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Thursday
April 12, 1984

Selected Subjects

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 275

[Amdt. No. 260]

Food Stamp Program, Quality Control Reviews

Correction

In FR Doc. 84–4532, beginning on page 6292 in the issue of Friday, February 17, 1984, make the following corrections:

§ 275.11 [Corrected]

1. On page 6305, second column, § 275.11(b)(1)(iv), seventh line, "n" should read "N".

2. On the same page, second column, § 275.11(b)(2)(ii), first line, "n" should read "N".

§ 275.12 [Corrected]

3. On page 6308, third column, § 275.12(g)(1)(i), second line from the bottom, "courses" should read "sources".

BILLING CODE 1505-01-M

Animal and Plant Health Inspection Service

9 CFR Part 166

[Docket No. 83-115]

Swine Health Protection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the "Swine Health Protection Provisions" regulations to allow garbage consisting of bakery waste, candy waste, eggs, domestic dairy products (including milk), or certain fish to be fed to swine without prior treatment. This document also exempts from the licensing requirements any person operating or desiring to operate a facility to treat garbage to be fed to swine who would otherwise be required to obtain a license to treat garbage only because it contains any of the items specified above. This action is warranted in order to delete unnecessary restrictions.

EFFECTIVE DATE: May 14, 1984.

FOR FURTHER INFORMATION CONTACT: Dr. L. W. Schnurrenberger, Chief Staff Veterinarian, Swine Diseases, Special Diseases Staff, VS, APHIS, USDA, Room 822, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8438.

SUPPLEMENTARY INFORMATION:

Background

This document amends the "Swine Health Protection Provisions" regulations (set forth in 9 CFR Part 166 and referred to below as the regulations) by allowing certain garbage to be fed to swine without prior treatment and by exempting persons operating or desiring to operate certain facilities from licensing requirements. The regulations were established pursuant to the Swine Health Protection Act (set forth in 7 U.S.C. 3901 *et seq.* and referred to below as the Act), which contains provisions designed to regulate certain activities relating to the feeding of garbage to swine.

Section 4 of the Act (7 U.S.C. 3803) provides that:

> (a) No person shall feed or permit the feeding of garbage to swine except in accordance with subsection (b) of this section.
>
> (b) Garbage may be fed to swine only if treated to kill disease organisms, in accordance with regulations issued by the Secretary, at a facility holding a valid permit issued by the Secretary, [the regulations use the term "license" in lieu of the term "permit"] or the chief agricultural or animal health official of the State where located if such State has entered into an agreement with the Secretary pursuant to section 9 or has primary enforcement responsibility pursuant to section 10 of this Act. No person shall operate a facility for the treatment of garbage knowing it is to be fed to swine unless such person holds a valid permit issued pursuant to this Act. The Secretary may exempt any facility or premises from the requirements of this section whenever the Secretary determines that there would not be a risk to the swine industry in the United States.

Section 3 of the Act (7 U.S.C. 3802) provides, among other things, that:

> The term garbage means all waste material derived in whole or in part from the meat of any animal (including fish and poultry) or other animal material, and other refuse of any character whatsoever that has been associated with any such material, resulting from the handling, preparation, cooking, or consumption of food, except that such term shall not include waste from ordinary household operations which is fed directly to swine on the same premises where such household is located * * *.

On September 16, 1983, the Department published a document in the **Federal Register** (48 FR 41596–41598) proposing to amend the regulations to allow garbage consisting of one or more of the following to be fed to swine without treatment: (1) Bakery waste; (2) candy waste; (3) poultry fed to swine at the same location where the poultry has been raised if the poultry has been raised in confinement so as to prevent scavenging and not fed garbage other than that allowed to be fed to swine under the regulations; (4) eggs; (5) domestic dairy products (including milk); (6) fish from the Atlantic Ocean within 200 miles of the Continental United States or Canada; and (7) fish from inland waters of the United States or Canada which do not flow into the Pacific Ocean. The document of September 16, 1983, also proposed to exempt from the license requirements any persons operating or desiring to operate a facility which treats garbage to be fed to swine who would otherwise be required to obtain a license to treat garbage only because it contains any of the items listed above.

The document of September 16, 1983, invited the submission of written comments on or before October 17, 1983. Twenty comments were received. These comments were from State Departments of Agriculture, individuals, and representatives of the swine industry. All of these comments have been carefully considered. Sixteen of the comments expressed approval of the proposal. The other comments are discussed below. Also, based on the rationale set forth in the proposal and this document, the provisions of the proposal have been adopted in the final rule as proposed except for certain provisions concerning poultry.

Poultry

It was proposed to amend the regulations to allow, among other things,

garbage consisting of poultry to be fed to swine without treatment if fed to swine at the same location where the poultry had been raised, and if the poultry had been raised in confinement so as to prevent scavenging and had not been fed garbage other than that allowed to be fed to swine under the regulations.

Two commenters objected to the proposed exclusion of such poultry from the treatment provisions. One commenter also asserted that there appears to be a significant correlation between the exposure of swine to poultry and the incidence of avian mycobacteriosis in swine. This commenter also objected to the exclusion of poultry from the treatment provisions by asserting that avian mycobacteriosis is a dangerous disease transmissible to humans. Another commenter asserted that avian mycobacteriosis can be a major problem in swine herds and lead to condemnations when the carcasses are found to be infected and have mycobacterial lesions at slaughter.

The proposal to exempt poultry from the treatment provisions was based on the conclusion that uncooked poultry fed to swine under the conditions referred to above would not be a risk to the swine industry. In this connection the proposal at 48 FR 41597 stated that:

> Poultry meeting all of the conditions referred to above could still cause diseases, but these diseases would not be a risk to the swine industry. For example, the poultry could transmit both *salmonella* and *Mycobacteria* to swine. If introduced in sufficient quantities into a susceptible herd, *Salmonella* may cause Salmonellosis, and *Mycobacteria* may cause Mycobacteriosis (avian tuberculosis). However, such occurrences are exceptional and when they do occur they are normally confined to that particular herd and do not affect the industry as a whole. Certainly an epidemic or industry-wide outbreak of Salmonellosis or Mycobacteriosis could not occur.

The comments received concerning poultry have caused the Department to reevaluate the whole issue concerning whether such poultry should be exempted from the treatment provisions. The Department is not aware of any evidence to establish that humans can get mycobacteriosis from eating pork. Further, it appears that the information in the proposal concerning outbreaks of salmonellosis and mycobacteriosis is correct. However, based on further discussions within the Department, it appears that there is a legitimate concern that organisms found in poultry could change and become pathogenic organisms in swine, and cause outbreaks of contagious diseases that could become a risk to the swine industry. Continued exposure of swine of organisms found in poultry would increase the likelihood that this would occur. Under these circumstances, the proposed provisions to exclude such poultry from the treatment provisions are not adopted.

Fish

It was further proposed to amend the regulations to allow fish from the Atlantic Ocean within 200 miles of the continental United States or Canada and fish from inland waters of the United States or Canada which do not flow into the Pacific Ocean to be fed to swine without treatment.

One commenter opposed feeding untreated fish to swine based on the assertion that the pork carcasses might be rendered inedible because of an off-flavor characteristic of fish. No changes are made based on this comment. Considerations concerning flavor are not relevant under the provisions of the Swine Health Protection Act to a determination as to whether such fish should be allowed to be fed to swine without treatment.

Miscellaneous

Several commenters appeared to object to the concept of having exemptions under section 4 of the Act to allow untreated garbage to be fed to swine (see section 4 of the Act quoted above). In this connection, it was asserted that (1) it would be simpler for enforcement purposes if products were not exempted from treatment provisions under the Act, and (2) products should not be exempted from the treatment provisions because otherwise consumers would conclude that swine for slaughter had been fed an unwholesome diet that could affect the quality and wholesomeness of meat and meat food products from the swine. No changes are made based on these comments. As noted above, the Act specifically provides that exemptions may be established under specified criteria, and to refuse to consider exemptions for the reasons asserted by the comments would effectively eliminate the exemption provisions under section 4 of the Act contrary to the statutory intent.

One commenter asserted that premises or facilities conducting operations exempted from treatment provisions should be required to be registered with the United States Department of Agriculture as a condition of conducting such operations. It was asserted that such a registration system would help identify premises and facilities conducting operations exempted from treatment provisions so that the exempted premises and facilities could be subject to surveillance. No changes are made based on this comment. The Federal Government or States that have primary responsibility for enforcement of the Act have authority, among other things, to require access at exempted premises or facilities where garbage is fed to swine for the purpose of examining the premises or facility, its garbage, and books and records. Further, enforcement personnel in the field are generally aware of premises and facilities conducting operations subject to the Act, and it does not appear that such a registration system is necessary to identify premises or facilities in order to conduct necessary surveillance activities.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in conformance with Executive Order 12291 and Secretary's Memorandum, 1512–1 and has been determined to be not a "major rule." The Department has determined that this action will not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Swine producers who feed garbage to swine will be affected by this regulation. However, only approximately 1.4 percent of the United States swine population is fed garbage, and only a portion of that garbage consists of the items affected by this document. This section will also impact those persons who will be exempted from obtaining licenses to treat garbage to be fed to swine. These persons will not be required to obtain licenses under the regulations.

Under the circumstances explained above, Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

Alternatives

Alternatives were considered concerning this rule. The alternatives considered were:

1. To allow the specified garbage to be fed to swine without prior treatment and to exempt persons operating or desiring to operate specified facilities from the licensing requirements, or

2. Not to make such exemptions.

Alternative 1 is adopted since it appears that this will relieve restrictions without causing a risk to the swine industry in the United States.

List of Subjects in 9 CFR Part 166

Animal diseases, Hogs, African swine fever, Foot-and-mouth disease, Garbage, Hog cholera, Swine vesicular disease, Vesicular exanthema of swine.

