed 7-8-83; 8:45 am]
BILLING CODE 7035-01-M

Motor Carrier 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.

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."

For the following, please direct status calls to Team 5 at 202–275–7289.

Volume No. OP5–326

Decided: June 29, 1983.

By the Commission, Review Board Members Fortier, Carleton and Parker.

MC 141589 (Sub-3B), filed June 17, 1983. Applicant: AMERICAN COACH LINES, INC., d.b.a. AMERICAN TRAILWAYS OF GEORGIA, 486 Fairmont Dr., Norcross, GA 30071. Representative: Gene Bryson (same address as applicant), 404–449–1806. Transporting *passengers* in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

Note.—Applicant also seeks authority in MC 141589 (Sub-3A), published in this same issue.

MC 156899 (Sub-2), filed June 16, 1983. Applicant: C & D TRUCKING, INC., 9715 N.E. Prescott, Portland, OR 97220. Representative: Carol A. Dixon (same address as applicant), 503–225–0812. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

Volume No. OP5–327

Decided: June 29, 1983.

By the Commission, Review Board Members Carleton, Krock and Dowell.

MC 125868 (Sub-2), filed June 16, 1983. Applicant: FRANK J. MILES, d.b.a. MILES BUS COMPANY, Rt. 6, Box 326, Blackfoot, ID 83221. Representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83701, (208) 343–3071. Transporting (1) *shipments* weighing 100 pounds or less if transported in a motor vehicle in which no one package exceeds 100 pounds, (2) for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), (3) *passengers*, in charter or special operations, and (4) *passengers*, in charter or special operations, under continuing contract(s) with the State of Idaho, the United States Government, the Church of Jesus Christ of Latter Day Saints, the Boy Scouts of America, the Girl Scouts of America, and Idaho School District #55, between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 164848 (Sub-1), filed June 17, 1983. Applicant: MAGRA, INC., 1720 Dove St., P.O. Box 152, Port Huron, MI 48060. Representative: Ronald J. Mastej, 900 Guardian Bldg., Detroit, MI 48226, 313–963–3750. As *broker of general commodities* (except household goods), between points in the U.S.

MC 166218, filed June 20, 1983. Applicant: WESTERN TRAVEL PLAZA, INC., 360 Post St., San Francisco, CA 94108. Representative: Steven G. Teraoka, 540 Pacific Ave., San Francisco, CA 94133, (415) 981–3100. Transporting *passengers*, in special and charter operations, between points in CA and NV.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 168749, filed June 17, 1983. Applicant: CHIP LEE PETERSON, 3328 Hwy 93 South, Kalispell, MT 59901. Representative: Chip Lee Peterson (same address as applicant), 406–755–4131. Transporting *food and other edible products and by-products intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

For the following, please direct status inquiries to Team 1, (202) 275–7030.

Volume No. OP–1–266(F)

Decided: June 28, 1983.

By the Commission, Review Board Members Dowell, Fortier, and Krock.

MC 55830 (Sub-3), filed June 15, 1983. Applicant: THRU-WAY TRANSFER, INC., 320 Woodmont Rd., Milford, CT 06460. Representative: Ronald I. Shapss, 450 7th Ave., New York, NY 10123, (212) 239–4610. As a *broker*, of *general*

commodities (except household goods), between points in the U.S. (except AK and HI).

Volume No. OP-1-268(F)

Decided: June 29, 1983.

By the Commission, Review Board Members Williams, Joyce, and Fortier.

MC 168771, filed June 21, 1983. Applicant: FLORIDA COASTAL LINES, INC., 8315 W Pocahontas Ave., Tampa, FL 33612. Representative: John B. Gunton (same address as applicant), (813) 884-1397. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

For the following please direct status inquiries to Team 2, (202) 275-7030.

Volume No. OP-2-297

Decided: July 1, 1983.

By the Commission, Review Board Members Joyce, Fortier, and Krock.

MC 162493 (Sub-1), filed June 27, 1983. Applicant: COLORADO TRANSPORTATION GROUP, INC., d.b.a. ALPINE CHARTER COACHES, INC., 1000 Lionsridge Loop, Vail, CO 81657. Representative: James B. Rea, (same address as applicant), 303-296-9102. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 168793, filed June 21, 1983. Applicant: OUACHITA COACHES, INC., P.O. Box 37, Newport, AR 72112. Representative: Caroline C. Fuller, Wood Law Firm, 201 W. Broadway, P.O. Box 5606, North Little Rock, AR 72119, 501-376-3700. Transporting *passengers* in special and charter operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 168803, filed June 21, 1983. Applicant: GODFREY & DAVIS TRANSIT, INC., 5629 Poplar Hall Drive, Norfolk, VA 23502. Representative: Michael A. Inman, Suite 500-Pembrooke Five Bldg., Virginia Beach, VA 23462-5483, 804-490-8000. Transporting *passengers*, in charter and special operations, beginning and ending at Norfolk, Virginia Beach, Portsmouth, Chesapeake, and Suffolk, VA, and those points in Currituck, Camden, Perquimans, Gates, Northampton, Hertford, Halifax, Nash, Johnston, Durham, Harnett, Cumberland, Robeson, Columbus, Brunswick, New Hanover, Pender, Sampson, Duplin, Onslow, Jones, Lenoir, Wayne, Greene, Wilson, Edgecombe, Pitt, Craven, Pamlico, Carteret, Beaufort, Martin, Washington, Tyrrell, Dare, Hyde, Bertie, and Chowan Counties, NC, and extending to points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 168813, filed June 21, 1983. Applicant: GENERAL COURIER SYSTEMS, INC., 209 West Hills Rd., Huntington Station, NY 11746. Representative: George Carl Pezold, 120 Main St., Huntington, NY 11743, 516-427-0100. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

MC 168832, filed June 16, 1983. Applicant: BROWN'S CREW CAR OF WYOMING, INC., P.O. Box 2582, Cheyenne, WY 82001. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501-2028, (402) 475-6761. (1) Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, and (2) *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 168842, filed June 23, 1983. Applicant: EDWARD HAUGEN, d.b.a. ED HAUGEN, Box 23, Pembina, ND 58271. Representative: Edward Haugen (same address as applicant), (701) 825-6937. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 168863, filed June 23, 1983. Applicant: TURBO TRANSPORTATION SYSTEMS, INC., 18770 NE 6th Ave., P.O. Box 5024, Miami, FL 33169-1920. Representative: Richard B. Austin, 320 Rochester Bldg., 8390 NW 53d St., Miami, FL 33166, (305) 592-0036. As a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

Please direct status inquiries about the following to Team Four at (202) 275-7669.

Volume No. OP4-420

Decided: July 1, 1983.

By the Commission, Review Board, Members Parker, Dowell, and Carleton.

MC 168686, filed June 13, 1983. Applicant: ALPHA TOURS, INC., 1494 Federal St., Camden, NJ 08105. Representative: Diane Fitzpatrick (same address as applicant), (609) 966-2075. Tranporting *passengers*, between Willingboro, NJ and New York City, NY.

Note.—Applicant seeks to serve a community not regularly served by an ICC-authorized motor common carrier of passengers.

Volume No. OP4-422

Decided: July 5, 1983.

By the Commission, Review Board, Members Parker, Joyce, and Fortier.

MC 168107 (Sub-1), filed June 28, 1983. Applicant: RONALD M. KERR, P.O. Box R, Velva, ND 58790. Representative: Jack L. Schiller, 111-56 76th Dr., Forest Hills, NY 11375, (212) 263-2078. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except HI).

MC 168927, filed June 27, 1983. Applicant: NATIONWIDE BROKERAGE, P.O. Box 396, Alma, AR 72921. Representative: Don Garrison, 416 Hay Drive, Decator, AL 35603, (205) 355-0221. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

[FR Doc. 83-18564 Filed 7-8-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Permanent Authority Decisions—Restriction Removals; Decision-Notice

The following restriction removal applications are governed by 49 CFR Part 1165. Part 1165 was published in the **Federal Register** of December 31, 1980, at 45 FR 86747 and redesignated at 47 FR 49590, November 1, 1982.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1165.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

Agatha L. Mergenovich,

Secretary.

Please direct status inquiries about the following to Team Three (3) at (202) 275–5223.

Volume No. OP3–314

Decided: June 30, 1983.

By the Commission, Review Board Members Parker, Krock, and Williams.

MC 109365 (Sub-44X), filed June 8, 1983. Applicant: A & P TRUCK LINE, INC., P.O. Box 15, Highway 71, North Ashdown, AR 71822. Representative: Thomas B. Staley, 1500 Tower Bldg., Little Rock, AR 72201. Lead certificate: (1) broaden commodity to "lumber and wood products, building materials, forest products, and paper and paper products", from "lumber, plywood, gypsum products, forest products, charcoal briquettes, paper, paper, products and linerboard, and posts, poles, and piling", (2) remove the facilities restrictions: (a) U.S. Plywood Division of Champion International Corporation, at or near Corrigan and Camden, TX; (b) Georgia-Pacific Corporation, at Fordyce and Crossett, AR; (c) Nekoosa-Edwards Paper Company, in Little River County, AR; (d) Weyerhaeuser Company, at or near Valliant, OK; and (e) Crown Zellerbach Corp., at points in Washington and West Feliciana Parishes, LA; (3) remove originating at or destined to restrictions, and (4) broaden the territorial description to between points in the U.S. (except AK and HI).

[FR Doc. 83-18582 Filed 7-8-83; 8:45 am]

BILLING CODE 7035-01-M

[Proposed Exemptions-OP3-318]

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 I.C.C. 113 (1982), 47 FR 53303 (November 24, 1982).

DATES: 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.

Decided: July 5, 1983.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[Proposed Exemption; No. MC–F–15282]

Interstate Carriers, Inc.—Purchase Exemption—Transit Homes, Inc.

Interstate Carriers, Inc., a non-carrier wholly-owned subsidiary of Home Transportation Company, Inc., (No. MC-111545), seeks and exemption from the requirement in 49 U.S.C. 11343 of prior approval and authorization for its purchase of the operating rights of Transit Homes, Inc., in No. MC–94350 (Sub-Nos. 435X and the certificates superseded thereby, 436, and 437), authorizing the transportation, generally, of trailers and buildings and buildings in sections between numerous points in the United States and motorized recreational vehicles between points in Marion County, FL, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii). Transit Homes' Sub-No. 435X certificate supersedes Sub-Nos. 16, 22, 23, 28, 29, 30, 31, 33, 35, 38, 40, 42, 43, 44, 45, 47, 48, 49, 52, 53, 54, 55, 56, 57, 59, 60, 61, 62, 64, 65, 67, 71, 73, 74, 76, 77, 81, 84, 87, 91, 94, 95, 96, 97, 100, 112, 121, 131, 133, 144, 150, 151, 152, 155, 156, 157, 159, 160, 161, 170, 173, 174, 177, 179, 180, 182, 183, 184, 187, 190, 192, 194, 198, 199, 200, 202, 203, 208, 209, 210, 211, 212, 215, 217, 220, 224, 227, 228, 229, 231, 232, 233, 234, 235, 236, 239, 240, 241, 242, 243, 253, 254, 256, 257, 261, 262, 263, 268, 270, 276, 280, 281, 282, 283, 286, 287, 288, 289, 290, 291, 292, 295, 296, 297, 302, 303, 305, 307, 308, 309, 311, 313, 314, 316, 321, 324, 325, 327, 329, 330, 333, 334, 336, 337, 338, 340, 341, 342, 343, 344, 345, 346, 348, 349, 352, 354, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 369, 370, 373, 374, 375, 376, 377, 378, 379, 381, 382, 383, 384, 385, 386, 387, 389, 391, 392, 393, 396, 397, 399, 400, 401, 402, 403, 407, 409, 410, 411, 415, 416, 417, 420, 421, 422, 423, 427, 430, 431, and 433.

The transaction also contemplates the control of Interstate by Home, prior approval and authorization for which is required by 49 U.S.C. 11343 upon Interstate's becoming a carrier as a result of our approval and authorization of the involved purchase of operating authorities.

Send comments to:

(1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, DC 20423

and

(2) Petitioner's representative: J. Michael May, P.O. Box 642 6–A, Marietta, GA 30065.

Comments should refer to No. MC–F–15282.

[FR Doc. 83-18581 Filed 7-8-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

National Institute of Justice

Solicitation; Involvement of Private Enterprise in Operation of Businesses and Manufacturing Concerns in Correctional Systems

The National Institute of Justice announces a competitive research cooperative agreement program to explore the involvement of private enterprise in operating businesses and manufacturing concerns in correctional systems and to determine what changes are necessary in law, policy or procedures to maximize the provision by private enterprises of job opportunities for inmates. The aim is to insure earnings at a regular wage level within a structure that provides for normal profits for the investor.

The solicitation asks for submission of proposals of twenty (20) pages or less and in order to be considered papers must be received at the National Institute of Justice by August 10, 1983. This cooperative agreement will be supported up to $150,000 for 12 months. To maximize competition, both profit-making and non-profit organizations are encouraged to apply; however, no fee will be paid.

Further information and copies of the solicitation can be obtained by contacting Dr. Richard Titus, National Institute of Justice, 633 Indiana Avenue,

N.W., Washington, D.C. 20531 or by phoning 202/724-2956.

James K. Stewart,

Director.

[FR Doc. 83-18671 Filed 7-8-83; 8:45 am]

BILLING CODE 4410-18-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-454-OL and 50-455-OL]

Commonwealth Edison Co., (Byron Nuclear Power Station, Units 1 and 2); Reconstitution of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has reconstituted the Atomic Safety and Licensing Appeal Board for this operating license proceeding. As reconstituted, the Appeal Board for this proceeding will consist of the following members:

Alan S. Rosenthal, Chairman
Christine N. Kohl
Dr. Reginald L. Gotchy

Dated: July 5, 1983.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 83-18638 Filed 7-8-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

GPU Nuclear Corp. and Jersey Central Power & Light Co.; Oyster Creek Nuclear Generating Station; Granting of Relief From ASME Code Section XI Inservice Inspection Requirements

The U.S. Nuclear Regulatory Commissioin (the Commission) has granted relief from certain requirements of the ASME Code, Section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components," to the GPU Nuclear Corporation (GPU) and Jersey Central Power and Light Company (the licensees). The relief relates to the inservice inspection program for the Oyster Creek Nuclear Generating Station (the facility) located in Ocean County, New Jersey. The ASME Code requirements are incorporated by reference into the Commission's rules and regulations in 10 CFR Section 50.55a(g). The relief is effective as of its date of issuance.

The relief permits GPU to perform inservice inspection examination in a manner or on a schedule different from that prescribed in Section XI of the ASME Boiler and Pressure Vessel Code and applicable Addenda, as required by 10 CFR 50, because of inaccessibility, configuration of components, radiation level, or other valid reasons.

The request for relief complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the letter granting relief.

The Commission has determined that the granting of relief will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the relief.

For further details with respect to this action, see: (1) The applications for relief dated June 15 and November 15, 1978, June 8, September 6, and December 11, 1979, June 5 and August 5, 1981, May 2, August 2, August 26, and September 14, 1982, (2) the Commission's letter dated June 28, 1983, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room ,1717 H Street, NW., Washington, D.C. and at the Local Public Document Room, 101 Washington Street, Toms River, New Jersey 08753. A single copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 28th day of June 1983.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 83-18642 Filed 7-8-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-142 OL (Proposed Renewal of Facilty License); ASLBP 30-444-05 LA]

Regents of the University of CAlifornia (UCLA Research Reactor); Hearing

July 1, 1983.

Please take notice that an evidentiary hearing in the above-captioned matter will take place in Los Angeles, California, commencing at 9:30 a.m. in the Patio Room of the Los Angeles Hilton, 930 Wilshire Boulevard, on Tuesday, July 19, 1983. The hearing will continue at that location, commencing at 9:30 a.m. each day, through JUly 23. On Monday, July 25, the hearing will be held in the Customs Courtroom Eight Floor, Federal Building, 300 N. Los Angeles Street, Los Angeles, Califorinia 90012, and continue at that location through August 5, commencing at 9:30 a.m. each day. On August 6 the hearing will return to the Patio Room at the Los Angeles Hilton, if necessary. It is anticipated that the hearing will break on the conclusion of proceedings on July 26 and reconvene on August 1.

Oral limited appearance statements from members of the public will be heard from 9:30 until 11:00 a.m. on July 19. Should large numbers of individuals desire to make limited appearance statements, the Board may request that each statement be limited to a set period of time so as to permit as many as possible to be heard. In order to facilitate these statements and to permit the Board to plan additional limited appearance statement sessions if necessary, those persons desiring to make limited appearance statements are requested to notify the Board by a postcard addressed to: Carole F. Kagan, Esq., Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Written limited appearance statements may be filed at any time.

Bethesda, Maryland, July 1, 1983.

For the Atomic Safety and Licensing Board.

John H. Frye, III,

Chairman, Administrative Judge.

[FR Doc. 83-18645 Filed 7-8-83; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Revision.

2. The title of the information collection:

10 CFR Part 40—Domestic Licensing of Source Material;
10 CFR Part 70—Domestic Licensing of Special Nuclear Material;
10 CFR Part 73—Physical Protection of Plants and Materials.

3. The Form number, if applicable: Not applicable.

4. How often the collection is required: Prior to each shipment of specified material.

5. Who will be required or asked to report: U.S. licensees engaged in international shipment or transport of natural uranium, special nuclear material in formula quantities or of moderate or low strategic significance, or irradiated reactor fuel.

6. An estimate of the number of responses: 1,300.

7. An estimate of the total number of hours needed to complete the requirement or request: 1,000.

8. An indication of whether Section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: In order for the U.S. to meet the obligations of the Convention on the Protection of Nuclear Material, it is necessary to require that licensees provide advance notification and, in some cases, assurances of protection for certain types of shipments of natural uranium, special nuclear material in formula quantities or of moderate or low strategic significance, or irradiated reactor fuel.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, N.W., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395-7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland, this 1st day of July 1983.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 83-18644 Filed 7-6-83; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) the following information collection requirements for clearance under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission: New.

2. The title of the information collection: 10 CFR Part 50, "Requirements For Licensing Actions Regarding the Disposition of Spent Fuel Upon Expiration of the Reactors' Operating Licenses."

3. The form number if applicable: NA.

4. How often the collection is required: Once for each licensed reactor.

5. Who will be required or asked to report: NRC power reactor licensees.

6. An estimate of the number of responses: None through the year 1990, one in 1991 with a gradual increase to about 141 in the year 2020.

7. An estimate of the total number of hours needed annually to complete the requirement or request: Zero through the year 1990, and 16 hours in 1991, with gradual increases beyond that date, with an average total of about 48 hours per licensee through the year 2020.

8. An indication of whether Section 3504(h), Pub. L. 96-511 applies: NA.

9. Abstract: The final rule would require that licensees for operating nuclear power reactors shall, no later than 5 years before expiration of the reactor operating license, submit written notification to the Commission for its review and approval of the program by which the licensee intends to manage and provide funding for the management of all irridated fuel at the reactor upon expiration of the reactor operating license until ultimate disposal of the spent fuel in a repository.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555.

Comments and questions should be directed to the OMB reviewer Jefferson B. Hill, (202) 395-7340.

NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland, this 1st day of July 1983.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc 83-18643 Filed 7-6-83; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, MS 144-4 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Fracture Toughness Criteria for Ferritic Steel Shipping Cask Containment Vessels with a Maximum Wall Thickness of Four Inches (0.1 m)," and is intended for Division 7, "Transportation." It is being developed to describe fracture toughness criteria and test methods acceptable to the NRC staff for use in evaluating ferritic steel containment vessels in shipping casks.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Comments on both drafts should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, by September 7, 1983.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with: (1) Items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technial Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 29th day of June 1983.

For the Nuclear Regulatory Commission.

Guy A. Arlotto,

Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 83-18639 Filed 7-8-83; 8:45 am]

BILLING CODE 7590-01-M

Documentation of Computer Codes for High-Level Waste Management; Final Technical Position

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of final technical position.

SUMMARY: The Division of Waste Management has published NUREG-0856, "Final Technical Position on Documentation of Computer Codes for High-Level Waste Management." This report presents guidelines for the preparation of documentation of computer programs used in support of a license application for high-level waste disposal.

The final technical position reflects the two comments received on the draft NUREG-0856 (47 FR 879).

ADDRESSES: The final technical position, along with comments on the draft and NRC responses, is available for inspection or copying for a fee at the NRC Public Document Room, 1717 H Street, NW, Washington, DC. The final technical position is available for sale from GPO Sales Program, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, DC 20555. After October 11, 1983 it will also be available for sale from the National Technical Information Service, Springfield, VA 22161. Although no further revisions are planned, written comments may be sent to Michael J. Bell, Chief, High-Level Waste Licensing Management Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Malcolm R. Knapp, High-Level Waste Licensing Management Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 427-4058.

Dated at Silver Spring, Maryland, this 27th day of June 1983.

Michael J. Bell,

Chief, High-Level Waste Licensing Management Branch, Division of Waste Management.

[FR Doc. 83-18641 Filed 7-8-83; 8:45 am]

BILLING CODE 7590-01-M

Borehole and Shaft Sealing for High Level Nuclear Waste Repositories; Availability of Draft Technical Position

June 30, 1983.

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) has completed a draft technical position on the "Borehole and Shaft Sealing for High Level Nuclear Waste Repositories". A public comment period has been scheduled for 45 days following publication of this Notice of Availability.

ADDRESS: Copies of this draft document may be obtained free of charge upon written request to Nancy Still, Docket Control Center, Division of Waste Management, U.S. Nuclear Regulatory Commission, Mail Stop 623-SS, Washington, D.C. 20555; (303) 427-4426.

FOR FURTHER INFORMATION CONTACT: Jay E. Rhoderick, Project Manager, High Level Waste Technical Development Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone No. (301) 427-4682.

SUPPLEMENTARY INFORMATION: This technical position is one in a series of technical positions prepared by the NRC staff establishing what must be achieved by DOE in site characterization programs at potential repositories. (Subsequent technical positions will be noticed in the **Federal Register**). The purpose of this technical position is to provide guidance for identifying what types of information must be developed to resolve borehole and shaft sealing issues in support of a license application for construction authorization.

The principal mechanism for providing guidance to the DOE is completion by the NRC staff of Site Characterization Anaylses which document critical reviews on DOE Site Characterization Plans submitted according to the Nuclear Waste Policy Act of 1982 (H.R. 3809-2). The NRC staff already has dealt with major issues of High Level Waste Isolation in a comprehensive fashion in NUREG-0960, The Draft Site Characterization Analysis of the Site Characterization Report for the Basalt Waste Isolation Project. In NUREG-0960, the NRC staff identifies the full range of issues that will need to be addressed in evaluating performance of the repository system, including both natural and engineered barriers.

On selected key issues important to repository performance, the staff will be addressing generic concerns in technical positions which are developed through a process that allows for public comment. The intent of the staff is to assure that guidance is provided to DOE at an early time and thus assure that the DOE gathers needed data in site characterization programs.

Dated at Silver Spring, Maryland, this 30th day of June 1983.

For the Nuclear Regulatory Commission.

Philip S. Justus,

Acting Chief, High-Level Waste Technical Development Branch, Division of Waste Management.

[FR Doc. 83-18640 Filed 7-8-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-247]

Consolidated Edison Co. of New York, Inc; Issuance of Amendment to Facility Operating License

The Nuclear Regulatory Commission (the Commission) has issued Amendment No. 84 to Facility Operating License No. DPR-26, issued to the Consolidated Edison Company of New York, Inc. (the licensee), which revised Technical Specifications for operation of the Indian Point Nuclear Generating Unit No. 2 (the facility) located in Buchanan, Westchester County, New York. The amendment was effective April 28, 1983.

The amendment modifies the Technical Specifications to permit, on a one time only basis, and extension of forty-eight (48) hours to the current twenty-four (24) hour limitation of operation with containment spray pump 21 out of service.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration, and the amendment was authorized prior to effective date of the Commission's Interim Final Rule relating to Notice and State Consultation (48 FR 14873).

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need

not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see: (1) The application for amendment dated April 28, 1983, (2) the Commission's letter to the licensee dated April 29, 1983, (3) Amendment No. 84 to License No. DPR-26, and (4) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated At Bethesda, Maryland, this 6th day of July 1983.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1. Division of Licensing.

[FR Doc. 83-18748 Filed 7-8-83; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/641]

Secretary of State's Advisory Committee on Private International Law, Study Group on the Law Applicable to International Sales; Meeting

There will be a meeting of the subject Study Group at 10:30 A.M. on Tuesday, July 26, 1983 in Room 1406 of the Department of State. Members of the general public may attend up to the capacity of the meeting room and participate in the discussion subject to the instructions of the Chairman.

The purpose of the meeting is to discuss the work done by the Special Commission of experts of the Hague Conference on Private International Law at its meeting in December, 1982 and the resulting preliminary draft convention on the law applicable to contracts for the international sale of goods. The Study Group meeting is intended to formulate and recommend guidance for U.S. experts that will participate at the next meeting of the Hague Conference Special Commission in November, 1983.

Entry to the Department of State building is controlled and members of the general public should use the "C" Street ("diplomatic") entrance. As entry will be facilitated by advance arrangements, members of the general public planning to attend should, prior to July 26, notify Ms. Rochelle Renna, Office of the Assistant Legal Adviser for Private International Law, Department of State, Washington, D.C. 20520 (telephone: (202) 632-8134) of their name, affiliation, address and telephone number.

Peter H. Pfund,

Assistant Legal Adviser for Private International Law and Vice-Chairman, Advisory Committee on Private International Law.

July 5, 1983.

[FR Doc. 83-18697 Filed 7-8-83; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB June 1-June 28, 1983

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements, transmitted by the Department of Transportation, during June 1983 to the Office of Management and Budget (OMB) for its approval. This notice is published in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Windsor, John Chandler, or Annette Wilson, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 7th Street SW., Washington, D.C. 20590, (202) 426-1887 or Gary Waxman or Wayne Leiss, Office of Management and Budget, New Executive Office Building, Room 3001, Washington, D.C. 20503, (202) 395-7313.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for approval under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. On Mondays and Thursdays, as needed, the Department of Transportation will publish in the **Federal Register** a list of those forms, reporting and recordkeeping requirements that it has submitted to OMB for review and approval under the Paperwork Reduction Act. The list will include new items imposing paperwork burdens on the public as well as revisions, renewals and reinstatements of already existing requirements. OMB approval of an information collection requirement must be renewed at least once every three years. The published list also will include the following information for each item submitted to OMB:

(1) A DOT control number.

(2) An OMB approval number if the submittal involves the renewal, reinstatement or revision of a previously approved item.

(3) The name of the DOT Operating Administration or Secretarial Office involved.

(4) The title of the information collection request.

(5) The form numbers used, if any.

(6) The frequency of required responses.

(7) The persons required to respond.

(8) A brief statement of the need for, and uses to be made of, the information collection.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 5 days from the date of publication is needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB during June 1983:

DOT No: 2175.

OMB No: 2115-0040.

By: United States Coast Guard.

Title: Spill Cleanup Inventory.

Forms: CG-5124, CG-5124-1 through CG-5124-16.

Frequency: Annually.

Respondents: Businesses, Cooperatives, Federal Agencies, and State and local governments.

Need/Use: The National Contingency Plan (40 CFR Part 300), establishes, as one of its objectives, the identification of

equipment available for response to discharges of oil and hazardous materials. The Spill Cleanup Inventory (SKIM) is an automated system for retrieval and update of information on available equipment resources, and the location of each piece of equipment geographically.

DOT No: 2176.

OMB No: 2115–0055.

By: United States Coast Guard.

Title: Recreational Boat Manufacturer Identification Number.

Forms: None.

Frequency: On Occasion.

Respondents: Manufacturers and importers of recreational boats.

Need/Use: 46 U.S.C. 1454, 1456 and implementing regulations require the establishment of a boat standards compliance program. The Coast Guard is required to establish a method for identifying specific boat manufacturers so that an effective compliance program may be maintained. A manufacturer identification code and hull identification number are used to identify specific boats by manufacturer boat type, year built, etc. Should a particular type boat fail its safety compliance or prove to have potential defects, it is possible to issue a recall using the recreational boat identification number assigned by the program.

DOT No: 2177.

OMB No: None (New).

By: Maritime Administration.

Title: Machine tool investigation.

Forms: None.

Frequency: On occasion.

Respondents: Machine tool importers/manufacturers.

Need/Use: To determine the effects of machine tool imports on the National security from standpoint of U.S.A. machine tool production and capacity and capabilities.

DOT No: 2178.

OMB: No. 2120–0101.

By: Federal Aviation Administration.

Title: Application and Agreement for Physiological Training.

Forms: AC Form 3150–7.

Frequency: On Occasion.

Respondents: Pilots and other air crew members.

Need/Use: This report is necessary to establish qualifications of eligibility to receive physiological training and the agreement portion is used as evidence of training. The form is filled out by pilots and air crew members who apply to receive the training.

DOT No: 2179.

OMB No: 2120–0018.

By: Federal Aviation Administration.

Title: Certification Procedures for Products & Parts FAR 21.

Forms: FAA 8110–12; 8130–1; 8130–6 and 8130–9.

Frequency: As required.

Respondents: Aircraft & Aircraft Parts Designers, Manufacturers and Aircraft Owners.

Need/Use: FAR 21 prescribes certification procedures for products & parts. The information collected is used to determine compliance and applicant eligibility as a safety control measure.

DOT No: 2180.

OMB No: 2133–0007.

By: Maritime Administration.

Title: Maintenance and Repair Cumulative Summary.

Forms: MA–140, "Subsidy Repair Summary".

Frequency: Quarterly.

Respondents: Shipowners/Operators.

Need/Use: These summaries are used to evaluate the validity of subsidy requests and to determine the amount of maintenance and repair subsidy shipowners and ship operators should receive.

DOT No: 2181.

OMB No: 2125–0074 and 2125–0075 (Combined).

By: Federal Highway Administration.

Title: Endorsement for Motor Carrier Policies of Insurance.

Forms: MCS–90 and MCS–82.

Frequency: Other: During period policy is in effect.

Respondents: Motor Carriers.

Need/Use: The requirements must be met by motor carriers to obtain and retain the endorsement and surety bond. These must be displayed at the principal place of business, and also made available to the public by displaying openly.

DOT No: 2182.

OMB No: 2120–0002.

By: Federal Aviation Administration.

Title: Aviation Medical Examiner Designation Application.

Forms: FAA Form 8520–2.

Frequency: On Occasion.

Respondents: Physicians.

Need/Use: FAA 8520–2 requires information needed for making selections of physicians as Aviation Medical Examiners (AME's) and for deciding who will be authorized to assess physical fitness of pilots and flight crewmen.

Issued in Washington, D.C. on June 30, 1983.

Karen S. Lee,

Deputy Assistant Secretary for Administration.

[FR Doc. 83-18450 Filed 7-8-83; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE–83–16]

Petitions for Exemption; Summary of Petitions Received, Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: July 21, 1983.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Petition Docket No.——, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426–3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on July 7, 1983.

Donald P. Byrne,

Chief, Certification Law Branch, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
18920	World Airways, Inc	14 CFR Part 121	To permit petitioner to conduct scheduled passenger service authorized by the CAB over certain routes utilizing the flight following/dispatch system procedures, communication procedures for pilots, and enroute servicing and maintenance procedures of Part 121 that are applicable to supplemental air carriers.
18920	Transamerica Airlines, Inc	14 CFR Part 121	To permit petitioner to conduct scheduled passenger service authorized by the CAB over certain routes utilizing the flight following/dispatch system procedures, communication procedures for pilots, and enroute servicing and maintenance procedures of Part 121 that are applicable to supplemental air carriers.

DISPOSITIONS OF PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
None this period.			

[FR Doc. 83-18780 Filed 7-8-83; 9:02 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 the Executive Steering Committee of the Federal Aviation Administration (FAA) National Airspace Review Advisory Committee. The agenda for this meeting is as follows:

Opening Remarks
Presentation of Task Group Staff Studies, including recommendations:
- Task Group 1-2.5 Additional Services IFR/VFR
- Task Group 1-3.3 Routes Infrastructure
- Task Group 1-7.2 Airspace Application
- Task Group 2-4.1 Helicopter Separation
- Task Group 2-5.1 National Beacon Code Allocation Plan (NBCAP)

DATE: August 9, 1983, convenes at 10:00 a.m.

ADDRESS: The meeting will be held at the Federal Aviation Administration, Room 1010, 800 Independence Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: National Airspace Review Program Management Staff, Room 1005, Federal Aviation Administration, 800 Independence Avenue, SW., AAT-30, 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, SW., Washington, D.C. 20591, by August 2, 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 July 5, 1983.

R. J. Van Vuren,

Executive Director, NARAC.

[FR Doc. 83-18632 Filed 7-8-83; 8:45 am]
BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Clackamas County, Oregon

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Clackamas County, Oregon.

FOR FURTHER INFORMATION CONTACT: Richard R. Arnold, Environmental Coordinator and Safety Programs Engineer, Federal Highway Administration, Equitable Center, Suite 100, 530 Center Street NE., Salem, Oregon 97301. Telephone (503) 378-3845.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Oregon Department of Transportation will prepare an environmental impact statement (EIS) on a proposal to add a new interchange to Interstate 205 in the vicinity of Lester Road in Clackamas County. The purpose of the proposed project is to accommodate planned, high-density urbanization of the adjacent area around the Clackamas Town Center shopping complex.

One build alternative and the No-build Alternative is being advanced for consideration in the EIS/Public Hearing process. The proposed design would be a full-diamond interchange with improved roadway connections to parallel arterials on both sides of the freeway.

Information describing the proposed action will be sent to the appropriate Federal, State, and local agencies and to private organizations and citizens who have previously expressed interest in this proposal. Public meetings will be held, as may be necessary, and a public hearing will be held. No formal scoping meeting is planned at this time.

Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and Federally assisted programs and projects apply to this program)

Issued: June 30, 1983.

E. J. Valach,

Program Development Engineer, Oregon Division, Salem, Oregon.

[FR Doc. 83-18669 Filed 7-8-83; 8:45 am]
BILLING CODE 4910-22-M

Environmental Impact Statement: Washington County, Oregon

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Washington County, Oregon.

FOR FURTHER INFORMATION CONTACT: Richard R. Arnold, Environmental Coordinator and Safety Programs Engineer, Federal Highway Administration, Equitable Center, Suite 100, 530 Center Street, N.E., Salem, Oregon 97301. Telephone (503) 378-3845.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Oregon Department of Transportation and Washington County will prepare an environmental impact statement (EIS) on the proposed widening of 185th Avenue from just north of U.S. 26

(Sunset Highway) to Tualatin Valley Higway, 3.5 miles to the south.

The widening is considered necessary to accommodate planned urbanization of adjacent, large tract agricultural land.

The present roadway is two lanes except for a recent 3 to 5-lane widening toward the north end. The proposal would widen 185th Avenue to include four travel lanes, a median lane, shoulder bike lanes, and sidewalks on both sides. Only one build alternative is being advanced with several design options considered at select intersection areas.

Information describing the proposed action will be sent to the appropriate Federal, State, and local agencies and to private organizations and citizens who have previously expressed interest in this proposal. Public meetings will be held, as may be necessary, and a public hearing will be held. No formal scoping meeting is planned at this time.

Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program)

Issued on: June 30, 1983.

E. J. Valach,

Program Development Engineer, Oregon Division, Salem, Oregon.

[FR Doc. 83-18505 Filed 7-6-83; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Denial of Petition for Defect Hearing

This notice sets forth the reasons for the denial of a petition by Gerard F. Tripptree to have a hearing to determine whether a manufacturer had reasonably met its obligation to notify purchasers of the existence of a safety-related defect (15 U.S.C.1416).

On March 16, 1983, Mr. Tripptree wrote NHTSA alleging leakage of gasoline through the filler neck and related hoses connecting the neck to the fuel tank on his Volkswagen Rabbit. He stated that he had been into his local dealer ten times in response to the manufacturer's notification of campaign 81V-058, and that the condition persisted. NHTSA contacted Volkswagen of America, Inc., who arranged for a further inspection and repair of Mr. Tripptree's car. Mr. Tripptree's complaint was found to be valid, but unrelated to the campaign, and the problem was corrected. Because Volkswagen had met its responsibility to correct a safety-related defect in the vehicle in question, Mr. Tripptree's petition was denied on May 20, 1983.

(Sec. 156, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1416); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on July 1, 1983.

George L. Parker,

Acting Associate Administrator for Enforcement.

[FR Doc. 83-18409 Filed 7-7-83; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

Hazardous Materials; Applications for Exemptions

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardouw Materials Regulation of the Materials Transportation Bureau has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehilce, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comment period closes August 9, 1983.

Address comments to: Dockets Branch Office of Regulatory Planning and Analysis, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, D.C.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9086-N	The Embassy of Switzerland, Washington, DC	49 CFR 172.101(6)(b)	To authorize shipment of rocket ammunition with explosive projectile, Class A explosive by cargo only aircraft. (mode 4)
9087-N	O. I. Corporation, College Station, TX	49 CFR 173.245	To authorize shipment of chromic acid solution, containing less than 25 percent chronic acid by weight, classed as corrosive liquid, n.o.s. contained in glass ampules packed in styrofoam containers surrounded with a polyethylene pad, overpacked in a fiberboard box. (mode 1)
9089-N	Fabricated Metals, Inc., San Leandro, CA	49 CFR 173.182(b)(7), 173.232, 173.239(a)	To manufacture, mark and sell non-DOT specification aluminum portable tanks comparable to DOT Specification 56 except that one component part does not comply with required tensile strength, for shipment of a flammable solid and certain oxidizers. (modes 1, 2)
9091-N	Allied Fibers & Plastic Company, Petersburg, VA.	49 CFR 173.31	To authorize shipment of cumene hydroperoxide, classed as an organic peroxide in DOT Specification 103AW tank car which is overdue for retest. (mode 2)
9092-N	West-Tex Equipment Company, Midland, TX	49 CFR 178.253	To manufacture, mark and sell non-DOT specification six 60 gallon compartmented steel portable tanks firmly mounted on the chassis of a truck, for shipment of various flammable liquids or corrosive materials. (mode 1)

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9094-N	Chemical Tank Lines, Inc., Mulberry, FL	49 CFR 173.265	To ship hydrofluosilicic acid in DOT Specification MC-312 stainless steel cargo tanks. (mode 1)
9095-N	Worthington Cylinders, Columbus, OH	49 CFR 173.34(e)(9)	To authorize shipment of natural gas well samples in DOT-4E aluminum cylinders retested every 12 years instead of 5 year intervals when in exclusive use service. (mode 1)

This notice of receipt of applications for new exemptions is published in accordance with Section 107 of the Harzadous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, D.C., on July 1, 1983.

J. R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 83-18407 Filed 7-8-83; 8:45 am]

BILLING CODE 4910-60-M

Hazardous Materials; Applications for Renewal or Modification of Exemptions or Applications to Become a Party to an Exemption

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of Applications for Renewal or Modification of Exemptions or Application to Become a Party to an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes July 26, 1983.

ADDRESS COMMENTS TO: Dockets Branch, Office of Regulatory Planning and Analysis, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

Application No.	Applicant	Re-newal of exemp-tion
2805-X	Allied Corp., Petersburg, VA	2805
3121-X	U.S. Department of Defense, Washington, DC	3121
3600-X	U.S. Department of Defense, Washington, DC	3600
4338-X	Stauffer Chemical Co., Westport, CT [1]	4338
4575-X	Union Carbide Corp., Danbury, CT [4]	4575
5206-X	Mesabi Powder Co., Hibbing, MN	5206
5945-X	Cardox Corp., Countryside, IL	5945
6122-X	Pennwalt Corp., Buffalo, NY	6122
6468-X	Sodyeco, Inc., Charlotte, NC	6468
6543-X	Synthatron Corp., Parisppany, NJ [3]	6543
6658-X	U.S. Department of Energy, Washington, DC	6658
7007-X	Allied Universal Corp., Miami, FL	7007
7060-X	Las Vegas Airlines, Inc., Las Vegas, NV	7060
7060-X	Empire Aero Services, Inc. d.b.a. SAIR Aviation, Syracuse, NY	7060
7269-X	U.S. Department of Energy, Washington, DC	7269
7605-X	General Dynamics, Fort Worth, TX	7605
7636-X	Minnesota Valley Engineering, New Prague, MN [6]	7636
7685-X	Aerojet Strategic Propulsion Co., Sacramento, CA	7685
8065-X	U.S. Department of Energy, Washington, DC	8065
8129-X	Rollins Environmental Services (DE), Inc., Wilmington, DE	8129
8196-X	ANF-Industrie, Paris, France	8196
8196-X	Freon Products (Middle East) S.A.L., Beirut, Lebanon	8196
8196-X	Societe Auxiliarie de Transports et d Industries, Paris, France	8196
8197-X	Container Corp. of America, Wilmington, DE	8197
8209-X	Coastal Planes Airways, Inc., Warner Robins, GA	8209
8213-X	Trailmaster Tanks, Inc., Fort Worth, TX	8213
8228-X	Bureau of Alcohol, Tobacco and Firearms, Washington, DC	8228
8247-X	Container Corp. of America, Wilmington, DE	8247
8249-X	Lawrence Packaging Supply Corp., Newark, NJ	8249
8256-X	E. I. du Pont de Nemours & Co., inc., Wilmington, DE	8256
8389-X	Container Corp. of America, Wilmington, DE [5]	8389
8465-X	Chase Bag Co., Oak Brook, IL [5]	8465
8489-X	FMC Corp., Philadelphia, PA [7]	8489
8522-X	Preferred Plastics, Inc., Sterling, VA [8]	8522
8554-X	Austin Powder Co., Cleveland, OH [9]	8554
8621-X	Sealand Terminal Corp., Gulfport, MS	8621
8651-X	Rockwell International Corp., Canoga Park, CA	8651
8665-X	Bethlehem Steel Corp., Bethlehem, PA	8665
8740-X	Argyle, Division of Sherwood Medical, St. Joseph, MO	8668
8685-X	Hercules Inc., Wilmington, DE	8685
8692-X	Mitsubshi International Corp., New York, NY	8692
8693-X	Matheson Gas Products, Secaucus, NJ	8693
8709-X	Delta Drum, Inc., Crete, IL [10]	8709
8710-X	Noury Chemical Corp., Burt, NY	8710
8970-X	Williams Strategic Metals, Inc., Wheat Ridge, CO [11]	8970
8988-X	Schlumberger Well Services, Houston, TX [12]	8988

[1] To authorize shipment of phosphorus trichloride in DOT Specification 51 portable tanks.
[2] To reinstate provision for shipment of a nonflammable compressed gas mixture containing ethylene oxide in MC-330 and MC-331 tank motor vehicles.
[3] To authorize various corrosive materials, as additional commodities.
[4] To authorize use of an additional model DOT-4L cylinder, having water capacity of 550 pounds, for liquefied carbon dioxide, and nitrous oxide.
[5] To authorize shipment of cleaning compounds containing less than 52% hydrofluoric acid in DOT Specification 34 containers.
[6] To authorize sodium nitrite mixture as an additional commodity, and to add water as an additional mode of transportation
[7] To authorize shipment of waste arsenical mixture, solid, classed as poison B.
[8] To authorize an additional 6 cavity polyethylene case containing one 20 ounce bottle per cavity, for shipment of those commodities authorized in DOT Specification 33A.
[9] To add oxidizing materials, n.o.s. as an additional commodity.
[10] To authorize shipment of certain flammable liquids in subject polyethylene drums.
[11] To authorize an optional all 304 stainless steel container and to add highway as additional mode of transportation
[12] To authorize water as an additional mode of transportation.

Application	Applicant	Parties to exemption
3121-P	Rockwell International Corp., Canoga Park, CA	3121
5022-P	Aerojet Tactical Systems Co., Sacramento, CA	5022
6543-P	Corning Glass Works, Corning, NY	6543
6543-P	Union Carbide Corp., Danbury, CT	6543
6563-P	Bemco Inc., Port Lambton, Canada	6563
6611-P	L'Air Liquide Corp., Paris France	6611
6765-P	L'Air Liquide Corp., Paris, France	6765
6798-P	M&T Chemicals Inc., Baltimore, MD	6798
7023-P	HiPure Chemicals, Inc., Nazareth, PA	7023
7052-P	DME Corp., Pompano Beach, FL	7052
7052-P	Powell Process Systems, Inc., Houston, TX	7052
7052-P	Cubic Corp., San Diego, CA	7052
8129-P	PPG Industries, Inc., Pittsburgh, PA	8129
8129-P	Lab Waste Services, Chicago, IL	8129
8141-P	The Boeing Co., Seattle, WA	8141
8585-P	Thermodynamics Corp., Broken Arrow, OK	8585
8995-P	Worum Chemical Co., St. Paul, MN[1]	8995
9064-P	Amalgamet Canada, Toronto, Ontario, Canada	9064
9064-P	J. T. Baker Chemical Co., Phillipsburg, NJ	9064
9064-P	Presussag AG Metall, Goslar, West Germany	9064
9064-P	Apache Chemicals, Inc., Seward, IL	9064

[1] Request party status and to authorize toluene diisocyanate, class B poison as an additional commodity.

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, D.C., on July 1, 1983.

J. R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulations, Materials Transportation Bureau.

[FR Doc. 83-18408 Filed 7-8-83; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Public Information Collection Requirements Submitted to OMB for Review

On July 5, 1983 the Department of the Treasury submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 634-2179. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 309, 1625 I Street, NW., Washington, D.C. 20220.

Office of the Secretary

OMB Number: None
Form Number: FC 2a
Title: Monthly Consolidated Foreign Currency Report on Foreign Branches and Subsidiaries of U.S. Banks
OMB Number: None
Form Number: FC 1a
Title: Monthly Foreign Currency Report of Banks in the United States
OMB Reviewer: Judy McIntosh, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Internal Revenue Service

OMB Number: 1545-0257
Form Number: FTD
TITLE: Federal Tax Deposit Form
OMB Number: 1545-0570
Form Number: Letter 313C, SC, SE/SP
Title: FTD Penalty Explained

Alcohol, Tobacco and Firearms

OMB Number: 1512-0017
Form Number: ATF F 6 Part 1
Title: Application and Permit for Importation of Firearms, Ammunition and Implements of War
OMB Reviewer: Norman Frumkin, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Rita A. DeNagy,

Departmental Reports Management Office.

July 5, 1983.

[FR Doc. 83-18580 Filed 7-8-83; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Agency Forms Under OMB Review

AGENCY: Veterans Administration

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists a new form. This entry contains the following information: (1) The department or staff office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(H) of Pub. L. 95-511 applies.

ADDRESSES: Copies of the proposed form and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (004A2), Veterans Administration, 810 Vermont Ave. NW., Washington, DC, 20420 (202) 389-2146. Comments and questions about the items on this list should be directed to the VA's OMB Desk Officer, Rich Shepard, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-6880.

DATES: Comments on the form should be directed to the OMB Desk Officer within 60 days of this notice.

By direction of the Administrator.

Dated: July 5, 1983.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

New

1. Department of Veterans Benefits
2. Application for Benefits and Request for Certification Under the Provisions of Sec. 156, Pub. L. 97-377
3. VA Form 21-8924
4. Other—Once per claimant
5. Individuals or Households/Federal Agencies or Employees
6. 18,000 Responses
7. 3,000 Hours
8. Not applicable under 3504(H)

[FR Doc. 83-18554 Filed 7-8-83; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 133
Monday, July 11, 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

	Items
Federal Energy Regulatory Commission	1
Nuclear Regulatory Commission	2
Securities and Exchange Commission	3, 4

1

FEDERAL ENERGY REGULATORY COMMISSION

Meeting

July 6, 1983.

TIME AND DATE: 10 a.m., July 13, 1983.

PLACE: 825 North Capitol Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, telephone (20) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

Consent Power Agenda—774th Meeting, July 13, 1983, Regular Meeting (10 a.m.)

CAP-1. Project No. 6840-000, Olympus Energy Corp.
CAP-2. Project No. 6638-001, Elba Hydroelectric Co., Inc.
CAP-3. Project No. 7077-000, Frontier Land & Power Co.
CAP-4. Project No. 344-003, Southern California Edison , Co.
CAP-5. Omitted
CAP-6. Project No. 2947-002, Central Vermont Public Service Corp.
CAP-7. Project No. 6982-000, Capital Development Co.
CAP-8. Project No. 3179-001, Suncook Power Corp.; Project No. 3185-001, Pembroke Hydro. Corp.
CAP-9. Project No. 7235-001, Bluestone Energy Design, Inc.
CAP-10. Project No. 3036-002, Municipal Energy Agency of Mississippi
CAP-11. Project Nos. 5-004 and 2776-000, the Montana Power Co. and Confederated Salish and Kootenai Tribes of the Flathead Reservation
CAP-12. Project Nos. 2787-002 and 2816-001, White Current Corp. v. Vermont Electric Generation and Transmission Cooperative, Inc.
CAP-13. Docket Nos. ER81-187-002 and 003, Public Service of New Mexico
CAP-14. Docket Nos. ER 79-182-004 and 005, ER80-106-001 and 002, Commonwealth Edison Co.
CAP-15. Docket No. ER82-616-002, Middle South Energy, Inc.
CAP-16. Docket No. ER83-430-001, Virginia Electric & Power Co.
CAP-17. Docket No. ER83-396-001, Northern Indiana Public Service Co.
CAP-18. Docket No. ER83-427-001, Utah Power & Light Co.
CAP-19. Docket No. ER83-437-001, Commonwealth Edison Co.
CAP-20. Docket No. ER83-519-000, Cincinnati Gas & Electric Co.
CAP-21. Docket No. ER83-523-000, Florida Power & Light Co.
CAP-22. Docket No. EL83-11-000, Virgina Electric & Power Co.
CAP-23. Docket No. EL83-9-000, Pennsylvania Power Co.
CAP-24. Docket No. EL82-21-001, Sacramento Municipal Utility District v. Pacific Gas & Electric Co., Southern California Edison Co. and San Diego Gas & Electric Co.
CAP-25. Docket No. ER82-481-005, Arizona Public Service Co.
CAP-26. Docket Nos. ER80-592, et al., ER80-676-000, ER 80-750-000, ER81-66-000, ER80-606-000, ER81-39-000, ER83-205-000, ER82-630-000 and ER83-362, Allegheny Power System, et al., Cliffs Electric Service Co., Central Illinois Light Co. and Public Service Co. of Indiana
CAP-27. Docket Nos. ER81-749-002, ER82-325-001, ER83-110-002, ER83-112-001 and ER83-136-001, Montaup Electric Co.
CAP-28. Docket No. ER82-854-000, Appalachian Power Co.
CAP-29. Omitted

Consent Miscellaneous Agenda

CAM-1. Docket Nos. RM81-38-001 through RM81-38-012, construction work in progress for public utilities
CAM-2. Docket Nos. RM83-21-001 and 002, interpretation of authority to suspend initial rate schedules
CAM-3. Docket No. RM 79-76-142 (Texas—10 addition II), high-cost gas produced from tight formations
CAM-4. Docket No. RM79-76-192 (Louisiana—9), high-cost gas produced from tight formations
CAM-5. Docket No. GP81-43-001, MCOR Oil & Gas Corp.
CAM-6. Docket No. GP83-6-000, Colorado Oil & Gas Conservation Commission, Section 107, NGPA determination, Davis Drilling, Inc., Baugham Farms No. 1-5 Well, et al., Docket No. 81-761, et al. JD. No. 8222170, et al.
CAM-7. Docket No. GP83-2-000 (formerly Docket No. RM81-45-000), Ladd Petroleum Corp.
CAM-8. (a) Docket No. GP81-34-000, State of Ohio, Section 103, NGPA determination, Charles O. Lighthizer, A. R. Crawford No. 1, Well, FERC No. JD79-6124, State Docket No. 2595, Marshall No. 1 Well, FERC No. JD79-12527, State Docket No. 3903; (b) Docket No. GP82-48-000, State of New Mexico, Section 103 NGPA determination, Warren Petroleum Co. (a Division of Gulf Oil Corp.), Mark Well No. 8, FERC Docket No. JD79-16337; (c) Docket No. GP82-9-000, State of West Virginia, Section 103 NGPA determination, Patrick Petroleum Corp., Jacob Daugherty No. 1 Well, FERC No. JD81-27387.

Consent Gas Agenda

CAG-1. Docket Nos. RP80-97-025, RP80-97-026, RP81-41- RP77-62, RP82-12 and RP82-125 (liquids and liquefiables), Tennessee Gas Pipeline Co.; Docket Nos. RP80-100, RP81-61, RP82-80 and RP79-39, Michigan-Wisconsin Pipe Line Co.; Docket Nos. RP80-146, RP81-83 and RP82-120, Columbia Gulf Transmission Co.; Docket Nos. RP80-55, RP80-118, RP81-73 and RP82-32, Sea Robin Pipeline Co.; Docket Nos. RP81-7 and RP81-84, Florida Gas Transmission Co.; Docket No. RP81-130, Transwestern Pipeline Co.; Docket No. RP81-109, Texas Eastern Transmission Corp.; Docket No. RP82-55, Transcontinental Gas Pipe Line Corp.; Docket No. 81-78, Northwest Central Pipeline Corp.; Docket Nos. RP80-121, RP81-81 and RP82-57 (not consolidated), United Gas Pipe Line Co.
CAG-2. Docket No. Omitted
CAG-3. Docket No. RP83-81-000, Montana-Dakota Utilities Co.
CAG-4. Docket No. RP83-82-001, Valley Gas Transmission, Inc.
CAG-5. Docket No. TA83-2-29-002 (PGA83-2a) (IP83-2a) (DCA83-2a) and (ISP83-2a), Transcontinental Gas Pipe Line Corp.
CAG-6. Docket Nos. TA81-2-33-006, TA82-1-33 (unpaid accruals), TA82-2-33 (unpaid accruals) and TA83-1-33 (unpaid accruals), El Paso Natural Gas. Co.
CAG-7. Docket No. RP80-107-009, Natural Gas Pipeline Co. of America
CAG-8. Docket No. RP83-98-000, Northwest Central Pipeline Co.
CAG-9. Docket No. RP83-99-000, El Paso Natural Gas Co.
CAG-10. Docket No. RP83-100-000, El Paso Natural Gas Co.
CAG-11. Docket No. TA83-2-2-002 (PGA83-2a), East Tennessee Natural Gas Co.
CAG-12. Docket No. TA83-2-1-000 (PGA83-2b), Alabama Tennessee Natural Gas Co.
CAG-13. Docket No. TA83-1-53-003 (PGA83-1), Kansas-Nebraska Natural Gas Co.
CAG-14. Docket No. RP83-73-000, State of North Dakota v. Northern Natural Gas Co.,

Division of Internorth, Inc. and Midwestern Gas Transmission Co.
CAG–15. Docket No. RP83–85–000, Northwest Central Pipeline Corp. v. Arkansas-Louisiana Gas Co.
CAG–16. Docket Nos. RP83–84–000 and RP82–58–000, Michigan Consolidated Gas Co. v. Panhandle Eastern Pipe Line Co.
CAG–17. Docket Nos. RP83–74–000, RP82–125–000, TA82–2–9–008, TA83–1–9–003, Robert Abrams, as Attorney General of the State of New York; Joseph Gerace, as County Executive for Chautauqua County; and Edward J. Rutkowski, as County Executive of Erie County, complainants, v Tennessee Gas Pipeline Co., defendant
CAG–18. Docket No. RP83–5–000, Columbia Gas Transmission Corp. v. Panhandle Eastern Pipe Line Co.
CAG–19. Docket No. RP82–8–000, Kansas-Nebraska Natural Gas Co., Inc.
CAG–20. Docket No. ST83–248–000, Riverway Gas Pipeline Co.
CAG–21. Docket No. ST83–257–000, Delhi Gas Pipeline Corp.
CAG–22. Docket No. ST83–267–000, Seagull Pipeline Corp.
CAG–23. Docket Nos. CI68–1321–001, CI70–1067–002, CI73–12–001, Arco Oil and Gas Co., Division of Atlantic Richfield Co.; Docket Nos. CI68–1322–001, CI70–1080–001 and CI73–38–001, Cities Service Oil & Gas Co.; Docket No. G–3805–018, Arco Oil & Gas Co., Division of Atlantic Richfield Co.; Docket No. CI77–837–002, Exxon Corp.; Docket Nos. CI68–1306–002, CI70–1079–001 and CI73–2–002, Getty Oil Co.
CAG–24. Docket No. CS73–603–002, Santa Fe-Andover Oil Co. (Andover Oil Co.); Docket No. CS83–79–002, William C. Richardson, Jr.; Docket No. G–3765–002, Arco Oil and Gas Co., Division of Atlantic Richfield Co.; Docket No. G–7648–003, Mobil Producing Texas & New Mexico Inc.
CAG–25. Docket No. CS83–62–002, Lois D. Cannady
CAG–26. Docket No. CI77–635–003, Gulf Oil Corp.
CAG–27. Docket No. CI84–686–002, Natural Gas Pipeline Co. of America
CAG–28. Docket No. CI79–53–001, Amoco Production Co.
CAG–29. Docket No. RI81–1–001, Amoco Production Co.
CAG–30. Docket No. RI82–4–001, Arco Oil & Gas Co., Division of Atlantic Richfield Co.
CAG–31. Docket Nos. RI74–188–015 and RI75–21–010, Independent Oil & Gas Association of West Virginia
CAG–32. Texas Eastern Transmission Corp. on behalf of Red Bay, Alabama
CAG–33. Texas Eastern Transmission Corp. on behalf of Pointe Coupee Paris, Louisiana
CAG–34. Docket No. CP83–279–001, producer-supplier of Transcontinental Gas Pipe Line Corp.
CAG–35. Docket Nos. CP83–14–006 and 008, Northern Natural Gas Co., Division of Internorth, Inc.
CAG–36. Docket No. CP82–37–001, Galaxy Energies, Inc.
CAG–37. Docket No. CP83–249–000, Niagara Interstate Pipeline System
CAG–38. Docket Nos. CP75–23–016 and CP75–120–001, Tennessee Gas Pipeline Co., a Division of Tenneco Inc.
CAG–39. Docket No. CP83–266–000, Tennessee Gas Pipeline Co., a Division of Tenneco Inc.
CAG–40. Docket No. CP83–133–000, Mississippi Valley Gas Co.
CAG–41. Docket No. CP83–298–000, Houston Pipe Line Co.; Docket No. CP83–297–000, Oasis Pipe Line Co.
CAG–42. Docket No. CP83–295–000, Seagull Pipeline Corp.; Docket No. CP83–327–000, Houston Pipe Line Co.; Docket No. CP83–328–000, Oasis Pipe Line Co.
CAG–43. Docket No. CP82–397–000, Midwestern Gas Transmission Co.
CAG–44. Docket No. PV–1355–000, Sohio Pipe Line Co.

Power Agenda

I. Licensed Project Matters

P–1. Project No. 2750–000, Town of Springfield, Vermont and Vermont Public Power Supply Authority
P–2. Project No. 6775–002, Winchester Water Control District and Elektra Power Corp.
P–3. Project Nos. 7265–000, 001, 002, and P–3229, City of Nashua, New Hampshire

II. Electric Rate Matters

ER–1. Docket Nos. EL78–24–023 and 026 (phase I), Municipal Electric Utilities Association of New York State v. Power Authority of the State of New York; Docket No. EL78–37–000 (phase I), Village of Ilion, New York v. Power Authority of the State of New York
ER–2. Docket No. EL80–7–000, Southeastern Power Administration v. Kentucky Utilities Co.
ER–3. Docket No. EL82–1–000, Town of Easton, Maryland v. Delmarva Power & Light Co. and Pennsylvania-New Jersey-Maryland Interconnection
ER–4. Docket No. EL82–9–000, Southern Carolina Public Service Authority

Miscellaneous Agenda

M–1. (a) Docket No. RM82–6–000, confirmation and approval of the rates of the Bonneville Power Administration; (b) Docket No. RM80–40–000, filing requirements and procedures for the approval of Federal Power Marketing Agencies
M–2. Reserved
M–3. Reserved
M–4. Omitted
M–5. Docket No. RM81–21–000, recovery of Alaska natural gas transportation system charges
M–6. Docket No. RM83–71–000, elimination of variable cost from natural gas pipe line minimum bill provision
M–7. Docket No. GP80–41–000 (stripper well), United Gas Pipe Line Co.
M–8. Omitted
M–9. Docket No. GP82–32–000, Conoco, Inc. and Shell Oil Co.

Gas Agenda

I. Pipeline Rate Matters

RP–1. Docket Nos. RP77–62–008, RP80–97–013, RP81–54–002, RP82–10–003 and RP82–12–004, Tennessee Gas Pipeline Co., a Division of Tenneco Inc.
RP–2. Docket No. TA80–2–21–002 (PGA80–3), Columbia Gas Transmission Corp. and Columbia LNG Corp.; Docket No. TA80–2–22–003 (PGA80–5) (IPR80–3) (LFUT80–2) and (RD&D80–2), Consolidated Gas Supply Corp. and Consolidated System LNG CO.; Docket No. RP80–136–000, Southern Natural Gas Co.; Docket No. RP80–129–000, State of Ohio, ex rel., William J. Brown, Attorney General
RP–3. Docket No. RP73–43–006 (PGA77–2), Mid Louisiana Gas Co.; Docket No. CI77–273–000, Gulf Oil Corp.; Docket No. CP77–352–000, Grand Bay Co.

II. Producers Matters

CI–1. Docket Nos. CI82–273–001 and CI82–274–000, Pennzoil Co.
CI–2. Docket No. CI72–674–001, Texas Gas Exploration Corp.; Docket No. CI62–965–001, Gulf Oil Corp.; Docket No. CP73–72–001, Southern Natural Gas Co.; Docket No. CP73–123–001, United Gas Pipe Line Co. v. Humble Oil & Refining Co. and Isaac Arnold, et al.; Docket No. CI75–420–002, Chevron U.S.A., Inc.

III. Pipeline Certificate Matters

CP–1. Docket No. CP83–254–000, Montana-Dakota Utilities Co.
CP–2. Docket No. CP80–435, Alaskan Northwest Natural Gas Transportation Co.; Docket No. CP78–123, et al., Northwest Alaskan Pipeline Co.

Kenneth F. Plumb,

Secretary.

[S–099–83 Filed 7–7–83; 3:20 pm]

BILLING CODE 6717–01–M

2

NUCLEAR REGULATORY COMMISSION

DATE: Week of July 11, 1983.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE DISCUSSED:

Tuesday, July 12:

2:00 p.m.:
Briefing on Severe Accident Research Plan (Public Meeting)

Wednesday, July 13:

2:00 p.m.:
Discussion of Regulatory Reform Task Force—Administrative Proposals—Revisions to Part 2 (Public Meeting)

Thursday, July 14:

10:00 a.m.:
Briefing on Integrated Scheduling Concept—Duane-Arnold (Public Meeting)
2:00 p.m.:
Discussion of Management-Organization and Internal Personnel Matters (Closed—Exemption 2 and 6)

Friday, July 15:

2:00 p.m.:
Discussion of Midland Adjudication (Closed—Exemption 10)

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.

Dated: July 7, 1983.

Walter Magee,

Office of the Secretary.

[S-996-83 Filed 7-7-83; 10:48 am]

BILLING CODE 7590-01-M

3

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 48 FR 28602, June 22, 1983.

STATUS: Closed meeting

PLACE: 450 5th Street NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Friday, June 17, 1983.

CHANGE IN THE MEETING: Additional item. The following additional item was considered at a closed meeting held on Thursday, June 30, 1983, at 9:30 a.m.:

Regulatory matter bearing enforcement implications.

Chairman Shad and Commissioners Evans and Treadway determined that Commission business required the above change and that no earlier notice thereof was possible.

At time changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Jerry Marlatt at (202) 272–2092.

July 6, 1983.

[S-998-83 Filed 7-7-83; 3:15 pm]

BILLING CODE 8010-01-M

4

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of July 11, 1983, at 450 5th Street, N.W., Washington, D.C.

A closed meeting will be held on Tuesday, July 12, 1983, at 10 a.m. Open meetings will be held on Thursday, July 14, 1983, at 10 a.m. and at 3 p.m. in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Evans, Thomas and Treadway voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, July 12, 1983, at 10 a.m., will be:

Access to investigative files by Federal, State, or Self-regulatory authorities.
Formal orders of investigation.
Institution of injunctive actions.
Institution of administrative proceeding of an enforcement nature.

The subject matter of the open meeting scheduled for Thursday, July 14, 1983, at 10 a.m., will be:

1. Consideration of whether to permit Andrew Dale Ledbetter to become associated with Bevill, Bresler & Schulman, Incorporated, in a supervisory capacity. For further information, please contact Jack Barrett at (202) 272–7417.

2. Consideration of whether to approve proposed rule changes of the options exchanges increasing position and exercise limits on stock options from 2,000 contracts to a two-tiered system of 4,000 options contracts on stocks with the heaviest trading volume and largest public float and 2,500 contracts on other options classes. For further information please contact William L. Golden at (202) 272–2855.

3. Consideration of whether to propose amendments to Rule 19d–1 (17 CFR 240.19d–1) to permit self-regulatory organizations to submit to the Commission plans specifying the circumstances under which certain minor disciplinary infractions would not be reported to the Commission pursuant to the rule, or which would be reported in abbreviated form. For further information, please contact Judithy Levy at (202) 272–2066.

4. Consideration of whether to propose for public comment the rescission of Rule 202–1 under the Investment Advisers Act of 1940 which would permit a person providing investment advice to an employe benefit plan sponsored by his employer to register voluntarily with the Commission even though registration of such person under the Advisers Act may not be required. For further information, please contact Forrest R. Foss at (202) 272–2079.

The subject matter of the open meeting scheduled for Thursday, July 14, 1983, at 3 p.m., will be:

The Commission will meet with the Investment Company Institute to discuss several matters of current interest to the Investment Company Institute and the Commission. For further information, please contact Kathleen A. Jackson at (202) 272–2751.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any matters have been added, deleted or postponed, please contact: JoAnn Zuercher at (202) 272–2014.

July 6, 1983.

[S-997-83 Filed 7-7-83; 3:15 pm]

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Monday
July 11, 1983

Part II

Environmental Protection Agency

Toxic Substances Control Act; Data Reimbursement; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 791

[OPTS-48001D; TSH-FRL 2349-8]

Toxic Substances Control Act; Data Reimbursement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a rule to implement sections 4(c)(3), and 4(c)(4), of the Toxic Substances Control Act (TSCA), 15 U.S.C. Sec. 2603, 2604. This rule sets forth methods of determining fair amounts for data reimbursement and resolving disputes that arise over allocation of the costs of testing required by a sec. 4(a) rule under TSCA.

EFFECTIVE DATE: September 9, 1983.

FOR FURTHER INFORMATION CONTACT: Jack McCarthy, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. 543, 401 M St., SW., Washington, D.C. 20460, (202-382-3790). Outside Continental U.S.: (Operator—202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Introduction

When the Environmental Protection Agency (EPA) promulgates a test rule, all of the manufacturers, importers, and processors of the chemical subject to the rule are expected to jointly bear the cost of testing. If the various firms are unable to agree on the amount or method of reimbursement, section 4(c) requires the Administrator to issue reimbursement orders. This rule establishes procedures and substantive criteria for EPA's determination of fair and equitable reimbursement.

The rule reflects EPA's review of the comments received in response to the Advance Notice of Proposed Rulemaking (ANPR) published in the **Federal Register** of September 18, 1979 (44 FR 54284) and to the Proposed Rule published in the **Federal Register** of June 4, 1982 (47 FR 24348). Many of the comments proved to be useful in revising the proposed rule. A summary of comments and EPA's response to them may be found in the public file. This preamble discusses only the most important aspects of the rule and changes made from the proposal. A more extensive discussion of the Agency's reasoning for those sections of the final rule which are unchanged from the proposal may be found in the preamble to the proposed rule.

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II. Statutory Scheme

A. Section 4

Section 4 of TSCA authorizes the Administrator to issue rules requiring manufacturers (including importers) and processors of certain chemical substances or mixtures to test them in order to generate information from which the effects of the chemicals on health and the environment can be determined. Section 4(c) permits a person to apply for an exemption from testing which the Administrator must grant if he determines that the chemical to which the application pertains is equivalent to one for which test data have been submitted or are being developed, and that submission of data by the applicant would be duplicative (sec. 4(c)(2)). Persons receiving exemptions at any time before the end of the reimbursement period must reimburse those who actually perform the required testing for a portion of the costs incurred in complying with the rule. The reimbursement period ends 5 years after the last non-duplicative test data are submitted or after a period of time equal to the time necessary to develop those data, whichever is longer.

Any person manufacturing or processing, or intending to manufacture or process the substance covered by the rule at any time from the effective date of the test rule until the end of the reimbursement period has a statutory obligation either to test or obtain an exemption. Under sec. 4(c), those who cannot reach voluntary agreements on how much reimbursement is owed may seek assistance from the Agency. Upon request the Administrator must issue a reimbursement order directing persons who received exemptions to provide an amount of reimbursement that the Administrator determines is fair and equitable to those who incurred the testing costs. The Administrator must base the order on a rule developed in consultation with the Department of Justice and the Federal Trade Commission. All relevant factors, including competitive position and the market shares of the persons providing and receiving reimbursement, are to be taken into account in developing the rule.

B. Section 5(h)(2)

Section 5(h)(2) provides reimbursement only for data submitted by persons giving notice under 5(b)(2) for a chemical on the sec. 5(b)(4) list of chemicals which may present an unreasonable risk of injury to health or the environment. It does not provide a comprehensive reimbursement scheme for other data submitted under sec. 5.

The Agency is not, at this time, including sec. 5(h)(2) in the data reimbursement scheme. The general approach taken in this rule for sec. 4 will probably work for sec. 5(h)(2), but several differences will require adjustments which the Agency has not

yet analyzed sufficiently. Because sec. 5(b)(4) has not been implemented, there is no immediate need for a reimbursement provision nor is there enough information to design the necessary provisions.

III. The Rule

A. Overview and Scope

This rule potentially affects all persons subject to best rules under sec. 4(a) of TSCA. Any person who receives an exemption from testing or data submission requirements or who is entitled to reimbursement for testing costs incurred by compliance with sec. 4(a) may ask EPA to resolve reimbursement disputes. However, in most cases the companies subject to a test rule should be able to work out voluntary cost-sharing arrangements. These private arrangements need not conform to EPA's reimbursement rule. Within the limits of the anti-trust laws, parties may make any voluntary cost allocation arrangements they wish.

EPA does not intend to promulgate test rules merely to afford a reimbursement remedy, where completed or ongoing testing provides, or is likely to provide, adequate data for risk assessment. EPA does not believe that the absence of mandatory data reimbursement will discourage voluntary or negotiated testing. Furthermore, if negotiated testing arrangements fail, for financial or other reasons before adequate test data is developed, EPA will be able to make the necessary sec. 4(a) findings and promulgate a test rule, making data reimbursement assistance available.

The testing obligation, and therefore the reimbursement obligation and the reimbursement rule, apply only to those manufacturing or processing or intending to manufacture or process the test chemical during the period covered by the test rule. It is possible, as some commenters have suggested, that a firm could evade reimbursement responsibility by withdrawing from the market. However, the period of absence would be a long one, more than five years, and thus a withdrawal is unlikely to be a sound business decision.

When persons subject to a test rule are unable to agree on appropriate reimbursement and request assistance, an independent hearing officer selected by the parties from a roster maintained by the American Arbitration Association will conduct an informal hearing. The hearing officer will use procedures similar to those used in commercial arbitration, with some significant differences explained below.

The hearing officer will base his proposed order on the formula and criteria set forth in this rule. In general, a person's share of the test cost will be equal to his share of the total production of the test chemical, but a person who believes that the formula will not provide fair and equitable reimbursement in a specific case may propose modifications to it. All costs incurred in meeting the requirements of the test rule will be eligible for reimbursement.

The hearing officer's proposed order will become final after 30 days unless within that time one of the parties requests a review by the Administrator or the Administrator decides upon his own initiative to review the proposed order. The Administrator will base his review on the record of the hearing, upon the petitions for review; and on written briefs and oral arguments if they are necessary. The final Agency order may be reviewed in federal district court.

B. Type of Administrative Proceeding

1. *Procedures.* EPA has chosen an informal adjudication procedure modeled on commercial arbitration, which has many advantages for the participants as well as the Agency. The parties will choose hearing officers knowledgeable in the field. The informality and flexibility of the procedures should accommodate the variety of situations in which reimbursement disputes will arise, and promote a concentration of the substance rather than strategy of the hearing.

The reimbursement hearings will be conducted according to a modified version of the American Arbitration Association's "Rules for Commercial Arbitration" (Commercial Rules). A full text of the pertinent rules appears in the data reimbursement rule, and the differences from the Commercial Rules are described below. If changes in the Commercial Rules necessitate changes in the data reimbursement procedures, EPA will provide appropriate notice and comment periods.

Expedited procedures will be used for most cases in which the claim of one party is less than $5,000, and may be used whenever the parties agree. Expedited procedures include giving notice to parties by telephone and providing shorter response times.

2. *Differences from commercial arbitration.* Many of the changes EPA has made from the Commercial Rules result from the differences between voluntary arbitration and the statutory context of the reimbursement hearings. The most important difference is that reimbursement hearings will not result in a final and binding decision, but in a proposed decision which may be appealed to EPA and to federal court. Commercial arbitration is binding because the parties voluntarily agree to give up some of their rights of appeal. Here, there is no such agreement. Furthermore, because TSCA gives EPA responsibility for reimbursement orders, the Agency must retain control over the final order. The specific changes made in the rules are:

a. Rules 1, 7, 9, 12, 14, and 15 of the Commercial Rules all refer to agreements to arbitrate which are not relevant to EPA's rules. EPA encourages parties to make private agreements to arbitrate differences that arise over data reimbursement, but when they are able to do so they will not need assistance of the Agency. Therefore, EPA has deleted all references to agreements to arbitrate, which can include agreements to use non-neutral arbitrators. The hearing officers conducting reimbursement hearings must be neutral because they are acting in a semi-official capacity.

b. The Commercial Rules require both parties to consent in writing to the arbitration, but under EPA's rules one party may initiate the hearing. This is also a consequence of the fact that EPA is conducting informal administrative adjudications rather than binding arbitration.

c. EPA's reimbursement rules allow additional time for procedures such as choosing the hearing officer and locale. The times begin to run from the end of the 45-day notice period during which additional interested parties may join rather than from the date the request for hearing is filed. This ensures that all parties have an equal voice in the decisions. Additional time has also been provided for the hearing officer to render his proposed order because EPA is asking for a short written explanation which usually does not accompany an arbitrator's award.

d. Under Commercial Rule 23, stenographic records are only made at the request of the parties. However, all data reimbursement hearings will be recorded to facilitate review of the hearing officer's proposed order. The expense will be shared by the parties.

e. The need to protect confidential business information prompted the Agency to modify Commercial Rules 25 and 31 for the purposes of data reimbursement hearings. The hearing officer will have the authority to exclude anyone, including a party, if necessary to protect the confidentiality of information, and therefore may also

accept evidence in the absence of some parties.

f. Under Commercial Rule 27, oaths are taken by arbitrator and witnesses only when "required by law". EPA's rules will require oaths of both the hearing officer and witnesses.

g. EPA's rules will allow the hearing officer to request the Administrator to issue a subpoena, if information or attendance cannot be secured any other way. The Commercial rules allow the arbitrator to issue a subpoena "when authorized by law".

h. Commercial Rules 42, 43 and 45 pertaining to the award have been modified for the Agency's rule. Instead of an award, the hearing officer will issue a proposed order. In addition to the order itself and the signature of the hearing officer, which is all the Commercial Rules require, the order will contain a concise statement of basis and rationale, and a schedule for payment of the reimbursement. This statement will aid the Agency in reviewing the proposed order when that is necessary. While Commercial rule 45 required filing of the proposed order, EPA's rules provide that the order may be delivered either by certified mail or by personal service.

i. Parts "a" and "c" of Commercial Rule 47 are not included in EPA's rules since they are inapplicable to EPA's method of appeal.

j. As in Commercial Rule 50, the parties will pay for the hearing officer's expenses and the administrative expenses of the American Arbitration Association. However, TSCA sec. 26(b) limits the amount of the fee that can be charged to regulated parties to $2,500 per party and $100 per small business.

3. *Legal Issues.* In its proposed rule, EPA discussed its rationale for delegating the initial decision to a private party (i.e., the hearing officer who will be a private party, rather than a government employee) and summarized the legal authority for the delegation. EPA believes that the delegation meets the tests set out in the court decisions on the subject. There is a protection against bias in the fact that the hearing officer is a neutral person, selected by the American Arbitration Association with the advice of the parties. The hearing officer's proposed order will be guided by EPA's reimbursement rule, and is subject to review by EPA. EPA will either adopt the proposed order as the final Agency order or will issue a different one after a review. The order may be appealed to federal court. No negative comments were received on EPA's plan or on its legal analysis.

C. Timing and Circumstances of EPA's Involvement

1. *Initiation and participation.* In response to several comments on the proposal, the final rule requires persons seeking a reimbursement hearing to submit only a description of unsuccessful attempts to negotiate a settlement, rather than a certification of a good faith attempt. Either a person seeking reimbursement or a person from whom the reimbursement is sought may initiate reimbursement proceedings under these rules.

After a request for a hearing is made, EPA will publish a notice in the **Federal Register**, requiring any person not already a party and wishing to participate in the proceeding to notify EPA within 45 days. Those who have already completed private agreements with the parties in the hearing need not join, as they will not be affected by the hearing officer's proposed decision. Promptly after the end of the 45-day period, when the Agency has the names of all those who wish to participate, the Agency will transmit the list to the proper regional office of the American Arbitration Association so that the parties can help choose hearing officers and the location for the hearing.

2. *Timing.* Most disagreements should surface soon after the test rule is promulgated, but persons may request EPA's involvement at any time if, for example, there are problems in deciding how to handle new market entrants or a need to reallocate testing costs based on changed circumstances.

Test rules and the concomitant obligation to test or obtain an exemption and reimburse the tester, remain in effect until the end of the reimbursement period (sec. 4(b)(4)). Those who begin to manufacture or process the chemical after the test rule takes effect will have the same choice of testing by themselves, joining a consortium, or obtaining an exemption and incurring a reimbursement obligation as those who were manufacturing and processing the chemical before the test rule was published. When late entrants cannot achieve private agreements they may request EPA's assistance.

3. *Defining the reimbursement period.* If a test rule involves several tests of varying lengths, the reimbursement period will begin when the last non-duplicative set of test data is submitted and end after a period of time equal to that which had been necessary to develop the last data or after 5 years, whichever is longer.

D. Method of Allocation

In most cases allocation of testing costs on the basis of market share as measured by production volume should result in fair and equitable reimbursement. However, there may be situations in which production volume will not give a fair result and other factors or criteria should be used. The relative amount of exposure attributable to each party may be a legitimate factor when different processes or end uses are used by different firms. TSCA mentions competitive position as a possible factor in allocation of test costs, although neither EPA nor any commenter has been able to reduce it to a quantitative measure. However, the cost allocation of one negotiated-test group suggests a way in which it could be used effectively. To allocate the cost of a category of chemicals, the commercially significant chemicals in the category were divided into subgroups according to structure/activity characteristics. The manufacturers of each subgroup were divided into major manufacturers and minor manufacturers, with a larger portion of the test costs going to the major manufacturers. Test costs were then evenly divided within each group.