PART 166—SWINE HEALTH PROTECTION PROVISIONS

Accordingly, 9 CFR Part 166 is amended as follows:

1. Paragraph (a) of § 166.2 is revised to read:

§ 166.2 General restrictions.

(a) No person shall feed or permit the feeding of garbage to swine unless the garbage is treated to kill disease organisms, pursuant to this Part, at a facility operated by a person holding a valid license for the treatment of garbage; except that the treatment and license requirements shall not apply to the feeding or the permitting of the feeding to swine of garbage only because the garbage consists of any of the following: rendered products; bakery waste; candy waste; eggs; domestic dairy products (including milk); fish from the Atlantic Ocean within 200 miles of the continental United States or Canada; or fish from inland waters of the United States or Canada which do not flow into the Pacific Ocean.

* * * * *

2. The last sentence of paragraph (a) of § 166.10 is revised to read:

§ 166.10 Licensing.

(a) * * * Any person operating or desiring to operate a facility to treat garbage to be fed to swine who would otherwise be required under this part to obtain a license to treat garbage only because it contains one or more of the items allowed to be fed to swine under § 166.2(a) is exempted from the requirements of this paragraph.

* * *

Authority: Sec. 511, Pub. L. 96-592, 94 Stat. 3451 (7 U.S.C. 3802); secs. 4, 5, 9, 10, 12, Pub. L. 96-468, 94 Stat. 2230, 2232, 2233 (7 U.S.C. 3803, 3804, 3808, 3809, 3811), 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 9th day of April, 1984.

K. R. Hook,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 84-9870 Filed 4-11-84; 8:45 am]

BILLING CODE 3410-34-M

Food Safety and Inspection Service

9 CFR Part 327

[Docket No. 83-042AI]

Imported Product; Amendment To Withdrawal of Certain Countries From the List of Those Eligible for Importation of Meat Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Amendment to interim rules.

SUMMARY: On February 15, 1984, the Food Safety and Inspection Service (FSIS) published an interim rule with request for comments. The interim rule withdrew Dominican Republic, El Salvador, Haiti, Mexico, Nicaragua, and Panama from the list of countries eligible for importation of products of cattle, sheep, swine, goats, and equines into the United States under the Federal Meat Inspection Act (FMIA). This action was necessary because of the failure of those countries to implement satisfactory residue testing and/or species verification programs resulting in their no longer meeting the provisions of the FMIA. The country of Panama has now corrected the deficiencies in its inspection system and, therefore, is being relisted as eligible for importing cattle, sheep, swine, and goats into the United States. All other aspects of the February 15, 1984, interim rule remain in effect.

DATES: Amendment to interim rule effective April 12, 1984; comments on the interim rule must be received on or before April 16, 1984.

ADDRESS: Written comments to: Regulations Office, Attn: Annie Johnson, FSIS Hearing Clerk, Room 2637, South Agriculture Building, Good Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Dr. Grace Clark, Director, Foreign Programs Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-7610.

SUPPLEMENTARY INFORMATION:

Background

On February 15, 1984, FSIS published in the Federal Register an interim rule with request for comments (49 FR 5727). The interim rule withdrew the countries of Dominican Republic, El Salvador, Haiti, Mexico, Nicaragua, and Panama from the list countries eligible for importation of products of cattle, sheep, swine, goats, and equines into the United States under the Federal Meat Inspection Act (FMIA). The FMIA requires that in order for a country to be eligible to export meat products to the United States, the meat inspection system of the country must assure compliance with requirements that are "at least equal to" the requirements of the FMIA and regulations as applied to official establishments in the United States.

In order for a country's inspection system to be considered "at least equal to" that of the United States, the country must provide for testing of fat, kidney, muscle and/or liver tissues for chlorinated hydrocarbons, organophosphates, trace metals, antibiotics, and hormones, if applicable, using a method approved by the Secretary. In addition, the country must conduct an approved species verification program. Failure of Dominican Republic, El Salvador, Haiti, Mexico, Nicaragua, and Panama to implement satisfactory residue testing and/or species verification programs resulted in their being withdrawn from the list of countries eligible to export meat products to the United States.

In the February 15, 1984, interim rule withdrawing these countries, FSIS stated that once these countries correct the deficiencies in their residue testing and/or species verification programs and the Administrator is satisfied that their systems meet all of the provisions of the FMIA, such countries may again be added to the list of countries eligible to export to the United States.

The country of Panama has provided the Administrator with evidence showing that its system is now "at least equal to" that of the United States. Accordingly, this amendment to the February 15 interim rule makes the country of Panama again eligible for importation of cattle, sheep, swine, and goats into the United States.

All other aspects of the February 15 interim rule remain in effect.

List of Subjects in 9 CFR Part 327

Imported products, Meat inspection.

PART 327—[AMENDED]

1. The authority citation for Part 327 is as follows:

Authority: 34 stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254(b).

§ 327.2 [Amended]

2. Section 327.2(b) of the Federal meat inspection regulations (9 CFR 327.2(b)) is amended by adding "Panama" to the list of countries eligible for importation of products of cattle, sheep, swine, and goats into the United States.

Done at Washington, DC, on March 29, 1984.

L. L. Gast,

Acting Administrator, Food Safety and Inspection Service.

[FR Doc. 84-9490 Filed 4-11-84; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-CE-6-AD; Amdt. 39-4844]

Airworthiness Directives; DeHavilland Models DHC-2 MK. I (L-20A, YL-20, U-6 and U-6A), MK. II, and MK. III Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthness Directive (AD), applicable to DeHavilland Models DHC-2 MK. I (L-20A, YL-20, U-6 and U-6A), MK. II, and MK. III airplanes which requires initial and repetitive inspections for cracks in both aileron center hinge/balance arm brackets until DeHavilland Modification No. 2/1536, is incorporated. Service history has revealed cracking and failures in these brackets due to stress corrosion. If the bracket fails, control surface flutter could develop resulting in the possible loss of control of the airplane. The required inspections will detect the cracks prior to failure.

EFFECTIVE DATE: April 18, 1984.

Compliance: As prescribed in the body of the AD.

ADDRESSES: DeHavilland Service Bulletin (SB) No. 2/37 Revision A, dated December 9, 1983, applicable to this AD, may be obtained from DeHavilland Aircraft of Canada, Limited, Downsview, Ontario, Canada M3K 1Y5. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Lester Lipsius, New York Aircraft Certification Office, ANE-172, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; Telephone No. (516) 791-6220.

SUPPLEMENTARY INFORMATION: Cracking, attributed to stress corrosion, has been found in the cast aluminum aileron center hinge/balance arm bracket of two Canadian DeHavilland DHC-2 MK. I airplanes. In another instance on a U.S. registered airplane the Right Hand (RH) center hinge mass balance casting had failed and the Left Hand (LH) casting was found cracked. Control surface flutter could develop due to such failures resulting in the possible loss of the airplane. However, no such occurrence has been experienced to date. As a result, DeHavilland has issued Service Bulletin SB No. 2/37 Revision A, which requires repetitive visual inspections at intervals not to exceed 500 hours time-in-service or twelve months, whichever occurs first, until Modification No. 2/1536 is incorporated. Incorporation of this modification removes the requirement of inspection compliance in the proposed AD.

Transport Canada, who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Canada, has reviewed and approves this Service Bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. The FAA relies upon Transport Canada, combined with FAA review of pertinent documentation, in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements, and the airworthiness and conformity of products of this design certificated for operation in the United States.

Based on the foregoing, the FAA has determined that the condition addressed by DeHavilland Service Bulletin No. 2/37 Revision A, is an unsafe condition that may exist on other products of this type design certificated for operation in the United States.

Therefore, an AD is being issued requiring inspections of both aileron center hinge/balance arm brackets on DeHavilland Models DHC-2 MK. I (L-20A, YL-20, U-6 and U-6A), MK. II, and MK. III airplanes until DeHavilland modification No. 2/1536 is incorporated.

Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD.

DeHavilland: Applies to all Models DHC-2 MK. I (including L-20A, YL-20, U-6 and U-6A), MK. II, and MK. III airplanes certificated in any category.

Compliance: Required as indicated, unless already accomplished. To prevent failure of center hinge/balance arm brackets, (aluminum castings) P/N C2-WA-126A (RH) and P/N C2-WA-125A (LH), accomplish the following:

(a) Within the next 100 hours time-in-service or two months, whichever occurs first, after the effective date of this AD, unless already accomplished within the last 400 hours time-in-service, or ten months, and at each 500 hours time-in-service or twelve months thereafter, whichever occurs first, accomplish the following:

(1) Visually inspect the left and right aileron center hinge/balance arm brackets as described in "Accomplishment Instructions" in DeHavilland Service Bulletin (SB) No. 2/37 Revision A, dated December 9, 1983.

(2) If a center hinge bracket is found with six attachment rivet holes in the spigot, replace the balance arm assembly and the center hinge bracket within 500 hours time-in-service or twelve months, whichever occurs first after the inspection, with a new balance arm assembly in a 2-rivet attachment configuration with either a new cast bracket, P/N C2-WA-125A(LH) or P/N C2-WA-126A(RH), or a new machined bracket, P/N C2-WA-161(LH) or P/N C2-WA-162(RH).

(b) If cracks are found, replace the part before further flight with a new part of the same part number, or with new machined brackets, P/N C2-WA-161(LH) or P/N C2-WA-162(RH), in accordance with the procedure described in "Replacement" in DeHavilland SB No. 2/37.

(c) Cast parts installed as replacements must be reinspected with the procedure in paragraph (a).

(d) The repetitive inspections of paragraph (a) of this AD are no longer required when DeHavilland Modification Kit No. 2/1536 is installed.