There may be cases in which measures of market share other than production volume should be used. For example, some confidentiality problems might be solved by dividing costs according to name plate capacity rather than actual production volume. Sales volume may also be used on occasion. It will also be possible to use different allocation schemes for different tests, though it may be too complicated to use more than two: perhaps one for environmental and one for health effects testing. Any party may propose factors for the hearing officer's consideration. The hearing officer has the discretion and the duty to adjust the formula to give the fairest result.

The chosen method of allocating test cost appears to minimize the potential effects on small businesses. In all but one of the aproximately five published and 40 completed, but unpublished, economic analyses of possible test chemicals, the companies with the largest market shares are larger companies. In future situations when this is not true and a smaller company feels that it has been allocated an unfair share of test costs, it may propose an adjustment to the hearing officer.

1. *Calculation of production volume.* The period over which production volume will be measured begins with the calendar year before the test rule is

promulgated and will continue through the most recent data available at the time of the hearing. Using a long period will reduce the possibility that will be skewed by a temporary aberration and assure that disputes arising late in the reimbursement period will not be settled on the basis of outdated market information.

If relative production volumes change after reimbursement is made but before the reimbursement period ends, it will be up to the parties to decide whether the change is large enough to warrant reopening the issue. Again, if the parties cannot agree among themselves, they may approach the Agency for assistance.

Unless the specific test rule provides to the contrary, amounts of the test chemical produced as byproducts will be included in calculating production volume, but amounts occurring as impurities will not be included.

2. *Exports, imports, and exempted uses.* Section 12(a)(2) specifically authorizes testing of chemicals destined for export when it is necessary to determine whether the manufacture or processing of them presents an unreasonable risk to the health or environment of this country. Therefore, production volume calculations will include export chemicals when the sec. 12(a)(2) finding has been made.

TSCA sec. 3(7) defines manufacture to include importation. Thus, importers will be subject to the same test and reimbursement rules as manufactures. Consistent with the policy for importers under sec. 5, 8, and 13, those importing the test chemical in bulk or in mixtures will have testing (and therefore reimbursement responsibilities), but importers of articles incorporating the test chemical will not.

Quantities of chemicals manufactured or processed for the exempt uses listed in sec. 3(2) of TSCA will not be used to calculate reimbursement shares. However, the Agency does not interpret sec. 3(2) as exempting chemicals used as intermediates to produce pesticides. Manufacturers will have to demonstrate to the satisfaction of the hearing officer that the amounts claimed are entitled to exemption.

3. *Reimbursable costs.* A firm may wish to conduct additional testing beyond that required by EPA (e.g., another dose level or species). EPA encourages any scientifically valuable testing which a company wishes to pursue, but TSCA does not authorize EPA to order data reimbursement for costs which exceed those required to meet the specific test standards in the applicable test rule. Of course, firms may agree among themselves to split additional costs.

The Agency believes that all the actual direct costs of the test and a reasonable profit should be reimbursable. For both independent labs and companies doing in-house testing, a portion of fixed costs, including rent, equipment, and salaries, should be eligible for reimbursement. In addition, the administrative costs of developing a protocol, evaluating data, arranging for funding, and supervising the actual tester will be reimbursable. To guard against excessive profits, the hearing officer will have the authority to review the costs as well as the amount claimed as profit. However, the profit earned will be presumed to be fair unless it is clearly excessive compared to similar situations.

Some costs may be incurred in repairing or repeating tests that have failed. EPA believes that these costs should be reimbursable, to the extent that they were not caused by the negligence of the tester. Compliance with published Good Laboratory Practices and any applicable test methodology requirements would help prove due care.

4. *Allocating the cost of the hearing.* The cost of the hearing itself will be divided equally among the parties, unless the hearing officer finds good cause for some other allocation. The cost of the hearing includes the administrative fee of the American Arbitration Association, the cost of recording the hearing, the travel or other expenses of the hearing officer, and the expenses of witnesses or other proof produced at the direct request of the hearing officer.

The administrative fee will be calculated by the American Arbitration Association according to the schedule in effect at the time of the hearing. The party initiating the hearing must deposit a fee based on the amount of reimbursement it is seeking, or the amount being sought from it. Additional parties will increase the total fee by 10 percent of the original amount for each additional party. The sum will be equally apportioned, and assessments made by the hearing officer in the proposed order.

Section 26(b) of TSCA limits the fees that can be charged to regulated parties to $2500 per person, or $100 per small business. Hearing expenses in excess of this limit will be paid by EPA. For the purpose of applying the sec. 26(b) limit, the reimbursement rule defines small business as a manufacturer or importer whose annual sales, when combined with those of its parent company (if any) is less than $30 million. The definition is taken from the one proposed for exempting small manufacturers from reporting and recordkeeping requirements. (June 22, 1982, 47 FR 26992). If the sec. 8(a) definition of small business is adjusted to allow for inflation, the definition for data reimbursement purposes will also be changed, after notice in the **Federal Register.**

E. Other Reimbursement Issues

1. *Reimbursement obligations of processors.* Sec. 4(b)(3)(B) of TSCA obligates processors to test when the potential exposure or risk results from the processing, distribution in commerce, use or disposal of a chemical. Under the regulations implementing sec. 4, EPA will generally allow processors to discharge their testing and reimbursement obligations indirectly. Usually the manufacturers will form consortia to perform the test, or will obtain exemptions and pay reimbursement, and will pass on a share of the test costs to processors through increases in the market price of chemicals. There are so many processors that it would be difficult to include them all in the technical decisions about the tests and in the financial decisions about how to allocate the costs. However, there are some situations in which EPA will require the direct participation of the processors.

The first is when most of the concern about the chemical's risk and exposure centers on processing, so that processors rather than manufacturers are the logical group to take the lead in testing the chemical. In this case the test rule will state the processors' obligation explicitly.

The second situation is when the manufacturers do not commit themselves to begin testing within the time allotted by the test rule. If no commitment from manufacturers has been received, EPA will publish a notice in the **Federal Register** 45 days after the effective date of the test rule, calling on processors to submit study plans or apply for an exemption within 60 days, or risk being found in violation of TSCA.

The third situation is when manufacturers, while accepting primary test responsibility, think that at least some processors should also provide direct reimbursement. This is most likely to affect only a small number of commercially important processors. If the named processors feel that they are being unfairly singled out, they can in turn name other processors that should be brought into the negotiations. The manufacturers may raise the issue of

direct processor responsibility in comments on the proposed test rule.

Finally, processors could volunteer to participate in any test consortium concerning a chemical which they process.

When processors do participate for one of the above reasons, the hearing officer will determine allocation on a case-by-case basis. If the test rule contains a finding that all of the risk or exposure occurs within the processing, and therefore only processors should be obligated to test and provide reimbursement, reimbursement will generally be determined according to the amount of the test chemical processed. Of course, if a processor feels that the formula does not result in fair reimbursement shares, he may attempt to convince the hearing officer to consider other factors.

2. *Section 8(a) reporting requirement.* If industry does ask EPA for assistance in reimbursement disputes, EPA and the hearing officer may need production volume data. The Agency may already have collected the information under the sec. 8(a) rule published in the **Federal Register** of June 22, 1982 (47 FR 26992), or by some other means. If it does not have sufficiently recent or complete production data, some direct method must be used to collect it.

Therefore, each **Federal Register** notice announcing a request for a hearing will include a proposed reporting rule under the authority of sec. 8(a). Those subject to the test rule will thus have specific notice of the information they must submit, and an opportunity to comment. If no party requests a hearing under that test rule, or if the Agency already has adequate information, there will not be a need for a reporting rule. Confidential information will be protected as all confidential information is under TSCA.

A contingent or "triggered" reporting rule was suggested by industry commenters on the ANPR, and no negative comments on its use were received on the proposed rule. The final rule changes the approach slightly. Instead of a generic reporting rule enacted as part of this data reimbursement rule, and then triggered by a request for hearing, a specific reporting rule for each test rule will be proposed when necessary. This will provide more meaningful notice and opportunity to comment to those who may have to submit information.

The reporting requirement will generally be limited to manufacturers. This does not preclude the possibility that processors may be required to furnish reimbursement information. If the manufacturers think that processors ought to have a direct reimbursement obligation in a particular case, they may raise the point in their comments on the proposed test rule.

If the parties convince the hearing officer that factors other than production volume should be considered, additional data may be needed. Use of a reporting rule in this situation would delay the hearing unnecessarily. Therefore, if the parties will not provide the information voluntarily, the hearing officer may request the Administrator of EPA to issue subpoenas.

3. *Multiple testing.* As the preamble to the proposed rule explained, EPA does not have the authority to designate an official tester when two or more firms submit or plan to submit the same type of data on equivalent chemicals. Because duplicative testing will increase everyone's share, EPA does not expect that it will happen very often. Most likely it would be a single test, rather than the entire battery, that would be duplicated and there would be some particular reason for the duplication.

When there are multiple tests, the cost of the tests will be added together, and the market share of each exemption holder will be applied to the total as usual. The individual reimbursement shares will then be divided among the various testers in proportion to the relationship of its test costs to the total. The shares of each exemption holder will be higher than they would if there were only one tester, which should discourage duplicative testing.

4. *Categories.* EPA discussed the financial aspects of testing structurally-related categories of chemicals in its proposed test rule and exemption policy, published in the **Federal Register** of July 18, 1980 (45 FR 48515). As illustrated by that discussion, and the comments submitted in response, the issue is an extremely difficult one. Each category is likely to be different in the number of chemicals and firms involved, their relationship to each other, and to the test chemicals chosen. There probably are no guidelines for achieving fair reimbursement that would work for every category.

Although EPA is working to define narrow and specific categories, reimbursement may be simplified at times by splitting a category into subgroups, perhaps on the basis of commercial importance of the manufacturers in the market, or based on the relationship of each chemical to the representative test chemical. Different subgroups may be created for different tests, if that would be helpful in defining a market and thus calculating market share. Consideration may be given to splitting the costs on some basis other than market share of the whole category when it is difficult to define. For example, after creating a subgroup around a representative chemical for a particular health test, the expenses of that test might be divided equally.

As successful techniques evolve from the ad hoc decisions of the hearing officers and the experience of the voluntary testing groups, EPA will amend this rule to incorporate them. In the interim, each proposed test rule for a category will contain some criteria for allocation to the test costs for that specific category, allowing comment from the firms manufacturing and processing chemicals in the category.

5. *Confidentiality.* It is difficult to work out in advance of an actual hearing the ways to protect confidentiality of business information. EPA expects that during reimbursement hearings the parties will be able to make arrangements with the hearing officer. The hearings may be closed, or arguments may be confined to the formula, and actual computation left to the hearing officer or an independent accountant. When an argument directly concerns the validity of the confidential figures being submitted it may be necessary to submit briefs on the point after the close of oral arguments. During the Agency review process, ample protection will be afforded by sec. 14 (a) of TSCA. If the parties think that the proposed order would be likely to release confidential information, they may claim confidentiality for the proposed order during the hearing. The Agency order will then be released in a version that protects confidential business information.

6. *Enforcement.* EPA expects that in most cases debts created by an EPA reimbursement order will be paid without the need for further involvement by the Agency. Nothing in TSCA restricts rights which any person may have under state or federal statutes or the common law to seek enforcement of the Act or of any rule or order under the Act, or to seek any other relief. If no such remedy is available, the party seeking payment may use the authority of sec. 20 of TSCA to directly sue the party from whom it is seeking payment, without requiring any EPA involvement. Section 20 allows "any person" to "commence a civil action against any person . . . who is alleged to be in violation of this Act. . . ." A person who failed to fulfill a reimbursement obligation set forth in an Agency order would be in violation of this reimbursement rule under sec. 4 and in violation of sec. 15 of the Act. Persons

suing under sec. 20 can be awarded costs of the suit, including fees for attorneys and expert witnesses, if the "court determines that such an award is appropriate."

When the sec. 20 remedy is unavailable, and the person seeking payment has no other legal remedy, he can request the Agency to use its own enforcement powers under sec. 16 or 17 of TSCA. Section 16 would allow the imposition of civil penalties up to $25,000 per day until the reimbursement order was obeyed, and sec. 17 conveys authority to bring court actions to compel payment.

IV. Rulemaking Record

Please notify EPA of any errors or omissions in the Public Record within 30 days of the date of publication. Use the document control number [OPTS-48001D] and address all correspondence to: TSCA Public Information Officer, Office of Pesticides and Toxic Substances (TS-793), Environmental Protection Agency, Room E-108, 401 M St., SW., Washington, D.C. 20460 (202-382-3532).

The Public Record for this Rule includes: comments on the ANPR with EPA summary and responses, comments on the proposed rule with EPA summary and responses, correspondence with the Department of Justice, the Federal Trade Commission, General Services Administration, and the American Arbitration Association.

V. Regulatory Assessment Requirements

A. Regulatory Impact Analysis

The rule on data reimbursement was analyzed under the terms of Executive Order 12291 and was designated a "non-major" rule. The regulation is a procedural one, and imposes no new substantive burdens on the regulated industry. Its sole purpose and effect is to provide a mechanism for deciding disputes that arise over the sharing of test costs among those subject to a test rule. It was designed to leave primary responsibility in the private sector. This regulation will have virtually no effect on the economy. It will not cause major price or cost increases, it will not significantly affect competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule was submitted to the Office of Management and Budget (OMB) which concurred in conformance with Executive Order 12291.

B. Regulatory Flexibility Analysis

EPA has evaluated this regulation under the mandate of the Regulatory Flexibility Act. Under the approach suggested in TSCA and adopted in this rule, the burden of sharing in test costs is apportioned among the manufacturers and processors of a test chemical according to their share of the market. In most cases this will mean that the smaller firms would have proportionally smaller shares of reimbursement. However, any firm may argue that extenuating circumstances make that amount unfairly high and that the hearing officer should modify the formula. It is expected that because most cost sharing arrangements will be private ones similar to those used now for voluntary and negotiated testing, many small manufacturers as well as most small processors will not have to pay reimbursement. For these reasons, the rule will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. the information provisions mentioned in this rule will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approves them. A notice of that approval will be published in the **Federal Register.**

EPA has decided that the reporting requirements, when necessary, should be made in relationship to each individual test rule when a request for hearing is made. The reporting requirement can be tailored more precisely to needs of the particular test, will provide any additional information necessary to resolve disputes, and those subject to the test will have more specific notice and better opportunity for comment.

List of Subjects in 40 CFR Part 791

Environmental protection, Data reimbursement, Hazardous materials, Chemicals.

Dated: June 28, 1983.

William D. Ruckelshaus,

Administrator.

Therefore, Chapter I, 40 CFR is amended by adding Part 791 to read as follows:

PART 791—DATA REIMBURSEMENT

Subpart A—General Provisions

Sec.
791.1 Scope and authority.
791.2 Applicability.
791.3 Definitions.

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Authority: Secs. 4 and 8 of TSCA, 15 U.S.C. 2603, 2607.

Subpart A—General Provisions

§ 791.1 Scope and authority.

(a) This Part establishes procedures and criteria to be used in determining fair amounts of reimbursement for testing costs incurred under sec. 4(a) of the Toxic Substances Control Act (TSCA) [15 U.S.C. 2603(a)].

(b) Section 4(c) of TSCA requires EPA to develop rules for the determination of fair and equitable reimbursement (15 U.S.C. 2603 (c)).

§ 791.2 Applicability.

(a) This rule is potentially applicable to all manufacturers, importers and processors who may be required by a specific test rule promulgated under sec. 4(a) of TSCA to conduct tests and submit data, and who seek the assistance of the Administrator in determining the amount or method of reimbursement. Persons subject to a test rule have an obligation from the date the test rule becomes effective until the end of the reimbursement period, either to test or to obtain an exemption and pay reimbursement.

(b) The provisions of this rule will take effect only when private efforts to resolve a dispute have failed and a manufacturer or processor requests EPA's assistance.

§ 791.3 Definitions.

Terms defined in the Act, and not explicitly defined herein, are used with the meanings given in the Act.

(a) "The Act" refers to the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 *et seq.*).

(b) "The Agency" or "EPA" refers to the Environmental Protection Agency.

(c) "Byproduct" refers to a chemical substance produced without a separate commercial intent during the manufacture, processing, use or disposal of another chemical substance or mixture.

(d) "Dispute" refers to a present controversy between parties subject to a test rule over the amount or method of reimbursement for the cost of developing health and environmental data on the test chemical.

(e) "Exemption holder" refers to a manufacturer or processor, subject to a test rule, that has received an exemption under secs. 4(c)(1) or 4(c)(2) of TSCA from the requirement to conduct a test and submit data.

(f) "Impurity" refers to a chemical substance unintentionally present with another chemical substance or mixture.

(g) A "party" refers to a person subject to a section 4 test rule, who—

(1) Seeks reimbursement from another person under these rules, or

(2) From whom reimbursement is sought under these rules.

(h) "Reimbursement period" refers to a period that begins when the data from the last non-duplicative test to be completed under a test rule is submitted to EPA and ends after an amount of time equal to that which had been required to develop that data or after 5 years, whichever is later.

(i) "Small business" refers to a manufacturer or importer whose annual sales, when combined with those of its parent company (if any) are less than $30 million.

(j) "Test rule" refers to a regulation ordering the development of data on health or environmental effects or chemical fate for a chemical substance or mixture pursuant to TSCA sec. 4(a).

Subpart B—Hearing Procedures

§ 791.20 Initiation of reimbursement proceeding.

(a) When persons subject to a test rule are unable to reach an agreement on the amount or method of reimbursement for test data development as described in TSCA sec. 4(c)(3)(A), any of them may initiate a proceeding by filing two signed copies of a request for a hearing with a regional office of the American Arbitration Association and mailing a copy of the request to EPA, and to each person from whom they seek reimbursement, or who seeks reimbursement from them.

(b) The request for hearing must contain the following:

(1) The names and addresses of the filing party and its counsel, if any.

(2) Identification of the test rule under which the dispute arose.

(3) A list of the parties from whom reimbursement is sought or who are seeking reimbursement, a brief description of the attempts to reach agreement and a concise explanation of the issues on which the parties are unable to agree.

(c) The request for a hearing shall be accompanied by the appropriate administrative fee, as provided in a current Fee Schedule of the American Arbitration Association.

§ 791.22 Consolidation of hearings.

(a) Promptly upon receipt of the request for a hearing, the Administrator will publish a notice in the **Federal Register**, advising those subject to the test rule that a request for a hearing has been made.

(b) Any other person wishing to participate in the hearing shall so notify EPA within 45 days of the **Federal Register** notice. EPA will promptly inform the regional office of the American Arbitration Association where the request has been filed of the additional parties.

§ 791.27 Pre-hearing preparation.

(a) *Responses to requests for hearings.* After filing of the request for hearing, if any other party desires to file an answer it shall be made in writing and filed with the American Arbitration Association, and a copy thereof shall be mailed to the other parties within a period of fourteen days from the date of receiving the complete list of parties. After the hearing officer is appointed, however, no new or different claim may be submitted except with the hearing officer's consent.

(b) *Pre-hearing conference.* At the request of the parties or at the discretion of the American Arbitration Association, a pre-hearing conference with a representative of the American Arbitration Association and the parties or their counsel will be scheduled in appropriate cases to arrange for an exchange of information and the stipulation of uncontested facts so as to expedite the proceedings.

(c) *Fixing of locale.* The parties may mutually agree on the locale where the hearing is to be held. If the locale is not designated within 45 days from the time the complete list of parties is received, the American Arbitration Association shall have power to determine the locale. Its decision shall be final and binding. If any party requests, and informs the other parties of its request, that the hearing be held in a specific locale and the other parties file no objection thereto within 14 days of the request, the locale shall be the one requested.

(d) *Time and place.* The hearing officer shall fix the time and place for each hearing. The American Arbitration Association will mail notice to each party at least 14 days in advance.

§ 791.29 Appointment of hearing officer.

(a) *Qualifications of hearing officer.* All hearing officers shall be neutral, subject to disqualification for the reasons specified in paragraph (f) of this section.

(b) *Appointment from panel.* Promptly after receiving the complete list of parties at the close of the notice period described in § 791.22, the American Arbitration Association shall submit simultaneously to each party to the dispute an identical list of names. Each party to the dispute shall have thirty days from the mailing date in which to cross off any names objected to, number the remaining names to indicate the order of preference, and return the list to the American Arbitration Association. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable to that party. From among the persons who have been approved on all lists, and in accordance with the designated order of mutual preference, the American Arbitration Association shall invite the acceptance of a hearing officer to serve. If the parties fail to agree upon any of the persons named, or if acceptable hearing officers are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the American Arbitration Association shall have the power to make the appointment without the submission of any additional list.

(c) *Nationality of hearing officer in international dispute.* If one of the parties is a national or resident of a country other than the United States, the hearing officer shall upon the request of any party, be appointed from among the nationals of a country other than that of the parties.

(d) *Number of hearing officers.* The dispute shall be heard and determined by one hearing officer unless the American Arbitration Association, in its discretion, directs that a greater number of hearing officers be appointed.

(e) *Notice of appointment.* Notice of the appointment of the hearing officer, together with a copy of these rules, and the signed acceptance of the hearing

officer shall be filed prior to the opening of the first hearing.

(f) *Disclosure and challenge procedure.* A person appointed as hearing officer shall disclose to the American Arbitration Association any circumstances likely to affect impartiality, including any bias or any financial or personal interest in the result of the hearing or any past or present relationship with the parties or their counsel. Upon receipt of such information from such hearing officer or other source, the American Arbitration Association shall communicate such information to the parties, and, if it deems it appropriate to do so, to the hearing officer and others. Thereafter, the American Arbitration Association shall determine whether the hearing officer should be disqualified and shall inform the parties of its decision, which shall be conclusive.

(g) *Vacancies.* If any hearing officer should resign, die, withdraw, refuse, be disqualified or be unable to perform the duties of the office, the American Arbitration Association may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these rules and the matter shall be reheard unless the parties shall agree otherwise.

§ 791.30 Hearing procedures.

(a) *Representation by counsel.* Any party may be represented by counsel. A party intending to be so represented shall notify the other parties and the American Arbitration Association of the name and address of counsel at least 5 days prior to the date set for the hearing at which counsel is first to appear. When a hearing is initiated by counsel, or where an attorney replies for the other party, such notice is deemed to have been given.

(b) *Stenographic record.* The American Arbitration Association shall make the necessary arrangements for the taking of a stenographic record. The parties shall share the cost of such record.

(c) *Attendance at hearings.* The hearing officer shall have the power to require the exclusion of anyone, including a party or other essential person, during the testimony of any witness to protect confidential business information. It shall be discretionary with the hearing officer to determine the propriety of the attendance of any other person.

(d) *Oaths.* Hearing officers shall swear or affirm their neutrality and their dedication to a fair and equitable resolution. Witnesses shall swear or affirm that they are telling the truth.

(e) *Order of proceedings.* (1) A hearing shall be opened by the filing of the oath of the hearing officer and by the recording of the place, time and date of the hearing, the presence of the hearing officer and parties, and counsel, if any, and by the receipt by the hearing officer of the request for hearing and answer, if any.

(2) The hearing officer may, at the beginning of the hearing, ask for statements clarifying the issues involved.

(3) The party or parties seeking reimbursement shall then present a claim and proofs and witnesses, who shall submit to questions or other examination. The party or parties from whom reimbursement is sought shall then present a defense and proofs and witnesses, who shall submit to questions or other examination. The hearing officer has discretion to vary this procedure but shall afford full and equal opportunity to all parties for the presentation of any material or relevant proofs.

(4) Exhibits, when offered by any party, shall be received in evidence by the hearing officer. The names and addresses of all witnesses and exhibits in order received shall be made a part of the record.

(f) *Hearing in the absence of a party.* A hearing may proceed in the absence of any party which, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made solely on the default of a party. The hearing officer shall require the parties who are present to submit such evidence as the hearing officer may require for the making of an award.

(g) *Evidence.* (1) The parties may offer such evidence as they desire and shall produce such additional evidence as the hearing officer may deem necessary to an understanding and determination of the dispute. The hearing officer shall be the judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all the hearing officers and of all the parties, except where any of the parties is absent in default, has waived the right to be present, or has been excluded by the hearing officer to protect confidential business information.

(2) All documents not filed with the hearing officer at the hearing, but arranged for by agreement of the parties, shall be filed with the American Arbitration Association for transmission to the hearing officer, according to the agreed-upon schedule. All parties shall be afforded opportunity to examine such documents.

(h) *Evidence by affidavit and filing of documents.* The hearing officer shall receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as the hearing officer deems it entitled to after consideration of any objections made to its admission.

(i) *Closing of hearings.* The hearing officer shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the hearing officer shall declare the hearings closed and record the time of closing of the hearing. If briefs are to be filed, the hearings shall be declared closed as of the final date set by the hearing officer for the receipt of briefs. If documents are to be filed as provided for in paragraph (g)(ii) of this section and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearings.

(j) *Reopening of hearings.* The hearings may be reopened on the hearing officer's own motion, or upon application of a party at any time before the award is made. If the reopening of the hearings would prevent the making of the award within the specified time the matter may not be reopened, unless the parties agree upon the extension of the time limit.

(k) *Waiver of oral hearings.* The parties may provide, by written agreement, for the waiver of oral hearings. If the parties are unable to agree as to the procedure, the American Arbitration Association shall specify a fair and equitable procedure.

(l) *Waiver of rules.* Any party who proceeds with the hearing after knowledge that any provision or requirement of these rules has not been complied with and who fails to state objection thereto in writing, shall be deemed to have waived the right to object.

(m) *Extensions of time.* The parties may modify any period of time by mutual agreement. The American Arbitration Association for good cause may extend any period of time established by these rules, except the time for making the award. (§ 791.37(a)) The American Arbitration Association shall notify the parties of any such extension of time and its reason therefor.

(n) *Communication with hearing officer.* There shall be no direct communication between the parties and a hearing officer other than at oral hearings. Any other oral or written communications from the parties to the hearing officer shall be directed to the American Arbitration Association for transmittal to the hearing officer.

§ 791.31 Expedited procedures.

Unless the American Arbitration Association in its discretion determines otherwise, the Expedited Procedures described in this section shall be applied in any case where the total claim of any party does not exceed $5,000, exclusive of interest and hearing costs, and may be applied in other cases if the parties agree.

(a) *Application of rules.* The expedited hearings will be conducted according to the same procedures as the regular ones, except for those specifically changed by the expedited rules in this section, § 791.31.

(b) *Notice by telephone.* The parties shall accept all notices from the American Arbitration Association by telephone. Such notices by the American Arbitration Association shall subsequently be confirmed in writing to the parties. Notwithstanding the failure to confirm in writing any notice or objection hereunder, the proceeding shall nonetheless be valid if notice or obligation has, in fact, been given by telephone.

(c) *Appointment and qualifications of hearing officers.* The American Arbitration Association shall submit simultaneously to each party to the dispute an identical list of five persons from which one hearing officer shall be appointed. Each party shall have the right to strike two names from the list on a peremptory basis. The list is returnable to the American Arbitration Association within 10 days from the date of mailing. If for any reasons the appointment cannot be made from the list, the American Arbitration Association shall have the authority to make the appointment without the submission of additional lists. Such appointment shall be subject to disqualification for the reasons specified in § 791.29(f). The parties shall be given notice by telephone by the American Arbitration Association of the appointment of the hearing officer. The parties shall notify the American Arbitration Association, by telephone, within 7 days of any objections to the hearing officer(s) appointed. Any objection by a party to such hearing officer shall be confirmed in writing to the American Arbitration Association with a copy to the other parties.

(d) *Time and place of hearing.* The hearing officer shall fix the date, time and place of the hearing. The American Arbitration Association will notify the parties by telephone, 7 days in advance of the hearing date. Formal notice of hearing will be sent by the American Arbitration Association to the parties.

(e) *The hearing.* Generally, the hearing shall be completed within 1 day. The hearing officer, for good cause shown, may schedule an additional hearing to be held within 5 days.

(f) *Time of award.* Unless otherwise agreed to by the parties, the Award shall be rendered not later than 15 business days from the date of the closing of the hearing.

§ 791.34 Serving of notice.

(a) Each party shall be deemed to have consented that any papers, notices or process necessary or proper for the initiation or continuation of a hearing under these rules and for any appeal to EPA or any court action in connection therewith may be served upon such party by mail addressed to such party or its attorney at its last known address or by personal service, within or without the state wherein the arbitration is to be held (whether such party be within or without the United States of America), provided that reasonable opportunity to be heard with regard thereto has been granted such party.

(b) The American Arbitration Association shall, upon the written request of a party, furnish to such party, at its expense, certified facsimiles of any papers in the American Arbitration Association's possession that may be required in appeal to EPA or judicial proceedings relating to the hearing.

§ 791.37 The award.

(a) *Time of award.* The award shall be made promptly by the hearing officer and, unless otherwise agreed by the parties, no later than 30 days from the date of closing the hearings, or if oral hearings have been waived, from the date of transmitting the final statements and proofs to the hearing officer.

(b) *Form of award.* The award shall be in writing and shall be signed either by the sole hearing officer or by at least a majority if there is more than one. It shall contain a concise statement of its basis and rationale, and a timetable for payment of any ordered reimbursement.

(c) *Delivery of award to parties.* Parties shall accept as legal delivery of the award the delivery of the award or a true copy thereof by certified mail to the party at its last known address or to its attorney, or by personal service.

§ 791.39 Fees and expenses.

(a) *Administrative fees.* (1) As a not-for-profit organization, the American Arbitration Association shall prescribe an Administrative Fee Schedule and a Refund Schedule to compensate it for the cost of providing administrative services. The schedule in effect at the time of filing or the time of refund shall be applicable.

(2) The administrative fees shall be advanced by the initiating party or parties, subject to final apportionment by the hearing officer in the award. The administrative fee is increased by 10 percent of the original for each additional party.

(3) Fees and expenses in excess of the limit contained in sec. 26(b) of TSCA ($2,500 per person, or $100 per small business) will be paid by EPA.

(b) *Expenses.* Subject to paragraph (a)(3) of this section, all expenses of the hearing, including the cost of recording (though not transcribing) the hearing and required traveling and other expenses of the hearing officer and of American Arbitration Association representatives, and the expenses of any witness or the cost of any proofs produced at the direct request of the hearing officer, shall be borne equally by the parties, unless they agree otherwise, or unless the hearing officer, in the award, assesses such expenses or any part thereof against any specified party or parties.

(c) *Hearing officer's fee.* Hearing officers will normally serve without a fee. In prolonged or special cases the American Arbitration Association in consultation with the Administrator may determine that payment of a fee by the parties is appropriate and may establish a reasonable amount, taking into account the extent of service by the hearing officer and other relevant circumstances of the case. Any arrangements for compensation shall be made through the American Arbitration Association and not directly between the parties and the hearing officer.

Subpart C—Basis for Proposed Order

§ 791.40 Basis for the proposed order.

(a) The hearing officer shall propose a fair and equitable amount of reimbursement. The formula in paragraph (b) of this section shall be presumed to be fair and equitable as applied to all persons subject to a test rule. However, the hearing officer has the discretion to modify the formula, or to use some other basis for allocation if necessary. Additional factors that may be taken into account include, but are not limited to, relative amounts of exposure attributable to each person and the effect of the reimbursement share on competitive position.

(b) In general, each person's share of the test cost shall be in proportion to its share of the total production volume of the test chemical:

$$R_x = C\frac{V_x}{V_t}$$

Where:

R = the reimbursement share owed by company X.
C = the total cost of the testing required by the test rule.
V_x = the volume of the test chemical produced or imported by company X over the period defined by § 791.48.
V_t = the total volume of the test chemical produced or imported over the period defined by § 791.48.

(c) The burden of proposing modifications to the formula shall lie with the party requesting the modification.

§ 791.45 Processors.

(a) Generally, processors will be deemed to have fulfilled their testing and reimbursement responsibilities indirectly, through higher prices passed on by those directly responsible, the manufacturers. There are three circumstances in which processors will have a responsibility to provide reimbursement directly to those paying for the testing:

(1) When a test rule or subsequent Federal Register notice pertaining to a test rule expressly obligates processors as well as manufacturers to assume direct testing and data reimbursement responsibilities.

(2) When one or more manufacturers demonstrate to the hearing officer that it is necessary to include processors in order to provide fair and equitable reimbursement in a specific case.

(3) When one or more processors voluntarily agree to reimburse manufacturers for a portion of test costs. Only those processors who volunteer will incur the obligation.

(b) A hearing including processors shall be initiated in the same way as those including only manufacturers. Voluntary negotiations must be attempted in good faith first, and the request for a hearing must contain the names of the parties and a description of the unsuccessful negotiations.

(c) When processors as well as manufacturers are required to provide reimbursement, the hearing officer will decide for each case how the reimbursement should be allocated among the participating parties. When a test rule is applicable solely to processors, the hearing officer will apply the formula to the amount of the test chemical purchased or processed.

§ 791.48 Production volume.

(a) Production volume will be measured over a period that begins one calendar year before publication of the final test rule in the Federal Register and continues up to the latest data available upon resolution of a dispute.

(b) For the purpose of determining fair reimbursement shares, production volume shall include amounts of the test chemical imported in bulk form and mixtures, and the total domestic production of the chemical including that produced as a byproduct. Impurities will not be included unless the test rule specifically includes them.

(c) Amounts of the test chemical manufactured for export will not be included unless covered by a finding under TSCA sec. 12(a)(2).

(d) Chemicals excluded from the jurisdiction of TSCA by sec. 3(2)(B) need not be included in the computation of production volume. (Chemicals used as intermediates to produce pesticides are covered by TSCA.)

(e) The burden of establishing the fact that particular amounts of the test chemical are produced for exempt purposes lies with the party seeking to exclude those amounts from the calculation of his production volume.

§ 791.50 Costs.

(a) All costs reasonable and necessary to comply with the test rule, taking into account the practices of other laboratories in conducting similar tests, are eligible for reimbursement. Necessary costs include:

(1) Direct and indirect costs of planning, conducting, analyzing and submitting the test results to EPA.

(2) A reasonable profit, and a reasonable rate of interest and depreciation on the tester's initial capital investment.

(3) The cost of repeating or repairing tests where failure was demonstrably due to some cause other than negligence of the tester.

(b) Costs attributable to tests beyond those specified by EPA shall not be eligible for reimbursement under this rule.

§ 791.52 Multiple tests.

When more than one of a particular kind of test required by the test rule is performed, the additional costs will be shared among all those holding exemptions. The costs of all the tests will be added together and each exemption holder shall be responsible for a share of the total which is equal to its share of the total production of the test chemical. The exemption holders shall divide their shares between test sponsors in proportion to the costs of their respective tests. Those sponsoring a particular test do not have to obtain exemptions for that test and therefore do not have reimbursement responsibilities for the same tests done by others.

Subpart D—Review

§ 791.60 Review.

(a) The hearing officer's proposed order shall become the final Agency order 30 days after issuance unless within the 30-day period one of the parties requests Agency review or the Administrator of his own initiative decides to review the proposed order.

(b) The proposed order may be reviewed upon the record of the hearing and the petitions for review. If necesary, the Administrator may order the transcription of the stenographic record of the hearing, written briefs, oral arguments or any other reasonable aids to making an equitable decision.

(c) The final Agency order may be reviewed in federal court as provided by 26 U.S.C. 2603(c).

Subpart E—Final Order

§ 791.85 Availablity of final Agency order.

The final Agency order shall be available to the public for inspection and copying pursuant to 5 U.S.C. 552(a)(2), subject to necessary confidentiality restrictions.

Subpart F—Prohibited Acts

§ 791.105 Prohibited acts.

Failure to provide information required by the Agency or to pay the amounts awarded under this rule within time alloted in the final order shall constitute a violation of 15 U.S.C. 2614(1) or 2614(3).

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federal register

Monday
July 11, 1983

Part III

Department of the Interior

Minerals Management Service
Bureau of Land Management

Site Security; Onshore Federal and Indian (Except Osage) Oil and Gas Leases; Final Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Bureau of Land Management

30 CFR Part 221

[Circular No. 2529]

Site Security; Onshore Federal and Indian (Except Osage) Oil and Gas Leases

AGENCY: Bureau of Land Management, Department of the Interior. (See first paragraph of supplementary information).

ACTION: Final rulemaking.

SUMMARY: This final rulemaking provides minimum standards required to be followed on onshore Federal and Indian (except Osage) oil and gas leases to reduce the circumstances which could facilitate the theft or mishandling of crude oil. The minimum standards have been designed under the basic premise that the primary responsibility for site security rests with those who operate the leases; however, oversight responsibility rests with the Government on behalf of the people of the United States and the appropriate Indian lessors.

EFFECTIVE DATE: September 9, 1983.

ADDRESS: Director (500), Bureau of Land Management, 18th & C. Streets NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald R. Daniels, (703) 860–7535, (FTS) 928–7535, or Mr. Stephen H. Spector (703) 860–7969, (FTS) 928–7969.

SUPPLEMENTARY INFORMATION:

Following the publication of the proposed site security regulations for public comment on November 19, 1982 (47 FR 52397), the Secretary of the Interior transferred to the Bureau of Land Management the duties concerning approval and supervision of operational activities on Federal and Indian oil and gas leases formerly exercised by the Minerals Management Service (MMS) (Secretarial Order #3087 December 3, 1982, amended February 7, 1983) Notice of these actions was published in the **Federal Register** on March 2, 1983 (48 FR 8983). In addition, on January 12, 1983, the Federal Oil and Gas Royalty Management Act of 1982 (Pub. L. 97–451) became law.

Section 102(b)(1) of that Act requires the Secretary to prescribe minimum standards for site security for onshore Federal and Indian (except Osage) oil and gas leases, and that lease operators shall develop and comply with site security plans which conform with these minimum standards. Section 301(b) of the Act requires that implementing rules and regulations shall be issued in conformity with Section 533 of Title 5 of the United States Code, notwithstanding Section 533(a)(2) of that title.

Implementation of the Royalty Management Act will also require a revision of other provisions of the existing onshore oil and gas operating regulations as well as promulgation of new regulations pertaining to subjects not now addressed in those regulations. The additional revision of existing regulations and the promulgation of new regulations will be addressed in separate, future rulemakings.

In accordance with Secretarial Order No. 3087, the Department plans to transfer the applicable portions of the operating regulations now in Title 30 to Title 43 of the Code of Federal Regulations. However, as this will not occur for several months, it has been determined to complete promulgation of this final site security rulemaking under Title 30 CFR Part 221, as initiated and to modify and reorganize the provisions, as proposed, only to the extent necessary to take into account the comments received, the enactment of the new Royalty Management Act, and the Departmental reorganization which transferred certain functions from MMS to BLM. The basic content of the minimum site security standards, as proposed, has not been disturbed significantly in this final rulemaking.

Until the public and lease operators are advised otherwise, any material required to be filed by these site security regulations, both for Federal and Indian leases, should be sent to the appropriate State Director of the Bureau of Land Management. The State Directors will forward the material to the appropriate supervising field office. The geographic areas within the jurisdiction of the respective BLM State Offices may be found in 43 CFR 1821.2–1.

Comments on the November 19, 1982 proposal were received from 62 entities including lessees, operators, industry associations, Indian Tribes, and our own field offices. The comments from operators ranged from total acceptance of the regulations, as proposed , to total rejection of all provisions. Most of the commenters advised that the proposed regulations were a great improvement over the interim regulations (which were published October 15, 1982 (47 FR 46236), and withdrawn on November 19, 1982 (47 FR 52936)) and the basic thrust of the regulations was appropriate; however, improvements were still in order. Many commenters disagreed with the basic premise that these regulations or any of the specific provisions would deter the actual theft of hydrocarbons by third parties.

The specific comments will be discussed under the individual paragraphs of the regulations to which they apply. However, with the passage of the Royalty Management Act, the questions of whether or not to promulgate regulations that provide minimum standards and whether or not operators should prepare plans that comply therewith are no longer at issue.

Several commenters raised questions about the scope of these rules. These minimum site security regulations also apply to those production and storage facilities located on lands other than Federal or Indian when those lands are committed to unit or communitization agreements which have been federally approved and under which the Federal and Indian leases committed to such agreements are entitled to share in the production from such non-Federal or non-Indian lands.

Also, as a general response to commenters, the rationale for prescribing minimum site security standards is not that these will completely stop the theft of hydrocarbons by third parties. No regulation possibly could do that. Rather, the regulations are intended first, to minimize or eliminate circumstances which exist in the field that could facilitate theft, and second, to make it easier to ascertain when a theft has occurred. Equally important, standards are provided which should minimize conditions that permit the mishandling and subsequent removal of hydrocarbons from storage without proper documentation through a standard system of recordkeeping.

A specific suggestion made by seventeen commenters, and alluded to by many others, concerned the timeframe for compliance with the provisions of the section. The wide variety of suggestions for preparing and submitting plans and facility diagrams ranged from 60 days to 24 months after the final rule is published. The preamble to the proposed rule published on November 19, 1982, provided that the effective date of the final rule would be 60 days after publication. Elsewhere in that preamble, lessees and operators were advised that the contents of schematic diagrams would not be revised substantively and the preparation process should not await the publication of final site security regulations. Because of this initial warning and the reduction in the final rule of some of the anticipated burden of compliance—a subject discussed later in this preamble—it has been determined

that further delay in the implementation of this rule beyond 60 days after its publication is not justified or in the public interest.

Almost all commenters stated that the proposed regulations were unclear. Many suggested that the sequence of the provisions might be causing some of the confusion. The proposed rule was prepared under the assumption that both site security plans and site facility diagrams would be filed with the District Supervisors of the Minerals Management Service. However, we agree with the nearly unanimous comments requesting that the plans be retained by the operators. This change is discussed further under paragaph (c)(2). Therefore, in order to eliminate confusion and clearly indicate what standards have been established, the sequence of the paragraphs is adjusted so that those provisions pertaining to minimum standards, those pertaining to site security plans, and those pertaining to facility diagrams are grouped together respectively. Substantive changes were made only when requested by commenters and where the objective of the rule as proposed is strengthened. A table indicating this re-grouping follows:

Subject	Provision of proposed regulation (§ 221.37)	Provision of final regulation (§ 221.37)
Definitions	None	(a).
Seal requirements	(b)(1)	(b)(1).
Bypass piping & ACT meters	(b)(5)	(b)(2).
Oil storage time	(b)(6)	(b)(3).
Accumulations of waste oil	(b)(7)	(b)(4).
Measurement records and inspections.	(b)(2) & (b)(3) part.	(b)(5).
Facility identification	(b)(8)	(b)(6).
Run ticket aboard trucks	(b)(9)	(b)(7).
Reporting thefts	(e)	(b)(8).
Variance from standards	(c)	(b)(9).
Site security plans	(a) part	(c)(1).
Operator retains plans	(a) part	(c)(2).
Measurement and inspection schedule.	(b)(2) & (b)(3) part.	(c)(3).
Site facility diagrams	(b)(4) and (d)	(d)(1).
Facility diagram format	None	(d)(2).
Facility diagram content	(b)(1) part	(d)(3).
Filing requirements	None	(d)(4).

Definitions. [Paragraph (a)], not in proposed rule.

Many commenters found provisions of the proposed rule unclear and requested that various terms be defined. Most of these terms were of a technical nature and relate to site security only. While § 221.2 provides definitions for the general operating regulations, it was determined that a separate definitions provision should be included in this section, and that this will not adversely affect the general regulatory scheme of Part 221. Definitions are provided for: seals, effectively sealed, closed system, open system, production phase, sales phase and appropriate valves.

Minimum standards. [Paragraph (b)(1)], paragraph (b)(1) in proposed rule.

Every commenter expressed concern about the requirements of the proposed minimum standards. As with the general comments, they ranged from acceptance of the proposed standards to total rejection due to the increased costs of compliance which according to some commenters could lead to early abandonment as a result of loss of profitability. Several commenters were concerned with such items as: what constitutes an appropriate or effectively sealed valve, time for compliance, recordkeeping, and the retention period for records. They were also concerned that the proposal did not restrict the standards to the storage facilities.

It is not possible to cover every variation in production and storage facilities in existence due to the variety of circumstances. Equipment and handling of production are more or less dictated by the type, quantity, and quality of the production, and climatic and topographic considerations. In recognition of this fact, the final minimum standards are directed only at the sales and storage facilities and to the piping system related to such facilities, i.e., fill lines, equalizer lines, sales lines, circulating lines, and drawdown lines. At this time, the standards are not applicable to the production vessels, headers, wellheads, or connections thereon. Based on the definitions provided and considering the various activities that routinely occur at production facilities and the construction of the piping systems, it is believed that valves or connections that could permit unauthorized access to production and undocumented movement of production from the storage or sales facilities can be identified and protected. The seal requirements depend on continuing activity, i.e., any tank from which sales are to be made by hand gauging must, prior to sales, be completely isolated by use of seals. During the sales phase, only the sales outlet valve may be opened. Once the sale is completed, the sales valve is required to be closed and sealed and valves on the other lines opened as needed for production. This standard will not be applicable to sample cocks on storage or wash tanks nor will it apply to production fill lines from separators on gas well installations where each individual well has its own production facilities and contains only one tank for the storage of produced condensate. It will, however, apply to all lines leaving the tank. This exception is being made due to the small volume of production, the frequency of gathering such production, and the volatile nature of condensate.

[Paragraph (b)(2)], paragraph (b)(5) in proposed rule.

This minimum standard pertains to Automatic Custody Transfer (ACT) systems and by-pass piping. Since there were no adverse comments to employing meters that have non-resettable totalizers, the final rule retains the requirement that all ACT systems employ meters that have no-resettable totalizers.

However, in response to several comments, the section was rewritten to provide that no by-pass piping is permitted around the ACT or gas meters rather than specifying that no extra piping is permitted without the Supervisor's approval. Permanent installation of such piping around the meters, whether sealed or unsealed, presents opportunity for unauthorized and undocumented removal of production from the leases. In response to several comments, the final regulation provides that equipment which permits changing the orifice plate in gas meter runs without bleeding pressure off the meter run will not be considered a by-pass. If an ACT is to be out of service for a period of time during which lease production would exceed the storage capacity of the facility, the ACT may, with the prior oral approval of the authorized officer, be disconnected from the system and temporary piping installed so that sales may be run via hand gauging of the affected tanks. A number of commenters advised that piping which permits removal of oil or water from storage is necessary to the continuing operation of the lease. This includes removal of oil for lease treating, royalty oil, fuel oil for lease use, water drain lines, and recirculating lines. The final rulemaking does not preclude use of such lines, but does require appropriate safeguards when utilized.

The provisions for preparing, submitting and modifying site facility diagrams (moved from (b)(4) and (d)) are expanded to provide not only the requirement for such diagrams, but also where and when the diagrams are to be filed, their format, and their content. Due to the variety of circumstances encountered at lease sites, it is not possible to derive general production/treating/storage layouts with which compliance would be mandatory without taking away the flexibility operators need to meet specific conditions. Unless operators have been advised in writing to the contrary, the filing of an acceptable facility diagram will constitute temporary approval of

the vessels, tanks, piping, and metering measurement system. The temporary approval may be cancelled or modified following inspection.

Upon inspection, the oprerator will be advised whether the facility remains approved or whether modifications are needed in order to continue approval. Thus, even though the facility diagrams will need to be filed by the effective date of this rule, any needed modifications or corrections will be phased in as facilities are inspected.

[Paragraph (b)(3)], paragraph (b)(6) in proposed rule.

A number of commenters pointed out that operators must retain oil on the lease for lease use such as hydraulic fracturing, other will treatments, and power oil for pumping. In addition, operators may be required to provide storage of royalty oil for up to 30 days. One commenter suggested that minimizing storage time should take into account the economics of transportation. Several commenters advised again in their comments to paragraph (b)(6) that extra piping is necessary for continued operation. Therefore, the paragraph was rewritten to minimize storage time to that needed to accumulate an economic run and to enable the operator to store royalty oil for lease use without consideration of minimizing storage time. The sentence concerning the Supervisor's approval of extra piping was deleted for the same reasons discussed previously—that the facility diagram is the mechanism for showing all piping and gaining approval thereof.

[Paragraph (b)(4)], paragraph (b)(7) in proposed rule.

Several commenters stated that the requirement concerning prompt handling of slop or waste oil is redundant and is covered by § 221.36. One commenter suggested that there be proper measurement to assure that this oil is actually "slop or waste oil." This section is retained, as proposed, to emphasize the need to minimize unauthorized transfers of merchantable oil to pits and disposition of salable oil from such pits without prompt royalty payment.

[Paragraph (b)(5)], parts of paragraph (b)(2) & (3) in proposed rule.

A total of 20 comments were received concerning the word "schedule." Operators did not want to be committed to a rigid schedule but wanted flexibility in conducting inspections and recording production based on lease production rates, weather, and road conditions. This recommendation was adopted and the term "with reasonable frequency" has been substituted for the term "on a reasonable schedule." Many commenters suggested that the last sentence in (b)(2) be eliminated and that (b)(2) and (b)(3) be combined into one standard. This has been adopted in the final rulemaking. Commenters also mentioned that no record retention times were given. The final rulemaking provides that records must be retained for 6 years, as required by section 103(b) of the Royalty Management Act.

[Paragraph (b)(6)], paragraph (b)(8) in proposed rule.

Nineteen comments were received on this section. Six commenters questioned the need to identify the meridian on the sign. In view of the fact that there is generally one meridian in most States, and in those instances where there are two or more meridians in a State, the identification of the meridian is not critical to locating the lease, the suggestion has been adopted and the requirement for meridian on the sign has been deleted.

Several commenters were concerned with the requirement that a unique number be placed on each storage tank. They particularly wondered how "unique" the number must be and whether the unique number required by some State regulations would suffice. The purpose of numbering the tanks is simply to set each storage tank apart from the others at any one facility for the purpose of better correlating sales records and for the correct correlation of strapping tables to each tank. This requirement is retained but is modified so that any designation established by State law or rule will satisfy the requirement.

Several commenters indicated that no purpose would be achieved by listing tribal names on signs located on Indian lands. In view of the importance we place on exercising our trust responsibility, this requirement has been retained. This will assure prompt identification of Indian production.

Several commenters pointed out the awkwardness of listing the name of each Indian allottee on the identification sign where there are many allottees involved. This recommendation has been adopted and the section modified to require only that the sign indicate whether the lease is tribal or allotted.

Several commenters were concerned with the placement of identification signs when there are multiple tanks at a storage facility. The language of the section has been modified to allow placing the sign along the entrance to the site or at the tank itself.

Several commenters sought to allow the use of a unit or communitization agreement identification instead of listing all lease numbers. The section has been modified in accordance with this comment.

[Paragraph (b)(7)], paragraph (b)(9) in proposed rule.

Several comments were received concerning the documentation required to be aboard trucks removing oil from Federal and Indian leases. Some commenters suggested that this requirement is duplicative of provisions of NTL's already in effect. It was decided to retain this requirement because it implements certain provisions of the new Royalty Management Act and is also a regulatory basis on which to issue future orders or NTL's on this subject, should the need arise.

Two commenters questioned how multi-truck loads from a single storage tank should be handled with respect to sufficient copies of the run ticket. The present requirements in this regard are contained in NTL–7 and have not been repeated here. Should a need arise for additional or changed requirements in this respect, these will be set forth in proposed new orders or regulations.

One commenter asked about the security of oil once it is in the truck. The security of the product, once it passes the sales point and becomes the property of the purchaser, is primarily the responsibility of the purchaser. However, the Department has new authority under the Royalty Management Act to stop vehicles on and off lease to verify proper documentation when there is probable cause to believe the onboard oil is from or allocated to a Federal or Indian lease.

One commenter questioned why the regulation requires a tank number on the run ticket. The existing NTL–7 requires the lease number on the run ticket, not the tank number. However, in view of the comments received concerning the tank numbers under paragraph (b)(8), the requirement of the new Royalty Management Act, and the need of both the operator and BLM to verify sales, it is appropriate to require that the purchaser identify the tank from which the run was made.

One commenter suggested that run tickets also be required for all waste oil or sump oil. This comment, while pertinent, was not adopted since 30 CFR 221.36 already requires a run ticket to be prepared for oil recovered and sold from pits or other bad oil storage.

[Paragraph (b)(8)], paragraph (e) in proposed rule.

Several comments were received concerning notification in the event of a theft. While there was general agreement that the proposal was a workable improvement over the interim rule, additional modification was requested. The proposed rule required

notification within 24 hours of the discovery of a theft. Most commenters requested a change to allow for notification by the next business day so that thefts found during a weekend could be reported on Monday, without any penalty. This change was adopted and will make the rule more workable without significantly affecting the desired result.

[Paragraph (b)(9)], paragraph (c) in proposed rule.

Since this paragraph deals with variances from minimum standards, it was moved to the minimum standards section. Several commenters advised that it was not clear who would approve a variance request, asked whether or not it would be approved, and suggested it is redundant to request a variance that can only meet or exceed the enumerated minimum standards. Therefore, the paragraph was rewritten to provide that an operator may request a variance from any of the minimum standards and that the variance would be approved if the alternative meets or exceeds the objective of the affected standards. Approvals would be granted or denied by the authorized officer.

Site Security Plans

[Paragraph (c)(1)], part of paragraph (a) in proposed rule.

Several commenters advised that they were not sure when the plans would be due, when facilities should be in compliance with the plans, and what the content of the plans should be since Minerals Management Service had changed the requirement between the interim rule on October 15, 1982, and the publication of the proposed rule on November 19, 1982. In response to these comments the elements of paragraph (a) of the proposed rule dealing with these specific elements have been removed from that paragraph and placed in this new paragraph (c)(1).

As stated previously, this rule is final and will be effective 60 days after its publication in the **Federal Register**. By no later than the effective date, the plans for existing facilities must be completed, leases must be in compliance with the plan, and notification of plan completion must be submitted. In addition, for new facilities all of these requirements are effective no later than 30 days after completion of construction or first production. Because the wide knowledge of the need for site security plans and facility diagrams spans nearly a year, it is believed that these effective dates are reasonable.

[Paragraph (c)(2)], not in proposed rule.

As previously stated, a substantial number of the comments received favored not filing the site security plan with the Supervisor and proposed, as an alternative, that the plans be maintained at the operator's appropriate field offices. Advantages cited include elimination of the expense of handling and storage of the plans by Bureau of Land Management, a better means of preserving confidentiality of plans, and minimizing mailing and administrative costs. Some commenters suggested that if this proposed change were adopted the operator could be required to submit a letter from each of its involved field offices to the Bureau of Land Management listing all onshore Federal and Indian leases in the BLM district's area of responsibility and indicating that site security plans for these leases are on file and available for inspection during normal working hours at the specified field office location. The proposed rulemaking provision which required that any changes in an existing plan be submitted to the Supervisor was also viewed by the commenters as an inordinate burden on both operators and the government.

Considering that BLM supervises over 17,500 producing leases containing approximately 40,800 active oil and gas wells in 22 states, the above comments have considerable merit. The requirement has been revised accordingly. This change will eliminate the need for an operator to submit plans or revisions thereof to the authorized officer. However, the operator will remain responsible for maintaining all site security plans in a current status and for notifying the appropriate official as plans are completed or conformed to reflect new leases. BLM will inspect the facilities against the minimum standards of this rule and against the facility diagrams required under paragraph (d) of this section. If deficiencies are found during this inspection process, the plan will be obtained and examined to determine if the plan is deficient or if it is only compliance with the plan that is deficient. Depending upon the results of the inspection and plan examination, the operator will be advised of any corrective measures needed to bring the facility and/or the plan into compliance.

One commenter suggested that plans must be filed for approval to assure that facilities are located in environmentally sound locations which are near roads, that they must be filed with any affected Indian Tribes, and that the responsibility should be the lessee's, not the operator's. This commenter also suggested that the authorized officer should draw up comprehensive plans and require the companies to comply with them. With regard to who should prepare the plans, the Royalty Management Act provides that operators are to develop and comply with site security plans which conform to minimum standards prescribed by the Secretary taking into account the variety of circumstances at lease sites. The law does not require that the plans be filed for approval.

Also, the variety of circumstances at lease sites in different regions of the country preclude an authorized officer from drawing up comprehensive plans with which the operator must comply. Section 203 of the Royalty Management Act assures that Indian Tribes may have access to all information, with certain caveats, and while the Department of the Interior will honor the spirit as well as the letter of those provisions, such subject matter does not properly belong in these regulations. It is better handled as a matter of policy, delegation of authority, contracts, or cooperative agreements under Title II of the Royalty Management Act. Also, questions of the environmental soundness of production facility siting are handled under other provisions of the regulations at the time of proposed construction and have little or no connection with site security.

[Paragraph (c)(3)], parts of paragraph (b)(2) & (b)(3) in proposed rule.

Several commenters advised that the regular recording of production volumes and inspection frequencies differ among companies and must be tailored to the variety of circumstances applicable to specific sites. It is also highly dependent on whether company or contract personnel are performing the work. It is agreed that operators must have the flexibility to derive the best procedures to meet the rule's objective for individual sites and that it is not possible to construct a single standard which will fit all circumstances other than the general provisions of paragraph (b)(5) hereof. Thus, the operator's site security plan must state the inspection and recordkeeping method and schedule to be followed by its employees and contractors. If, at the time of inspection, the records pertaining to volume measurements and operator inspections appear inadequate for a specific site, the operator will be advised of any needed corrective measures.

Site Facility Diagrams

[Paragraphs (d)(1) through (d)(4)], part of paragraph (b)(1) and paragraphs (b)(4) and (d) in proposed rule.

Several commenters requested more detail in the provisions relating to site facility diagrams. Such detail is provided by expanding the provisions into four related paragraphs. Many commenters requested additional time

for preparation of the diagrams. However, as the requirement for facility diagrams was included in Part 221 in the final oil and gas operations regulations published on October 27, 1982 (47 FR 47758), additional time is neither necessary nor appropriate. Several commenters questioned the possible disclosure of confidential information. There is no problem with confidentiality since schematic diagrams need only to show the vessels, piping and metering systems. There is no requirement to show alerting devices or systems. Commenters suggested the diagrams be maintained at their field offices for review. This was not accepted because each facility must be inspected by the Bureau of Land Management with the diagram in hand. An operator's representative is not expected to accompany every Departmental inspector during onsite inspections to explain where underground piping is located. The facility diagrams will assure that uniform and consistent inspections are made each time the lease is inspected. The requirement for filing of the diagrams will necessitate little additional filing space or time. Several commenters expressed concern about costs of diagram preparation. A legible free hand schematic will be acceptable. Site facility diagrams are not by themselves expected to deter theft but will assure that the appropriate values are sealed, piping is appropriate, and that any removal of oil can be and is recorded.

Executive Order 12291 on Federal Regulation

A number of commenters took exception to the economic impacts estimated for the proposed rule under Executive Order 12291. They advised that their estimates for industry-wide cost of compliance far exceeded the $7 million estimate cited. These differences in estimated costs reflect only a differing perception of the stringency with which the rule will be applied, the level of detail and expected quality of facility diagrams, and the frequency of operator inspection and volume measurements along with the methods of recording and/or reporting inspections and production records. It is still estimated that such costs would not have exceeded $7 million for some 17,500 producing leases. In addition, as a result of the comments received, the provisions of the proposed rule have been further modified to reduce some of the administrative, recordkeeping, reporting, and performance requirements placed on the operators. These reductions include: (1) A section clarifying the content of facility diagrams to require merely that they be legible and comprehensible to a person of ordinary working knowledge of oilfield operations and equipment; (2) a reduction in data requirements for signs, acceptance of any existing State standards for numbering of tanks and/or identification of facilities, and a provision that new facility signs are not required so long as existing signs reflect the basic data required; and (3) the requirement that site security plans be filed with the authorized officer is changed to allow operators to retain the plans. In addition, the requirement that an operator must schedule inspections and record production volumes is clarified to require only that the operator do so regularly on a reasonable schedule with frequency to be determined by the operator, with the qualification that if inspections and/or examination of the records indicate either to be inadequate for a specific facility, the operator will be required to make appropriate improvements. In general, the operators appear to have been projecting the "worst case" in arriving at their estimates. The intent of this rulemaking has always been to set minimum standards which are not unduly burdensome but which are commensurate with the need to improve site security and, thus, reduce the opportunities for the undocumented removal of crude oil, condensate, and gas from Federal and Indian leases.

The Department has determined that this final rule is not a major rule and does not require the preparation of a regulatory impact analysis under Executive Order 12291 because it is estimated to result in a total economic effect of less than $7 million. Since this amount will be spread among approximately 2,200 operators and 17,500 producible oil and gas leases, the total and individual economic effect is not deemed significant under the terms of the Executive Order.

Regulatory Flexibility Act

A few commenters also felt that a regulatory flexibility analysis under Section 603 of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) should have been prepared and that Section 604 required one for the final rule. The Department continues to believe that such an analysis is not required and that the determination made under Section 605 was appropriate. That determination was made in August 1982, and the regulatory burden has been substantially reduced twice since that time. According to industry sources, the major continuing cost of these rules, as originally designed, would have been the hiring of additional people to conduct the daily inspections at all facilities. In addition, extensive costs were projected for the preparation of facility diagrams. The commenters estimated that both of these costs would fall more heavily on small independent operators since the burden could not be distributed among many leases and storage facilities. In analyzing the comments and designing the final rule, an effort was made to minimize any such disproportionate impact, while not eliminating the essential elements of the minimum standards. The clarification provided by the new paragraphs (d)(1) through (d)(4) should remove the widely stated fears that the site facility diagram requirement would necessitate the hiring of draftsmen to create professional schematics of all facilities to exacting specifications. The standard for inspection and recording of production volumes in new paragraph (b)(5) has also been clarified to indicate that an inordinate burden will not be placed upon operators beyond what reason dictates. If seasonal conditions require the altering of a general inspection frequency, the plan will so indicate. Additionally, the remoteness and production levels of a facility are expected to be considered along with the relative risk to all interest owners and the opportunities for theft which are present at a specific site. Therefore, the statement published in the proposed rulemaking is determined to be valid and appropriate.

National Environmental Policy Act of 1969

It is hereby determined that this final rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C) is required.

Paperwork Reduction Act of 1980

The information collection requirements of the site security plan in 30 CFR 221.37 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 04–0134.

The principal authors of this final rulemaking are Mr. Michael F. Reitz, Albuquerque, New Mexico; Mr. Sylvester J. Fisher, Denver, Colorado; and Mrs. Florence J. Lee, Messrs. Larry P. Bauer, Gerald R. Daniels, John Duletsky, Stephen H. Spector and Eddie R. Wyatt of the headquarters office, Reston, Virginia.

List of Subjects in 30 CFR Part 221

Oil and gas exploration, Public lands/mineral resources, Reporting requirements.

Under the authority of the Act of February 25, 1920, (30 U.S.C. 189), the Federal Oil and Gas Royalty Management Act of 1982 (Pub. L. 97-451), and Executive Order 12291 (3 CFR, 1981 Comp., p. 127), Part 221, Chapter II, Title 30 of the Code of Federal Regulations is amended as set forth below.

Dated: June 14, 1983.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

PART 221—[AMENDED]

Section 221.37, is added to read as follows:

§ 221.37 Site Security on Federal and Indian (except Osage) Oil and Gas Leases.

(a) *Definitions.–Appropriate valves.* Those valves in a particular piping system, i.e., fill lines, equilizer lines, sales lines, circulating lines, drain lines, or other lines, that must be sealed during a given phase of operations.

Authorized Officer (AO). The employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in the specific provision of this section.

Authorized Representative. Any person authorized by the Secretary to perform designated duties by delegation, cooperative agreement, or contract.

Closed system. A piping arrangement from one or more source points to one or more other points in a system which does not have means of access, i.e., flat plugs, bullplugs, blanking caps, open-ended valves, or combinations thereof.

Effectively sealed. The placement of a seal in such a manner that the position of the sealed fitting may not be altered or the fitting removed from the system without the seal being destroyed.

Open system. A piping arrangement from one or more source points to one or more other points in a system which does have a means of access, i.e., flat plugs, bullplugs, blanking caps, open-ended valves, or combinations thereof.

Production phase. That period of time or mode of operation during which crude oil is delivered directly to or through production vessels to the storage facilities.

Proper BLM office. The Bureau of Land Management office having jurisdiction over the lands subject to the regulation in this section. (See 43 CFR 1821.2–1) When two or more offices have jurisdiction over a field or the lands to be unitized, the "proper BLM office" shall be the office having jurisdiction over the majority of the field or unit area when the field is developed or the unit is formed.

Sales phase. That period of time or mode of operation during which crude oil is removed from the storage facilities for sales, transportation or other purposes.

Seal. A device, uniquely numbered, which completely secures a fitting.

(b) *Minimum standards.* Each operator of a Federal or Indian (except Osage) lease shall comply with the following minimum standards:

(1) All appropriate valves on lines entering or leaving oil storage tanks shall be effectively sealed during the production phase and during the sales phase. The piping and connections in a closed system which are tamper proof or tamper resistant are essentially protected from unauthorized or undocumented entry, but the piping and connections in an open system shall be protected. For a minimum of 6 years the operator shall maintain a record of seal numbers used and shall document on which valves or connections they were used as well as when they were installed and removed. The site facility diagram(s) shall show which valves will be sealed in which positions during both the production and sales phase, and shall show whether the piping is an open or closed system.

(2) Each Automatic Custody Transfer (ACT) system shall employ meters that have non-resettable totalizers. There shall be no by-pass piping around the ACT. Similarly, there shall be no by-pass piping around gas meters. Equipment which permits changing the orifice plate without bleeding the pressure off the gas meter run is not considered a by-pass.

(3) Where oil is sold via hand gauged volumes, the operator shall minimize the time that oil is stored on leases to that time needed to accumulate an economic run. The operator may retain that oil needed for use on the lease and to provide for delivery of royalty oil.

(4) The operator will deal promptly with any other accumulations of oil in pits or tanks in accordance with the provisions of § 221.36 and applicable NTL's or onshore orders.

(5) The operator, with reasonable frequency, shall regularly inspect all leases, units, and communitized areas to determine site security and production volumes. The operator shall retain records of such inspections and measurements for 6 years. Such records and measurements shall be available to any authorized officer or authorized representative upon request.

(6) All facilities at which oil is stored shall be clearly identified with a sign that contains the name of the operator, the lease serial number (or communitization or unit agreement identification), and, in public land States, the quarter-quarter, section, township, and range. On Indian leases, the sign also shall include the name of the appropriate Tribe and whether the lease is tribal or allotted. In addition, each storage tank shall be clearly identified by a unique number. The identification shall be maintained in legible condition and shall be clearly apparent to any person at or approaching the sales or transportation point. With regard to the quarter-quarter designation and the unique tank number, any such designation established by state law or rule will satisfy this requirement. Any facility identification which is in existence on the effective date of this rule and which meets the basic information required herein will satisfy this paragraph until such sign is replaced.

(7) Any person removing oil from a facility by motor vehicle shall possess the identification documentation required by applicable NTL's or operating orders while the oil is being removed and transported.

(8) Theft or mishandling of oil from a Federal or Indian lease shall be reported to the authorized officer as soon as discovered but not later than the next business day. Said report shall include an estimate of the volume of oil involved. Operators also are expected to report such thefts promptly to local law enforcement agencies and internal company security.

(9) Any operator may request the authorized officer to approve a variance from any of the minimum standards prescribed by this section. The authorized officer shall approve a variance if the proposed alternative meets or exceeds the objective of the applicable standard.

(c) *Site Security Plans.* (1) Site security plans, which include the operator's plan for complying with the minimum standards enumerated in paragraph (b) of this section, shall be completed and the existing facilities shall be in compliance with the plan on September 9, 1983. For facilities constructed after September 9, 1983 conformance with existing plans shall be established or new plans shall be completed no later than 30 days of completion of construction or first production, whichever occurs first, and on that date the facilities shall be in compliance with the plan. At the operator's option, a single plan may

include all of the operator's leases, unit and communitized areas, within a single BLM district, provided the plan clearly identifies each lease, unit, or communitized area included within the scope of the plan and the extent to which the plan is applicable to each lease, unit, or communitized area so identified.

(2) The operator shall retain the plan but shall notify the authorized officer of its completion and which leases, unit and communitized areas are involved. Such notification is due at the time the plan is completed as required by (c)(1) of this section. Such notification shall include the location and normal business hours of the office where the plan will be maintained.

(3) The plan shall include the frequency and method of the operator's inspection and production volume recordation. The authorized officer may, upon examination, require adjustment of the method or frequency of inspection.

(d) *Site Facility Diagrams.* (1) Facility diagrams shall be filed with the authorized officer no later than September 9, 1983 for those facilities in existence on that date. Thereafter, facility diagrams shall be filed within 30 days after new measurement facilities are installed or existing facilities are modified.

(2) No format is prescribed for facility diagrams. They should be prepared on 8½" X 11" paper, if possible, and be legible and comprehensible to a person with ordinary working knowledge of oilfield operations and equipment.

(3) A site facility diagram shall reflect the actual conditions at the site and shall clearly identify the vessels, piping (indicating whether piping is a closed or open system), and metering system which apply to the handling and disposal of oil, gas, and water. The diagram must clearly identify the lease on which the facility is located and the site security plan to which it is subject along with the location of the plan.

(4) Site facility diagrams submitted under this section will satisfy the requirement for facility diagrams appearing at any other section of this part.

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federal register

Monday
July 11, 1983

Part IV

Environmental Protection Agency

4,4'-Methylenedianiline; Response to the Interagency Testing Committee

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–42036; TSH–FRL 2382–1]

4,4'-Methylenedianiline; Response to the Interagency Testing Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice is EPA's response to the Interagency Testing Committee's recommendation that EPA consider requiring health and environmental effects testing of 4,4'-Methylenedianiline (MDA) under section 4(a) of the Toxic Substances Control Act. EPA is not initiating rulemaking at this time under section 4(a) to require testing of MDA for health effects because: (1) EPA has received data from a recently completed National Toxicology Program (NTP) 2-year carcinogenicity study which show MDA to be a carcinogen in both rats and mice, and (2) EPA has initiated evaluation of the need to control exposure to MDA on the basis of the NTP test data and does not believe that data obtained from testing for other health effects are likely to significantly change the regulatory decisions that will be based on the NTP data. EPA is not initiating rulemaking at this time to require epidemiological studies of MDA because a suitable study population has not been identified. EPA is not initiating rulemaking for environmental effects testing because MDA is not anticipated to enter the environment in substantial quantities, and if it does enter the environment it is not expected to persist sufficiently to attain levels likely to lead to toxicity.

FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, D.C. 20460, Toll Free: (800–424–9065), in Washington, D.C.: (554–1404), outside the USA: (Operator—202–544–1404).

SUPPLEMENTARY INFORMATION:

I. Background

Section 4(a) of the Toxic Substance Control Act (TSCA) (Pub. L. 94–469, 90 Stat. 2003 *et seq.;* 15 U.S.C. 2601 *et seq.*) authorizes EPA to promulgate regulations requiring testing of chemical substances and mixtures to develop data relevant to determining the risks that such chemicals may present to health and the environment.

Section 4(e) of TSCA established an Interagency Testing Committee (ITC) to recommend a list of chemicals for EPA to consider for promulgation of testing rules under section 4(a) of TSCA. The ITC may designate up to 50 of its recommendations at any one time for priority consideraton.

The ITC designated 4,4'-methylenedianiline (MDA) for priority consideration in its Fourth Report published in the **Federal Register** of June 1, 1979 (44 FR 31866). It recommended that MDA be considered for testing for carcinogenicity, mutagenicity, teratogenicity, other chronic effects, environmental effects and epidemiology. The ITC's recommendations were based upon: (1) High production levels of MDA; (2) a National Institute for Occupational Safety and Health (NIOSH) estimate of 5,000 people potentially exposed to MDA in the workplace; (3) toxicological effects in animals, including indications of tumorigenic potential, (4) carcinogenic activity of structurally similar compounds, mutagenic activity in two strains of *Salmonella*, teratogenic effects on chicks, and retinotoxic effects on cats, (5) liver toxicity to humans, (6) development of contact dermatitis by humans working with MDA, (7) sensitivity of *Daphnia* to MDA and lack of other environmental effects data, and (8) potential widespread environmental exposure to MDA (Ref. 21).

This notice provides EPA's response to the ITC's designation of MDA for testing as required by TSCA section 4(e).

II. Decision Not To Initiate Rulemaking

EPA has decided not to initiate rulemaking at this time to require testing of MDA for health effects under section 4 of TSCA because the results of a recently completed 2-year National Toxicology Program (NTP) carcinogenesis bioassay indicate MDA is a carcinogen in both rats and mice and provide sufficient information to assess the carcinogenic risk of MDA. Because the potential carcinogenic risk to humans exposed to MDA is projected to be significant, EPA believes that an exposure level that is acceptable for control of the carcinogenicity risk should provide an acceptable margin of safety for the other health effects of concern listed by the ITC and that no significant additional regulatory information will be gained from requiring further testing for mutagenicity, teratogenicity, or other chronic effects.

On the basis of existing data on MDA's carcinogenicity and indications of potentially significant cancer risks to exposed workers, EPA and the Occupational Safety and Health Administration (OSHA) are exploring the type of regulatory action that might be taken to provide protection against the risk of cancer from exposure to MDA. EPA is conducting its review of the control of MDA exposure under the accelerated schedule prescribed by section 4(f) of TSCA. The Agency's designation of MDA for such priority consideration was published in the **Federal Register** of April 27, 1983 (48 FR 19078).

EPA is not initiating rulemaking at this time to require epidemiologic studies of MDA because a suitable study population has not been identified. EPA has decided not to initiate rulemaking for environmental effects because: (1) There are no data that document MDA's presence in the environment, (2) if any release occurs it is predicted to be low, and (3) MDA is not predicted to persist in the environment so as to pose a threat to aquatic or terrestrial species if the release does occur.

A. Release and Exposure

From 200 to 400 million pounds of MDA is produced annually. Approximately 90 percent of the animal production is used as an on-site intermediate in the manufacture of methylenediphenyl diisocyanate (MDI), which is used to manufacture rigid polyurethane foams. About 9 percent of the total MDA is transferred to other locations for MDI production (Ref. 22). The remaining MDA (about 1 percent, or 2 to 4 million pounds annually) is purified and used as an intermediate in the manufacture of specialty products such as epoxy resins, a corrosive preventive, a footwear antioxidant, and the chemical *trans, trans-bis(para-*aminocyclohexyl) methane (PACM) which is in turn used in the manufacture of elastomeric fibers (Refs. 22, 28).

Human exposure to MDA appears to be principally in the workplace as a result of uses other than MDI manufacture. In 1976, NIOSH estimated worker exposure to be 2500 people (Ref. 30). In 1979, the same agency (Ref. 31) estimated 5000 workers were exposed to MDA. NIOSH (Ref. 36) currently estimates 12,000–13,000 people may be exposed to MDA in the workplace. The NIOSH estimates are generated for the use of MDA in the fabrication of finished products in non-captive use. The Chemical Manufacturers Association (CMA), on the other hand, estimates that approximately 600 people are potentially exposed to MDA in the workplace during the onsite manufacture as an MDI intermediate (Ref. 3).

In 1980, The American Conference of Government Industrial Hygienists (ACGIH) recommended a Threshold Limit Value (TLV) of 0.1 ppm (0.8 mg/m³) (8-hour time-weighted average) and a Short Term Exposure Limit (STEL) of 0.5 ppm (4 mg/m³) for MDA (Ref. 1). TLV and STEL are nonenforceable recommendations for protection of workers in the workplace.

Data from industrial monitoring studies indicate that airborne concentrations of MDA can be as high as 3.8 ppm during the transfer of molten MDA and during grinding and packaging operations (Ref. 1). With proper housekeeping and good work practices, MDA levels have been controlled to ambient levels as low as 0.0064 ppm during the above operations (Ref. 13).

Except for data submitted under TSCA section 8(a) (Ref. 29) which indicate small quantities of MDA were released into the environment in 1981 to unspecified environmental compartments, there are no data that show any release of MDA to the environment. Mathematical modeling predicts that MDA's bioconcentration factor (log BCF) would range from 1–46, its octanol-water partition coefficient (log Kow) from 1.76–2.52 and its organic carbon distribution coefficient (log Koc) from 1.79–2.62 (Ref. 26). These calculated values suggest that uptake and subsequent concentration by the biota would have little impact on the fate of MDA in the environment.

The Agency's conclusion that MDA has little potential for general population exposure is based upon data on the behavior in landfill situations of other monomers used in polyurethane manufacture, data on the behavior of MDA when subjected to treatment in manufacturing effluent, and on the results of mathematical modeling. There are no monitoring data available showing MDA in the environment; however, indirect negative evidence is provided in an EPA-sponsored study designed to detect pollutants in surface waters. Two hundred four water samples from 14 heavily industrialized river basins were collected (Ref. 37). MDA-producing plant sites were included in the water systems which were sampled. In control experiments, amines could be detected reproducibly at levels as low as 50 ppb. No aromatic amines were detected in the ambient water samples.

Once MDA is converted into polyurethane materials, there is very little likelihood that MDA will be released into the environment from the plastics in significant amounts. An example of the behavior of aromatic amine monomers used as starting materials in the manufacture of plastics was submitted in response to EPA's ANPR on phenylenediamines (Ref. 24). The International Isocyanate Institute (Ref. 25) submitted the results of a research effort to determine whether ether-based polyurethane flexible foams would biodegrade under the conditions of sanitary landfills and whether 2,4- and 2,6-toluenediamines (TDA) would be released. Polyurethane foam made with ^{14}C-labeled toluenediisocyanates was subjected to three experimental media of different bacterial activity for three months. The sanitary fill medium and the refuse compost medium were subjected to temperatures of 22°C and 50°C. At 22°C no TDA could be detected and no release of $^{14}CO_2$ was identified from any experiments done with sanitary fill medium, but after three months at 50°C, 0.04 percent of the ^{14}C-tagged starting activity in foam extracts was identified as 2,4- and 2,6-TDA. In refuse compost medium and parabrown earth medium, no detectable TDA was formed, but at 22°C and at 50°C, 0.01 percent and 0.1 percent of the starting activity of the labeled foam was detectable as $^{14}CO_2$. The paper concludes that polyurethane is very resistent to microbial degradation. The Agency believes that polyurethanes based on MDA could be expected to behave in a manner similar to those based on TDA. Therefore, very little regeneration and release of MDA would be expected in landfill situations. Any MDA released is expected to be degraded chemically or microbially as suggested by the occurrence of radiolabeled carbon primarily as CO_2 rather than as TDA in the experiment discussed above.

The potential mode of release of MDA into the aquatic environment is in effluent from MDA manufacturing plants or from the user plants. The Bendix Corporation sponsored a study that was designed to determine the most efficient method for removing MDA from the plant's effluent (Ref. 32). Treatment of the waste water from the treatment plant with activated charcoal filters or sodium nitrite reduced effluent concentrations of MDA from 62.6 mg/L to less than the detection limit of 1.0 mg/L. No other data were located which indicate that other MDA manufacturers or users treat their waste effluent specifically to remove MDA.

Data submitted in response to the TSCA section 8(a) (Ref. 29) rule indicate that only small quantities of MDA were released into the environment in 1981 into unspecified environmental compartments during the manufacturing process. The Agency is also aware that MDA may be present in MDI manufacturing plant waste streams which enter these plants' waste treatment facilities. Based upon existing data for water solubility (1000 mg/L), melting point (91–92° C), boiling point (398–399° C) and heat of vaporization (22.8 Kcal/mole) and estimates of equilibrium constants and second-order kinetic rate data based on data for structurally related compounds (toluene and aniline), maximum exposure levels of MDA under normal conditions are estimated to range from 10^{-1}–10^{-4} mg/L in the water column of the river systems receiving effluent from MDA manufacturing plants. MDA levels (ug/g) estimated for the sediment of these aquatic ecosystems, by EPA's EXAMS modeling system were of the same order of magnitude as predicted for the water column. The EXAMS model predicts that MDA would persist in the river systems 0.2 to 6.5 days ("best case-worst case") and that oxidation would have the greatest impact on MDA in these environments (Ref 26). MDA is therefore unlikely to be found in the environment at high enough concentrations to lead to concern.