(e) The airplane may be flown in accordance with FAR 21.197 to a location where the requirements of this AD may be accomplished.

(f) An equivalent method of compliance with this AD may be used if approved by the Manager, New York Aircraft Certification Office, ANE-170, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

This amendment becomes effective on April 18, 1984.

(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);

Sec. 11.89 of the Federal Aviation Regulations (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 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 Rules Docket under the caption "ADDRESSES" at the location identified.

Issued in Kansas City, Missouri, on April 3, 1984.

Murray E. Smith,

Director, Central Region.

[FR Doc. 84-9761 Filed 4-11-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-CE-7-AD; Amdt. 39-4841]

Airworthiness Directives; DeHavilland DHC-6 Models 1, 100, 200 and 300 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to DeHavilland DHC-6 Models 1, 100, 200 and 300 airplanes. It requires initial and repetitive inspections or modifications to ensure security of the seat to the rail. Reports and inspection findings indicate that the seat legs may be dislodged from the mounting rails during normal usage. The inspections and modifications will eliminate hazards to seat occupants resulting from a loss or inadequately restrained seat during a crash.

EFFECTIVE DATE: April 13, 1984.

Compliance: As prescribed in the body of the AD.

ADDRESSES: DeHavilland Service Bulletin S/B No. 6/447 dated October 14, 1983, approved by Department of Transport (DOT) Canada, Ltd., Downsview, Ontario, Canada MY3 1YK. A copy of this information is also contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Vahan Barsamian, FAA, New York Aircraft Certification Office, ANE-172, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; Telephone (516) 791-6220.

SUPPLEMENTARY INFORMATION: The British CAA reported an occurrence in a DeHavilland DHC-6 Model airplane where the utility seat front leg was not engaged in the seat rail, presenting a hazard to the seat occupants in the event of a crash. As a result, DeHavilland has issued Service Bulletin No. 6/447, which provides for inspection and installation of a positive locking mechanism (Modification No. 6/1828) to prevent disengagement of the seat forward leg from the seat rail. The Department of Transport, who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Canada has issued Airworthiness Directive No. CF-83-25 dated September 19, 1983. This AD provides for repetitive inspections, however, it does not reference Service Bulletin No. 6/447, since the effective date of the AD precedes that of the Service Bulletin. The FAA relies upon the certification of Department of Transport combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Transport Canada AD No. CF-83-25. Based on the foregoing, the FAA has determined that the condition addressed by Service Bulletin No. 6/447 is an unsafe condition that may exist on other products of the same type design certificated for operation in the United States.

Therefore, an AD is being issued requiring inspection and incorporation of Modification No. 6/1828 on DeHavilland DHC-6 Models 1, 100, 200 and 300 airplanes fitted with side folding cabin utility seats. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD:

DeHavilland: Applies to DHC-6 Models 1, 100, 200 and 300 airplanes certificated in any category when fitted with side folding cabin utility seats.

Compliance: Required as indicated, unless already accomplished.

To prevent disengagement of the utility seat forward legs, accomplish the following:

(a) Within 50 hours time-in-service from the effective date of this AD, unless already accomplished within the last 25 hours time-in-service, and at subsequent intervals of 50 hours time-in-service, attempt to move the lower end of each front leg sideways into the open part of the keyhole slot using as much force as can be exerted by hand. If the leg can be removed from the keyhole slot, remove the seat from service until Modification No. 6/1828 is incorporated.

(b) If Modification No. 6/1828 is installed, subsequent inspections required by this AD are no longer required.

(c) An equivalent means of compliance may be used when approved by the Manager, New York Aircraft Certification Office, Federal Aviation Administration, ANE-170, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

DeHavilland Service Bulletin No. 6/447 dated October 14, 1983, applies to this subject.

This amendment becomes effective on April 13, 1984.

(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); Sec. 11.89 of the Federal Aviation Regulations (14 CFR Sec. 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 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 Rules Docket under the caption "ADDRESSES" at the location identified.

Issued in Kansas City, Missouri, on March 28, 1984.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 84-9765 Filed 4-11-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 83-NM-114-AD; Amdt. 39-4843]

Airworthiness Directives: Short Brothers Limited Model SD3-30 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires inspections of structural and system components on certain Shorts SD3-30 series airplanes and modification or repair, as necessary, to correct unsafe conditions which may exist. This action is necessary to preserve the structural integrity of the wing and horizontal stabilizer, to prevent fuel leaks into the cabin, to insure adequate fire protection for the aft baggage compartment, and to prevent operation with the control surfaces locked.

DATES: Effective May 14, 1984.

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 be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of a number of unsafe conditions that may exist on Shorts SD3-30 airplanes. These may be corrected by incorporating eight (8) separate mandatory service bulletins. The unsafe conditions and corrective actions are described as follows:

A. The amount of fire extinguishing agent available to extinguish a fire in the aft baggage compartment may not be adequate because the compartment is not sealed. A new closing panel is installed which seals the compartment. (Reference Short Brothers Ltd. Service Bulletin SD3-25-30.)

B. Weather and fuel leakage can occur through the fuselage crown skins into the cabin. Inspections of the fuselage crown skins are required and repairs or additional sealing must be accomplished where necessary. (Reference Short Brothers Ltd. Service Bulletins SD3-53-01, Revision 2, SD3-53-18, and SD3-53-41.)

C. The bottom flanges of the wing drag links were notched to clear the aft attachment bracket. A fatigue crack could form in the drag link if a sharp corner was left in the web which would compromise the strength of the wing attachment. Inspection and modification or replacement are required. (Reference Short Brothers Ltd. Service Bulletin SD3-53-48, Revision 1.)

D. Corrosion and wear has occurred on the horizontal stabilizer-to-fuselage attachment pins and bushings which, if allowed to increase, could compromise the strength of the stabilizer/fuselage assembly. An inspection of the lugs, bushings, and pins is required, and replacement is necessary if they are worn beyond acceptable limits. (Reference Short Brothers Ltd. Service Bulletin SD3-55-16. Revised 2.)

E. Cracks have been found in the rib/skin attachment cleats at the left wing upper surface which, if allowed to grow, could compromise the structural capability of the wing. Inspections and repairs, where necessary, are required. (Reference Short Brothers Ltd. Service Bulletin SD3-57-10, Revision 1.)

F. The existing gust lock/power control interlock system allows excessively high power selections to be made with the flight controls locked. The power control circuit must be modified so that only limited power is available when the flight control gust locks are engaged to prevent takeoff with locked controls. (Reference Short Brothers Ltd. Service Bulletin SD3-76-01.)

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring accomplishment of the previously mentioned inspections and modifications was published in the **Federal Register** on January 4, 1984 (49 FR 417). The comment period closed on February 20, 1984, and interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received.

It is estimated that approximately 50 U.S. registered airplanes will be affected by this AD, that it will take approximately 180 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Repair parts are estimated at $3000 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $510,000. For these reasons, this 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.

Therefore, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

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 Model SD3-30 airplanes as indicated in the applicability statement of each service bulletin listed below. Compliance is required within the time interval specified in each of the following paragraphs unless already accomplished:

A. To ensure the availability of an adequate concentration of fire extinguishing agent in the event of baggage compartment fire, within 180 days after the effective date of this AD, install a new closing panel in the aft baggage compartment in accordance with Short Brothers Ltd. Service Bulletin SD3-25-30 dated January 8, 1982.

B. To prevent weather or fuel leakage into the passenger cabin, within 180 days after the effective date of this AD, inspect and seal the fuselage crown in accordance with Short Brothers Ltd. Service Bulletins SD3-53-01, Revision 2, dated January 19, 1977; SD3-53-18 dated November 25, 1977; and SD3-53-41 dated May 21, 1980.

C. To prevent fatigue failure of the wing drag links, within 600 hours time in service after the effective date of this AD or upon the accumulation of 4800 total hours time in service, whichever occurs later, inspect and modify in accordance with Short Brothers Ltd. Service Bulletin SD3-53-48, Revision 1, dated January 5, 1983. Replace damaged parts per the service bulletin.

D. To detect excessive corrosion or wear in the stabilizer/fuselage attach pins, within the next 600 hours time in service after the effective date of this AD or upon the accumulation of 4800 total hours time in service, whichever occurs later, inspect in accordance with Short Brothers Ltd. Service Bulletin SD3-55-16, Revision 2, dated June 24, 1982. Replace damaged parts per the service bulletin.

E. To detect cracked or broken rib/skin attachment cleats at left wing station 160, within 300 hours time in service after the effective date of this AD or upon the accumulation of 4800 hours total time in service, whichever occurs later, inspect in accordance with Short Brothers Ltd. Service Bulletin SD3-57-10, Revision 1 dated October 11, 1982. Replace damaged parts as necessary.

F. To prevent takeoff with locked flight controls, within 180 days after the effective date of this AD, modify the power control circuit in accordance with Short Brothers Ltd. Service Bulletin SD3-76-01 dated September 8, 1981.

G. Alternate means of compliance which provide and equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

H. 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 May 14, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the 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); 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 Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, Model SD3-30 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the regulatory docket. A copy may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Seattle, Washington on March 30, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-9764 Filed 4-11-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-ASO-5]

Alteration of Transition Area, Cullman, Alabama

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the Cullman, Alabama, transition area by revoking an unneeded arrival extension, increasing the size of the basic area centered on Folsom Field airport and designating additional controlled airspace in the vicinity of Rountree Field airport. The arrival extension located north of Folsom Field is not required for protection of aeronautical activities and the basic area centered on the airport needs to be enlarged from 6.5 to 7.5 miles to accommodate the size aircraft which the airport is capable of accommodating. Additional controlled airspace is required in the vicinity of Rountree Field to accommodate Instrument Flight Rule (IFR) operations to and from the airport. An instrument approach procedure has been developed to serve the airport and this transition area alteration will lower the base of controlled airspace, in the vicinity of Rountree Field, from 1,200 to 700 feet above the surface.