B. Health Effects

The NTP carcinogenesis bioassay (Ref. 16) subjected groups of 50 F344/N rats and 50 B6C3F1/N mice of each sex to 150 or 300 ppm 4,4'-methylenedianiline dihydrochloride (MDA.2HCl) in the drinking water for 103 weeks. Concurrent control groups of 50 rats and 50 mice of each sex received drinking water adjusted with 0.1 N HCl to the pH of the 300 ppm formulation. Under the conditions of the NTP bioassay, MDA.2HCl caused statistically significant ($P<0.05$) increased incidences of thyroid follicular-cell carcinomas in male rats, follicular-cell adenomas in female rats and mice of each sex, C-cell adenomas in female rats, neoplastic nodules in the livers of male rats, hepatocellular carcinomas in mice of each sex, malignant lymphomas in female mice, and adrenal pheochromocytomas in male mice. In addition, the appearance of rare bile duct adenomas in male rats and ovarian granulosa-cell tumors and urinary bladder transitional-cell papillomas in female rats may also have been related to the administration of MDA.2HCl. All of the tumors except for the hepatocellular carcinomas in male mice were increased in a dose-related fashion.

EPA has concluded that the data from the NTP bioassay are sufficient to characterize the oncogenic potential of MDA in rats and mice and, therefore,

further oncogenicity testing is unnecessary.

Chronic effects data for MDA include studies on histopathological and oncogenic effects on laboratory animals and follow-up observations on workers exposed to MDA. Female beagle dogs fed 70 mg/day, 3 times/week, for 3–7 years showed general necrotic changes in liver, kidneys, and lung on post mortem examination (Ref. 6).

MDA has been extensively studied for its mutagenic activity in bacteria. It is a positive mutagen in *Salmonella* strains TA 100 and TA 98 and is nonmutagenic in strains TA 1535, 1537, and 1538 (Refs. 2, 5, 7, 10, 12, 15, 17, 18, 19 and 20).

Reports have also become available which indicate that MDA is not a mutagen in the *Drosophila* sex-linked recessive tests (Ref. 9), mammalian cell transformation assay (Ref. 10), sister chromatid exchange assay and chromosome aberration test (Ref. 8). The *Drosophila* gene mutation and the cytogenetic data on MDA suggest that MDA lacks mutagenic activity in a number of important test systems. Data received from Upjohn (Ref. 20) indicate significant single strand breaks in DNA of V–79 cells exposed to MDA *in vitro*. Parodi et al. (Ref. 17) also reported significant DNA fragmentation induced *in vivo* by MDA administered i.p. to male rats. Taken as a whole, the data suggest that although sufficient research might well identify an upper-level test system in which MDA is mutagenic, it is not a broadly active mutagen.

Only one study has addressed MDA's teratogenic potential. Five mg of MDA in ethanol was injected into the yolk sac of fertile White Leghorn chicken eggs prior to incubation (Ref. 14). Only 30 percent of the MDA-injected eggs hatched. Eggs injected with 5 mg boiled water or 5 mg undiluted ethanol had 95 percent hatching success. This was described as being the same rate as found in non-treated controls. Beak and skeletal abnormalities were observed in the MDA-injected embryos that did not hatch. These data are at best weakly suggestive of potential MDA teratogenicity in other species.

An unpublished report submitted in response to the TSCA section 8(d) health and safety data reporting rule (Ref. 33) presents the results of oral toxicity studies in rats and dogs. Rats were fed MDA for 90 days on diets equivalent to 30 mg/kg-day and 100 mg/kg-day. The dogs were given MDA orally in two dose regimes: (1) 12, 8, or 5 mg/kg-day or (2) 33 doses in 44 days of 2.5, 1.25 or 0.65 mg/kg-day. Gross and microscopic examination of body organs showed some reduction in liver weight and bile duct proliferation at all doses in the dog and only at the 100 mg/kg-day dose in rats. Hemoglobin levels were reported low in both species, no methemoglobin formation was found, and urinalysis was within the normal range (Ref. 34).

Prechronic tests to the carcinogenicity study by NTP (Ref. 16) showed increases, compared to controls, in bile duct hyperplasia, adenomatous goiter and thyroid follicularcell hyperplasia in male and female rats at 400 ppm and 800 ppm. In mice, the only histopathological effect noticed was an increase in bile duct hyperplasia over controls at 400 ppm in both males and females (Ref. 16).

McGill and Moto (Ref. 13) examined 12 workers exposed to 0.1 ppm MDA during the manufacture of epoxy resins. Within 2 weeks of initial exposure to the MDA, these individuals developed acute hepatitis. Examinations 9 months to 5.5 years after the occurrence of the hepatitis indicated no residual liver toxicity in any of the individuals. Private communications supplied by Dow Chemical Co. for the preparation of an ACGIH documentation of TLV (Ref. 1) were reported to indicate no MDA-attributable morbidity findings at exposure levels ranging from 0.03 to 0.4 ppm during the 26-year period covered by the data. Specific information on the medical criteria used to determined morbidity are not available.

Two of the 84 humans who consumed MDA-contaminated bread in Epping, England (0.28% or 2800 ppm in bread) complained of visual problems in addition to acute hepatitis (Ref. 11). Neither the visual nor the hepatitis-related symptoms were observed in a 2-year follow-up examination.

Retinotoxic effects have also been observed in cats given MDA at various dose levels by stomach tube. One animal received single doses of 25 and 50 mg/kg, another animal received a dose of 200 mg/kg, two animals received 3 doses of 25 mg/kg and 3 doses of 50 mg/kg and one animal received one dose of 100 mg/kg. The MDA administration resulted in blindness of all 5 animals by causing disintegration of the rods and cones accompanied by proliferation of the pigment epithelium and atrophy of the nuclei of the outer granular layer. The doses required to cause blindness were close to the lethal levels of MDA in cats (Ref. 4).

A human skin sensitization study sponsored by Dow concluded that MDA was a skin sensitizer but not a primary irritant nor a fatiguing agent (Ref. 35).

While the MDA data raise the possibility of its posing mutagenic, cytogenetic, teratogenic, and other chronic risks, EPA's analysis indicates significant carcinogenic risk to humans, a fact which EPA believes must be taken into consideration in reaching an MDA testing decision. In the case of MDA, EPA's judgment is that exposure levels which are predicted to minimize worker risk of cancer are lower than the exposure levels at which teratogenic, reproductive or other effects are likely to occur. EPA concludes, therefore, that any exposures low enough to afford adequate protection against unreasonable risk of cancer would also protect workers against other health risks. EPA has issued a notice under section 4(f) of TSCA (Ref. 23) indicating its concern about carcinogenic risks and its investigation of control options to reduce these risks to workers. In view of this investigation, EPA has concluded that testing for other health effects is not necessary at this time.

C. Environmental Effects.

The ITC recommended MDA for environmental effects testing because of its known toxicity to certain organisms and lack of information on its behavior in the environment.

A single study has been identified which demonstrates the toxicity of MDA to aquatic organisms (Bringmann & Meinick 1964). This study indicates the minimum levels of MDA at which four organisms were unable to function. They are: *Daphnia magna* = 0.25 mg/L; *Pseudomonas florescens* (bacterium) = 15 mg/L; *Scenedesmus quadricauda* (alga) = 30 mg/L; and *Microegma heterostoma* (protozoan) = 124 mg-L. This study does not present LC_{50} values.

The only information documenting any release of MDA to the environment is from the TSCA section 8(a) (Ref. 29) reports which indicated that only small quantities were released to unidentified environment compartments in 1981. There is no indication which compartments were affected or the amount released to each. However, in light of other information available to EPA and the EXAMS modeling results, the Agency has concluded that only very small amounts of MDA might be released to the environment or persist for any period in the environment.

The only environmental effects data for MDA are for aquatic organisms. Release of MDA to water has not been documented. Any release of MDA to water that might occur would likely be in very low concentrations from waste treatment facilities and would be rapidly diluted. MDA is predicted to oxidize fairly rapidly in water. Thus EPA is unable to conclude from available data that the very limited expected release of MDA to water will present a risk to aquatic organisms. In

the absence of any data on environmental effects outside the aquatic environment and any data on release to nonaquatic compartments, EPA is unable to conclude that there is any risk of adverse environmental effects in those compartments.

D. Epidemiology

The Agency is not proposing epidemiologic studies at this time because it has been unable to adequately identify the specific manufacturer or processor populations at risk from exposure to MDA.

The Agency realizes that 5,000–13,000 people are potentially exposed during MDA use. The Agency also realizes that epidemiologic studies of user populations, if feasible, would be beneficial in establishing regulatory measures under sections 6 of TSCA and the Occupational Safety and Health Act. The Agency has been able to identify the potential, generic use categories for non-MDI production, and is in the process of identifying specific companies which use MDA in their manufacturing process. When the appropriate cohorts can be identified, epidemiologic studies will be considered.

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U.S. Environmental Protection Agency. Contract 68-01-3234.

IV. Public Record

The EPA has established a public record for this testing decision (docket number OPTS-42036) which includes:

1. **Federal Register** notice containing the designation of 4,4'-methylenedianiline to the Priority List and public comments thereon.
2. Communications (public).
a. Non-confidential letters.
b. Confidential letters (separately held).
c. Contact reports of telephone conversations.
d. Meeting summaries.
3. Published and unpublished data.

This record, which includes basic information considered by the Agency in developing this decision, is available for inspection in the OPTS Reading Room from 8:00 a.m. to 4:00 p.m. on working days in Rm. E-107, 401 M St., SW., Washington D.C. 20460.

(Sec. 4, 90 Stat. 2003; (15 U.S.C. 2061))

Dated June 30, 1983.

William D. Ruckelshaus,

Administrator.

[FR Doc. 83-18583 Filed 7-8-83; 8:45 am]

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federal register

Monday
July 11, 1983

Part V

Environmental Protection Agency

Cresols; Proposed Test Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42033; BH-FRL 2341-2]

Cresols; Proposed Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under section 4 of the Toxic Substances Control Act (TSCA), EPA is proposing that manufacturers and processors of cresols test these chemicals for carcinogenicity, mutagenicity, teratogenicity, reproductive effects, neurotoxicity, skin sensitization and subchronic toxicity. The testing being proposed will be performed according to protocols adopted by the Agency. EPA is not proposing to require any additional environmental effects testing at this time. However, EPA is also soliciting public comments on the decision not to propose environmental effects testing for cresols. This notice constitutes EPA's response to the Interagency Testing Committee's (ITC) designation of cresols as priority candidates for testing.

DATES: Submit written comments on or before September 9, 1983. If persons request an opportunity for oral comment by August 25, 1983, EPA will hold a public meeting on September 26, 1983, on this rule in Washington, D.C. For further information on arranging to speak at the meeting see unit VI of this preamble.

ADDRESS: Submit written comments in triplicate to: TSCA Public Information Office (TS-793), Office of Pesticide and Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St. SW., Washington, D.C. 20460.

Include the document control number [OPTS-42032] on all submissions.

FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-545, 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. Introduction

Section 4(e) of TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) established an Interagency Testing Committee (ITC) to recommend to EPA a list of chemicals to be considered for testing under section 4(a) of the Act. The ITC may designate substances on the list for priority consideration for requiring testing by EPA.

The ITC designated cresols for priority consideration in its Initial Report, published in the **Federal Register** on October 12, 1977 (42 FR 55026). The ITC recommended that industry test cresols for the following health effects: carcinogenicity, mutagenicity, teratogenicity and other chronic effects. The ITC also recommended testing for environmental effects, specifically chronic effects in fish and other aquatic organisms.

The ITC's recommendations were based on the large volume of cresols produced in the United States. It was estimated in the ITC's report that the U.S. production of cresols in 1975 was about 90 million pounds. The ITC also reported an annual release rate of approximately 45 million pounds. In addition, the ITC was concerned that the manufacture and use of cresol-containing products could result in substantial occupational exposure and high general population exposure.

Under section 4(a)(1) of TSCA, EPA must require testing of a chemical substance to develop health or environmental data if the Agency finds that:

> (A) (i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,
>
> (ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and
>
> (iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or
>
> (B) (i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,
>
> (ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and
>
> (iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight of evidence approach in making a section 4(a)(1)(A)(i) finding in which both exposure and toxicity information are considered to make the finding that the chemical may present an unreasonable risk. For the section 4(a)(1)(B)(i) finding, EPA considers only production, exposure and release information to determine if there is substantial exposure or release. For the findings under both section 4(a)(1)(A)(ii) and 4(a)(1)(B)(ii), EPA examines toxicity and fate studies to determine if existing information is adequate to determine or reasonably predict the effects of human exposure to or environmental release of the chemical. In making the third finding that testing is necessary, EPA considers whether any ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information.

EPA's process for determining when these findings can be made is described in detail in EPA's first and second proposed test rules as published in the **Federal Register** of July 18, 1980 (45 FR 48528) and June 5, 1981 (46 FR 30300). The section 4(a)(1)(A) finding is discussed in 45 FR 48528, and the section 4(a)(1)(B) finding is discussed in 46 FR 30300.

In evaluating the ITC's testing recommendations concerning cresols, EPA considered all available relevant information including the following: Information presented in the ITC's report recommending testing consideration; production volume, use, exposure, and release information reported by manufacturers of cresols under the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712); health and safety studies submitted by the manufacturers of cresols under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716); and published and unpublished data available to the Agency. Based on its evaluation, as

described in this preamble and the accompanying technical support document, EPA is proposing health effects testing requirements for cresols under section 4(a)(1)(A) and 4(a)(1)(B). EPA tentatively has determined that additional environmental effects testing should not be required. However, due to the absence of chronic toxicity data for fish and invertebrates in freshwater and saltwater systems, EPA is soliciting comments on the need for additional environmental effects testing. By these actions, EPA is responding to the ITC's designation of cresols for testing consideration.

II. Cresols

A. Profile

Cresols (C_7H_8O) is a chemical category consisting of three cresol isomers: *ortho*-cresol (*o*-cresol), *meta*-cresol (*m*-cresol), and *para*-cresol (*p*-cresol). Cresols are commercially available as individual isomers or as mixtures. Approximately, 172–200 million pounds of cresols are either produced in or imported into the United States each year. The EPA Toxic Substances Inventory records that approximately 72 million pounds of *o*-cresol; 32 million pounds of *m*-cresol and 62 million pounds of *p*-cresol were produced in the United States in 1977.

Cresols are used as wire enamel solvents and as organic intermediates in the manufacture of phenolic resins and phosphate esters. Additional uses of either individual isomers or mixtures are in the production of several herbicides, as cleaning compounds and disinfectants, and in ore flotation.

B. Findings

The EPA is basing its proposed testing on the authority of section 4(a)(1)(B) of TSCA. Additionally, for mutagenicity and oncogenicity, the Agency is basing this proposal on the authority of section 4(a)(1)(A).

EPA finds that each of the three cresol isomers is manufactured, processed, and used in substantial quantities, which may result in substantial human exposure. Furthermore, EPA finds that there are insufficient data available to either reasonably determine or predict the result of this exposure in the areas of carcinogenic, mutagenic, teratogenic, reproductive, neurotoxic, skin sensitivity, and subchronic health effects. These findings are based on the following information:

1. There are substantial amounts of cresols produced in or imported into the United States each year. The annual U.S. production volume of cresols is estimated to be approximately 169 million pounds, with another 17 million pounds imported into the United States each year. Each of the three cresol isomers is individually produced in substantial quantities. Of the total 169 million pounds produced domestically, 43 percent is *o*-cresol, 37 percent is *p*-cresol and 20 percent is *m*-cresol.

2. Estimates indicate that between 600,000 and 1.2 million people are exposed to cresols each year via manufacturing, processing and/or use activities.

3. EPA finds that there are insufficient data on all of these cited human health effects from which to reasonably determined or predict the result of exposure to cresols, and that testing of cresols for these effects is necessary to develop such data.

4. EPA does not believe that the rule will result in a loss to society of the benefits of cresols because the Agency's economic evaluation has shown that the economic impact of testing these substances will be minimal.

In addition, EPA has found that (a) there is evidence of potential unreasonable human health risks from mutagenic and carcinogenic effects resulting from the manufacture, processing and use activities associated with cresols, and that while there are existing data which support this belief with respect to these effects, (b) these existing data are inadequate to reasonably predict or determine the effects of these exposures to cresols, and (c) testing is necessary for these effects. Therefore, EPA believes that requiring testing of cresols for mutagenicity and carcinogenicity can also be based upon section 4(a)(1)(A) of TSCA.

The analyses on which the above findings are based, are presented in the Cresols Support Document which is available from the TSCA Assistance Office (TAO). The ITC recommendations and EPA's proposed testing requirements are summarized in the following tables:

Effect	ITC recommendation	EPA proposed testing
Skin sensitization	–	×
Chronic effects	×	× [1]
Mutagenicity	×	× [2]
Carcinogenicity	×	× [2]
Teratogenicity	×	×
Reproductive effects	–	×
Neurotoxicity	×	×
Environmental effects	×	– [3]

[1] Subchronic proposed in lieu of full chronic.
[2] Test substance(s) to be selected based on mutagenicity testing.
[3] EPA will determine if testing is needed based upon public comments.

In addition, the Agency has concluded that the following human health effects are adequately characterized and, therefore, that no further testing should be required at this time: Acute toxicity (lethality); acute skin and eye irritation, and skin corrosivity. The Agency has also concluded that available information is sufficient to evaluate the chemical fate and bioconcentration potential of cresols, and therefore no further testing in these areas is being proposed at this time.

With respect to environmental concerns, the Agency finds that the release of cresols to the environment is high. About 3.5 million pounds per year are released to the atmosphere, while the estimated annual release of cresols as solid wastes is 4.2 million pounds. The aqueous compartment may receive as much as 11.2 million pounds per year from dispersed use of cleaning compounds. It is estimated that about 80 percent of that volume is discharged to sewage treatment plants and will be biodegraded resulting in an expected annual release of as much as 2.8 million pounds of cresols to natural waters.

While there is no existing chronic aquatic effects data for cresols, the Agency believes that information exists which allows EPA to reasonably predict that exposure of aquatic organisms to cresols should not cause chronic effects. Therefore, the Agency has made a preliminary judgment that no additional environmental effects testing is needed at this time. This judgment is based on monitoring information which indicates that the ambient concentrations of cresols found in aquatic systems are expected to be minimal and will not be acutely toxic to aquatic organisms based on existing data for acute effects. In addition, analyses have been conducted for cresols using EPA's Exposure Analsysis Modeling Systems (EXAMS) and the Environmental Partitioning Model (ENPART). The results of EXAMS and ENPART, using actual discharge and flow rates from a cresols manufacturing plant, indicate that the expected concentrations of cresols, after treatment, will be 0.0016 mg/L—one mile from point of discharge, 0.0014 mg/L—five miles from point of discharge, and finally 0.00094 mg/L—30 miles from point of discharge. These numbers reflect the concentration levels that would be expected in the winter months, when microbial degradation rates would be the lowest, and with maximum effluent discharge rates.

Therefore, while the ITC recommended testing for environmental effects, the Agency may be able to reasonably predict that levels of cresols may not cause chronic effects. However, this preliminary decision not to propose

environmental effects testing for cresols is one for which further input by interested parties will be particularly helpful to the Agency. Therefore, EPA is soliciting public comment on the need for chronic toxicity data generation.

The public comments received in response to this **Federal Register** notice will be instrumental in assisting the Agency in evaluating its decision not to propose environmental effects testing for cresols. If, after the public comments are reviewed and evaluated, and the Agency is convinced that its preliminary decision is inappropriate for cresols, then the Agency will require, in the final rule for cresols, that environmental effects testing be performed.

In that event, the environmental effects testing shall be performed for the purpose of developing data on the chronic toxicity of cresols to aquatic organisms in saltwater and freshwater systems. The following environmental effects studies would be included as required testing in the final rule: Freshwater vertebrate early life stage testing in rainbow trout, freshwater invertebrate chronic test in *Daphnia* sp., saltwater vertebrate early life stage in *Menidia* sp., and saltwater invertebrate chronic in Mysid shrimp.

The Agency has determined that sufficient information does exist for acute toxicity and that no additional acute testing is needed. In addition, the Agency has determined that while there is substantial release of cresols to the soil, this route of environmental exposure is not expected to be a problem. Cresols are readily biodegraded by soil microflora and are mobile in soils. Therefore, cresols will not persist in soils and will probably be leached, due to their water solubility into the aquatic environment where they will be acted upon by degrading microorganisms. The Agency has also determined that cresols released to the atmosphere are not expected to create an exposure problem. Cresols are not expected to persist in the atmosphere because (1) cresols have low estimated half-lives of less than 1 day; (2) they are sensitive to photolysis; and (3) the water solubility of cresols may be expected to cause transport of cresols from the atmosphere to the soil or aqueous environment.

C. Test Substance

EPA is proposing for the subchronic toxicity, mutagenicity, carcinogenicity, teratogenicity, reproductive effects, neurotoxicity, and skin sensitization testing that *o*-cresol, *m*-cresol and/or *p*-cresol of at least 99 percent purity shall be used as the test substance(s).

Each individual isomer will be tested in the subchronic toxicity, teratogenicity, reproductive effects, neurotoxicity, and skin sensitization studies. However, some of the cresol isomers have previously been tested in individual mutagenicity tests included in the proposed battery. Therefore, in some instances, not all of the isomers will be tested in each mutagenicity test. The test substance(s) in the oncogenicity bioassays will be determined from the results obtained in the proposed mutagenicity test battery as further explained in section 7.4 of the Cresols Support Document.

Each isomer has exhibited different chemical and toxicological properties in previous testing. EPA has determined that because of these differences, one of the cresol isomers could not satisfactorily be tested in all the proposed testing as a representative of all three.

Furthermore, it is not generally acceptable for an equimolar mixture of the three cresol isomers to be the test substance in the prescribed health effects testing. The Agency is primarily interested in the health effects attributable to individual cresol isomers.

With regard to mutagenic and carcinogenic effects, a mutagenicity testing battery has been proposed for cresols, with testing endpoints that could result in oncogenicity bioassays for individual cresol isomers. This proposed tiered mutagenicity testing scheme has been designed specifically for cresols. It has been conceived to serve both as an indicator of mutagenic potential, an ITC concern, and also as a procedure to identify the test substance(s) to be used in any subsequent oncogenicity testing. While the ITC recommended carcinogenicity testing for cresols, EPA finds that the proposed mutagenicity testing scheme is an appropriate and scientifically valid first testing tier in screening for oncogenicity.

Several testing endpoints in this mutagenicity battery could result in oncogenicity bioassays for individual cresol isomers. However, if, after the completion of the entire mutagenicity test battery, each of the three cresol isomers produce only negative results, thereby not triggering any 2-year bioassays, then a mixture of the three isomers shall be tested in a full 2-year oncogenicity bioassay. If the mutagenicity tests on individual isomers are negative, the rule will require that a mixture be tested. EPA requests comments on the appropriate composition for such a mixture. The decision to propose an oncogenicity bioassay for isomeric mixture is based on the fact that, in previous mutagenicity testing, an equimixture of the three cresol isomers has had positive results. However, as the Agency is primarily interested in the health effects of the individual isomers, the isomers will be initially screened as the potential bioassay test substances, prior to any testing of an isomeric mixture.

D. Persons Required to Test

Section 4(b)(3)(B) specifies that the activities for which the Administrator makes section 4(a) findings (manufacture, processing, distribution, use and/or disposal) determines who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing. ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing. Both manufacturers and processors are required to test if the exposures giving rise to the potential risk occur during use, distribution, or disposal. Because EPA has found that the manufacturing, processing, and use of cresols give rise to exposures that may lead to an unreasonable risk, EPA is proposing that persons who manufacture or process, or who intend to manufacture or process these chemicals at any time from the effective date of this test rule to the end of the reimbursement period be subject to the rule. The end of the reimbursement period, ordinarily will be 5 years after the last final report is submitted. As discussed in Unit II.F, EPA expects that manufacturers will conduct testing and that processors will ordinarily be exempted from testing.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA permit two or more manufacturers or processors who are subject to a test rule to designate one such person or a qualified third person to conduct these tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from that requirement.

E. Development and Adoption of Study Plans

EPA proposed generic test methodology requirements (generic test standards) for various health effects in the **Federal Register** of May 9, 1979 (44 FR 27334) and July 26, 1979 (44 FR 44054). In response to concerns about rigid generic test methodology requirements, EPA changed its approach

for providing test standards for TSCA section 4 test rules and issued generic test methodology guidelines to replace previously proposed generic test methodology requirements. (See the **Federal Register** of March 26, 1982; 47 FR 13012.) The Health Effects Guidelines have been published by the National Technical Information Service (NTIS) under publication number PB 82–232984. Good Laboratory Practice (GLP) standards will continue to be promulgated as generic requirements.

Under the new approach, test rule development will be a two-phase process. In Phase I, test rules will be promulgated for individual chemicals, specifying the health or environmental effects characteristics for which test data are to be developed and the reporting requirements. In Phase II, following promulgation of a test rule, those persons subject to the rule will be required to develop study plans for the development of data pertaining to the effects and characteristics specified in the rule. For guidance in preparing study plans, it is recommended that the TSCA Health Effects Test Guidelines, published by NTIS (PS 82–232984), be consulted. Additional guidance may be obtained from the Organization for Economic Cooperation and Development (OECD) Test Guidelines and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Pesticide Registration Guidelines: Proposed Data Requirements for Hazard Evaluation: Human and Domestic Animals, published by NTIS under publication number PB 83–153916.

Sponsors must submit their study plans to EPA within 90 days from the effective date of the test rule. After an opportunity for public comment, EPA will issue a final rule adopting the study plans as proposed or modified. The approved and adopted study plans will become the enforceable test requirements and will serve as the chemical specific test standards for the test rule. Testing will also be subject to EPA's generic GLP standards. Modification to the adopted study plans can be made only with EPA approval.

EPA intends to issue a procedural rule which will set out the details of the two-phase rulemaking process. That procedural rule will apply to the test rule for cresols and all other test rules. Information on this proposed procedure appears in the July 18, 1980 **Federal Register** (45 FR 48512), which describes the proposed exemption policy and procedures, in March 26, 1982 **Federal Register** (47 FR 10312) which provides the policy statement on the test rules development process and in the proposed test rule for diethylenetriamine, see the April 29, 1982 **Federal Register** (47 FR 18390). The final procedural rule will be issued before the cresols rule is promulgated. If there are significant changes in the final procedural rule, EPA may allow a short period of supplementary comment on the cresols proposal.

For the purposes of announcing the carcinogenicity test if it is needed, the Agency will publish an announcement in the **Federal Register** announcing the receipt of the mutagenicity data, the results of the testing and the need for the carcinogenicity testing, and the particular test substance. This Notice will then start the portion of the rule requiring carcinogenicity testing. Persons subject to the rule will follow the existing mechanisms for submission of study plans within the allowed time.

EPA has been reevaluating this two-phase rulemaking process with a view to improving its efficiency. The Agency is considering a modification as follows. EPA would conduct its rulemaking in a single phase. The proposed test rule would contain all the necessary elements: The basis for the testing decision, who must test, the tests to be performed, and the test standards which would apply to the specific tests. After receiving comments on all aspects of the rule, EPA would promulgate the final rule. Once the final rule was in effect, manufacturers and processors subject to the rule would be required to announce their intention to test or apply for exemption.

The key difference between this modified approach and current two-phase approach is that the protocols which would become the test standards for the required tests would be proposed by EPA in phase I rather than being submitted by test sponsors in phase II. EPA believes such a change would be appropriate in light of its experience in rulemaking under section 4 and would be likely to speed the process for adopting test rules. To implement this approach EPA is considering proposing that testers be able to choose to perform the required tests under any of the appropriate protocols in the FIFRA guidelines, OECD guidelines, and TSCA guidelines. During the comment period, interested persons would be able to comment on the details of these protocols and could, if desired, propose alternative protocols.

If EPA decides to take this modified approach, the Agency will publish later this year supplementary proposls for cresols and other recent proposed test rules setting out protocols which would be the test standards, and seeking comment on those protocols. EPA believes these supplementary proposals would result in final test rules faster than under the current two-phase process.

EPA solicits comments on this proposed modification of the test rules process.

F. Exemption Procedures

Within 30 days after the effective date of the final rule, each cresol manufacturer or group of cresol manufacturers must either (1) notify EPA that it intends to conduct or sponsor testing and to submit study plans for the required tests, or (2) apply for an exemption on a belief that testing will be performed by others. Study plans must be submitted 90 days after the effective date of this rule. If no manufacturer notifies EPA of its intent to sponsor testing, EPA will inform manufacturers that their exemptions will not be granted and will give them an opportunity to submit study plans in compliance with this rule.

Processors of cresols will not be required to apply for an exemption, submit study plans or conduct testing unless manufacturers do not submit study plans and conduct testing. EPA will issue a notice in the **Federal Register** requiring processors to submit notices of intent to test or apply for an exemption, submit study plans and conduct testing. No exemptions will be granted until a study plan for each of the required tests is received and approved.

EPA has determined that the three cresol isomers are not equivalent because each isomer has exhibited different chemical and toxicological properties in previous testing. In applying for an exemption, manufacturers must state which isomer or isomers they manufacture. If the substance manufactured contains more than one cresol isomer, then the percent isomer composition or range of percent isomer composition should be given.

EPA proposed exemption procedures for section 4 test rules in the **Federal Register** of July 18, 1980 (45 FR 48512). EPA intends to issue these procedures as a final rule shortly. If there are significant changes in the exemption procedures, EPA may allow a short period of supplementary comment on the cresols proposals.

G. Reporting Requirements

EPA is proposing that all data be reported in accordance with the EPA GLP Standards to appear in 40 CFR Part 792. EPA has reviewed public comment on the proposed GLP Standards and is now developing final GLP standards.

The final GLP Standards will apply to this rule.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. These deadlines will be established in the Phase II rulemaking in which study plans are approved, or in a subsequent FR notice if EPA changes its policy as described in section E, above.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the **Federal Register** as required by section 4(d).

H. Enforcement Provisions

Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to (1) establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by the Act or any regulation issued under TSCA. The Agency considers that failure to comply with any aspect of a section 4 rule may be judged to be a violation of sections 15(1) and 15(3) of TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce * * *". The Agency considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory audits/inspections will be conducted periodically in accordance with the procedures outlined in TSCA section 11 by only designated representatives of the EPA for the purpose of determining compliance with any final rule for cresols. These inspections may be conducted for purposes which verification that testing as begun, that schedules are being met, that reports accurately reflect the underlying raw data and interpretations and evaluations thereof, and that the studies are being conducted according to TSCA standards and the test standards established in the Phase II rule.

Violators of TSCA may be subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties calculated as if they never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 per day for each violation. Each day of operation in violation may constitute a separate violation. (This would also be applicable to manufacturers or processors who fail to submit a letter of intent to perform testing or an exemption request and who continue manufacturing or processing after the deadlines for such submissions. Knowing or willful violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to one year. Other remedies are available to EPA under sections 7 and 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4 and the seizure of chemical substances manufacture or processed in violation of the rule.

Individuals, as well as corporations, could be subject to enforcement actions. Section 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

I. Issues for Public Comment

1. The Agency has proposed a mutagenicity testing scheme with testing endpoints that could result in oncogenicity bioassays for individual cresol isomers. The Agency is requesting comments on the tiered testing approach for cresols, in light of the fact that the ITC recommended carcinogenicity testing for cresols. Does the mutagenicity scheme, as designed, serve the purpose of screening the three isomers for potential oncogenicity? Does a negative result for an isomer in the mutagenicity screen reasonably eliminate the need to require a full bioassay for that isomer?

2. In previous mutagenicity assays, an equimixture of the three cresol isomers was tested. The results of the equimixture in the unscheduled DNA synthesis assay, the mouse lymphoma assay, the sister chromatid exchange assay and the cell transformation, with activation, assay were positive. In the event that the cresol isomers, when tested individually, produce negative results in all of the assays in the full mutagenicity testing scheme, no oncogenicity bioassays would be triggered for any of the cresol isomers. The present testing scheme is designed so that positive results in any of the six mutagenicity assays, for any individual isomers would trigger a 2-year oncogenicity bioassay for that isomer. However, the cresol mixture did produce positive results in some of these same tests. The Agency is proposing to require that an isomeric mixture of cresols be tested in a 2-year oncogenicity bioassay if all the individual isomers produce negative results in the mutagenicity testing scheme.

However, cresols are commercially processed into a wide variety of mixtures, composed of two or three isomers in any number of proportional combinations with each other and with other chemicals. Therefore, the Agency is requesting comments on the suitable test substance in a two-year oncogenicity bioassay. What would be a representational isomeric mixture which could serve as a test substance, in the event that none of the individual cresol isomers trigger a two-year bioassay in the mutagenicity testing screen?

3. The ITC recommended that cresols be tested for chronic effects in fish and other aquatic organisms. The Agency believes that there is substantial release and exposure to the environment by cresols, and has tentatively concluded that there is sufficient information which, when evaluated, allows the Agency to reasonably predict that cresols do not pose either an acute or a chronic aquatic toxicity hazard. This information upon which the evaluation was based, includes ambient concentrations predicted through computer models, available acute toxicity data, monitoring data, and known bioconcentration, biodegradation and persistence values.

The Agency in this proposed rule has an acute toxicity to ambient concentration ratio of over 10,000 at a point approximately 30 miles downstream of the discharge. Further, the Agency believes that given this ratio there is a low likelihood of chronic effects. However, the Agency acknowledges that it does not have an absolute assurance that chronic toxicity could not occur. If comment convinces EPA that it cannot reasonably predict that cresols will not be chronically toxic at known or projected concentration levels, it would require freshwater and saltwater chronic tests on aquatic vertebrates (rainbow trout and *Menidia* sp.) and a chronic toxicity study on aquatic invertebrates (*Daphnia* sp. and Mysid shrimp). The Agency recognizes that data, particularly those obtained

from predictive modeling, are open to many different interpretations. Therefore, the Agency is soliciting comments on the amount and type of data which the Agency should have before making a decision that this data allows it to reasonably predict that effects will not occur.

III. Economic Analysis of Proposed Rule

To assess the potential economic impact of this proposed rule, EPA has prepared a Level I economic evaluation that examines the costs of the required testing and analyzes four market characteristics of the chemical: (1) Demand sensitivity, (2) cost characteristics, (3) industry structure, and (4) market expectations.

The Level I analysis of cresols, which estimates a total testing cost of from $800,000 for the minimum set of tests to $5 million for the maximum set of tests, indicates that the potential for adverse economic effects due to the estimated testing costs is low. This conclusion is based on the following observations:

1. Stable or moderate growth is expected in most markets for cresols.

2. The production of coproducts to cresols would mitigate the potential for impact of incremental test costs.

3. The relative magnitude of the test cost is minor, i.e., on an annualized unit cost basis, the upper end of the cost range is equivalent to $0.012 per pound for *o*-cresol and for the mixed cresols (*m*-cresol and *p*-cresol) the cost is $0.009 per pound. This represents 2.1 percent of price for *o*-cresol, 0.6 percent for cresylic acid, and 1.0 percent for all other cresols.

4. Demand in most of the markets does not appear very sensitive to small increases in price.

Because the Level I analysis indicates very little potential for an adverse economic impact, EPA has determined that a more comprehensive and detailed Level II economic evaluation is not needed for cresols.

IV. Availability of Test Facilities and Personnel

Section 4(b)(1) requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules and test programs negotiated with industry in place of rulemaking. Copies of the study, "Chemical Testing Industry: Profile of Toxicological Testing, October, 1981," can be obtained from NTIS, under publication number PB 82-140773.

On the basis of this study, the Agency believes that there will be available resources to perform the testing in this proposed rule.

V. Environmental Impact Statement

EPA is not required to prepare Environmental Impact Statements (EIS), under the National Environmental Policy Act (NEPA), 41 U.S.C. 4321, for test rules. EPA has determined that voluntary preparation of an EIS is not appropriate for regulations issued under section 4 of TSCA. For further discussion of EPA's EIS policies, see the preamble to the Agency's rules for compliance with NEPA published in the **Federal Register** of November 6, 1979 (44 FR 64174).

VI. Public Meetings

If persons wish to present comments on this proposed rule to EPA officials who are directly responsible for developing the rule and supporting analyses, EPA will hold a public meeting on September 26, 1983, in Washington, D.C. This meeting is scheduled after the deadline for submission of written comments, so that issues raised in the written comments can be discussed by EPA and the public commenters. Information on the exact time and place of the meeting is available from the TSCA Assistance Office (TAO), Toll Free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the U.S.A. (Operator-202-554-1404).

Persons who wish to attend or present comments at the meeting should call the TAO by August 25, 1983. While the meeting will be open to the public, active participation will be limited to those persons who arranged to present comments and to designated EPA participants. Attendees should call the TAO before making travel plans because the meeting will not be held if members of the public do not wish to make oral comments.

The Agency will transcribe the meeting and include the written transcript in the public record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

VII. Public Record

EPA has established a public record for this rulemaking docket number [OPTS-42033] which is available for inspection in the OPTS Reading Room from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays in Rm. E-107, 401 M St. SW., Washington, D.C. This record includes the basic information the Agency considered in developing this proposal, and appropriate **Federal Register** notices. The Agency will supplement the record with additional information as it is received. This record includes the following information:

(1) **Federal Register** notices pertaining to this rule consisting of:

(a) Notice of proposed rule on cresols.

(b) Notice containing the ITC designation of cresols to the Priority List (42 FR 55026, October 12, 1977).

(c) Notices relating to EPA's health effects test guidelines and EPA Good Laboratory Practice Standards.

(d) Notice of proposed rule on exemption policy and procedures.

(e) Notice of proposed rulemaking on reimbursement policy and procedures.

(2) Support Documents: consisting of:

(a) Cresols support document.

(b) Economic analysis support document.

(c) Human exposure assessment support document.

(3) Communications before proposal consisting of:

(a) Written public and intra-agency memoranda and comments.

(b) Summaries of telephone conversations.

(c) Meeting summaries.

(d) Reports—published and unpublished factual materials, including contractors' reports.

VIII. Classification of Rule

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. The regulation for these chemical substances is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. First, the actual annual cost of the testing prescribed for cresols is less than $1.3 million over the testing and reimbursement period. Second, because the cost of the required testing will be distributed over a large production volume, the rule will have only very minor effects (less than 2.1 percent a year) on producers' costs or users' prices for this chemical. Finally, taking into account the nature of the market for this substance, the low level of costs involved, and the expected nature of the mechanisms for sharing the costs of the required testing, EPA concludes that there will be no significant adverse economic impact of any type as a result of this rule.

This proposed regulation was submitted to the Office of Management

and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA, and any EPA response to those comments, are included in the public record.

IX. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, (15 U.S.C. 601, *et seq.*, Pub. L. 96–354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses for the following reasons:

1. Small processors will not perform testing themselves, or will not participate in the organization of the testing effort.

2. Small processors will experience only minor costs in securing exemption from testing requirements.

3. Small processors are unlikely to be affected by reimbursement requirements.

X. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) authorizes the Director of OMB to review certain information collection requests by Federal agencies. The test rule proposed in this notice, if promulgated, could result in the submission of several types of information related to the required testing, including study plans and final reports for each test required by persons sponsoring the tests. For the reasons set forth in the **Federal Register** of June 5, 1981 (46 FR 30315), EPA believes that the test rule contained in this notice does not constitute an information collection request as defined in the Paperwork Reduction Act.

(Sec. 4, TSCA (Pub. L. 94–469, 90 Stat. 2003, 15 U.S.C. 2601))

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous material, Chemicals.

Dated: June 30, 1983.

William D. Ruckelshaus,

Administrator.

PART 799—IDENTIFICATION OF SPECIFIC CHEMICAL SUBSTANCES TESTING REQUIREMENTS

Therefore, it is proposed that a new § 799.1250 be added to the proposed Part 799 to read as follows:

Subpart A—[Reserved]

Subpart B—Specific Chemical Testing

§ 799.1250 ortho-Cresol (o-cresol), meta-cresol (m-cresol) and para-cresol (p-cresol).

(a) *Identification of test substance.* (1) *o*-Cresol (CAS No. 95–48–7), *m*-cresol (CAS No. 108–39–4), and *p*-cresol (CAS No. 106–44–5), each shall be tested in accordance with this part.

(2) *o*-Cresol, *m*-cresol and *p*-cresol of at least 99 percent purity shall be used as the test substances in all tests.

(b) *Persons required to test.* (1) All persons who manufacture or intend to manufacture any cresol isomer or any mixture of cresol isomers from the effective date of this rule to the end of the reimbursement period shall submit study plans, as specified by 40 CFR Part 770, and conduct tests and submit data as specified by this part.

(2) Any person subject to the requirements of this section may apply to EPA for an exemption from study plan submission, testing and data submission. No later than 30 days after the effective date of this rule, each manufacturer of cresols must notify EPA by letter of an intent either to submit a proposed study plan or to be exempted from testing for each test or study required in this rule.

(3) If manufacturers submit study plans, conduct testing, and submit data in a satisfactory manner, processors will be given an automatic exemption by EPA. If manufacturers fail to submit study plans, all persons who process or intend to process cresols from the effective date of this rule to the end of the reimbursement period shall be directed in a special **Federal Register** notice to submit study plans and to conduct tests and submit data as specified by this Part or be in violation of this rule.

(c) *Study plans*—(1) *Testing.* Testing shall be performed using a study plan submitted and approved in accordance with 40 CFR Part 770. All data must be developed and reported in accordance with the EPA Good Laboratory Practice (GLP) standards in accordance with 40 CFR Part 792. Laboratories conducting testing under this rule must adhere to the EPA GLP standards published by the Agency.

(2) *Submission.* (i) Manufacturers of cresols who indicate they will perform testing must submit proposed study plans on or before 90 days after the effective date of this rule. Only one set of study plans should be prepared and submitted by persons who are jointly sponsoring testing.

(ii) If, by the date specified in paragraph (b)(2) of this section, no letter of intent to submit a proposed study plan is submitted by a manufacturer for a test or study required by this rule, EPA will so notify the manufacturers of cresols. If no manufacturer promptly decides to submit a study plan and conduct testing, EPA will publish a **Federal Register** notice of this fact and then (A) no later than 30 days after publication of such a notice, each processor must notify EPA by letter of its intent either to submit a proposed study plan for each test or study that will not be covered by manufacturers' study plans or to be exempted from testing and (B) processors who indicate they will perform testing must submit proposed study plans on or before 90 days after publication of such a notice.

(iii) Manufacturers which do not notify EPA of their intent, either to submit a proposed study plan or to be exempted from testing for each test or study required in this rule, will be considered in violation of the rule beginning on the 31st day after the effective date of the rule. Manufacturers who indicate they will perform testing and which do not submit proposed study plans on or before 90 days after the effective date of this rule will be considered in violation of the rule beginning on the 91st day after the effective date of this rule. Each processor who fails to submit a letter of intent to submit a study plan or to request an exemption when required will also be considered in violation of this rule beginning on the 31st day after publication of the notice described in paragraph (c)(2)(ii) of this section.

(iv) If no study plan is proposed for each test or study required in this rule, every manufacturer and every processor of such chemicals will be in violation of this rule beginning on the 91st day after the publication of the notice described in paragraph (c)(2)(ii) of this section until such a study plan is submitted by an appropriate sponsor.

(3) *Content.* (i) All study plans are required to contain the following information: (A) Identity of the test rule and the specific test requirements of that rule to be covered by the study plan.

(B)(*1*) The names and addresses of the test sponsors.

(*2*) The names and addresses of the responsible administrative officials and project manager(s) in the principal sponsor's organization.

(*3*) The name, address and telephone number of the appropriate individual(s) for oral and written communications with EPA.

(*4*)(*i*) The name and address of the testing facility(ies) including responsible administrative officials and project manager(s) responsible for this testing.

(*ii*) Brief summaries of the training and experience of each professional involved in the study including study director, veterinarian(s), toxicologist(s), pathologist(s) and laboratory assistants.

(C) Identity and data on the substances being tested including

appropriate physical constants, spectral data, chemical analysis and stability under test and storage conditions.

(D) Study protocols, including rationale for: species-strain selection; dose selection (and supporting data); route(s) or method(s) of exposure; a description of diet to be used and its source, including nutrients and contaminants and their concentrations; for *in vitro* test systems, a description of culture medium and its source; and a summary of expected spontaneous chronic disease (including tumors), genealogy, and life span.

(E) Schedule for initiation and completion of major phases of long term tests; schedule for submission of interim progress and final reports to EPA.

(ii) Information given under paragraph (c)(3)(i)(B)(*4*) of this section is not required in proposed study plans if the information is not available at the time of submission; however, the information must be submitted before the initiation of testing.

(4) *Adoption.* Upon receipt of proposed study plans, EPA will publish in the **Federal Register** a notice requesting comments on the ability of the study plans to ensure that data from the tests are reliable and adequate. EPA will provide a 45-day comment period, and will provide an opportunity for an oral presentation on the request of any person. EPA may extend the comment period if it appears from the nature of the issues raised by EPA's review or public comment that further comment is warranted. Following the close of the comment period, EPA will publish a final rule adopting the study plans as proposed or modified which will become the test standards by which the study will be conducted.

(5) *Modification of study plans during conduct of study*—(i) *Application.* Any test sponsor who wishes to modify the adopted study plan for any test required under this rule must submit an application in accordance with this section. Application for modification shall be made in writing or by phone to the Chief Test Rules Development Branch, with written confirmation to follow within 10 working days. Applications must explain why the modification is necessary.

(ii) *Adoption.* To the extend feasible, EPA will seek comment on all significant substantive changes in study plans. EPA will issue a notice in the **Federal Register** requesting comments on requested modifications in accordance with section 4(b)(5) of TSCA. However, EPA will act on the requested modification without seeking public comment (A) if EPA believes that an immediate modification to a study plan is necessary in order to preserve the accuracy of an on-going study or (B) if EPA determines that a modification clearly does not pose any significant substantive issues. EPA will notify the sponsor of the Agency's approval or disapproval. When the Agency approves a modification, it will publish a notice in the **Federal Register** indicating that the study plan has been modified.

(d) *Health effects testing*—(1) *Subchronic inhalation toxicity*—(i) *Required testing.* Ninety-day subchronic inhalation toxicity testing shall be conducted with *o*-, *m*-, and *p*-cresol, individually.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the Toxic Substances Control Act (TSCA) Health Effects Test Guidelines for Subchronic Exposure Inhalation Toxicity, published by the National Technical Information Service (NITS) under publication number PB–82–232984, be consulted. Additional guidance may be obtained from the organization for Economic Cooperation and Development (OECD) Test Guidelines for Health Effects and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Pesticide Registration Guidelines; Proposed Data Requirements for Hazard Evaluation: Human and Domestic Animals, published by NTIS under publication number PB 83–153916.

(2) *Mutagenic effects—Chromosomal aberrations*—(i) *Required testing.*—(A) *In vitro* cytogenetics tests shall be conducted with *o*-, *m*- and *p*-cresol, individually.

(B) An *in vivo* cytogenetics test shall be conducted for each isomer which produces a negative result in the *in vitro* cytogenetics test.

(C) A dominant lethal assay shall be conducted for each isomer which produces a positive result in either the *in vitro* or the *in vivo* cytogenetics test.

(D) A heritable translocation assay shall be conducted with each isomer which produces a positive result in the dominant lethal assay.

(E) Further testing for chromosomal aberrations is not required for any isomer which produces a negative result in the *in vivo* cytogenetics test or the dominant lethal assay.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the TSCA Health Effects Test Guidelines for Chromosomal Effects, published by NTIS (PB 82–232984), be consulted. Additional guidance may be obtained from the OECD Test Guidelines for Genetic Toxicology, and the FIFRA Pesticide Registration Guidelines; Proposed Data Requirements for Hazard Evaluation: Human and Domestic Animals, published by NTIS (PB 82–153916).

(3) *Mutagenic effects—Gene Mutation*—(i) *Required testing.* (A) a DNA damage assay shall be conducted with *m*- cresol only.

(B) Sister chromatid exchange (SCE) assays shall be conducted with *m*- and *p*-cresol, individually.

(C) Gene mutation in cells in culture assays shall be conducted with *m*- and *p*-cresol, individually.

(D) A second gene mutation in cells in culture assay, using a different cell line from that used in the first assay, shall be conducted for each isomer which produces a negative result in the first gene mutation in cells in culture assay, specified by paragraph (d)(3)(D) of this section, coupled with positive results in both the DNA damage and SCE assays.

(E) *o*- and *p*-Cresol shall be tested in a *Drosophila* sex-linked recessive lethal (SLRL) test. A *Drosophila* SLRL test also shall be conducted for *m*-cresol if it produces a positive result in the DNA damage assay, SCE assay or either gene mutation in cells in culture assay.

(F) A mouse specific locus assay shall be conducted with each isomer which produces a positive result in the *Drosophila* SLRL.

(G) Further testing for gene mutations is not required for any isomer which produces a negative result in the *Drosophila* SLRL.

(H) Further testing for gene mutations is not required for any isomer which produces a negative result in the second gene mutation in cells in culture assay.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the TSCA Health Effects Test Guidelines for Gene Mutations and DNA Effects, published by NTIS (PB 82–232984), be consulted. Additional guidance may be obtained from the OECD Test Guidelines for Genetic Toxicology and the FIFRA Pesticide Registration Guidelines; Proposed Data Requirements for Hazard Evaluation: Human and Domestic Animals, published by NTIS (PB 83–153916).

(4) *Mutagenic Effects—Cellular Transformation*—(i) *Required testing.* (A) Balb/c 3T3 cellular transformation tests performed without metabolic activation shall be conducted with *m*- and *p*-cresol, individually.

(B)(*1*) *o*-Cresol shall be tested in the cellular transformation test with activation. A Balb/c 3T3 cellular transformation test with metabolic activation shall be conducted with each isomer which produces a negative result

in the cellular transformation test without activation.

(2) If the method of metabolic activation in the cell transformation assay with activation, for the individual cresol isomers, is by feeder layers using rat hepatocytes, then an equimixture of the three isomers shall also be tested under these conditions.

(C) A confirmatory tumor formation *in vivo* assay shall be performed with each isomer which produces a positive result in the cellular transformation test without activation or with activation.

(D) Further testing for cell transformations is not necessary for any isomer which produces a negative result in the cellular transformation test with activation or in the confirmatory tumor formation *in vivo* assay.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the following paper be consulted: Heidelberger, et al. 1983. Cell Transformation by Chemical Agents: A Review and Analysis of the Literature; A Report of the USEPA's Gene-Tox Program. *Mutation Research* Vol. 114, pp. 283–385.

(5) *Carcinogenicity*—(i) *Required testing.* A two-year oncogenicity bioassay shall be conducted with each isomer which produces a positive result in any one of the following tests: *in vitro* cytogenetics test, *in vivo* cytogenetics test, first gene mutation in cells in culture assay, second gene mutation in cells in culture assay, *Drosophila* SLRL and cell transformation confirmatory tumor formation *in vivo* tests. A two-year oncogenicity bioassay shall be conducted with a mixture of *o*-, *m*-, and *p*-cresol, if after the completion of the entire mutagenicity test battery, each of the three isomers produce only negative results, thereby not triggering any 2-year bioassays for individual isomers.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the TSCA Health Effects Guidelines for Chronic Exposure—Oncogenicity, published by NTIS (PB 82–232984), be consulted. Additional guidance may be obtained from the OECD Test Guidelines for Health Effects, and the FIFRA Pesticide Registration Guidelines: Proposed Data Requirements for Hazard Evaluation: Human and Domestic Animals, published by NTIS (PB 83–153916).

(6) *Teratogenicity*—(i) *Required testing.* Teratogenicity studies shall be conducted with *o*-, *m*-, and *p*-cresol, individually.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the TSCA Health Effects Test Guidelines for Specific Organ/Tissue Toxicity-Teratogenicity, published by NTIS (PB 82-232984), be consulted. Additional guidance may be obtained from the OECD Test Guidelines for Health Effects, and the FIFRA Pesticide Registration Guidelines; Proposed Data Requirements for Hazard Evaluation: Human and Domestic Animals, published by NTIS (PB 83–153916).

(7) *Reproductive effects*—(i) *Required testing.* Two-generation reproductive effects studies shall be conducted with *o*-, *m*-, and *p*-cresol, individually. Inhalation shall be the route of administration of the test substances in these studies.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the TSCA Health Effects Test Guidelines for Specific Organ/Tissue Toxicity—Reproduction/Fertility Effects, published by NTIS (PB 82–232984), be consulted. Additional guidance may be obtained from the FIFRA Pesticide Registration Guidelines; Proposed Data Requirements for Hazard Evaluation: Human and Domestic Animals, published by NTIS (PB 83–153916).

(8) *Neurotoxicity*—(i) *Required testing.* The following neurotoxicity test battery shall be performed following subchronic inhalation exposure.

(A) A neuropathology test shall be conducted with *o*-, *m*-, and *p*-cresol, individually.

(B) A motor activity test shall be conducted with *o*-, *m*-, and *p*-cresol, individually.

(C) A functional observation battery shall be conducted with *o*-, *m*-, and *p*-cresol, individually.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the TSCA Health Effects Test Guidelines for Neurotoxicity, published by NTIS (PB 82–232984), be consulted. Additional guidance may be obtained from the FIFRA Pesticide Registration Guidelines; Proposed Data Requirements for Hazard Evaluation: Human and Domestic Animals, published by NTIS (PB 83–153916).

(9) *Skin sensitization*—(i) *Required testing.* Skin sensitization studies shall be conducted with *o*-, *m*-, and *p*-cresol, individually.

(ii) *Study plans.* For guidance in preparing study plans, it is recommended that the TSCA Health Effects Test Guidelines for Dermal Sensitization, published by NTIS (PB 82-232984), be consulted. Additional guidance may be obtained from the OECD Test Guidelines for Health Effects, and the FIFRA Pesticide Registration Guidelines; Proposed Data Requirements for Hazard Evaluation: Human and Domestic Animals, published by NTIS (PB 83–153916).

[FR Doc. 83-18570 Filed 7-8-83; 8:45 am]

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July 11, 1983

Part VI

Federal Election Commission

Presidential Election Campaign Fund Provisions

FEDERAL ELECTION COMMISSION

11 CFR Parts 9001, 9002, 9003, 9004, 9005, 9006, 9007, and 9012

[Notice 1983-18]

Presidential Election Campaign Fund Provisions

AGENCY: Federal Election Commission.

ACTION: Transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission is revising its regulations which implement the Presidential Election Campaign Fund Act, 26 U.S.C. 9001 *et seq.*, and have transmitted those regulations to Congress pursuant to 26 U.S.C. 9009(c). The revisions are based on the Commission's experience in administering the Act and on public comments received on the Notice of Proposed Rulemaking. Many of the provisions in these regulations have been revised to assure consistency with the recently revised Presidential Primary Matching Fund Regulations, 11 CFR Part 9031 *et seq.* In addition, the revisions include a new Part 9012 regarding unauthorized expenditures and contributions which follows 26 U.S.C. 9012. Further information on the intended effect of the revised regulations is contained in the supplemental information below.

EFFECTIVE DATE: Further action, including the announcement of an effective date, will be taken by the Commission after these regulations have been before the Congress 30 legislative days in accordance with 26 U.S.C. 9009(c).

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 1325 K Street, N.W., Washington, D.C. 20463, (202) 523-4143 or (800) 424-9560.

SUPPLEMENTARY INFORMATION: The revisions are based on the Commission's experience in administering the Act and on public comments received in response to the Commission's Notice of Proposed Rulemaking [48 FR 14532; April 4, 1983]. One issue raised in the Notice of Proposed Rulemaking was that of providing public funding for independent candidates. After receiving public comment and Commission consideration of this question, these provisions were removed from the regulations.

26 U.S.C. 9009(c) requires that any rule or regulation prescribed by the Commission to implement Chapter 95 of Title 26, United States Code, be transmitted to the Speaker of the House of Representatives and the President of the Senate prior to final promulgation. The Commission may finally prescribe the regulations in question after they have been before both Houses of Congress for 30 legislative days. The following regulations were transmitted to Congress on July 1, 1983.

Explanation and Justification of the Presidential Election Campaign Fund Regulations, Parts 9001 through 9007 and new Part 9012.

Part 9001—Scope

Section 9001.1 Scope.

This section follows current § 9001.1

Part 9002—Definitions

Section 9002.1 Authorized Committee.

This section generally follows current § 9002.1 but subsection (d) has been added to make clear that responsibilities of the candidate are also those of his or her authorized committee(s).

Section 9002.2 Candidate.

This section generally follows current § 9002.2.

Section 9002.3 Commission.

This section follows current § 9002.3.

Section 9002.4 Eligible Candidates.

This section follows current § 9002.4.

Section 9002.5 Fund.

This section follows current § 9002.5.

Section 9002.6 Major Party.

This section follows current § 9002.6.

Section 9002.7 Minor Party.

This section follows current § 9002.7.

Section 9002.8 New Party.

This section follows current § 9002.8.

Section 9002.9 Political Committee.

This section follows current § 9002.9.

Section 9002.10 Presidential Election.

This section follows current § 9002.10.

Section 9002.11 Qualified Campaign Expense.

Subsection (a) generally follows current § 9002.11(a).

Subsection (b) generally follows current § 9002.11(b) but (b)(2)(iii) has been added to conform to 11 CFR 9032.9(b)(3). In subsection (b)(4), references to expenditures for travel and services provided to Secret Service personnel and other staff required by law have been deleted as other government regulations govern payment for those expenditures. Subsection (b)(5) generally follows current § 9002.11(b)(5) but clarifies that if payments for legal and accounting services which are provided solely to ensure compliance with the Act and Chapter 95 of Title 26 are made by a minor or new party candidate from an account containing private contributions, the payments do not count against that candidate's expenditure limitation.

Subsection (c) has been revised to provide that expenditures incurred in accordance with § 9004.4 are qualified campaign expenses even if incurred outside of the expenditure report period. This subsection also provides a cross reference to § 9004.4(b) which sets forth examples of what is a non-qualified campaign expense.

Section 9002.12 Expenditure Report Period.

This section follows current § 9002.12.

Section 9002.13 Contribution.

This section follows current § 9002.13.

Section 9002.14 Secretary.

This section follows current § 9002.14.

Section 9002.15 Political Party.

This section follows current § 9002.15.

Part 9003—Eligibility for Payments

This Part has been revised to delete current §§ 9003.6, 9003.7, and 9003.8. The provisions of these sections are now incorporated in subsection (b) of § 9003.1 which sets forth the various conditions to which a candidate and his or her authorized committee(s) must agree in order to become eligible to receive payments from the Fund. The Commission's decision to include these items in the candidate agreement is consistent with their inclusion in the candidate agreement for Presidential primary candidates.

Section 9003.1 Candidate and Committee Agreements.

This section has been reorganized for clarity into two subsections, (a) and (b). Subsection (a) sets forth the general requirements that a candidate must meet to become eligible to receive payments and basically follows current § 9003.1 (a) and (b). Subsection (b) sets forth in greater detail the various conditions to which a candidate must agree, and incorporates the provisions of current § 9003.6, § 9003.7 and § 9003.8. Subsection (b)(1) specifies that the candidates shall have the burden of proving that disbursements made by them, or any authorized committee(s) or agent(s) thereof are qualified campaign expenses as defined in 11 CFR 9002.11. Subsection (b)(2) contains an agreement by the candidate to comply with the documentation requirements of § 9003.5.

Subsections (b) (3) and (4) require the candidate to explain the connection between the disbursements and the campaign and to maintain and furnish to the Commission documentation relating to receipts and disbursements. Subsection (b)(5) generally follows current § 9003.7. Subsection (b)(6) generally follows current § 9003.1(a)(5). Subsections (b) (7) and (8) generally follow current § 9003.7 (a) and (b).

Section 9003.2 Candidate Certifications.

Subsections (a) and (b) generally follow current § 9003.2(a) and (b). Subsection (c) generally follows current § 0993.2(c), with three additions. In subsection (c)(3)(i) the definition of "personal funds" and "personal funds of his or her immediate family" has been rearranged to make clear that the candidate must have legal access or control over the funds whether he or she has legal or equitable title to the property. Also in this subsection, the term "equitable interest' has been substituted for "beneficial enjoyment" when defining the types of ownership interest that may be used as personal funds. "Equitable interest" is a more specific term which is used as a definition of ownership or pecuniary interest. Subsection (c)(3)(iii) has been added to clarify what portion of jointly owned property the candidate's share is considered to be. These changes were made as part of the Commission's regulations on "Candidate's Use of Property in Which Spouse Has An Interest." For a fuller discussion of these changes, see 48 F.R. 19019 (April 27, 1983). Subsection (d) generally follows current § 9003.2(d).

Section 9003.3 Allowable Contributions.

This section has been substantially revised and expanded from the current regulation. Subsection (a), which permits a candidate to establish a legal and accounting compliance fund, has been limited to major party candidates. While minor and new party candidates may also make disbursements for legal and accounting services to ensure compliance with the Act, which disbursements would not count against the expenditure limit, there is no need for those candidates to establish a separate account for that purpose as they can already accept private contributions. Therefore, the need for a compliance fund only arises when a major party candidate receives full federal funding and cannot accept private funds except for the purposes permitted by the compliance fund. This rule does not, however, prohibit other candidates from establishing separate accounts if they so desire.

Subsection (a)(1)(ii) has been revised to make clear that excess funds from the candidate's primary account may be transferred to the compliance fund without regard to the contribution limitations. Thus, the candidate need not determine which of the funds transferred represent contributions which would otherwise count against the amount those persons could contribute to the compliance fund.

Subsection (a)(2)(i) has been revised to make clear that a portion of payroll, overhead and computer services costs may be defrayed from the compliance fund to the extent such costs relate to ensuring compliance with the Federal Election Campaign Act and the Presidential Election Campaign Fund Act. This provision has been patterned after 11 CFR 9035.1(c) but has been expanded to include computer costs. As in section 9035.1(c), a candidate may demonstrate that a larger proportion of the described costs are related to ensuring compliance than the percentages provided in this section would cover. This section also provides that payroll, overhead and computer services costs must be initially paid from the federal funds account and then may be reimbursed by the compliance fund at any time before the Commission's final repayment determination is made. In the limited circumstance in which a bona fide error is made and a qualified campaign expense is paid from the compliance fund, the federal fund account may reimburse the compliance fund.

Subsections (a)(2)(iii) and (iv) follow current §§ 9003.3(a)(2)(iii) and (iv). Subsection (a)(3) generally follows current § 9003.3(a)(3).

Subsection (b) has been revised to address major party candidates in the event of a deficiency in the Fund. Such candidates may solicit private contributions to defray qualified campaign expenses in order to make up the deficiency. They may choose to deposit these contributions in the same account as the federal funds received or they may deposit them separately. This approach is consistent with the Commission's view in the case of Presidential primary candidates, who may also defray qualified campaign expenses from both federal and private funds. Subsection (b)(5) follows current § 9003.3(b)(4) but is revised to more accurately reflect the provisions of 11 CFR 100.8(b)(2) and 2 U.S.C. 431(9)(B)(vi).

Subsections (b) (5), (6), (7) and (8) provide that a candidate may exempt a portion of payroll and overhead costs from the expenditure limitation as fundraising costs. A candidate may also exempt a portion of overhead, payroll and computer services costs as compliance costs. As in subsection (a), these provisions follow 11 CFR 9035.1(c).

Subsection (c) contains the provisions applicable to minor and new party candidates. This subsection has been revised from current § 9003.3(b) to reflect the Commission's decision that one account may be used to defray both qualified campaign expenses and the costs normally payable from a compliance fund. The provisions regarding the exemptions for compliance and fundraising costs parallel those in subsection (b).

The Commission considered and rejected a proposal to add provisions to subsections (a) through (c) that would have permitted candidates to use private contributions deposited in their compliance fund or campaign account for transition expenses after all other obligations including repayments and penalties had been paid. In view of the "Transition Trust" permitted by Advisory Opinion 1980-97 and the funds provided under the Presidential Transition Act of 1963, Pub. L. 88-277, 78 Stat. 153, the Commission decided not to include a provision to this effect in these regulations.

Section 9003.4 Expenses Incurred Prior to the Beginning of the Expenditure Report Period or Prior to Receipt of Federal Funds.

This section generally follows current § 9003.4

Section 9003.5 Documentation of Disbursements.

This section generally follows current § 9003.5. In the Notice of Proposed Rulemaking, this section required the "identification" of a payee; however, the Commission has determined to retain the language of the current regulation which requires the "full name and mailing address" of the payee. The latter was retained as a clearer statement of the information sought.

In addition, the Commission notes that the use of the term "purpose" in this section has the same meaning as in 11 CFR 104.3(b)(4)(i)(A).

Subsection (c) has been added to follow the Presidential Primary Matching Fund regulations at 11 CFR 9033.11(c).

Part 9004—Entitlement of Eligible Candidates to Payments; Use of Payments

Section 9004.1 Major Parties.

This section follows current § 9004.1.

Section 9004.2 Pre-Election Payments for Minor and New Party Candidates.

This section has been divided into three parts to set forth separately and in detail the conditions which candidates of a minor party in the preceding election, candidates of a minor party in the current election, and new party candidates must satisfy to qualify for pre-election payments from the Fund. Otherwise, this section generally follows current § 9004.2.

Section 9004.3 Post-election Payments.

Subsection (a) generally follows current § 9004.3(a) but has been reworded for clarification. Subsection (b) sets forth the maximum amount of payments which may be received and generally follows current § 9004.3(c). Subsection (c) generally follows current § 9004.3(b).

Section 9004.4 Use of Payments.

This section has been reorganized to provide examples of what may be considered qualified and non-qualified campaign expenses. The format of this section generally follows that of 11 CFR 9034.4.

Section 9004.5 Investment of Public Funds.

This section generally follows current § 9004.5 but contains a new provision requiring repayment of a net loss resulting from the investment of public funds. A net loss will be considered a non-qualified campaign expense and repayable under § 9007.2(b)(2)(i).

Section 9004.6 Reimbursements for Transportation and Services Mode Available to Media Personnel.

All references to reimbursement for transportation, services and facilities made available to the Secret Service or other staff authorized by law or required by national security to travel with a candidate have been deleted from this section. Other government regulations govern payment for those expenditures.

In subsection (a), language has been added to clarify that expenditures for services provided to media personnel are subject to the overall expenditure limitations of 11 CFR 9003.2(a)(1) and (b)(1).

Subsection (b) follows the Presidential primary regulations at 11 CFR 9034.6 and provides that the reimbursements received from each person may not exceed the total cost of providing services to that person by more than 10%. The 10% figure will be based on the total cost of providing services to each person over the course of the campaign rather than on a per-trip basis. Candidates may include the cost of "down-time" for leased aircraft in the amount requested for reimbursement as this is a cost of providing transportation to the media. The reimbursements may be deducted from the amount applied to the overall expenditure limit but only to the extent that the reimbursements do not exceed the actual cost to the campaign.

Section 9004.7 Allocation of Travel Expenditures.

This section generally follows current § 9004.7 with one significant change. Subsection (b)(5) has been revised to require that candidates using government conveyance, such as government aircraft, pay the equivalent of first-class commercial air fare or commercial charter fare rather than the actual cost of such government transportation. Candidates must also pay the cost of other government conveyances or accommodations used such as government-owned cars or buses.

Section 9004.8 Withdrawal by Candidate.

This section has been revised to delete much of the language regarding the statement to be filed by a candidate who withdraws. Instead, this section now refers to new § 9004.9, which consolidates the requirements for statements to be filed by all candidates. In addition, the time for filing a statement under this section has been shortened from 60 to 30 calendar days.

Section 9004.9 Net Outstanding Qualified Campaign Expenses.

This new section sets forth requirements for filing statements similar to the statements of net outstanding campaign obligations filed by Presidential primary candidates under 11 CFR 9034.5. It reflects requirements consistent with past Commission practice.

Unlike the Presidential primary regulations, however, this section sets different deadlines for candidates who withdraw, candidates seeking post-election funding and all other candidates. Candidates seeking post-election funding must file a preliminary statement to aid in determining their entitlement to public funds as well as a statement at the time other candidates must submit theirs.

Subsection (d) follows the Presidential primary regulations at 11 CFR 9034.5(b). Subsection (e) follows 11CFR 9034.5(e).

Section 9004.10 Sale of Assets Acquired for Fundraising Purposes.

This new section follows the Presidential primary regulations at 11 CFR 9034.9. Its application here is limited, however, to minor and new party candidates and to major party candidates who have not received full federal funding due to a deficiency in the Fund.

Part 9005—Certification by Commission

Section 9005.1 Certification of Payments for Candidates.

This section reflects the provisions of current §§§ 9005.1 and 9005.2 but has been reorganized and expanded. Subsection (a) addresses certification of payments for major party candidates. Subsection (b) addresses certification of pre-election payments for minor and new party candidates.

Subsection (c) has been added to follow the procedures used by the Commission in 1980 to certify post-election payments to minor and new party candidates but adds the requirement to file a preliminary statement of net outstanding qualified campaign expenses pursuant to section 9004.9.

Subsection (d) follows current § 9005.1(b) regarding the finality of Commission certifications.

Section 9005.2 Payments to Eligible Candidates from the Fund.

This section generally follows current § 9005.3.

Part 9006—Reports and Recordkeeping

Section 9006.1 Separate Reports.

This section generally follows current § 9006.1.

Section 9006.2 Filing Dates.

This section follows current § 9006.2.

Part 9007—Examinations and Audits; Repayments

Section 9007.1 Audits.

Subsection (a)(1) follows current § 9007.1. The remaining provisions of this section follow the provisions of the Presidential primary regulations at 11 CFR 9038.1.

Section 9007.2 Repayments.

This section has been reorganized to follow the format of the Presidential primary regulations at 11 CFR 9038.2.

Section 9007.3 Extensions of Time.

This new section follows the Presidential primary regulations at 11 CFR 9038.4.

Section 9007.4 Additional Audits.

This section follows current § 9007.3.

Part 9008—Federal Financing of Presidential Nominating Conventions

This Part has not been changed; however, the separate subchapter designation for this Part has been removed and this Part included in subchapter E to permit the correct numbering of new Part 9012 in accordance with the corresponding statutory citation. Part 9012 was printed as Part 9007a in the Notice of Proposed Rulemaking.

Part 9012—Unauthorized Expenditures and Contributions

Section 9012.1 Excessive Expenses.

This new section follows 26 U.S.C. 9012(a).

Section 9012.2 Unauthorized Acceptance of Contributions.

This new section follows 26 U.S.C. 9012(b).

Section 9012.3 Unlawful Use of Payments Received from the Fund.

This new section follows 26 U.S.C. 9012(c).

Section 9012.4 Unlawful Misrepresentations and Falsification of Statements, Records or Other Evidence to the Commission; Refusal to Furnish Books and Records.

This new section follows 26 U.S.C. 9012(d).

Section 9012.5 Kickbacks and Illegal Payments.

This new section follows 26 U.S.C. 9012(e). In the Notice of Proposed Rulemaking, subsection (c) was inadvertently included regarding the penalty provisions of 9012(e). This subsection was deleted from the regulations in accordance with the Commission's practice of not including the statutory penalty provisions in the regulations.

Section 9012.6 Unauthorized Expenditures and Contributions by Political Committees.

This new section follows 26 U.S.C. 9012(f).

List of Subjects

11 CFR Parts 9001, 9002, 9003, 9004 and 9005

Campaign funds, Political candidates, Elections.

11 CFR Part 9006

Campaign funds, Reporting and recordkeeping requirements, Political candidates, Elections.

11 CFR Part 9007

Campaign funds, Administrative practice and procedure, Political candidates.

11 CFR Part 9012

Political candidates, Political committees and parties, Elections.

11 CFR is amended as follows:

1. By Revising Parts 9001 through 9007 to read as follows:

PART 9001—SCOPE

§ 9001.1 Scope.

This subchapter governs entitlement to and use of funds certified from the Presidential Election Campaign Fund under 26 U.S.C. 9001 *et seq.* The definitions, restrictions, liabilities and obligations imposed by this subchapter are in addition to those imposed by sections 431–455 of Title 2, United States Code, and regulations prescribed thereunder (11 CFR Parts 100 through 115). Unless expressly stated to the contrary, this subchapter does not alter the effect of any definitions, restrictions, obligations and liabilities imposed by sections 431–455 of Title 2 United States Code, or regulations prescribed thereunder (11 CFR Parts 100 through 115).

(26 U.S.C. 9009(b))

PART 9002—DEFINITIONS

Sec.

9002.1 Authorized committee.
9002.2 Candidate.
9002.3 Commission.
9002.4 Eligible candidates.
9002.5 Fund.
9002.6 Major party.
9002.7 Minor party.
9002.8 New party.
9002.9 Political committee.
9002.10 Presidential election.
9002.11 Qualified campaign expense.
9002.12 Expenditure report period.
9002.13 Contribution.
9002.14 Secretary.
9002.15 Political party.

Authority: 26 U.S.C. 9002, 9009(b).

§ 9002.1 Authorized committee.

(a) Notwithstanding the definition at 11 CFR 100.5, "authorized committee" means with respect to a candidate (as defined at 11 CFR 9002.2) of a political party for President and Vice President, any political committee that is authorized by a candidate to incur expenses on behalf of such candidate. The term "authorized committee" includes the candidate's principal campaign committee designated in accordance with 11 CFR 102.12, any political committee authorized in writing by the candidate in accordance with 11 CFR 102.13, and any political committee not disavowed by the candidate pursuant to 11 CFR 100.3(a)(3). If a party has nominated a Presidential and a Vice Presidential candidate, all political committees authorized by that party's Presidential candidate shall also be authorized committees of the Vice Presidential candidate and all political committees authorized by the Vice Presidential candidate shall also be authorized committees of the Presidential candidate.

(b) Any withdrawal of an authorization shall be in writing and shall be addressed and filed in the same manner provided for at 11 CFR 102.12 or 102.13.

(c) Any candidate nominated by a political party may designate the national committee of that political party as that candidate's authorized committee in accordance with 11 CFR 102.12(c).

(d) For purposes of this subchapter, references to the "candidate" and his or her responsibilities under this subchapter shall also be deemed to refer to the candidate's authorized committee(s).

§ 9002.2 Candidate.

(a) For the purposes of this subchapter, "candidate" means with respect to any presidential election, an individual who—

(1) Has been nominated by a major party for election to the Office of President of the United States or the Office of Vice-President of the United States; or

(2) has qualified or consented to have his or her name appear on the general election ballot (or to have the names of electors pledged to him or her on such ballot) as the candidate of a political party for election to either such office in 10 or more States. For the purposes of this section, "political party" shall be defined in accordance with 11 CFR 9002.15.

(b) An individual who is no longer actively conducting campaigns in more than one State pursuant to 11 CFR 9004.8 shall cease to be a candidate for the purpose of this subchapter.

§ 9002.3 Commission.

"Commission" means the Federal Election Commission, 1325 K Street NW., Washington, D.C. 20463.

§ 9002.4 Eligible candidates.

"Eligible candidates" means those Presidential and Vice Presidential candidates who have met all applicable conditions for eligibility to receive payments from the Fund under 11 CFR Part 9003.

§ 9002.5 Fund.

"Fund" means the Presidential Election Campaign Fund established by 26 U.S.C. 9006(a).

§ 9002.6 Major party.

"Major party" means a political party whose candidate for the office of President in the preceding Presidential election received, as a candidate of such party, 25 percent or more of the total number of popular votes received by all candidates for such office. For the purpose of 11 CFR 9002.6, "candidate" means, with respect to any preceding Presidential election, an individual who received popular votes for the office of President in such election.

§ 9002.7 Minor party.

"Minor party" means a political party whose candidate for the office of President in the preceding Presidential election received, as a candidate of such party, 5 percent or more, but less than 25 percent, of the total number of popular votes received by all candidates for such office. For the purpose of 11 CFR 9002.7, "candidate" means with respect to any preceding Presidential election, an individual who received popular votes for the office of President in such election.

§ 9002.8 New party.

"New party" means a political party which is neither a major party nor a minor party.

§ 9002.9 Political committee.

For purposes of this subchapter, "political committee" means any committee, club, association, organization or other group of persons (whether or not incorporated) which accepts contributions or makes expenditures for the purpose of influencing, or attempting to influence, the election of any candidate to the office of President or Vice President of the United States; except that for the purpose of 11 CFR 9012.6, the term "political committee" shall be defined in accordance with 11 CFR 100.5.

§ 9002.10 Presidential election.

"Presidential election" means the election of Presidential and Vice Presidential electors.

§ 9002.11 Qualified campaign expense.

(a) "Qualified campaign expense" means any expenditure, including a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value—

(1) Incurred to further a candidate's campaign for election to the Office of President or Vice President of the United States;

(2) Incurred within the expenditure report period, as defined under 11 CFR 9002.12, or incurred before the beginning of such period in accordance with 11 CFR 9003.4 to the extent such expenditure is for property, services or facilities to be used during such period; and

(3) Neither the incurrence nor the payment of such expenditure constitutes a violation of any law of the United States, any law of the State in which such expense is incurred or paid, or any regulation prescribed under such Federal or State law, except that any State law which has been preempted by the Federal Election Campaign Act of 1971, as amended, shall not be considered a State law for purposes of this subchapter. An expenditure which constitutes such a violation shall nevertheless count against the candidate's expenditure limitation if the expenditure meets the conditions set forth at 11 CFR 9002.11(a) (1) and (2).

(b)(1) An expenditure is made to further a Presidential or Vice Presidential candidate's campaign if it is incurred by or on behalf of such candidate or his or her authorized committee. For purposes of 11 CFR 9002.11(b)(1), any expenditure incurred by or on behalf of a Presidential candidate of a political party will also be considered an expenditure to further the campaign of the Vice Presidential candidate of that party. Any expenditure incurred by or on behalf of the Vice Presidential candidate will also be considered an expenditure to further the campaign of the Presidential candidate of that party.

(2) An expenditure is made on behalf of a candidate if it is made by—

(i) Any authorized committee or any other agent of the candidate for the purpose of making an expenditure; or

(ii) Any person authorized or requested by the candidate, by the candidate's authorized committee(s), or by an agent of the candidate or his or her authorized committee(s) to make an expenditure; or

(iii) A committee which has been requested by the candidate, the candidate's authorized committee(s), or an agent thereof to make the expenditure, even though such committee is not authorized in writing.

(3) Any expenditure incurred by a candidate or his or her authorized committee(s) to further the election of any other individual to a Federal, State or local office shall be a qualified campaign expense to the extent such expenditure is to further the candidate's own campaign for election. If the expenditure is incurred specifically to further the election of such other individuals, it will not be considered a qualified campaign expense.

(4) Expenditures by a candidate's authorized committee(s) pursuant to 11 CFR 9004.6 for the travel and related ground service costs of media shall be qualified campaign expenses. Any reimbursement for travel and related services costs received by a candidate's authorized committee shall be subject to the provisions of 11 CFR 9004.6.