EFFECTIVE DATE: 0901 G.m.t., May 10, 1984.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On Friday, February 17, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by designating additional controlled airspace in the vicinity of Rountree and Folsom Fields. This action will provide required controlled airspace for containment of aircraft executing instrument approach procedures to the two airports. In addition, the floor of controlled airspace in an area north of Folsom Field will be raised form 700 to 1,200 feet above the surface as this particular segment of controlled airspace was no longer required. (49 FR 6112.) The operating status of Rountree Field airport is changed to IFR. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. In response to publication of details of this proposal, comments were received from the City of Cullman. The City noted that it had purchased and installed the non-directional radio beacon which would be used to support the instrument approach procedure to Rountree Field. Therefore, the City felt that the City of Hartselle, operator of Rountree Field, should share in the annual recurring cost related to retention of the radio beacon in the National Airspace System. This, however, is a matter that must be resolved at the local level and has no bearing on the designation of this transition area. This amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will designate that controlled airspace necessary for containment of IFR operations in the vicinity of Folsom and Rountree Fields.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition area.

Adoption of the Amendment

§ 71.181 [Amended]

Accordingly, pursuant to the authority delegated to me, the Cullman, Alabama, transition area under § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended) is further amended, effective 0901 G.m.t., May 10, 1984, as follows:

Cullman, AL—[Revised]

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Folsom Field (Lat. 34°15'57"N., Long. 86°51'35"W.); within a 6.5-mile radius of Rountree Field (Lat. 34°24'28"N., Long. 86°55'58"W.).

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Public Law 97-449, January 12, 1983))

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

Issued in East Point, Georgia, on March 29, 1984.

Jonathan Howe,

Director, Southern Region.

[FR Doc. 84-9762 Filed 4-9-84; 10:38 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 84-ASO-4]

Designation of Transition Area, Gulf Shores, Alabama

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates the Gulf Shores, Alabama, transition area to accommodate Instrument Flight Rule (IFR) operations in the vicinity of Jack Edwards Airport. This action will lower the base of controlled airspace from 1,200 to 700 feet above the surface within a five-mile radius of the airport. An instrument approach procedure, based on the Navy Pensacola Airport Surveillance Radar system, has been developed to serve the airport and the controlled airspace is required for protection of IFR aeronautical operations.

EFFECTIVE DATE: 0901 G.m.t., May 10, 1984.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, February 7, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by designating the Gulf Shores, Alabama, transition area. This action will provide controlled airspace for aircraft executing a new instrument approach procedure to Jack Edwards Airport (49 FR 4502). The operating status of Jack Edwards Airport is changed to IFR. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. All comments received were favorable. This amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates the Gulf Shores, Alabama, transition area to accommodate IFR aeronautical operations in the vicinity of Jack Edwards Airport.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition area.

Adoption of the Amendment

§ 71.181 [Amended]

Accordingly, pursuant to the authority delegated to me, the Gulf Shores, Alabama, transition area is designated under § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended) effective 0901 G.m.t., May 10, 1984, as follows:

Gulf Shores, AL—[New]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Jack Edwards Airport (Lat. 30°17'19" N., Long. 87°40'26" W.); excluding that portion that coincides with the Pensacola, Florida, transition area and Restricted Area R-2908.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Public Law 97-449, January 12, 1983))

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

Issued in East Point, Georgia, on March 29, 1984.

Jonathan Howe,

Director, Southern Region.

[FR Doc. 84-9763 Filed 4-9-84; 10:37 am]

BILLING CODE 4910-13-M

INTERNATIONAL TRADE COMMISSION

19 CFR Parts 201, 204, and 207

Amendments to Rules of Practice and Procedure

AGENCY: U.S. International Trade Commission.

ACTION: Amendment of rules; request for comments.

SUMMARY: These rules amend parts 201, 204, and 207 of the Commission's *Rules of Practice and Procedure.* Part 201 sets forth rules of general application; Part 204 governs Commission investigations concerning the effect of imports on agricultural programs (section 22 of the Agricultural Adjustment Act); and Part 207 governs investigations of whether injury to domestic industries results from imports sold at less than fair value or from subsidized exports to the United States.

The amendments to Part 201 provide, in particular, for an expansion of the definition of confidential business information to include certain additional information of commercial value; clearer marking of the confidential portions of documents for which confidential treatment treatment is requested; certain changes concerning paper size of documents, unbound copies, and one-sided copying; clarification of the provision permitting additional time for responses when service is by mail; and adjustment of the fees charged for copying and searching for documents in response to requests under the Freedom of Information Act. The amendment to Part 204 deletes the word "Tariff" to reflect the change in name of the Commission in 1975 from the Tariff Commission. The amendments to Part 207 provide that the Commission will not serve on all parties to antidumping and countervailing duty proceedings responses to requests for confidential treatment or documents under protective order; conform the requirement concerning number of copies to be filed to that of Part 201; and reflect the change in name of the U.S. Customs Court to the U.S. Court of International Trade.

EFFECTIVE DATE: April 12, 1984. Comments will be considered if received by May 11, 1984 (30 days after publication).

FOR FURTHER INFORMATION CONTACT: William W. Gearhart, Esq., Assistant General Counsel, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 202-523-0487.

SUPPLEMENTARY INFORMATION: Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties.

The amendments set forth below are intended to remedy problems that have arisen under existing Commission practice, reflect increased costs incurred in furnishing information under the Freedom of Information Act, and correct certain errors in the Commission's rules.

Rule 201.6(a) is amended to include within the definition of confidential business information, in addition to information which concerns or relates to trade secrets, processes, operations,

style of works, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, "other information of commercial value," the disclosure of which is likely to have the effect of either (1) impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions, or (2) causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained, unless the Commission is required by law to disclose such information. Such "other information of commercial value" may include copyrighted material or other material of commercial value prepared or purchased at considerable expense by the submitter but which is not otherwise covered by the definition.

Rule 201.6(b)(3) is amended to require that persons requesting confidential treatment for documents containing business information clearly indicate on the cover of such documents the pages on which confidential information appears and identify the confidential information on those pages by means of brackets. Confidential versions of briefs and other documents presently filed with the Commission often do not clearly identify which information is confidential. When the confidential information is not clearly indentified, the Commission staff must spend extra time comparing confidential and non-confidential versions in order to identify the confidential information. This causes delays in processing requests and may result in the Commission's inadvertent overlooking of portions not clearly marked as confidential.

Rule 201.6(b)(3) also is amended to refer to the requirement set forth in rule 201.8(d) that a nonconfidential version of confidential documents be furnished. Persons filing confidential documents often fail to file nonconfidential versions because they have failed to follow rule 201.8(d). This amendment would remind them of the rule 201.8(d) requirement.

Rule 201.8(d) is amended to require that all submissions be on letter-sized paper (8½ inches by 11 inches), except patent file wrappers or other documents prepared by or for another agency or court; and that the original and at least one copy of all submissions be printed on one side only and be unbound. These requirements will facilitate storage and reproduction of documents. The paper-size requirement was erroneously deleted from this rule in a previous revision.

Rule 201.16(d) is amended to make clear the fact that the additional time for responses permitted when service is by mail is 3 calendar days in the case of service to a person located in the United States and 10 calendar days in the case of a person located in a foreign country, rather than 3 or 10 working days.

Rule 201.20(a) is amended to provide that fees for search time for records will be computed at the rate of $8.00 per hour for time spent by agency personnel in grades GS–2 through GS–10 and at the rate of $16 per hour for time spent by agency personnel in grades GS–11 and above. This charge reflects the current level of Federal salaries. However, no charge will be imposed when the total charge for search time and copying does not exceed $25.00. On charges of $25.00 or less, the cost of billing, bookkeeping, and check processing tends to equal or exceed the fee collected. The Commission presently does not impose a fee for search time when the search time is one-half hour or less.

Rule 201.20(b), which provides for copying fees, is amended to provide that the Commission will not impose a fee unless the total charge for search time and copying exceeds $25.00. The Commission presently does not impose a fee for copying unless the total charge for copying exceeds 50 cents.

Rule 201.20(c) is amended to provide that the Commission will not process a request for information which is expected to involve assessed fees in excess of $25.00 unless the request states that whatever cost is involved is acceptable or is acceptable up to a specified limit which covers anticipated costs. The present rule provides a limit of $15.00, but this limit has been rendered obsolete by rules 201.20 (a) and (b), which waive all search time and copying charges of $25.00 or less.

Rule 204.5 is amended to delete the word "Tariff" in Tariff Commission, the former name of this Commission. Due to an oversight, this reference was not deleted in earlier rule changes. The name of the agency was changed effective January 3, 1975, by section 171 of the Trade Act of 1974 (19 U.S.C. 2231).

Rule 207.3 is amended to provide that the Commission, in antidumping and countervailing duty proceedings, need not serve on all parties of record its responses to requests for confidential treatment from individual parties. It also is amended to make clear that the Commission will not serve on all parties responses to requests for access to confidential information under protective order.

Rule 207.45(b) is amended to provide that parties filing requests for a review of antidumping and countervailing duty actions must file an original and 14 copies of such documents (rather than 19 copies, as under the resent rule). This change would conform this requirement to the copies requirement of rule 201.8(d).

Rules 207.50 and 207.51 are amended to reflect the fact that persons entitled to judicial review may seek such review in the U.S. Court of International Trade (rather than the U.S. Customs Court, the former name of this court).

List of Subjects

19 CFR Part 201

Administrative practice and procedure, Confidential business information, Investigations, Freedom of information.

19 CFR Part 207

Administrative practice and procedure, Antidumping, Countervailing duties, Investigations.

PART 201—[AMENDED]

Part 201 is amended as set forth below:

1. Paragraphs (a) and (b)(3) of § 201.6, which concerns confidential business information, is revised as follows:

§ 201.6 Confidential business information.

(a) *Definition.* Confidential business information is information which concerns or relates to the trade secrets, processes, operations, style of works, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, or other information of commercial value, the disclosure of which is likely to have the effect of either: (1) Impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions, or (2) causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained, unless the Commission is required by law to disclose such information.

* * * * *

(b) * * *

(3) With each submission of, or offer to submit, business information which a submitter desires to be treated as confidential under paragraph (a)(2) of this section, the submitter shall provide

the following, which may be disclosed to the public:

(i) A written description of the nature of the subject information;

(ii) A justification for the request for its confidential treatment;

(iii) A certification in writing under oath that substantially identical information is not available to the public;

(iv) A copy of the document (A) clearly marked on its cover as to the pages on which confidential information can be found, and (B) with information for which confidential treatment is requested clearly identified by means of brackets (except when submission of such document is withheld in accord with paragraph (b)(4) of this section); and

(v) A nonconfidential copy of the documents as required by § 201.8(d).

* * * * *

2. Section 201.8(d), which concerns filing of documents, is revised as follows:

§ 201.8 Filing of documents.

* * * * *

(d) *Number of copies.* A signed original (or a copy designated as an original) and fourteen (14) copies of each document shall be filed. All submissions shall be on letter-size paper (8½ inches by 11 inches), except copies of documents prepared for another agency or a court (e.g., patent file wrappers or pleading papers). The original and at least one copy of all submissions shall be printed on one side only and shall be unbound (although they may be stapled or held together by means of a clip). In the event that confidential treatment of the document is requested under § 201.6, at least one additional copy shall be filed, in which the confidential business information shall have been deleted and which shall have been marked conspicuously "nonconfidential" or "public inspection." The name of the person signing the original shall be typewritten or otherwise reproduced on each copy.

* * * * *

3. Section 201.16(d), which concerns service of process and other documents, is revised as follows:

§ 201.16 Service of process and other documents.

* * * * *

(d) *Additional time after service by mail.* Whenever a party or Federal agency or department has the right or is required to perform some act or take some action within a prescribed period after the service of a document upon it and the document is served upon it by mail, three (3) calendar days shall be added to the prescribed period, except that when mailing is to a person located in a foreign country, ten (10) calendar days shall be added to the prescribed period.

4. Paragraphs (a)(1), (b) and (c) of § 201.20, which concerns fees for searching for or copying of records, is revised as follows:

§ 201.20 Fees.

(a) *Search for records.* (1) The charge will be computed at the rate of $8.00 per hour for actual search time spent by agency personnel in salary grades GS–2 through GS–10 and at the rate of $16.00 per hour for actual search time by agency personnel in salary grades GS–11 and above, with said charges to be computed in quarter hour increments; however, no charge will be imposed when the total charge for search time and copying of records (see § 201.20(b)) does not exceed $25.00

* * * * *

(b) *Copying of records.* The charge for reproduction, duplication, or copying of records by the Commission will be 10 cents per page; however, no charge will be imposed when the total charge for search time (see § 201.20(a)) and reproduction, duplication, or copying of records does not exceed $25.00.

(c) Unless a request for information specifically states that whatever cost is involved is acceptable, or acceptable up to a specified limit that covers anticipated costs, a request that is expected to involve assessed fees in excess of $25.00 or the specified limit will not be deemed to have been received until the requester is advised of the anticipated costs and agrees to bear such costs.

5. Section 204.5, which concerns reports issued by the Commission as a result of investigations conducted under section 22 of the Agricultural Adjustment Act (7 U.S.C. 624), is revised as follows:

§ 204.5 Reports.

After completion of its investigation, the Commission will transmit to the President a report of the results thereof, including its findings and recommendations based thereon, and a statement of the steps taken in the investigation, together with a transcript of the evidence submitted at the hearing. A copy of such report will be transmitted to the Secretary of Agriculture.

6. Section 207.3, which concerns service of documents in connection with Commission proceedings under section 303, section 516A, and title VII of the Tariff Act of 1930 (19 U.S.C. 1303, 1516A, and 1671–1677) and sections 102–107 of the Trade Agreements Act of 1979 (Pub. L. 96–39, 93 Stat. 144), is revised as follows:

§ 207.3 Service of documents.

Any party submitting a document for inclusion in the record of the investigation shall, in addition to complying with § 201.8, serve a copy of each such document on all other parties to the investigation in the manner prescribed in § 201.16. Failure to comply with the requirements of this rule may result in removal from status as a party. The Commission shall make available to all parties to the investigation a copy of each document, except transcripts of conferences and hearings and responses to requests under § 201.6(b) (confidential business information) and § 201.76 (documents under protective order), placed in the record of the investigation by the Commission.

7. Paragraph (b)(1)(i) of § 207.45, which concerns investigations to review certain antidumping and countervailing duty actions, is revised as follows:

§ 207.45 Investigation to review outstanding determination.

* * * * *

(b) *Procedures*—(1) *Commencement of proceedings*—(i) *Upon receipt of a request.* A proceeding is commenced upon the filing with the Commission of the original and fourteen (14) true copies of a request. Requests for a review investigation may be filed by any person. All requests shall set forth a description of changed circumstances sufficient to warrant the institution of a review investigation by the Commission under this section.

8. Section 207.50, which concerns judicial review under section 516A of the Tariff Act of 1930 with respect to antidumping and countervailing duty actions, is revised as follows:

§ 207.50 Judicial review.

(a) *In general.* Persons entitled to judicial review under section 516A of the Act may seek review in the U.S. Court of International Trade.

(b) *Transmittal of record.* In the event a Commission determination is appealed to the U.S. Court of International Trade under section 516A, a copy of the record in the proceeding before the Commission, as such record is defined in § 207.2(j), or a certified list of all items therein, will be transmitted to the court by the Secretary in accordance with the rules of the court.

* * * * *

9. Paragraph (a) of § 207.51, which concerns judicial review of the denial of applications for disclosure of certain

confidential information under protective order, is revised as follows:

§ 207.51 Judicial review of denial of application for disclosure of certain confidential information under protective order.

(a) *In general.* Persons entitled to judicial review under section 777(c)(2) of a Commission determination not to disclose confidential information concerning domestic price or cost of production may apply to the U.S. Court of International Trade for an order directing the Commission to make the information involved available.

By order of the Commission.

Issued: April 2, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-9744 Filed 4-11-84; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin

Correction

In FR Doc. 84-4030 appearing on page 5749 in the issue of Wednesday, February 15, 1984, make the following correction.

In the second column, § 558.625(b)(3), fourth line, "20 to 40" should read "20 and 40".

BILLING CODE 1505-01-M

21 CFR Part 860

[Docket No. 84N-0058]

Medical Device Classification Procedures; Number of Copies of a Petition for Reclassification

AGENCY: Food and Drug Administration.

ACTION: Final rule and request for comments.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule that reduces the number of copies required to be submitted of a petition for reclassification of any medical device. The procedure is being changed to conform to Office of Management and Budget (OMB) guidelines.

DATES: Comments by May 14, 1984. The final rule is effective June 11, 1984.

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

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (formerly National Center for Devices and Radiological Health) (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Under section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), FDA is required to classify each medical device into one of three regulatory categories: class I (general controls); class II (performance standards); or class III (premarket approval), according to the degree of control necessary to provide reasonable assurance of the safety and effectiveness of the device. Sections 513(e) and (f), 514(b), 515(b), and 520(l) of the act (21 U.S.C. 360c(e) and (f), 360d(b), 360e(b), and 360j(l)) provide for persons to request FDA to change the classification of any device. Subpart C of Part 860 of FDA's regulations governing medical device classification procedures (21 CFR Part 860, Subpart C) provides that any such request is to be in the form of a petition for reclassification; § 860.123(b)(4) (21 CFR 860.123(b)(4)) requires that each such petition be submitted in quintuplicate (OMB approval number 0910-0138).

In the **Federal Register** of March 31, 1983 (48 FR 13666), OMB published a final rule (5 CFR Part 1320) implementing the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511), which establishes policies and procedures for controlling paperwork burdens imposed by Federal agencies on the public. Section 1320.6(c) of OMB's general information collection guidelines, which are codified as part of its final rule, provides that an agency should not require persons to submit to the agency more than one original and two copies of any document, unless the agency demonstrates that the requirement is necessary to satisfy a statutory requirement or some other substantial need.

Therefore, FDA is changing its procedure to conform to OMB's guidelines by requiring a petitioner to submit only an original and two copies of any petition for reclassification of a medical device.

In accordance with 5 U.S.C. 553(b) and (d) and 21 CFR 10.40, FDA has determined that there is good cause not to follow the usual requirements of prior notice and comment and delayed effective date. The reasons for this determination are that reducing the number of copies of a petition for reclassification required to be submitted to FDA will not affect the public health and will be less burdensome on, and less costly for, the petitioner. Also, FDA has learned from experience that an original and two copies are adequate for FDA to review and make a decision on a petition. The agency, nevertheless, is providing a 30-day period during which it will accept comments on its procedural change. If FDA decides on the basis of comments received that the change should be modified or revoked, it will provide further notice in the **Federal Register.**

List of Subjects in 21 CFR Part 860

Administrative practice and procedure, Classification procedure, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 514, 515, 519, 520, and 701(a), 52 Stat. 1055, 90 Stat. 540-559, 564-576 (21 U.S.C. 360c, 360d, 360e, 360i, 360j, and 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 860 is amended in § 860.123 by revising paragraph (b)(4) to read as follows:

PART 860—MEDICAL DEVICE CLASSIFICATION PROCEDURES

§ 860.123 Reclassification petition: Content and form.