(5) Legal and accounting services which are provided solely to ensure compliance with 2 U.S.C. 431 *et. seq.*, or 26 U.S.C. 9001, *et seq.*, shall be qualified campaign expenses which may be paid from payments received from the Fund. If federal funds are used to pay for such services, the payments will count against the candidate's expenditure limitation. Payments for such services may also be made from an account established in accordance with 11 CFR 9003.3 or may be provided to the committee in accordance with 11 CFR 100.7(b)(14) and 100.8(b)(15). If payments for such services are made from an account established in accordance with 11 CFR 9003.3, the payments do not count against the candidate's expenditure limitation. If payments for such services are made by a minor or new party candidate from an account containing private contributions, the payments do not count against that candidate's expenditure limitation. The amount paid by the committee shall be reported in accordance with 11 CFR Part 9006. Amounts paid by the regular employer of the person providing such services pursuant to 11 CFR 100.7(b)(14) and 100.8(b)(15) shall be reported by the recipient committee in accordance with 11 CFR 104.3(h).

(c) Expenditures incurred either before the beginning of the expenditure report period or after the last day of a candidate's eligibility will be considered qualified campaign expenses if they meet the provisions of 11 CFR 9004.4(a). Expenditures described under 11 CFR

9004.4(b) will not be considered qualified campaign expenses.

§ 9002.12 Expenditure report period.

"Expenditure report period" means, with respect to any Presidential election, the period of time described in either paragraph (a) or (b) of this section, as appropriate.

(a) In the case of a major party, the expenditure report period begins on September 1 before the election or on the date on which the major party's presidential nominee is chosen, whichever is earlier; and the peirod ends 30 days after the Presidential election.

(b) In the case of a minor or new party, the period will be the same as that of the major party with the shortest expenditure report period for that Presidential election as determined under paragraph (a) of this section.

§ 9002.13 Contribution.

"Contribution" has the same meaning given the term under 2 U.S.C. 431(8), 441b and 441c, and under 11 CFR 100.7, and 11 CFR Parts 114 and 115.

§ 9002.14 Secretary.

"Secretary" means the Secretary of the Treasury.

§ 9002.15 Political party.

"Political party" means an association, committee, or organization which nominates or selects an individual for election to any Federal office, including the office of President or Vice President of the United States, whose name appears on the general election ballot as the candidate of such association, committee, or organization.

PART 9003—ELIGIBILITY FOR PAYMENTS

Sec.

9003.1 Candidate and committee agreements.
9003.2 Candidate certifications.
9003.3 Allowable contributions.
9003.4 Expenses incurred prior to the beginning of the expenditure report period or prior to receipt of Federal funds.
9003.5 Documentation of disbursements.

Authority: 26 U.S.C. 9003, 9009(b).

§ 9003.1 Candidate and committee agreements.

(a) *General.*

(1) To become eligible to receive payments under 11 CFR Part 9005, the Presidential and Vice Presidential candidates of a political party shall agree in a letter signed by the candidates to the Commission that they and their authorized committee(s) shall comply with the conditions set forth in 11 CFR 9003.1(b).

(2) Major party candidates shall sign and submit such letter to the Commission within 14 days after receiving the party's nomination for election. Minor and new party candidates shall sign and submit such letter within 14 days after such candidates have qualified to appear on the general election ballot in 10 or more states pursuant to 11 CFR 9002.2(a)(2). The Commission, on written request by a minor or new party candidate, at any time prior to the date of the general election, may extend the deadline for filing such letter except that the deadline shall be a date prior to the date of the general election.

(b) *Conditions.* The candidates shall:

(1) Agree that they have the burden of proving that disbursements made by them or any authorized committee(s) or agent(s) thereof are qualified campaign expenses as defined in 11 CFR 9002.11.

(2) Agree that they and their authorized committee(s) shall comply with the documentation requirements set forth at 11 CFR 9003.5.

(3) Agree that they and their authorized committee(s) shall provide an explanation, in addition to complying with the documentation requirements, of the connection between any disbursements made by the candidates or the authorized committee(s) of the candidates and the campaign if requested by the Commission.

(4) Agree that they and their authorized committee(s) shall keep and furnish to the Commission all documentation relating to receipts and disbursements including any books, records (including bank records for all accounts), all documentation required by this subchapter including those required to be maintained under 11 CFR 9003.5, and other information the Commission may request.

(5) Agree that they had their authorized committee(s) shall permit an audit and examination pursuant to 11 CFR Part 9007 of all receipts and disbursements including those made by the candidate, all authorized committees and any agent or person authorized to make expenditures on behalf of the candidates or committee(s). The candidate and authorized committee(s) shall facilitate the audit by making available in one central location, office space, records and such personnel as are necessary to conduct the audit and examination, and shall pay any amounts required to be repaid under 11 CFR Part 9007.

(6) Submit the name and mailing address of the person who is entitled to receive payments from the Fund on behalf of the candidates; the name and address of the depository designated by the candidates as required by 11 CFR Part 103 and 11 CFR 9005.2; and the name under which each account is held at the depository at which the payments from the Fund are to be deposited.

(7) Agree that they and their authorized committee(s) shall comply with the applicable requirements of 2 U.S.C. 431 *et seq.*, 26 U.S.C. 9001 *et seq.*, and the Commission's regulations at 11 CFR Parts 100–115, and 9001–9012.

(8) Agree that they and their authorized committee(s) shall pay any civil penalties included in a conciliation agreement entered into under 2 U.S.C. 437g against the candidates, any authorized committees of the candidates or any agent thereof.

§ 9003.2 Candidate certifications.

(a) *Major Party Candidates.* To be eligible to receive payments under 11 CFR Part 9005, each Presidential and Vice Presidential candidate of a major party shall, under penalty of perjury, certify to the Commission:

(1) That the candidate and his or her authorized committee(s) have not incurred and will not incur qualified campaign expenses in excess of the aggregate payments to which they will be entitled under 11 CFR Part 9004.

(2) That no contributions have been or will be accepted by the candidate or his or her authorized committee(s); except as contributions specifically solicited for, and deposited to, the candidate's legal and accounting compliance fund established under 11 CFR 9003.3(a); or except to the extent necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b).

(b) *Minor and Major Party Candidates.* To be eligible to receive payments under 11 CFR Part 9005, each Presidential and Vice Presidential candidate of a minor or new party shall, under penalty of perjury, certify to the Commission:

(1) That the candidate and his or her authorized committee(s) have not incurred and will not incur qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party are entitled under 11 CFR 9004.1

(2) That no contributions to defray qualified campaign expenses have been or will be accepted by the candidate or his or her authorized committee(s) except to the extent that the qualified campaign expenses incurred exceed the aggregate payments received by such candidate from the Fund under 11 CFR 9004.2.

(c) *All Candidates.* To be eligible to receive any payment under 11 CFR

9004.2, the Presidential candidate of each major, minor or new party shall certify to the Commission, under penalty of perjury, that such candidate will not knowingly make expenditures from his or her personal funds, or the personal funds of his or her immediate family, in connection with his or her campaign for the office of President in excess of $50,000 in the aggregate.

(1) For purposes of this section, the term "immediate family" means a candidate's spouse, and any child, parent, grandparent, brother, half-brother, sister, or half-sister of the candidate, and the spouses of such persons.

(2) Expenditures from personal funds made under this paragraph shall not apply agains the expenditure limitations.

(3) For purposes of this section, the terms "personal funds" and "personal funds of his or her immediate family" mean:

(i) Any assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either:

(A) Legal and rightful title, or

(B) An equitable interest.

(ii) Salary and other earned income from bona fide employment; dividends and proceeds from the sale of the candidate's stocks or other investments; bequests to the candidate; income from trusts established before candidacy; income from trusts established by bequest after candidacy of which the candidate is a beneficiary; gifts of a personal nature which had been customarily received prior to candidacy; proceeds from lotteries and similar legal games of chance.

(iii) A candidate may use a portion of assets jointly owned with his or her spouse as personal funds. The portion of the jointly owned assets that shall be considered as personal funds of the candidate shall be that portion which is the candidate's share under the instrument(s) of conveyance or ownership. If no specific share is indicated by any instrument of conveyance or ownership, the value of one-half of the property used shall be considered as personal funds of the candidate.

(4) For purposes of this section, expenditures from personal funds made by a candidate of a political party for the office of Vice President shall be considered to be expenditures made by the candidate of such party for the office of President.

(5) Contributions made by members of a candidate's family from funds which do not meet the definition of personal funds under 11 CFR 9003.2(c)(3) shall not count against such candidate's $50,000 expenditure limitation under 11 CFR 9003.2(c).

(6) Personal funds expended pursuant to this section shall be first deposited in an account established in accordance with 11 CFR 9003.3(b) or (c).

(d) *Form.* Major party candidates shall submit the certifications required under 11 CFR 9003.2 in a letter which shall be signed and submitted within 14 days after receiving the party's nomination for election. Minor and new party candidates shall sign and submit such letter within 14 days after such candidates have qualified to appear on the general election ballot in 10 or more States pursuant to 11 CFR 9002.2(a)(2). The Commission, upon written request by a minor or new party candidate made at any time prior to the date of the general election, may extend the deadline for filing such letter, except that the deadline shall be a date prior to the day of the general election.

§ 9003.3 Allowable contributions.

(a) *Legal and Accounting Compliance Fund—Major Party Candidates.*—(1) *Source.* (i) A major party candidate may accept contributions to a legal and accounting compliance fund if such contributions are received and disbursed in accordance with this section. A legal and accounting compliance fund may be established by such candidate prior to being nominated or selected as the candidate of a political party for the office of President or Vice President of the United States.

(A) All solicitations for contributions to this fund shall clearly state that such contributions are being solicited for this fund.

(B) Contributions to this fund shall be subject to the limitations and prohibitions of 11 CFR Parts 110, 114, and 115.

(ii) Funds remaining in the primary election account of a candidate, which funds are in excess of any amount required to be reimbursed to the Presidential Primary Matching Payment Account under 11 CFR 9038.2, may be transferred to the legal and accounting compliance fund without regard to the contribution limitations of 11 CFR Part 110 and used for any purpose permitted under this section.

(iii) Contributions which are made after the beginning of the expenditure report period but which are designated for the primary election may be deposited in the legal and accounting compliance fund: Provided, That the candidate already has sufficient funds to pay any outstanding campaign obligations incurred during the primary campaign; and the candidate notifies the contributor that his or her contribution will be deposited in the compliance fund. If after such notification the contributor objects to the funds being so used, the contribution shall be returned. The contribution so received and deposited shall be subject to the contribution limitations applicable for the general election, pursuant to 11 CFR 110.1(a)(2)(ii)(B).

(2) *Uses.*

(i) Contributions to the legal and accounting compliance fund shall be used only for the following purposes:

(A) To defray the cost of legal and accounting services provided solely to ensure compliance with 2 U.S.C. 431 *et seq.*, and 26 U.S.C. 9001 *et seq.*, in accordance with 11 CFR 9003.3(a)(2)(ii);

(B) To defray in accordance with 11 CFR 9003.3(a)(2)(ii)(A), that portion of expenditures for payroll, overhead, and computer services related to ensuring compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.*;

(C) To defray any civil or criminal penalties imposed pursuant to 2 U.S.C. 437g or 26 U.S.C. 9012;

(D) To make repayments under 11 CFR 9007.2;

(E) To defray the cost of soliciting contributions to the legal and accounting compliance fund; and

(F) To make a loan to an account established pursuant to 11 CFR 9003.4 to defray qualified campaign expenses incurred prior to the expenditure report period or prior to receipt of federal funds, provided that the amounts so loaned are restored to the legal and accounting compliance fund.

(ii)(A) Expenditures for payroll (including payroll taxes), overhead and computer services, a portion of which are related to ensuring compliance with Title 2 and Chapter 95 of Title 26, shall be initially paid from the candidate's federal fund account under 11 CFR 9005.2 and may be later reimbursed by the compliance fund. For purposes of 11 CFR 9003.3(a)(2)(i)(B), a candidate may use contributions to the compliance fund to reimburse his or her federal fund account an amount equal to 10 percent of the payroll and overhead expenditures of his or her national campaign headquarters and state offices. Overhead expenditures include, but are not limited to rent, utilities, office equipment, furniture, supplies and telephone base service charges. In addition, a candidate may use contributions to the compliance fund to reimburse his or her federal fund account an amount equal to 70 percent of the costs (other than payroll) associated with computer services. Such

costs include but are not limited to rental and maintenance of computer equipment, data entry services not performed by committee personnel, and related supplies. If the candidate wishes to claim a larger compliance exemption for payroll or overhead expenditures, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered necessary to ensure compliance with Title 2 or Chapter 95 of Title 26. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance and the percentage of time each person spends on such activity. If the candidate wishes to claim a larger compliance exemption for costs associated with computer services, the candidate shall establish allocation percentages for each computer function that is considered necessary, in whole or in part, to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* The allocation shall be based on a reasonable estimate of the costs associated with each computer function, such as the costs for data entry services performed by persons other than committee personnel and processing time. The candidate shall keep detailed records to support such calculations. The records shall indicate which computer functions are considered compliance-related and shall reflect which costs are associated with each computer function.

(B) Reimbursement from the compliance fund may be made to the separate account maintained for federal funds under 11 CFR 9005.2 for legal and accounting compliance services disbursements that are initially paid from the separate federal funds account. Such reimbursement must be made prior to any final repayment determination by the Commission pursuant to 11 CFR 9007.2. Any amounts so reimbursed to the federal fund account may not subsequently be transferred back to the legal and accounting compliance fund.

(iii) Amounts paid from this account for the purposes permitted by 11 CFR 9003.3(a)(2)(i) (A) through (E) shall not be subject to the expenditure limits of 2 U.S.C. 441a(b) and 11 CFR 110.8. (See also 11 CFR 100.8(b)(15)). When the proceeds of loans made in accordance with 11 CFR 9003.2(a)(2)(i)(F) are expended on qualified campaign expenses, such expenditures shall count against the candidate's expenditure limit.

(iv) Contributions to or funds deposited in the legal and accounting compliance fund may not be used to retire debts remaining from the Presidential primaries, except that, if after payment of all expenses relating to the general election, there are excess campaign funds, such funds may be used for any purpose permitted under 2 U.S.C. 439a and 11 CFR Part 113, including payment of primary election debts.

(3) Deposit and disclosure.

(i) Amounts received pursuant to 11 CFR 9003.3(a)(1) shall be deposited and maintained in an account separate from that described in 11 CFR 9005.2 and shall not be commingled with any money paid to the candidate by the Secretary pursuant to 11 CFR 9005.2.

(ii) The receipts to and disbursements from this account shall be reported in a separate report in accordance with 11 CFR 9006.1(b)(2). All contributions made to this account shall be recorded in accordance with 11 CFR 102.9. Disbursements made from this account shall be documented in the same manner provided in 11 CFR 9003.5.

(b) *Contributions to Defray Qualified Campaign Expenses—Major Party Candidates.* (1) A major party candidate or his or her authorized committee(s) may solicit contributions to defray qualified campaign expenses to the extent necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b).

(2) Such contributions may be deposited in a separate account or may be deposited with federal funds received under 11 CFR 9005.2. Disbursements from this account shall be made only to defray qualified campaign expenses and to defray the cost of soliciting contributions to such account. All disbursements from this account shall be documented in accordance with 11 CFR 9003.5 and shall be reported in accordance with 11 CFR 9006.1.

(3) A candidate may make transfers to this account from his or her legal and accounting compliance fund.

(4) The contributions received under this section shall be subject to the limitations and prohibitions of 11 CFR Parts 110, 114 and 115 and shall be aggregated with all contributions made by the same persons to the candidate's legal and accounting compliance fund under 11 CFR 9003.3(a) for the purposes of such limitations.

(5) Any costs incurred for soliciting contributions to this account shall not be considered expenditures to the extent that the aggregate of such costs does not exceed 20 percent of the expenditure limitation under 11 CFR 9003.2(a)(1). These costs shall, however, be reported as disbursements in accordance with 11 CFR Part 104 and 11 CFR 9006.1. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10% of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices as exempt fundraising costs.

(6) Any costs incurred for legal and accounting services which are provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* shall not count against the candidate's expenditure limitation. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10% of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices. In addition, a candidate may exclude from the expenditure limitation an amount equal to 70% of the costs (other than payroll) associated with computer services.

(i) For purposes of 11 CFR 9003.3(b)(6), overhead costs include, but are not limited to, rent, utilities, office equipment, furniture, supplies and telephone base service charges.

(ii) For purposes of 11 CFR 9003.3(b)(6) costs associated with computer services include but are not limited to, rental and maintenance of computer equipment, data entry services not performed by committee personnel, and related supplies.

(7) If the candidate wishes to claim a larger compliance or fundraising exemption under 11 CFR 9003.3(b) (5) or (6) for payroll and overhead expenditures, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered compliance or fundraising. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance or fundraising and the percentage of time each person spends on such activity.

(8) If the candidate wishes to claim a larger compliance exemption under 11 CFR 9003.3(b)(6) for costs associated with computer services, the candidate shall establish allocation percentages for each computer function that is considered necessary, in whole or in part, to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* The allocation shall be based on a reasonable estimate of the costs associated with each computer function, such as the costs for data entry services

performed by other than committee personnel and processing time. The candidate shall keep detailed records to support such calculations. The records shall indicate which computer functions are considered compliance-related and shall reflect which costs are associated with each computer function.

(c) *Contributions to Defray Qualified Campaign Expenses—Minor and New Party Candidates.* (1) A minor or new party candidate may solicit contributions to defray qualified campaign expenses which exceed the amount received by such candidate from the Fund, subject to the limits of 11 CFR 9003.2(b).

(2) The contributions received under this section shall be subject to the limitations and prohibitions of 11 CFR Parts 110, 114 and 115.

(3) Such contributions may be deposited in a separate account or may be deposited with federal funds received under 11 CFR 9005.2. Disbursements from this account shall be made only for the following purposes:

(i) To defray qualified campaign expenses;

(ii) To make repayments under 11 CFR 9007.2;

(iii) To defray the cost of soliciting contributions to such account;

(iv) To defray the cost of legal and accounting services provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.*

(4) All disbursements from this account shall be documented in accordance with 11 CFR 9003.5 and shall be reported in accordance with 11 CFR Parts 104 and 9006.1.

(5) Any costs incurred for soliciting contributions to this account shall not be considered expenditures to the extent that the aggregate of such costs does not exceed 20 percent of the expenditure limitation under 11 CFR 9003.2(a)(1). These costs shall, however, be reported as disbursements in accordance with 11 CFR Part 104 and 9006.1. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10 percent of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices as exempt fundraising costs.

(6) Any costs incurred for legal and accounting services which are provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* shall not count against the candidate's expenditure limitation. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10 percent of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices. In addition, a candidate may exclude from the expenditure limitation an amount equal to 70 percent of the costs (other than payroll) associated with computer services.

(i) For purposes of 11 CFR 9003.3(c)(6), overhead costs include, but are not limited to, rent, utilities, office equipment, furniture, supplies and telephone base services charges.

(ii) For purposes of 11 CFR 9003.3(c)(6) costs associated with computer services include but are not limited to, rental and maintenance of computer equipment, data entry services not performed by committee personnel, and related supplies.

(7) If the candidate wishes to claim a larger compliance or fundraising exemption under 11 CFR 9003.3(c)(6) for payroll and overhead expenditures, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered compliance or fundraising. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance or fundraising and the percentage of time each person spends on such activity.

(8) If the candidate wishes to claim a larger compliance exemption under 11 CFR 9003.3(c)(6) for costs associated with computer services, the candidate shall establish allocation percentages for each computer function that is considered necessary, in whole or in part, to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* The allocation shall be based on a reasonable estimate of the costs associated with each computer function, such as the costs for data entry services performed by other than committee personnel and processing time. The candidate shall keep detailed records to support such calculations. The records shall indicate which computer functions are considered compliance-related and shall reflect which costs are associated with each computer function.

(9) The candidate shall keep and maintain a separate record of disbursements made to defray exempt legal and accounting costs under 11 CFR 9003.3(c)(6) and (7) and shall report such disbursements in accordance with 11 CFR Part 104 and 11 CFR 9006.1.

§ 9003.4 Expenses incurred prior to the beginning of the expenditure report period or prior to receipt of Federal funds.

(a) *Permissible Expenditures.* (1) A candidate may incur expenditures before the beginning of the expenditure report period, as defined at 11 CFR 9002.12, if such expenditures are for property, services or facilities which are to be used in connection with his or her general election campaign and which are for use during the expenditure report period. Such expenditures will be considered qualified campaign expenses. Examples of such expenditures include but are not limited to: Expenditures for establishing financial accounting systems, expenditures for organizational planning and expenditures for polling.

(2) A candidate may incur qualified campaign expenses prior to receiving payments under 11 CFR Part 9005.

(b) *Sources.* (1) A candidate may obtain a loan which meets the requirements of 11 CFR 100.7(b)(11) for loans in the ordinary course of business to defray permissible expenditures described in 11 CFR 9003.4(a). A candidate receiving payments equal to the expenditure limitation in 11 CFR 110.8 shall make full repayment of principal and interest on such loans from payments received by the candidate under 11 CFR Part 9005 within 15 days of receiving such payments.

(2) A major party candidate may borrow from his or her legal and accounting compliance fund for the purposes of defraying permissible expenditures described in 11 CFR 9003.4(a). All amounts borrowed from the legal and accounting compliance fund must be restored to such fund after the beginning of the expenditure report period either from federal funds received under 11 CFR Part 9005 or private contributions received under 11 CFR 9003.3(b). For candidates receiving federal funds, restoration shall be made within 15 days after receipt of such funds.

(3) A minor or new party candidate may defray such expenditures from contributions received in accordance with 11 CFR 9003.3(c).

(4)(i) A candidate who has received federal funding under 11 CFR Part 9031 *et seq.*, may borrow from his or her primary election campaign an amount not to exceed the residual balance projected to remain in the candidate's primary account(s) on the basis of the formula set forth at 11 CFR 9038.3(c). A major party candidate receiving payments equal to the expenditure limitation shall reimburse amounts borrowed from his or her primary campaign from payments received by the candidate under 11 CFR Part 9005 within 15 days of such receipt.

(ii) A candidate who has not received federal funding during the primary

campaign may borrow at any time from his or her primary account(s) to defray such expenditures, provided that a major party candidate receiving payments equal to the expenditure limitation shall reimburse all amounts borrowed from his or her primary campaign from payments received by the candidate under 11 CFR Part 9005 within 15 days of such receipt.

(5) A candidate may use personal funds in accordance with 11 CFR 9003.2(c), up to his or her $50,000 limit, to defray such expenditures.

(c) *Deposit and Disclosure.* Amounts received or borrowed by a candidate under 11 CFR 9003.4(b) to defray expenditures permitted under 11 CFR 9003.4(a) shall be deposited in a separate account to be used only for such expenditures. All receipts and disbursements from such account shall be reported pursuant to 11 CFR 9006.1(a) and documented in accordance with 11 CFR 9003.5.

§ 9003.5 Documentation of disbursements.

(a) *Burden of Proof.* Each candidate shall have the burden of proving that disbursements made by the candidate or his or her authorized committee(s) or persons authorized to make expenditures on behalf of the candidate or authorized committee(s) are qualified campaign expenses as defined in 11 CFR 9002.11. The candidate and his or her authorized committee(s) shall obtain and furnish to the Commission at its request any evidence regarding qualified campaign expenses made by the candidate, his or her authorized committees and agents or persons authorized to make expenditures on behalf of the candidate or committee(s) as provided in 11 CFR 9003.5(b).

(b) *Documentation Required.* (1) For disbursements in excess of $200 to a payee, the candidate shall present either:

(i) A receipted bill from the payee that states the purpose of the disbursement; or

(ii) If such a receipt is not available, a cancelled check negotiated by the payee, and

(A) One of the following documents generated by the payee: a bill, invoice, or voucher that states the purpose of the disbursement; or

(B) Where the documents specified in 11 CFR 9003.5(b)(1)(ii)(A) are not available, a voucher or contemporaneous memorandum from the candidate or the committee that states the purpose of the disbursement; or

(iii) If neither a receipted bill as specified in 11 CFR 9003.5(b)(1)(i) nor the supporting documentation specified in 11 CFR 9003.5(b)(1)(ii) is available, a cancelled check negotiated by the payee that states the purpose of the disbursement.

(iv) Where the supporting documentation required in 11 CFR 9003.5(b)(1) (i), (ii) or (iii) is not available, the candidate or committee may present a cancelled check and collateral evidence to document the qualified campaign expense. Such collateral evidence may include but is not limited to:

(A) Evidence demonstrating that the expenditure is part of an identifiable program or project which is otherwise sufficiently documented such as a disbursement which is one of a number of documented disbursements relating to a campaign mailing or to the operation of a campaign office;

(B) Evidence that the disbursement is covered by a pre-established written campaign committee policy, such as a per diem policy.

(2) For all other disbursements the candidate shall present:

(i) A record disclosing the full name and mailing address of the payee, the amount, date and purpose of the disbursement, if made from a petty cash fund; or

(iii) A cancelled check negotiated by the payee that states the full name and mailing address of the payee, and the amount, date and purpose of the disbursement.

(3) For purposes of this section:

(i) "Payee" means the person who provides the goods or services to the candidate or committee in return for the disbursement; except that an individual will be considered a payee under this section if he or she receives $500 or less advanced for travel and/or subsistence and if the individual is the recipient of the goods or services purchased.

(ii) "Purpose" means the full name and mailing address of the payee, the date and amount of the disbursement, and a brief description of the goods or services purchased.

(c) *Retention of Records.* The candidate shall retain records with respect to each disbursement and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, and any related materials documenting campaign receipts and disbursements, for a period of three years pursuant to 11 CFR 102.9(c), and shall present these records to the Commission on request.

PART 9004—ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS

Sec.

9004.1 Major parties.
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Authority: 26 U.S.C. 9004, 9009(b).

§ 9004.1 Major parties.

The eligible candidates of each major party in a Presidential election shall be entitled to equal payments under 11 CFR Part 9005 in an amount which, in the aggregate, shall not exceed $20,000,000 as adjusted by the Consumer Price Index in the manner described in 11 CFR 110.9(c).

§ 9004.2 Pre-election payments for minor and new party candidates.

(a) *Candidate of a Minor Party in the Preceding Election.* An eligible candidate of a minor party is entitled to pre-election payments:

(1) If he or she received at least 5% of the total popular vote as the candidate of a minor party in the preceding election whether or not he or she is the same minor party's candidate in this election.

(2) In an amount which is equal, in the aggregate, to a proportionate share of the amount to which major party candidates are entitled under 11 CFR 9004.1. The aggregate amount received by a minor party candidate shall bear the same ratio to the amount received by the major party candidates as the number of popular votes received by the minor party Presidential candidate in the preceding Presidential election bears to the average number of popular votes received by all major party candidates in that election.

(b) *Candidate of a Minor Party in the Current Election.* The eligible candidate of a minor party whose candidate for the office of President in the preceding election received at least 5% but less than 25% of the total popular vote is eligible to receive pre-election payments. The amount which a minor party candidate is entitled to receive under this section shall be computed pursuant to 11 CFR 9004.2(a) based on the number of popular votes received by

the minor party's candidate in the preceding Presidential election; however, the amount to which the minor party candidate is entitled under this section shall be reduced by the amount to which the minor party's Presidential candidate in this election is entitled under 11 CFR 9004.2(a), if any.

(c) *New Party Candidate.* A candidate of a new party who was a candidate for the office of President in at least 10 States in the preceding election may be eligible to receive pre-election payments if he or she received at least 5% but less than 25% of the total popular vote in the preceding election. The amount which a new party candidate is entitled to receive under this section shall be computed pursuant to 11 CFR 9004.2(a) based on the number of popular votes received by the new party candidate in the preceding election. If a new party candidate is entitled to payments under this section, the amount of the entitlement shall be reduced by the amount to which the candidate is entitled under 11 CFR 9004.2(a), if any.

§ 9004.3 Post-election payments.

(a) *Minor and New Party Candidates.* Eligible candidates of a minor party or of a new party who, as candidates, receive 5 percent or more of the total number of popular votes cast for the office of President in the election shall be entitled to payments under 11 CFR Part 9005 equal, in the aggregate, to a proportionate share of the amount allowed for major party candidates under 11 CFR 9004.1. The amount to which a minor or new party candidate is entitled shall bear the same ratio to the amount received by the major party candidates as the number of popular votes received by the minor or new party candidate in the Presidential election bears to the average number of popular votes received by the major party candidates for President in that election.

(b) *Amount of Entitlement.* The aggregate payments to which an eligible candidate shall be entitled shall not exceed an amount equal to the lower of:

(1) The amount of qualified campaign expenses incurred by such eligible candidate and his or her authorized committee(s), reduced by the amount of contributions which are received to defray qualified campaign expenses by such eligible candidate and such committee(s); or

(2) The aggregate payments to which the eligible candidates of a major party are entitled under 11 CFR 9004.1, reduced by the amount of contributions received by such eligible candidates and their authorized committees to defray qualified campaign expenses in the case of a deficiency in the Fund.

(c) *Amount of Entitlement Limited By Pre-Election Payment.* If an eligible candidate is entitled to payment under 11 CFR 9004.2, the amount allowable to that candidate under this section shall also be limited to the amount, if any, by which the entitlement under 11 CFR 9004.3(a) exceeds the amount of the entitlement under 11 CFR 9004.2.

§ 9004.4 Use of payments.

(a) *Qualified Campaign Expenses.* An eligible candidate shall use payments received under 11 CFR Part 9005 only for the following purposes:

(1) A candidate may use such payments to defray qualified campaign expenses;

(2) A candidate may use such payments to repay loans that meet the requirements of 11 CFR 100.7(a)(1) or 100.7(b)(11) or to otherwise restore funds (other than contributions received pursuant to 11 CFR 9003.3(b) and expended to defray qualified campaign expenses) used to defray qualified campaign expenses;

(3) A candidate may use such payments to restore funds expended in accordance with 11 CFR 9003.4 for qualified campaign expenses incurred by the candidate prior to the beginning of the expenditure report period.

(4) *Winding down costs.* The following costs shall be considered qualified campaign expenses:

(i) Costs associated with the termination of that candidate's general election campaign such as complying with the post-election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries and office supplies; or

(ii) Costs incurred by the candidate prior to the end of the expenditure report period, for which written arrangement or commitment was made on or before the close of the expenditure report period.

(b) *Non-qualified campaign expenses.*—(1) *General.* The following are examples of disbursements that are not qualified campaign expenses.

(2) *Excessive Expenditures.* An expenditure which is in excess of any of the limitations under 11 CFR 9003.2 shall not be considered a qualified campaign expense.

(3) *Expenditures Incurred After the Close of the Expenditure Report Period.* Any expenditures incurred after the close of the expenditure report period, as defined in 11 CFR 9002.12, are not qualified campaign expenses except to the extent permitted under 11 CFR 9004.4(a)(4).

(4) *Civil or Criminal Penalties.* Civil or criminal penalties paid pursuant to the Federal Election Campaign Act are not qualified campaign expenses and cannot be defrayed from payments received under 11 CFR Part 9005. Any amounts received or expended to pay such penalties shall not be considered contributions or expenditures but all amounts so received shall be subject to the prohibitions of the Act. Amounts received and expended under this section shall be reported in accordance with 11 CFR Part 104.

(5) *Solicitation Expenses.* Any expenses incurred by a major party candidate to solicit contributions to a legal and accounting compliance fund established pursuant to 11 CFR 9003.3(a) are not qualified campaign expenses and cannot be defrayed from payments received under 11 CFR Part 9005.

§ 9004.5 Investment of public funds.

Investment of public funds or any other use of public funds to generate income is permissible, provided that an amount equal to all net income derived from such investments, less Federal, State and local taxes paid on such income, shall be repaid to the Secretary. Any net loss resulting from the investment of public funds will be considered a non-qualified campaign expense and an amount equal to the amount of such net loss shall be repaid to the United States Treasury as provided under 11 CFR 9007.2(b)(2)(i).

§ 9004.6 Reimbursements for transportation and services made available to media personnel.

(a) If an authorized committee incurs expenditures for transportation, ground services and facilities (including air travel, ground transportation, housing, meals, telephone service, typewriters) made available to media personnel, such expenditures will be considered qualified campaign expenses subject to the overall expenditure limitation of 11 CFR 9003.2(a)(1) and (b)(1).

(b) If reimbursement for such expenditures is received by a committee, the amount of such reimbursement for each individual shall not exceed either: the individual's pro rata share of the actual cost of the transportation and services made available; or a reasonable estimate of the individual's pro rata share of the actual cost of the transportation and services made available. An individual's pro rata share shall be calculated by dividing the total number of individuals to whom such transportation and

services are made available into the total cost of the transportation and services. The total amount of reimbursements received from an individual under this section shall not exceed the actual pro rata cost of the transportation and services made available to that person by more than 10%. Reimbursements received in compliance with the requirements of this section may be deducted from the amount of expenditures that are subject to the overall expenditure limitation of 11 CFR 9003.2(a)(1) and (b)(1), except to the extent that such reimbursements exceed the amount actually paid by the committee for the services provided.

(c) The total amount paid by an authorized committee for the cost of transportation or for ground services and facilities shall be reported as an expenditure in accordance with 11 CFR 104.3(b)(2)(i). Any reimbursement received by such committee for transportation or ground services and facilities shall be reported in accordance with 11 CFR 104.3(a)(3)(ix).

§ 9004.7 Allocation of travel expenditures.

(a) Notwithstanding the provisions of 11 CFR Part 106, expenditures for travel relating to a Presidential or Vice Presidential candidate's campaign by any individual, including a candidate, shall, pursuant to the provisions of 11 CFR 9004.7(b), be qualified campaign expenses and be reported by the candidate's authorized committee(s) as expenditures.

(b)(1) For a trip which is entirely campaign-related, the total cost of the trip shall be a qualified campaign expense and a reportable expenditure.

(2) For a trip which includes campaign-related and non-campaign related stops, that portion of the cost of the trip allocable to campaign activity shall be a qualified campaign expense and a reportable expenditure. Such portion shall be determined by calculating what the trip would have cost from the point of origin of the trip to the first campaign-related stop and from the stop through each subsequent campaign-related stop to the point of origin. If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related.

(3) For each trip, an itinerary shall be prepared and such itinerary shall be made available for Commission inspection.

(4) For trips by government conveyance or by charter, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign-related, shall be made available for Commission inspection.

(5) If any individual, including a candidate, uses government conveyance or accommodations paid for by a government entity for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to:

(i) The first class commercial air fare plus the cost of other services; in the case of travel to a city served by a regularly scheduled commercial service; or

(ii) The commercial charter rate plus the cost of other services, in the case of travel to a city not served by a regularly scheduled commercial service.

(6) Travel expenses of a candidate's spouse and family when accompanying the candidate on campaign-related travel may be treated as qualified campaign expenses and reportable expenditures. If the spouse or family members conduct campaign-related activities, their travel expenses shall be qualified campaign expenses and reportable expenditures.

(7) If any individual, including a candidate, incurs expenses for campaign-related travel, other than by use of government conveyance or accommodations, an amount equal to that portion of the actual cost of the conveyance or accommodations which is allocable to all passengers, including the candidate, travelling for campaign purposes shall be a qualified campaign expense and shall be reported by the committee as an expenditure.

(i) If the trip is by charter, the actual cost for each passenger shall be determined by dividing the total operating cost for the charter by the total number of passengers transported. The amount which is a qualified campaign expense and a reportable expenditure shall be calculated in accordance with the formula set forth at 11 CFR 9004.7(b)(2) on the basis of the actual cost per passenger multiplied by the number of passengers travelling for campaign purposes.

(ii) If the trip is by non-charter commercial transportation, the actual cost shall be calculated in accordance with the formula set forth at 11 CFR 9004.7(b)(2) on the basis of the commercial fare. Such actual cost shall be a qualified campaign expense and a reportable expenditure.

§ 9004.8 Withdrawal by candidate.

(a) Any individual who is not actively conducting campaigns in more than one State for the office of President or Vice President shall cease to be a candidate under 11 CFR 900.2.

(b) An individual who ceases to be a candidate under this section shall:

(1) No longer be eligible to receive any payments under 11 CFR 9005.2 except to defray qualified campaign expenses as provided in 11 CFR 9004.4.

(2) Submit a statement, within 30 calendar days after he or she ceases to be a candidate, setting forth the information required under 11 CFR 9004.9(c).

§ 9004.9 Net outstanding qualified campaign expenses.

(a) *Candidates Receiving Post-Election Funding.* A candidate who is eligible to receive post-election payments under 11 CFR 9004.3 shall file, no later than 20 calendar days after the date of the election, a preliminary statement of that candidate's net outstanding qualified campaign expenses. The preliminary statement shall be signed by the treasurer of the candidate's principal campaign committee. The candidate's net outstanding qualified campaign expenses under this section equal the difference between 11 CFR 9004.9 (a)(1) and (2).

(1) The total of:

(i) All outstanding obligations for qualified campaign expenses as of the date of the election; plus

(ii) An estimate of the amount of qualified campaign expenses that will be incurred by the end of the expenditure report period; plus

(iii) An estimate of necessary winding down costs as defined under 11 CFR 9004.4(a)(4); less

(2) The total of:

(i) Cash and hand as of the close of business on the day of the election (including all contributions dated on or before that date);

(ii) The fair market value of capital assets and other assets on hand; and

(iii) Amounts owed to the campaign in the form of credits, refunds of deposits, returns, receivables, or rebates of qualified campaign expenses; or a commercially reasonable amount based on the collectibility of those credits, returns, receivables or rebates.

(b) *All Candidates.* Each candidate, except for individuals who have withdrawn pursuant to 11 CFR 9004.8, shall submit a statement of net outstanding qualified campaign expenses no later than 30 calendar days after the end of the expenditure report period. This statement shall be signed by the treasurer of the candidate's principal campaign committee. The statement shall contain the information required by 11 CFR 9004.9(a) (1) and (2), except that the amount of outstanding

obligations under 11 CFR 9004.9(a)(1)(i) and the amount of cash on hand, assets and receivables under 11 CFR 9004.9(a)(2) shall be complete as of the last day of the expenditure report period.

(c) *Candidates Who Withdraw.* An individual who ceases to be a candidate pursuant to 11 CFR 9004.8 shall file a statement of net outstanding qualified campaign expenses no later than 30 calendar days after he or she ceases to be a candidate. This statement shall be signed by the treasurer of the candidate's principal campaign committee. The statement shall contain the information required under 11 CFR 9004.9(a) (1) and (2), except that the amount of outstanding obligations under 11 CFR 9004.9(a)(1)(i) and the amount of cash on hand, assets and receivables under 11 CFR 9004.9(a)(2) shall be complete as of the day on which the individual ceased to be a candidate.

(d)(1) *Capital Assets.* For purposes of this section, the term "capital assets" means any property used in the operation of the campaign whose value exceeds $500 on the last day of the expenditure report period or the day on which the individual ceases to be a candidate, whichever is earlier. Property that must be valued as capital assets under this section includes, but is not limited to, office equipment, furniture, vehicles and fixtures acquired for use in the operation of the candidate's campaign, but does not include property defined as "other assets" under 11 CFR 9004.9(d)(2). The value of a capital asset shall be the fair market value on the last day of the expenditure report period or the day on which the individual ceases to be a candidate whichever is earlier, unless the item is acquired after these dates, in which case the item will be valued on the date it is acquired.

(2) *Other Assets.* The term "other assets" means any property acquired by the campaign for use in raising funds or as collateral for campaign loans. "Other assets" must be included on the candidate's statement of net outstanding qualified campaign expenses if the aggregate value of such assets exceeds $5000. The value of "other assets" shall be determined by the fair market value of each item on the last day of the expenditure report period or the day on which the individual ceased to be a candidate, whichever is earlier, unless the item is acquired after these dates, in which case the item shall be valued on the date it is acquired.

(e) *Review of Candidate Statement.*—(1) *General.* The Commission will review the statement filed by each candidate under this section. The Commission may request further information with respect to statements filed pursuant to 11 CFR 9004.9(b) during the audit of that candidate's authorized committee(s) under 11 CFR Part 9007.