* * * * *

(b) * * *

(4) Submitted in an original and two copies.

Interested persons may, on or before May 14, 1984, submit to the Dockets Management Branch (address above), written comments on this final rule. Such comments will be considered in determining whether further amendments, modifications, or revisions to the final rule are warranted. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective June 11, 1984.

Dated: March 23, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-9769 Filed 4-11-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11 84-011]

Special Local Regulations: Newport to Ensenada Yacht Race

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Newport to Ensenada Yacht Race in Newport Beach. This event will be held on April 28, 1984, at Newport Beach, California. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective on April 28, 1984 and terminate on April 28, 1984.

FOR FURTHER INFORMATION CONTACT: LTJG Jorge Arroyo, Commander (bb), Eleventh Coast Guard District, 400 Oceangate, Long Beach, California 90822, (213) 590-2331.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for these regulations and they are being made effective in less than 30 days from the date of publication. The application to hold the event was not received until January 17, 1984, and there was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date. Nevertheless, interested persons wishing to comment may do so by submitting written comments to the office listed under **"FOR FURTHER INFORMATION CONTACT"** in this preamble. Commenters should include their names and addresses, identify this notice CGD11 84-011, and give reasons for their comments. Based on comments received, the regulation may be changed.

Drafting Information

The drafters of this regulation are LTJG Jorge Arroyo, Chief, Boating Affairs Branch, Eleventh Coast Guard District, Project Officer, and LT Joseph R. McFaul, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Regulation

Newport Ocean Sailing Association "NEWPORT TO ENSENADA YACHT RACES" will be conducted beginning April 28, 1984, in Newport Beach starting near the Newport Jetty. This event will have 800 ocean racing and cruising sailboats, 24 to 85 feet in length, that could pose a hazard to navigation. Vessels desiring to transit the regulated area may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

List of Subjects In 33 CFR Part 100

Marine safety, Navigation (water).

PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS

Final Regulations: In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding the following section:

§ 100.35-11-84-11 Newport Beach, Newport to Ensenada Yacht Race

(a) *Regulated Area:* That portion of the Pacific Ocean off Newport Beach, California, enclosed by the following coordinates:

(i) 33 degrees 35.3' N., 117 degrees 53.3' W.

(ii) 33 degrees 34.9' N., 117 degrees 53.3' W.

(iii) 33 degrees 34.9' N., 117 degrees 54.5' W.

(iv) 33 degrees 35.3' N., 117 degrees 54.5' W.

(b) *Effective Date:* The regulated area will be closed intermittently to all vessel traffic from 12:00 PM to 4:00 PM on April 28, 1984.

(c) *Special Local Regulations:* (1) No vessels, other than participants, U.S. Coast Guard operated and employed small craft, public vessels, state and local law enforcement agencies and the sponsor's vessels shall enter the regulated area during the above hours, unless cleared for such entry by or through a patrolling law enforcement vessel, or an event committee boat.

(2) When hailed by Coast Guard or Coast Guard Auxiliary vessels patrolling the event area, a vessel shall come to an immediate stop. Vessels shall comply with all directions of the designated Coast Guard Regatta Patrol.

(3) These regulations are temporary in nature and shall cease to be in effect at the end of the period set forth.

(46 U.S.C. 454; 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b); 33 CFR 100.35))

Dated: March 30, 1984.

F. P. Schubert,

Rear Admiral, U.S. Coast Guard Commander, Eleventh Coast Guard District.

[FR Doc. 84-9832 Filed 4-11-84; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

Amendment of the Commission's Rules To Reflect a Change in the Office of Managing Director

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Office of Managing Director proposes to revise the rule section which lists all major subordinate units to reflect recent reorganizations.

EFFECTIVE DATE: April 3, 1984.

FOR FURTHER INFORMATION CONTACT: Richard D. Goodfriend, (202) 632-7513.

List of Subjects in 47 CFR Part 0

Organization and functions (Government agencies).

Order

In the Matter of revision of Part 0 of the Commission's rules to reflect a change in the Office of Managing Director.

Adopted: March 29, 1984.
Released: April 3, 1984.

1. The Commission is adopting an Order in the above-captioned proceeding to revise its organizational rules to reflect recent reorganizations. Accordingly, certain organizational unit titles have been changed requiring amendment to Part 0 of the Commission's Rules.

2. Authority for this action is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and § 0.231(d) of the Commission's Rules. Since the amendments are editorial in nature the public notice, procedure and effective date provisions of 5 U.S.C. 533 do not apply.

3. In view of the above, it is ordered, that § 0.12 of the Commission's Rules is amended in accordance with the attached appendix, effective April 3, 1984.

Federal Communications Commission.

Edward J. Minkel,

Managing Director.

Appendix

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 0.12 is revised to read as follows:

§ 0.12 Units in the Office.

(a) Immediate Office of the Managing Director

(b) Director of Equal Employment Opportunity
(c) Management Planning and Program Evaluation Staff
(d) Associate Managing Director for Operations
(1) Financial Management Division
(2) Operations Support Division
(e) Associate Managing Director for Information Management
(1) Network Management Staff
(2) Computer Applications Division
(3) Information Processing Division
(4) Planning and Analysis Division
(f) Associate Managing Director for Personnel Management
(1) Personnel Management Office
(g) The Secretary
(h) Internal Review and Security Division
(i) Emergency Communications Division

[FR Doc. 84-9771 Filed 4-11-84; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Parts 73 and 74

Oversight of the Radio and TV Broadcast Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends broadcast station regulations in 47 CFR Parts 73 and 74 of the FCC rules. Amendments are made to delete regulations that are no longer necessary, correct inaccurate rule texts, contemporize certain requirements, to execute editorial revisions as needed for purposes of clarity and ease of understanding.

DATE: Effective April 3, 1984.

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

FOR FURTHER INFORMATION CONTACT: Steve Crane, Mass Media Bureau, (202)632-5414.

List of Subjects in 47 CFR Parts 73 and 74

Radio broadcasting.

In the matter of oversight of the radio and TV broadcast rules.

Adopted: March 29, 1984.
Released: April 3, 1984.

By the Chief, Mass Media Bureau.

1. In this *Order*, the Commission focuses its attention on the oversight of its radio and TV broadcast rules. Modifications are made herein to update, delete, clarify or correct broadcast regulations as described in the following amendment summaries:

(a) Two inaccuracies are corrected in the text of § 73.68, Sampling systems for antenna monitors. Subparagraph (b)(3) refers to meter readings and "maintenance log" entries. Since maintenance logs were eliminated in BC Docket 82-537 [1] the rule is corrected accordingly. This paragraph also incorrectly cross-references § 73.1830(a)(2)(iv), the eliminated maintenance log rule. It is revised to correctly cross-reference § 73.1820, Station log, and the reference to subparagraph (a)(2)(iv) is corrected to read (a)(2) since no subparagraph (iv) exists. (See Appendix item 1.)

(b) Section 73.1210, TV/FM dual-language broadcasting in Puerto Rico, requires both the participating FM and TV licensees to make program log entries to "reflect all time segments within which dual-language programming is presented." The requirement for commercial AM and FM licensees to keep program logs was removed in the Report and Order in BC Docket 79-219, Deregulation of Radio. Failure to remove the requirement from Section 73.1210 is remedied in this Order by stating that such logging requirements pertain only to those stations required to keep such logs. (See appendix item 2.)

(c) Section 73.1225, Station inspections by FCC, was amended in the Report and Order in BC Docket 82-537 [2] by revising paragraph (d) to remove the requirement to make operating and maintenance logs available for inspection. (BC Docket 82-537 eliminated the requirement to keep operating and maintenance logs.) Paragraph (d) was amended to require that station logs (a log newly adopted in this proceeding) and technical records be made available for inspections. Inadvertently, the requirement to make available the program logs for commercial TV and noncommercial AM, FM and TV stations was removed. The keeping of program logs for these stations is of course still an FCC requirement and the unintentional deletion of their inspection availability is remedied by restoring the requirement to the inspection rule, § 73.1225. (See Appendix item 3.)

(d) In the fourth Report and Order in Docket 21502, Subscription TV Service, § 73.1570, Modulation levels: AM, FM and TV aural, was amended, effective December 23, 1983, by revising subparagraph (b)(3); revising (b)(3)(ii) and redesignating it as (b)(3)(i) (which had formerly been marked [Reserved]); and by adding a new subparagraph (b)(3)(ii). 48 FR 5636, December 21, 1983.

On January 24, 1984, an Order was adopted which corrected § 73.1570(b) by changing the limitations on modulation of the maincarrier "to not more than 15%" from the formerly incorrect 10%. This change, effective January 27, 1984, failed to use the newly adopted text set forth in Docket 21502's Report and Order, thereby subverting the December modification of the paragraph. To clear the record, subparagraphs (b)(3) and (b)(3) (i) and (ii) of § 73.1570 are rewritten herein to include the desired modulation limitation to "not more than 15%", as well as the inadvertently deleted text adopted in Docket 21502. (See Appendix item 4.)

(e) Section 73.1800, General requirements related to the station log, was revised to its present form in the Report and Order in BC Docket 82-537 [3] (See paragraphs (a) and (c) above). As drafted, the section title and text indicate that this rule relates to *station* logs only. It does not; it also relates to program logs for commercial TV and noncommercial educational AM, FM and TV stations. In excising references to operating and maintenance logs in the Order in BC Docket 82-537, and introducing the new station log rule and cross references thereto, Section 73.1800, which applies to all logs, was inadvertently amended in such fashion as to denote referencing *station* logs only. The rule is restored to its proper and correct state via this Order to include all required logging, program and station. Amendments are therefore made to the rule title and to the text of paragraphs (a), (b), (f) and (g), to forestall any interpretation that it applies to station logs only.

Another correction must be made to this rule. A requirement, pertaining to operating and maintenance logs, remains in paragraph (c). Overlooked in rewriting the rule, these references to the operating and maintenance logs are changed to the station log herein.

Lastly, a further change is made in paragraph (c) correcting "station technical supervisor" to "Chief operator" as designated and required in § 73.1870, Chief Operators, adopted June 16, 1981, Docket No. 20817, The Operator Licensing Program. 46 FR 35450, July 8, 1981. (See Appendix item 5.)

(f) A logging entry must be made by all stations for each test of the Emergency Broadcast System procedures made pursuant to the requirements of Subpart G of Part 73. For commerical TV and noncommercial educational AM, FM and TV stations, entries may be made in the program log

[1] Report and Order, In the Matter of Operating and Maintenance Logs for Broadcast and Broadcast Auxiliary Stations. BC Docket 82-537. 48 FR 38473, August 24, 1983.

[2] Id.

[3] Id.

or station log. For commercial AM and FM stations, entries must be made in the station log since those stations do not keep program logs.

In subparagraph (b)(5) of the program log rule, § 73.1810, the text incorrectly states that the results of EBS tests "must be entered in the station log (in the case of television stations, the station log may be the program log)."

Since this text appears in the *program* log rules, the rule will be revised to state the program log entry requirements, not those pertaining to station logs.

Since entries of EBS tests in the program log may be made by noncommercial educational AM, FM and TV stations, not just "television stations," as presently designated, these noncommercial services will be added to the program logging option.

And since commercial AM and FM stations no longer keep program logs, the requirement to log EBS tests for them will be clearly indicated as the exception to logging EBS tests in the program log. (See Appendix item 6.)

(g) When the formerly designated Broadcast Bureau was reorganized and renamed Mass Media Bureau in December, 1982, every effort was made to change all rules affected accordingly. Some slipped through the net. Two recent discoveries requiring correction are in §§ 73.3562 and 73.3564. The Broadcast Bureau designations therein are corrected to read Mass Media Bureau. (See Appendix items 7 and 8.)

(h) On December 22, 1983, the Commission adopted the Report and Order and Policy statement in Docket 19142, Children's TV Programming and Advertising Practices. 49 FR 1704, January 13, 1984. It is added herein to the listings of FCC policies as paragraph (b) to § 73.4050, Children's TV Programs. The present listing of the Report and Policy Statement of 1974 is designated paragraph (a). (See Appendix item 9.)

(i) The rules for remote pickup broadcast stations are found in Subpart D, Part 74. Licensing requirements and procedures for this service are found in § 74.432 of this subpart. This rule formerly had a time limit requiring installation and operation of authorized units within 120 days following the grant date. This time limit was removed from § 74.432(d) in the Report and Order in BC Docket 81–497 effective April 1, 1982. 47 FR 9214, March 4, 1982.

In paragraph (k) of § 74.432, a cross reference to the time limit eliminated from paragraph (d) was not removed. Via this Order the incorrect cross reference is deleted. (See Appendix item 10.)

(j) Another modification in § 74.432 is made in paragraph (h). The paragraph opens with the statement that "Each remote pickup broadcast station * * * shall be made available for inspection upon request by any * * * representative of the Commission."

When Subpart-General was adopted as a new subpart in Part 74, for rules common to all services in that Part, requirements pertaining to FCC station inspections were created and designated § 74.3. Inspection regulations, as found in § 74.432(h) stated above, were to be excised from the separate Subparts. In this case they were not; they are removed herein. (See Appendix item 10.)

2. No substantive changes are made herein which impose additional burdens or remove provisions relied upon by licensees or the public. We conclude, for the reasons set forth above, that these revisions will serve the public interest.

3. These amendments are implemented by authority delegated by the Commission to the Chief, Mass Media Bureau. Inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of rulemaking, effective date provisions and public procedure thereon are unnecessary pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553(b)(3)(B).

4. Since a general notice of proposed rulemaking is not required, the Regulatory Flexibility Act does not apply.

5. Therefore, IT IS ORDERED, That pursuant to Sections 4(i), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended, and §§ 0.61 and 0.283 of the Commission's Rules, Parts 73 and 74 of the FCC Rules and Regulations ARE AMENDED as set forth in the attached Appendix, effective April 3, 1984.

6. For further information on this *Order*, contact Steve Crane, (202) 632–5414, Mass Media Bureau.

Federal Communications Commission.

James C. McKinney,

Chief, Mass Media Bureau.

Appendix

PART 73—[AMENDED]

1. 47 CFR 73.68 is amended by revising paragraph (b)(3) to read as follows:

§ 73.68 Sampling systems for antenna monitors.

* * * * *

(b) * * *

(3) The readings and station log entries specified in § 73.1820(a)(2).

* * * * *

2. 47 CFR 73.1210 is amended by revising paragraph (b)(4) to read as follows:

§ 73.1210 TV/FM dual-language broadcasting in Puerto Rico.

* * * * *

(b) * * *

(4) The program logs of stations required to keep such logs shall clearly reflect all time segments within which dual-language programming is presented.

* * * * *

3. 47 CFR 73.1225 is amended by revising paragraph (d) to read as follows:

§ 73.1225 Station inspections by FCC.

* * * * *

(d) The following records shall be made available upon request by representatives of the FCC:

(1) *For commercial and noncommercial eductional AM, FM, and TV stations:*

(i) Station logs and special technical records;

(2) *For commercial TV and noncommercial educational AM, FM, and TV stations:*

(i) Program logs.

4. 47 CFR 73.1570 is amended by revising paragraphs (b)(3) to read as follows:

§ 73.1570 Modulation levels: AM, FM, and TV aural.

* * * * *

(b) * * *

(3) *TV stations.* Except as provided in (i) and (ii) below the total modulation of the aural carrier must not exceed 100% on peaks of frequent recurrence.

(i) Stations transmitting multiplex subcarrier signals on the aural carrier for telemetry or other authorized services (see § 73.682(a)(23)) must limit the modulation of the main carrier by the arithmetic sum of the subcarrier(s) to not more than 15%. The total modulation may not exceed 100% unless specifically authorized by the FCC.

(ii) Stations transmitting aural subcarriers as part of encoded subscription programs under the provisions of §§ 73.641–73.644 may modulate the aural carrier in accordance with the specifications stated in the application for advance FCC approval.

* * * * *

5. 47 CFR 73.1800 is amended by revising the Section title and paragraphs (a), (b), (c), (f) and (g) to read as follows:

§ 73.1800 General requirements relating to logs.

(a) The licensee of each station shall maintain logs as required by §§ 73.1810 and 73.1820. Each log shall be kept by station employees competent to do so, having actual knowledge of the facts required. All entries, whether required or not by the provisions of this Part, must accurately reflect the operation of the station. Any employee making a log entry shall sign the log, thereby attesting to the fact that that entry, or any correction or addition made thereto, is an accurate representation of what transpired.

(b) The logs shall be kept in an orderly and legible manner, in suitable form and in such detail that the data required for the particular class of station concerned are readily available. Key letters or abbreviations may be used if the proper meaning or explanation is contained elsewhere in the log. Each sheet must be numbered and dated. Time entries must be made in local time and must be indicated as advanced (*e.g.*, EDT) or non-advanced (*e.g.*, EST) time.

(c) Any necessary corrections of a manually kept log after it has been signed in accordance with paragraph (a) of this Section shall be made only by striking out the erroneous portion and making a corrective explanation on the log or attachment to it. For program logs, such corrections shall be dated and signed by the person who kept the log or the program director, the station manager or an officer of the licensee. For station logs, such corrections shall be dated and signed by the person who kept the log or the station chief operator, the station manager or an officer of the licensee.

* * * * *

(f) Entries shall be made in logs as required by §§ 73.1810 and 73.1820. Additional information, such as that needed for administrative or operational purposes, may be entered on the logs. Such additional information shall not be subject to the restrictions and limitations in the FCC rules on making corrections or changes in logs, and may be removed, without otherwise altering the log in any way, before making the log a part of an application or available for public inspection.

(g) Application forms for licenses and other authorizations may require that certain technical operating and program data be supplied. These application forms should be kept in mind in connection with the maintenance of the program log and station log.

6. 47 CFR 73.1810 is amended by revising paragraph (b)(5) to read as follows:

§ 73.1810 Program logs.

* * * * *

(b) * * *

* * * * *

(5) *For Emergency Broadcast System Operations.* An entry, by stations required to keep program logs, for tests of the EBS procedures pursuant to the requirements of Subpart G of this Part and the appropriate EBS station checklist, unless such entries are consistently made in the station log. In the case of commercial AM and FM stations which are not required to keep program logs an entry will be made in the station log.

* * * * *

7. 47 CFR 73.3562 is revised to read as follows:

§ 73.3562 Staff consideration of applications not requiring action by the Commission.

Those applications which do not require action by the Commission but which, pursuant to the delegations of authority set forth in Subpart B of Part O, may be acted upon by the Chief, Mass Media Bureau, are forwarded to the Mass Media Bureau for necessary action. If the application is granted, the formal authorization is issued. In any case where it is recommended that the application be set for hearing, where a novel question of policy is presented, or where the Chief, Mass Media Bureau desires instructions from the Commission, the matter is placed on the Commission agenda.

8. 47 CFR 73.3564 is amended by revising paragraph (a) to read as follows:

§ 73.3564 Acceptance of applications.