(2) *Candidate Eligible for Post-Election Funding.* (i) If, in reviewing the preliminary statement of a candidate eligible to receive post-election funding, the Commission receives information indicating that substantial assets of that candidate's authorized committee(s) have been undervalued or not included in the statement or that the amount of outstanding qualified campaign expenses have been otherwise overstated in relation to campaign assets, the Commission may decide to temporarily postpone its certification of funds to that candidate pending a final determination of whether the candidate is entitled to all or a portion of the funds for which he or she is eligible based on the percentage of votes the candidate received in the general election.

(ii) *Initial Determination.* In making a determination under 11 CFR 9004.9(e)(2)(i), the Commission will notify the candidate within 10 business days after its receipt of the statement of its initial determination that the candidate is not entitled to receive the full amount for which the candidate may be eligible. The notice will give the legal and factual reasons for the initial determination and advise the candidate of the evidence on which the Commission's initial determination is based. The candidate will be given the opportunity to revise the statement or to submit, within 10 business days, written legal or factual materials to demonstrate that the candidate has net outstanding qualified campaign expenses that entitle the candidate to post-election funds. Such materials may be submitted by counsel if the candidate so desires.

(iii) *Final Determination.* The Commission will consider any written legal or factual materials submitted by the candidate before making its final determination. A final determination that the candidate is entitled to receive only only a portion or no post-election funding will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the legal and factual reasons underlying the Commission's determination and will summarize the rusults of any investigation on which the determination is based.

(iv) If the candidate demonstrates that the amount of outstanding qualified campaign expenses still exceeds campaign assets, the Commission will certify the payment of post-election funds to which the candidate is entitled.

§ 9004.10 Sale of assets acquired for fundraising purposes.

(a) *General.* A minor or new party candidate may sell assets donated to the campaign or otherwise acquired for fundraising purposes subject to the limitations and prohibitions of 11 CFR 9003.2, Title 2, United States Code, and 11 CFR Parts 110 and 114. This section will only apply to major party candidates to the extent that they sell assets acquired either for fundraising purposes in connection with his or her legal and accounting compliance fund or when it is necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b).

(b) *Sale After End of Expenditure Report Period.* A minor or new party candidate, or a major party candidate in the event of a deficiency in the payments received from the Fund due to the application of 11 CFR 9005.2(b), whose outstanding debts exceed the cash on hand after the end of the expenditure report period as determined under 11 CFR 9002.12, may dispose of assets acquired for fundraising purposes in a sale to a wholesaler or other intermediary who will in turn sell such assets to the public provided that the sale to the wholesaler or intermediary is an arms-length transaction. Sales made under this subsection will not be subject to the limitations and prohibitions of Title 2, United States Code and 11 CFR Parts 110 and 114.

PART 9005—CERTIFICATION BY COMMISSION

Sec.

9005.1 Certification of payments for candidates.
9005.2 Payments to eligible candidates from the fund.

Authority: 26 U.S.C. 9005, 9009(b).

9005.1 Certification of payments for candidates.

(a) *Certification of Payments for Major Party Candidates.* Not later than 10 days after the Commission determines that the Presidential and Vice Presidential candidates of a major party have met all applicable conditions for eligibility to receive payments under 11 CFR 9003.1 and 9003.2, the Commission shall certify to the Secretary that payment in full of the amounts to which such candidates are entitled under 11 CFR Part 9004 should be made pursuant to 11 CFR 9005.2.

(b) *Certification of Pre-election Payments for Minor and New Party Candidates.* (1) Not later 10 days after a minor or new party candidate has met all applicable conditions for eligibility to

receive payments under 11 CFR 9003.1, 9003.2 and 9004.2, the Commission will make an initial determination of the amount, if any, to which the candidate is entitled. The Commission will base its determination on the percentage of votes received in the official vote count certified in each State. In notifying the candidate, the Commission will give the legal and factual reasons for its determination and advise the candidate of the evidence on which the determination is based.

(2) The candidate may submit, within 15 days after the Commission's initial determination, written legal or factual materials to demonstrate that a redetermination is appropriate. Such materials may be submitted by counsel if the candidate so desires.

(3) The Commission will consider any written legal or factual materials timely submitted by the candidate in making its final determination. A final determination of certification by the Commission will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation on which the determination is based.

(c) *Certification of Minor and New Party Candidates for Post-election Payments.* (1) Not later than 30 days after the general election, the Commission will determine whether a minor or new party candidate is eligible for post-election payments.

(2) The Commission's determination of eligibility will be based on the following factors:

(i) The candidate has received at least 5% or more of the total popular vote based on unofficial vote results in each State;

(ii) The candidate has filed a preliminary statement of his or her net outstanding qualified campaign expenses pursuant to 11 CFR 9004.9(a); and

(iii) The candidate has met all applicable conditions for eligibility under 11 CFR 9003.1 and 9003.2.

(3) The Commission will notify the candidate of its initial determination of the amount, if any, to which the candidate is entitled, give the legal and factual reasons for its determination and advise the candidate of the evidence on which the determination is based. The Commission will also notify the candidate that it will deduct a percentage of the amount to which the candidate is entitled based on the unofficial vote results when the Commission certifies an amount for payment to the Secretary. This deduction will be based on the average percentage differential between the unofficial and official vote results for all candidates who received public funds in the preceding Presidential general election.

(4) The candidate may submit within 15 days after the Commission's initial determination written legal or factual materials to demonstrate that a redetermination is appropriate. Such materials may be submitted by counsel if the candidate so desires.

(5) The Commission will consider any written legal or factual materials timely submitted by the candidate in making its final determination. A final determination of certification by the Commission will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation on which the determination is based.

(d) All certifications made by the Commission pursuant to this section shall be final and conclusive, except to the extent that they are subject to examination and audit by the Commission under 11 CFR Part 9007 and judicial review under 26 U.S.C. 9011.

§ 9005.2 Payments to eligible candidates from the fund.

(a) Upon a receipt of a certification from the Commission under 11 CFR 9005.1 for payment to the eligible Presidential and Vice Presidential candidates of a political party, the Secretary shall pay to such candidates out of the Fund the amount certified by the Commission. Amounts paid to a candidate shall be under the control of that candidate.

(b)(1) If at the time of a certification from the Commission under 11 CFR 9005.1, the Secretary determines that the monies in the Fund are not, or may not be, sufficient to satisfy the full entitlements of the eligible candidates of all political parties, he or she shall withhold an amount which is determined to be necessary to assure that the eligible candidates of each political party will receive their pro rata share.

(2) Amounts withheld under 11 CFR 9005.2(b) (1) shall be paid when the Secretary detemines that there are sufficient monies in the Fund to pay such amounts, or pro rata portions thereof, to all eligible candidates from whom amounts have been withheld.

(c) Payments received from the Fund by a major party candidate shall be deposited in a separate account maintained by his or her authorized committee, unless there is a deficiency in the Fund as provided under 11 CFR 9005.2(b)(1). In the case of a deficiency, the candidate may establish a separate account for payments from the Fund or may deposit such payments with contributions received pursuant to 11 CFR 9003.3(b). The account(s) shall be maintained at a State bank, federally chartered depository institution or other depository institution, the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(d) No funds other than the payments received from the Treasury, reimbursements, or income generated through use of public funds in accordance with 11 CFR 9004.5, shall be deposited in the account described in 11 CFR 9005.2(c). "Reimbursements" shall include, but are not limted to, refunds of deposits, vendor refunds, reimbursements for travel expenses under 11 CFR 9004.6 and 9004.7 and reimbursements for legal and accounting costs under 11 CFR 9003.3(a) (2) (ii) (B.

PART 9006—REPORTS AND RECORDKEEPING

Sec.
9006.1 Separate reports.
9006.2 Filing dates.

Authority: 26 U.S.C. 9006, 9009.

§ 9006.1 Separate reports.

(a) The authorized committee(s) of a candidate shall report all expenditures to further the candidate's general election campaign in reports separate from reports of any other expenditures made by such committee(s) with respect to other elections. Such reports shall be filed pursuant to the requirements of 11 CFR Part 104.

(b) The authorized committee(s) of a candidate shall file separate reports as follows:

(1) One report shall be filed which lists all receipts and disbursements of:

(i) Contributions and loans received by a major party candidate pursuant to 11 CFR Part 9003 to make up deficiencies in Fund payments due to the application of 11 CFR Part 9005;

(ii) Contributions and loans received pursuant to 11 CFR 9003.2(b)(2) by a minor, or new party for use in the general election;

(iii) Receipts for expenses incurred before the beginning of the expenditure report period pursuant to 11 CFR 9003.4;

(iv) Personal funds expended in accordance with 11 CFR 9003.2(c); and

(v) Payments received from the Fund.

(2) A second report shall be filed which lists all receipts of and

disbursements from contributions received for the candidate's legal and accounting compliance fund in accordance with 11 CFR 9003.3(a).

§ 9006.2 Filing dates.

The reports required to be filed under 11 CFR 9006.1 shall be filed during an election year on a monthly or quarterly basis as prescribed at 11 CFR 104.5(b)(1). During a non-election year, the candidate's principal campaign committee may elect to file reports either on a monthly or quarterly basis in accordance with 11 CFR 104.5(b)(2).

PART 9007—EXAMINATION AND AUDITS; PAYMENTS

Sec.
9007.1 Audits.
9007.2 Repayments.
9007.3 Extensions of time.
9007.4 Additional audits.

Authority: 26 U.S.C. 9007, 9009(b).

§ 9007.1 Audits.

(a) *General.* (1) After each Presidential election, the Commission will conduct a thorough examination and audit of the receipts, disbursements, debts and obligations of each candidate, his or her authorized committee(s), and agents of such candidates or committees. Such examination and audit will include, but will not be limited to, expenditures pursuant to 11 CFR 9003.4 prior to the beginning of the expenditure report period, contributions to and expenditures made from the legal and accounting compliance fund established under 11 CFR 9003.3(a), contributions received to supplement any payments received from the Fund, and qualified campaign expenses.

(2) In addition, the Commission may conduct other examinations and audits from time to time as it deems necessary to carry out the provisions of this subchapter.

(3) Information obtained pursuant to any audit and examination conducted under 11 CFR 9007.1(a) (1) and (2) may be used by the Commission as the basis, or partial basis, for its repayment determinations under 11 CFR 9007.2.

(b) *Conduct of Fieldwork.* (1) The Commission will give the candidate's authorized committee at least two weeks' notice of the Commission's intention to commence fieldwork on the audit and examination. The fieldwork will be conducted at a site provided by the committee.

(i) *Office Space and Records.* On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee(s) shall provide Commission staff with office space and committee records in accordance with the candidate and committee agreement under 11 CFR 9003.1(b)(6).

(ii) *Availability of Committee Personnel.* On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee(s) shall have committee personnel present at the site of the fieldwork. Such personnel shall be familiar with the committee's records and operation and shall be available to Commission staff to answer questions and to aid in locating records.

(iii) *Failure to Provide Staff, Records or Office Space.* If the candidate or his or her authorized committee(s) fail to provide adequate office space, personnel or committee records, the Commission may seek judicial intervention under 2 U.S.C. 437d or 26 U.S.C. 9010(c) to enforce the candidate and committee agreement made under 11 CFR 9003.1(b). Before seeking judicial intervention, the Commission will notify the candidate of his or her failure to comply with the agreement and will recommend corrective action to bring the candidate into compliance. Upon receipt of the Commission's notification, the candidate will have ten (10) calendar days in which to take the corrective action indicated or to otherwise demonstrate to the Commission in writing that he or she is complying with the candidate and committee agreements.

(iv) If, in the course of the audit process, a dispute arises over the documentation sought or other requirements of the candidate agreement, the candidate may seek review by the Commission of the issues raised. To seek review, the candidate shall submit a written statement within 10 days after the disputed Commission staff request is made, describing the dispute and indicating the candidate's proposed alternative(s).

(2) Fieldwork will include the following steps designed to keep the candidate and committee informed as to the progress of the audit and to expedite the process:

(i) *Entrance Conference.* At the outset of the fieldwork, Commission staff will hold an entrance conference, at which the candidate's representatives will be advised of the purposse of the audit and the general procedures to be followed. Future requirements of the candidate and his or her authorized committee, such as possible repayments to the United States Treasury, will also be discussed. Committee representatives shall provide information and records necessary to conduct the audit, and Commission staff will be available to answer committee questions.

(ii) *Review of Records.* During the fieldwork, Commission staff will review committee records and may conduct interviews of committee personnel. Commission staff will be available to explain aspects of the audit and examination as it progresses. Additional meetings between Commission staff and committee personnel may be held from time to time during the fieldwork to discuss possible audit findings and to resolve issues arising during the course of the audit.

(iii) *Exit Conference.* At the conclusion of the fieldwork, Commission staff will hold an exit conference to discuss with committee representatives the staff's preliminary findings and recommendations which the Commission staff anticipates that it may present to the Commission for approval. Commission staff will advise committee representatives at this conference of the projected timetable regarding the issuance of an audit report, the committee's opportunity to respond thereto, and the Commission's initial and final repayment determinations under 11 CFR 9007.2.

(3) Commission staff may conduct additional fieldwork after the completion of the fieldwork conducted pursuant to 11 CFR 9007.1(b) (1) and (2). Factors that may necessitate such follow-up fieldwork include, but are not limited to, the following:

(i) Commmittee response to audit findings;

(ii) Financial activity of the commmittee subsequent to the fieldwork conducted pursuant to 11 CFR 9007.1(b)(1);

(iii) Committee responses to Commission repayment determinations made under 11 CFR 9007.2.

(4) The Commission will notify the candidate and his or her authorized committee if follow-up fieldwork is necessary. The provisions of 11 CFR 9007.1(b) (1) and (2) will apply to any additional fieldwork conducted.

(c) *Preparation of Interim Audit Report.* (1) After the completion of the fieldwork conducted pursuant to 11 CFR 9007.1(b)(1), the Commission will issue an interim audit report to the candidate and his or her authorized committee. The interim audit report may contain Commission findings and recommendations regarding one or more of the following areas:

(i) An evaluation of procedures and systems employed by the candidate and committee to comply with applicable provisions of the Federal Election Campaign Act, Presidential Election Campaign Fund Act and Commission regulations;

(ii) Accuracy of statements and reports filed with the Commission by the candidate and committee;

(iii) Compliance of the candidate and committee with applicable statutory and regulatory provisions in those instances where the Commission has not instituted any enforcement action on the matter(s) under the provisions of 2 U.S.C. 437g and 11 CFR Part 111; and

(iv) Preliminary calculations regarding future repayments to the United States Treasury.

2. The candidate and his or her authorized committee will have an opportunity to submit in writing within 30 calendar days of receipt of the interim report, legal and factual materials disputing or commenting on the contents of the interim report. Such materials may be submitted by counsel if the candidate so desires.

(3) The Commission will consider any written legal and factual materials submitted by the candidate or his or her authorized committee in accordance with 11 CFR 9007.1(c)(2) before approving and issuing an audit report to be released to the public. The contents of the publicly-released audit report may differ from that of the interim report since the Commission will consider timely submissions of legal and factual materials by the candidate or committee in response to the interim report.

(d) *Preparation of Publicly-Released Audit Report.* An audit report prepared subsequent to an interim report will be publicly released pursuant to 11 CFR 9007.1(e). This report will contain Commission findings and recommendations addressed in the interim audit report but may contain adjustments based on the candidate's response to the interim report. In addition, this report will contain an initial repayment determination made by the Commission pursuant to 11 CFR 9007.2(c)(1) in lieu of the preliminary calculations set forth in the interim report.

(e) *Public Release of Audit Report.* (1) After the candidate and committee have had an opportunity to respond to a written interim report of the Commission, the Commission will make public the audit report prepared subsequent to the interim report, as provided in 11 CFR 9007.1(d).

(2) If the Commission determines, on the basis of information obtained under the audit and examination process, that certain matters warrant enforcement under 2 U.S.C. 437g and 11 CFR Part 111, those matters will not be contained in the publicly-released report. In such cases, the audit report will indicate that certain other matters have been referred to the Commission's Office of General Counsel.

(3) The Commission will provide the candidate and committee copies of the audit report 24 hours prior to releasing the report to the public.

(4) Addenda to the audit report may be issued from time to time as circumstances warrant and as additional information becomes available. Such addenda may be based in part on follow-up fieldwork conducted under 11 CFR 9007.1(b)(3) and will be placed on the public record.

§ 9007.2 Repayments.

(a) *General.* (1) A candidate who has received payments from the Fund under 11 CFR Part 9005 shall pay the United States Treasury any amounts which the Commission determines to be repayable under this section. In making repayment determinations under this section, the Commission may utilize information obtained from audits and examinations conducted pursuant to 11 CFR 9007.1 or otherwise obtained by the Commission in carrying out its responsibilities under this subchapter.

(2) The Commission will notify the candidate of any repayment determinations made under this section as soon as possible, but not later than 3 years after the close of the expenditure report period.

(3) Once the candidate receives notice of the Commission's final repayment determination under this section, the candidate should give preference to the repayment over all other outstanding obligations of his or her committee, except for any federal taxes owed by the committee.

(b) *Bases for Repayment.* The Commission may determine that an eligible candidate of a political party who has received payments from the Fund must repay the United States Treasury under any of the circumstances described below.

(1) *Payments in Excess of Candidate's Entitlement.* If the Commission determines that any portion of the payments made to the candidate was in excess of the aggregate payments to which such candidate shall pay to the United States Treasury an amount equal to such portion.

(2) *Use of Funds for Non-qualified Campaign Expenses.*

(i) If the Commission determines that any amount of any payment to an eligible candidate from the Fund or any contributions received by a candidate under 11 CFR 9003.3(b) were used for purposes other than those described in paragraphs (6) (A) through (C) of this section, it will notify the candidate of the amount so used, and such candidate shall pay to the United States Treasury an amount equal to such amount.

(A) To defray qualified campaign expenses;

(B) To repay loans, the proceeds of which were used to defray qualified campaign expenses; and

(C) To restore funds (other than contributions which were received and expended by minor or new party candidates to defray qualified campaign expenses) which were used to defray qualified campaign expenses.

(ii) Examples of Commission repayment determinations under 11 CFR 9007.2(b)(2) include, but are not limited to the following:

(A) Determinations that a candidate, a candidate's authorized committee(s) or agent(s) have incurred expenses in excess of the aggregate payments to which an eligible major party candidate is entitled;

(B) Determinations that amounts spent by a candidate, a candidate's authorized committee(s) or agent(s) from the Fund, or from any contributions received by a candidate under 11 CFR 9003.3 (b) or (c), were not documented in accordance with 11 CFR 9003.5;

(C) Determinations that any portion of the payments made to a candidate from the Fund or any contributions received by a candidate under 11 CFR 9003.3 (b) or (c) were expended in violation of State or Federal law; and

(D) Determinations that any portion of the payments made to a candidate from the Fund, or any contributions received by a candidate under 11 CFR 9003.3 (b) or (c) were used to defray expenses resultng from a violation of State or Federal law, such as the payment of fines or penalties.

(3) *Surplus.* If the Commission determines that a portion of payments from the Fund remains unspent after all qualified campaign expenses have been paid, it shall so notify the candidate, and such candidate shall pay the United States Treasury that portion of surplus funds.

(4) *Income on Investment of Payments from the Fund.* If the Commission determines that a candidate received any income as a result of investment or other use of payments from the Fund pursuant to 11 CFR 9004.5, it shall so notify the candidate and such candidate shall pay to the United States Treasury an amount equal to the amount determined to be income, less any Federal, State or local taxes on such income.

(5) *Unlawful Acceptance of Contributions by an Eligible Candidate of a Major Party.* If the Commission determines that an eligible candidate of

a major party, the candidate's authorized committee(s) or agent(s) accepted contributions to defray qualified campaign expenses (other than contributions to make up deficiencies in payments from the Fund, or to defray expenses incurred for legal and accounting services in accordance with 11 CFR 9003.3(a)), it shall notify the candidate of the amount of contributions so accepted, and the candidate shall pay to the United States Treasury an amount equal to such amount.

(c) *Repayment Determination Procedures.* The Commission repayment determination will be made in accordance with the procedures set forth at 11 CFR 9007.2 (c)(1) through (c)(4).

(1) *Initial Determination.* The Commission will provide the candidate with a written notice of its initial repayment determination(s). This notice will be included in the Commission's publicly-released audit report pursuant to 11 CFR 9007.1(d) and will set forth the legal and factual reasons for such determination(s). Such notice will also advise the candidate of the evidence upon which any such determination is based. If the candidate does not dispute an initial repayment determination of the Commission within 30 calendar days of the candidate's receipt of the notice, such initial determination will be considered a final determination of the Commission.

(2) *Submission of Written Materials.* If the candidate disputes the Commission's initial repayment determination(s), he or she shall have an opportunity to submit in writing, within 30 calendar days of receipt of the Commission's notice, legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. The Commission will consider any written legal and factual materials submitted by the candidate within this 30 day period in making its final repayment determination(s). Such materials may be submitted by counsel if the candidate so desires.

(3) *Oral Presentation.* A candidate who has submitted written materials under 11 CFR 9007.2(c)(2) may request that the Commission provide such candidate with an opportunity to address the Commission in open session. If the Commission decides by an affirmative vote of four (4) of its members to grant the candidate's request, it will inform the candidate of the date and time set for the oral presentation. At the date and time set by the Commission, the candidate or candidate's designated representative will be allotted an amount of time in which to make an oral presentation to the Commission based upon the legal and factual materials submitted under 11 CFR 9007.2(c)(2). The candidate or representative will also have the opportunity to answer any questions from individual members of the Commission.

(4) *Final Determination.* In making its final repayment determination(s), the Commission will consider any submission made under 11 CFR 9007.2(c)(2) and any oral presentation made under 11 CFR 9007.2(c)(3). A final determination that a candidate must repay a certain amount will be accompanied by a written statement of reasons for the Commission's actions. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation upon which the determination is based.

(d) *Repayment Period.* (1) Within 90 calendar days of the candidate's receipt of the notice of the Commission's initial repayment determination(s) the candidate shall repay to the United States Treasury amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(2) If the candidate submits written materials under 11 CFR 9007.2(c)(2) disputing the Commission's initial repayment determination(s), the time for repayment will be suspended until the Commission makes its final repayment determination(s). Within 20 calendar days of the candidate's receipt of the notice of the Commission's final repayment determination(s), the candidate shall repay to the United States Treasury amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(e) *Computation of Time.* The time periods established by this section shall be computed in accordance with 11 CFR 111.2.

(f) *Additional Repayments.* Nothing in this section will prevent the Commission from making additional repayment determinations on one or more of the bases set forth at 11 CFR 9007.2(b) after it has made a final determination on any such basis. The Commission may make additional repayment determinations where there exist facts not used as the basis for a previous final determination. Any such additional repayment determination will be made in accordance with the provisions of this section.

(g) *Newly-Discovered Assets.* If, after any initial or final repayment determination made under this section, a candidate or his or her authorized committee(s) receives or becomes aware of assets not previously included in any statement of net outstanding qualified campaign expenses submitted pursuant to 11 CFR 9004.9, the candidate or his or her authorized committee(s) shall promptly notify the Commission of such newly-discovered assets. Newly-discovered assets may include refunds, rebates, late-arriving receivables, and actual receipts for capital assets in excess of the value specified in any previously-submitted statement of net outstanding qualified campaign expenses. Newly-discovered assets may serve as a basis for additional repayment determinations under 11 CFR 9007.2(f).

(h) *Limit on Repayment.* No repayment shall be required from the eligible candidates of a political party under 11 CFR 9007.2 to the extent that such repayment, when added to other repayments required from such candidates under 11 CFR 9007.2, exceeds the amount of payments received by such candidates under 11 CFR 9005.3.

§ 9007.3 Extensions of time.

(a) It is the policy of the Commission that extensions of time under 11 CFR Part 9007 will not be routinely granted.

(b) Whenever a candidate has a right or is required to take action within a period of time prescribed by 11 CFR Part 9007 or by notice given thereunder, the candidate may apply in writing to the Commission for an extension of time in which to exercise such right or take such action. The candidate shall demonstrate in the application for extension that good cause exists for his or her request.

(c) An application for extension of time shall be made at least 7 calendar days prior to the expiration of the time period for which the extension is sought. The Commission may, upon a showing of good cause, grant an extension of time to a candidate who has applied for such extension in a timely manner. The length of time of any extension granted hereunder shall be decided by the Commission and may be less than the amount of time sought by the candidate in his or her application.

(d) If a candidate fails to seek an extension of time, exercise a right or take a required action prior to the expiration of a time period prescribed by 11 CFR Part 9007, the Commission may, on the candidate's showing of excusable neglect:

(1) Permit such candidate to exercise his or her right(s), or take such required action(s) after the expiration of the prescribed time period; and

(2) Take into consideration any information obtained in connection with the exercise of any such right or taking of any such action before making decisions or determinations under 11 CFR part 9007.

§ 9007.4 Additional audits.

In accordance with 11 CFR 104.16(c), the Commission pursuant to 11 CFR 111.10, may upon affirmative vote of four members conduct an audit and field investigation of any committee in any case in which the Commission finds reason to believe that a violation of a statute or regulation over which the Commission has jurisdiction has occurred or is about to occur.

2. By Transferring Part 9008 to Subchapter E, removing the heading for Subchapter F, and redesignating Subchapter G (consisting of Parts 9031 through 9039) as Subchapter F.

3. By adding and reserving Parts 9009 through 9011 as follows:

PARTS 9009—9011 [Reserved]

4. By adding new Part 9012 as follows:

PART 9012—UNAUTHORIZED EXPENDITURES AND CONTRIBUTIONS

Sec.

9012.1 Excessive expenses.
9012.2 Unauthorized acceptance of contributions.
9012.3 Unlawful use of payments received from the fund.
9012.4 Unlawful misrepresentations and falsification of statements, records or other evidence to the Commission; refusal to furnish books and records.
9012.5 Kickbacks and illegal payments.
9012.6 Unauthorized expenditures and contributions by political committees.

Authority: 26 U.S.C. 9012.

§ 9012.1 Excessive expenses.

(a) It shall be unlawful for an eligible candidate of a political party for President and Vice President in a Presidential election or the candidate's authorized committee(s) knowingly and willfully to incur qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party are entitled under 11 CFR Part 9004 with respect to such election.

(b) It shall be unlawful for the national committee of a major or minor party knowingly and willfully to incur expenses with respect to a Presidential nominating convention in excess of the expenditure limitation applicable with respect to such committee under 11 CFR Part 9008, unless the incurring of such expenses is authorized by the Commission under 11 CFR 9008.7(a)(3).

§ 9012.2 Unauthorized acceptance of contributions.

(a) It shall be unlawful for an eligible candidate of a major party in a Presidential election or any of his or her authorized committees knowingly and willfully to accept any contribution to defray qualified campaign expenses, except to the extent necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b), or to defray expenses which would be qualified campaign expenses but for 11 CFR 9002.11(a)(3).

(b) It shall be unlawful for an eligible candidate of a political party (other than a major party) in a Presidential election or any of his or her authorized committees knowingly and willfully to accept and expend or retain contributions to defray qualified campaign expenses in an amount which exceeds the qualified campaign expenses incurred in that election by that eligible candidate or his or her authorized committee(s).

§ 9012.3 Unlawful use of payments received from the fund.

(a) It shall be unlawful for any person who receives any payment under 11 CFR Part 9005, or to whom any portion of any payment so received is transferred, knowingly and willfully to use, or authorize the use of, such payment or any portion thereof for any purpose other than—

(1) To defray the qualified campaign expenses with respect to which such payment was made; or

(2) To repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray such qualified campaign expenses.

(b) It shall be unlawful for the national committee of a major or minor party which receives any payment under 11 CFR Part 9008 to use, or authorize the use of, such payment for any purpose other than a purpose, authorized by 11 CFR 9008.6

§ 9012.4 Unlawful misrepresentations and falsification of statements, records or other evidence to the Commission; refusal to furnish books and records.

It shall be unlawful for any person knowingly and willfully—

(a) To furnish any false, fictitious, or fraudulent evidence, books or information to the Commission under 11 CFR Parts 9001–9008, or to include in any evidence, books or information so furnished any misrepresentation of a material fact, or to falsify or conceal any evidence, books or information relevant to a certification by the Commission or any examination and audit by the Commission under 11 CFR Parts 9001 *et seq.*; or

(b) To fail to furnish to the Commission any records, books or information requested by the Commission for purposes of 11 CFR Parts 9001 *et seq.*

§ 9012.5 Kickbacks and illegal payments.

(a) It shall be unlawful for any person knowingly and willfully to give or accept any kickback or any illegal payment in connection with any qualified campaign expenses of any eligible candidate or his or her authorized committee(s).

(b) It shall be unlawful for the national committee of a major or minor party knowingly and willfully to give or accept any kickback or any illegal payment in connection with any expense incurred by such committee with respect to a Presidential nominating convention.

§ 9012.6 Unauthorized expenditures and contributions by political committees.

(a) It is unlawful for any political committee which is not an authorized committee of any eligible candidate of a political party for the Office of President or Vice President, knowingly and willfully to incur expenditures to further the election of such candidates which aggregate in excess of $1,000 and which would constitute qualified campaign expenditures if incurred by the candidate's authorized committee.

(b) The unauthorized expenditures and contributions referred to in 11 CFR 9012.6(a) do not include:

(1) Expenditures by a broadcaster regulated by the Federal Communications Commission, or by a periodical publication, in reporting the news or taking editorial positions; or

(2) Expenditures by any organization described in 26 U.S.C. 501(c) which is exempt from tax under 26 U.S.C. 501(a) in communicating to its members the views of that organization.

Dated: July 1, 1983.

Danny L. McDonald,

Chairman, Federal Election Commission.

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Monday
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Part VII

Department of Transportation

Federal Aviation Administration

Flight After Structural Failure

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 2390; Notice No. 83-8]

Flight After Structural Failure

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: This notice: (1) Announces the FAA's intent to amend the airworthiness standards for transport category airplanes by including a requirement that an airplane be capable of continued safe flight and landing after failure of any single, principle structural element and/or obvious partial failure of a large external skin; and (2) invites interested persons to submit specific comments, suggestions, and recommendations to assist the FAA in determining the future course of action regarding this early rulemaking activity. The objective of this rulemaking activity is to develop an airworthiness standard for designing transport category airplanes not only for the secondary effects of single element failures but also to provide adequate residual strength for otherwise noncatastrophic, complete failures of primary structure.

DATES: Comments must be received on or before September 12, 1983.

ADDRESSES: Comments on this notice may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 23690, 800 Independence Avenue SW., Washington, D.C. 20591; or delivered in duplicate to: Room 916, 800 Independence Avenue SW., Washington, D.C. 20591. Comments delivered must be maked Docket No. 23690. Comments may be inspected in Room 916 weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Office of the Regional Counsel (ANM-7), Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Comments in the information docket may be inspected in the Office of the Regional Counsel weekdays, except Federal holidays, between 7:30 a.m. 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Iven Connally, Regulations and Policy Office (ANM-110), Aircraft Certification Division, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C68966, Seattle, Washington, 98168; telephone (206) 431-2120.

SUPPLEMENTARY INFORMATION:

Comments Invited

This ANPRM is being issued under the FAA's policy for early public participation in rulemaking proceedings. An ANPRM is issued when it is found that reasonable outside inquiry is needed to identify and select a tentative or alternative course of action, or where it would be helpful to invite public participation in identifying and selecting a course of action.

Interested persons are invited to participate in these preliminary rulemaking procedures by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 23690." The postcard will be date/time stamped and returned to the commenter. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket, both before and after the closing date for comments, for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. If it is determined to be in the public interest to proceed with further rulemaking after considering the available data and comments received in response to this notice, a Notice of Proposed Rulemaking will be issued.

Availability of ANPRM

Any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center (APA-430), 800 Independence Avenue SW., Washington, D.C. 20591; or by calling (202) 426-8058. Communications must identify the notice number of this ANPRM. Persons interested in being placed on the mailing list for future ANPRMs and NPRMs should also request a copy of Advisory Circular No. 11-2, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

In December 1979, following the DC-10 engine pylon failure in Chicago, the National Research Council of the National Academy of Sciences was requested by the Secretary of Transportation to form a committee to assess certain procedures and practices used by the FAA to assure the airworthiness of commerical passenger aircraft. The Committee, which became known as the Low Committee, included distinguished members of the aviation community with special knowledge of aircraft design and FAA certification procedures. During the Committee's subsequent investigation, attention was focused on airplane airworthiness with emphasis on FAA approval of the design, fabrication, and production of large passenger aircraft and the maintenance and continuing airworthiness of such aircraft after being placed in commerical service.

The results of the Committee's investigation were published in June 1980 in a report entitled, "Improving Aircraft Safety." One of the recommendations contained in the report is that the FAA develop a rule requiring assurance that an aircraft is designed to continue to fly after structural failure, unless that failure itself prevents the aircraft from flying.

In making this recommendation, the Committee perceived a shortcoming in the current regulations and how they are applied. The report stated that in the design of an aircraft a manufacturer is currently permitted to demonstrate that certain failures simply cannot occur and that, once demonstrated, the consequences to other structure and systems of such an "impossible" failure need not be taken into account.

The Committee observed that this practice fails to take into account an important consideration: structures designed not to fail when subjected to conditions *within* the design environment sometimes do fail, usually as a result of hazardous conditions *outside* the design environment. The Committee cited examples of such hazardous conditions including maintenance-induced damage, hard impact by ground servicing equipment, cargo-induced damage, or perhaps even faulty quality control during manufacturing. The Committee concluded that during the long life of many fleets or aircraft, with millions of operations, one cannot guarantee that such damage will not occur.

In the Committee's judgment, aircraft design principles should take into account the potential of structural damage caused by conditions outside the design environment, and should seek to prevent catastrophic effects resulting from such damage. Of course, this theory cannot apply to the consequences of the kind of damage that by itself prevents the airplane from continuing to fly, such as a wing torn off in a mid-air collision.

The FAA generally concurs in the Committee's assessment. Service experience indicates that major damage, including complete failure (or separation) of primary structure, has occurred and was not catastrophic because of adequate residual strength capability. Either a failing load did not occur in the short exposure time, the failed item was not essential to flight (e.g., secondary structure, slats, flaps, etc.), or redundant capability was provided. Consequently, design for the secondary effects of failure or damage shown to be likely by service experience has merit. Protection of vital systems for these incidents is already required under existing rules.

Accordingly, the FAA has determined there is merit in considering the Committee's recommendation for a rule change which would highlight the single failure concept requiring airplanes to be designed not only for the secondary effects of single element failures, but also to provide adequate residual strength.

Economic Impact and Regulatory Evaluation

This ANPRM solicits public comments relating to the proposed rule, including comments of an economic nature. Design concepts appear possible that would not have severe economic impact. It is premature at this time, however, to accurately evaluate the costs and benefits of such a proposed rule. This ANPRM will aid in deciding whether to go forward with a rule. Questions relating to economic matters are included for comment. If it is determined that further rulemaking is appropriate, an NPRM and full regulatory evaluation will be issued containing an economic evaluation relating to its costs and benefits.

Request for Information

Persons responding to this notice are invited to specifically address the following questions and supply any other information they consider pertinent to the FAA's decision on further rulemaking on this subject. Additionally, comments should address the proposed amendment.

1. Is there justification for requiring that an airplane be capable of continued safe flight after failure of any single, principal structural element?

2. What safety benefits would be derived from the proposed rule?

3. What are the expected life cycle costs because of the proposed rule?

4. What would the environmental impact be?

5. How would the rule impact energy resources?

6. What alternative solutions would be equally effective?

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety.

The Proposed Amendment

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANE

Accordingly, the FAA proposes to amend Part 25 of the Federal Aviation Regulations (FAR), 14 CFR Part 25, as follows:

1. By revising § 25.571, paragraph (b), to read as follows:

§ 25.571 Damage-tolerance and fatigue evaluation of structure.

* * * * *

(b) *Damage-tolerance (fail-safe) evaluation.* The evaluation must include a determination of the probable locations and modes of damage due to fatigue, corrosion, or accidental damage. The determination must be by analysis supported by test evidence and (if available) service experience. Damage at multiple sites due to prior fatigue exposure must be included where the design is such that this type of damage can be expected to occur. The evaluation must incorporate repeated load and static analyses supported by test evidence. The extent of damage for residual strength evaluation at any time within the operational life must be consistent with the initial detectability and subsequent growth under repeated loads. Except when shown to be impracticable, the extent of damage for residual strength evaluation must include, as a minimum, the failure of any single, principal structural element (or, for a large exterior skin with effective crackstoppers, an obvious partial failure) regardless of the improbability of occurrence. The residual strength evaluation must show that the remaining structure is able to withstand loads (considered as static ultimate loads) corresponding to the following conditions:

* * * * *

2. By adding a new § 25.573 as follows:

§ 25.573 Flight after structural failure.

The aircraft must be designed to successfully complete a flight after failure of any single, principal structural element (or immediately obvious partial failure of large exterior skins), regardless of the improbability of the failure's occurrence, taking into account probable secondary damage to other structures, equipment, systems, and installations.

(Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.45)

Note.—This ANPRM seeks information from interested persons, including manufacturers and users of transport category airplanes and their components, the general public, both foreign and domestic, and foreign airworthiness authorities in developing a proposed new airworthiness standard. Preliminary evaluation indicates that this document is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) since information is being requested, and no economic or regulatory impact is imposed on any person by this action. A full regulatory evaluation will be prepared if further rulemaking is warranted based on the comments received as a result of this notice.

Issued in Seattle, Washington, on June 22, 1983.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 83-18631 Filed 7-8-83; 8:45 am]

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federal register

Monday
July 11, 1983

Part VIII

Department of the Interior

National Park Service

General Regulations for Areas Administered by the National Park Service; Correction

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 2

General Regulations for Areas Administered by the National Park Service

Correction

In FR Doc. 83-17468, beginning on page 30252, in the issue of Thursday, June 30, 1983, on page 30288, in the second column, in § 2.50(a), after "There" in the fifth line and before paragraph (1) insert the following material:

is a meaningful association between the park area and the events, and the observance contributions to visitor understanding of the significance of the park area, and a permit therefor has been issued by the superintendent. A permit shall be denied if such activities would:

(1) Cause injury or damage to park resources; or

(2) Be contrary to the purposes for which the natural, historic, development and special use zones were established; or unreasonably impair the atmosphere of peace and tranquility maintained in wilderness, natural, historic, or commemorative zones.

(3) Unreasonably interfere with interpretive, visitor service, or other program activities, or with the administrative activities of the National Park Service; or

(4) Substantially impair the operation of public use facilities or services of National Park Service concessioners or contractors; or

(5) Present a clear and present danger to the public health and safety; or

(6) Result in significant conflict with other existing uses.

(b) An application for such a permit shall set forth the name of the applicant, the date, time, duration, nature and place of the proposed event, an estimate of the number of persons expected to attend, a statement of equipment and facilities to be used, and any other information required by the superintendent. The application shall be submitted so as to reach the superintendent at least 72 hours in advance of the proposed event.

(c) As a condition of permit issuance, the superintendent may require:

BILLING CODE 1505-01-M

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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.

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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 30, 1983



Now Available 1980-1981 Microfilm Editions of the Federal Register

The microfilm editions of the **Federal Register** for 1980 and 1981 (volumes 45 and 46) are now available at a cost of $735. These volumes cover 150,566 pages, the annual indexes, and the quarterly indexes of the List of CFR Sections Affected. Volume 45, the 1980 edition, is available on 26 rolls of microfilm at a cost of $390. Volume 46, the 1981 edition, is on 23 rolls and costs $345. The entire microfilm publication (M190), now comprising 410 rolls and spanning the years 1936–1981, is for sale at $6,150. Further information concerning the 1980–81 volumes or any other volumes may be obtained from the Publications Sales Branch (NEPS), National Archives and Records Service, Washington, D.C. 20408.

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