(a) Applications tendered for filing are dated upon receipt and then forwarded to the Mass Media Bureau, where an administrative examination is made to ascertain whether the applications are complete. Except for low power TV and TV translator applications, those found to be complete or substantially complete are accepted for filing and are given file numbers. In the case of minor defects as to completeness, the applicant will be required to supply the missing information. Applications that are not substantially complete will be returned to the applicant. In the case of low power TV and TV translator applications, those found to be complete are accepted for filing and are given file numbers. Low power TV and TV applications that are not complete will be returned to the applicant.

* * * * *

9. 47 CFR 73.4050 is amended by adding new paragraph (b) and designating the present text as paragraph (a), as revised § 73.4050 reads as follows:

§73.4050 Children's TV programs.

(a) See Report and Policy Statement, Docket 19142, FCC 74–1174, adopted October 24, 1974. 50 FCC 2d 1; 39 FR 39396, November 6, 1974.

(b) See Report and Order; Policy Statement, Docket 19142, FCC 83–609, adopted December 22, 1983. 49 FR 1704, January 13, 1984.

PART 74—[AMENDED]

10. 47 CFR 74.432 is amended by revising paragraphs (h) and (k) to read as follows:

§ 74.432 Licensing requirements and procedures.

* * * * *

(h) In cases where a series of broadcasts are to be made from the same location, portable or mobile transmitters may be left at such location for the duration of the series of broadcasts: *Provided,* The transmitting apparatus is properly secured so that it may not be operated by unauthorized persons when unattended. Prior Commission authority shall be obtained for the installation of any transmitting antenna which requires notification to the FAA, pursuant to § 17.7 of the Commission's rules and regulations, and which will be in existence for more than 2 days.

* * * * *

(k) In the case of permanent discontinuance of operation of a station or system licensed under this Subpart, the licensee shall forward the station or system license to the FCC in Washington, D.C. for cancellation. For purposes of this Section, a station which is not operated for a period of one year is considered to have been permanently discontinued.

* * * * *

[FR Doc. 84–9647 Filed 4–11–84; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-193]

Organization and Delegation of Powers and Duties—Delegation by the General Counsel to the Chief Counsel of the Coast Guard

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Final rule.

SUMMARY: This amendment delegates to the Chief Counsel of the Coast Guard the General Counsel's authority to detail appellate counsel in connection with the review of courts-martial by the Court of Military Review and the Court of Military Appeals. The Chief Counsel performs related duties and can better perform this more efficiently than the General Counsel. This amendment also ratifies all details previously made by the Chief Counsel.

DATE: The effective date of this amendment is April 12, 1984.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, C-50, Department of Transportation, Washington, DC (202) 426-4723.

SUPPLEMENTARY INFORMATION: Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the **Federal Register**.

By virtue of section 6(b)(3) of the Department of Transportation Act (Pub.L. 89-670), the General Counsel is Judge Advocate General of the Coast Guard except when the Coast Guard is operating as a service in the Navy. The General Counsel has delegated to the Chief Counsel of the Coast Guard some of the Judge Advocate General's functions (see 49 CFR Part 1, Appendix A, Section 2), including the authority under Section 66(b) of the Uniform Code of Military Justice (10 U.S.C. 866(b)) to refer records of certain trials to the Court of Military Review, which reviews the records for correctness of law and fact. (Review by the Court of Military Review is a prerequisite to review by the Court of Military Appeals.) To assist the Court in its review, Article 70 of the Code provides for appointment of Government and defense counsel. As part of his referrals to the Court under Article 66(b), the Chief Counsel has routinely been appointing counsel. This amendment formalizes his authority to do that and ratifies all such appointments previously made.

List of Subjects in 49 CFR Part 1

Authority delegations (government agencies), Organization and functions (government agencies), Transportation Department.

PART 1—[AMENDED]

In consideration of the foregoing, Section 2 of Appendix A of Part 1 of Title 49, Code of Federal Regulations, is amended by adding a new subparagraph (8) to paragraph (a), to read as follows:

Appendix A—Delegations and Redelegations by Secretarial Officers

* * * * *

2. Chief Counsel, U.S. Coast Guard.

(a) * * *

(8) The authority to detail appellate Government counsel and appellate defense counsel to perform duties in connection with the review of court-martial cases by the Court of Military Review and the Court of Military Appeals.

Authority: 49 U.S.C. 322.

Issued in Washington, DC, on April 3, 1984.

Rosalind A. Knapp,

Acting General Counsel.

[FR Doc. 84-9691 Filed 4-11-84; 8:45 am]

BILLING CODE 4910-62-M

Proposed Rules

Federal Register
Vol. 49, No. 72
Thursday, April 12, 1984

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 1030

[Docket No. AO–361–A20]

Milk in the Chicago Regional 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 recommended decision would provide the operators of certain supply plants a choice of methods by which their plants could qualify as pool plants under the Chicago Regional order. A "reserve supply plant" provision would allow supply plants that met certain criteria to be pool plants without having to ship any milk to distributing plants unless the market administrator determined that such shipments were needed to meet the fluid milk demands of the market. A plant that failed to meet such a "call" for shipments would lose its status as a pool reserve supply plant for one year.

As proposed, the market administrator could determine that pool reserve supply plants, in one or more areas, would have to make qualifying shipments of milk if milk were needed at distributing plants in the respective call area. The shipping requirements could be at different levels within a call area or between areas that, together, would define the call area.

Alternatively, a supply plant operator could choose to pool a plant by making monthly shipments to qualifying plants. The shipments would be required each month at a rate equal to the marketwide Class I utilization percentage for the same month of the preceding year. Plants pooled through the latter provision would not be subject to any call to ship milk issued by the market administrator. However, each such plant would have to make the required shipments, since handlers no longer would be able to form pool units composed of more than one plant.

Another proposed change would require each producer to ship one day's production each month to the pool plant that receives and reports such milk as producer milk. Such shipments now are required once a month during September through March.

This recommended decision is based on the record of a public hearing held in May 1983, at the request of a group of dairy farmer cooperatives that represents more than one-half of the producers who supply this market. The changes recommended herein reflect current marketing conditions and would tend to facilitate stable and orderly marketing of milk supplies associated with the Chicago Regional market.

DATE: Comments are due on or before May 14, 1984.

ADDRESS: Comments (four 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: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–4829.

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 of 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 amendments would promote orderly marketing of milk by producers and regulated handlers.

At the hearing and in briefs later submitted, the operators of three unregulated cheese manufacturing plants alleged that the Department of Agriculture had violated certain procedural requirements in calling an emergency hearing. Specifically, it was charged that the Administrative Procedure Act, the Regulatory Flexibility Act, and Executive Order 12291 had been either violated or ignored.

The Department holds that all procedural requirements of the above statutes and regulations were met, as were the Department's own procedures for formal rulemaking proceedings. Formal rulemaking proceedings are exempt from Executive Order 12291. The exemption was clearly stated in the hearing notice along with a statement that this action is subject to Sections 556 and 557 of Title 5 of the U.S. Code (the Administrative Procedure Act).

It was alleged that the Department had failed to publish an initial regulatory flexibility analysis, which the plant operators maintained is required by the Regulatory Flexibility Act, 5 U.S.C. 603. Procedurally, the initial regulatory flexibility analysis would not be published until the issuance of the recommended decision. For this proceeding, however, such an analysis is not required, and the certification regarding this is set forth above. In this regard, the Regulatory Flexibility Act, in 5 U.S.C. 605(b), provides as follows:

> Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the **Federal Register** at the time of publication of general notice of proposed rulemaking for the rule or at the time of the publication of the final rule, along with a succinct statement explaining the reasons for such cetification, and provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.

It should be noted that the hearing notice specifically invited interested persons to present evidence concerning the probable regulatory and informational impact of the proposals on small businesses. Most parties subject to a milk order are considered to be a small business. Certain testimony at the hearing was directed to the impact of the proposals on small businesses.

This recommended decision contains an economic analysis and takes into consideration the impact of the proposed changes in regulation upon the dairy industry, including, to the extent permitted, the impact on small businesses. Although not identical to a regulatory flexibility analysis, a decision based on the record evidence obtained at a public hearing serves the same

basic purpose as a regulatory flexibility analysis.

Prior documents in the proceeding:

Notice of Hearing: Issued April 25, 1983; published April 29, 1983 (48 FR 19380).

Partial Decision: Issued August 4, 1983; published August 11, 1983 (48 FR 36464).

Order Amending Order: Issued August 17, 1983; published August 24, 1983 (48 FR 38448).

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 the order regulating the handling of milk in the Chicago Regional 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, by the 30th day after publication of this decision in the **Federal Register.** Four copies of the 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 amendments set forth below are based on the record of a public hearing held at Madison, Wisconsin, on May 24–26, 1983, pursuant to a notice of hearing issued April 25, 1983 (48 FR 19380).

The material issues on the record of hearing relate to:

1. Pool reserve supply plant provisions.
2. Performance standards for supply plants.
3. Producer delivery requirements.
4. Modification of the Director's discretionary authority provision.
5. Need for emergency action on one or more of the above issues.

A prior decision dealt with issues 4 and 5. Issue 5 also is considered in this decision and the remaining issues (Nos. 1, 2, and 3) of the hearing are considered in this decision.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

Background information: The Chicago Regional order area resulted from a merger of the former Chicago, Illinois order area; and the adjacent territory of the Madison, Wisconsin; Northeastern Wisconsin; Northwestern Indiana; and Rock River Valley Federal milk order areas and some adjacent unregulated territory. The marketing area has been changed twice since the initial order became fully effective on July 1, 1968. In January 1969, the counties in northwestern Indiana were deleted from the area. In September 1970, some unregulated counties in Wisconsin that were surrounded by the marketing area were added. Neither of these area changes resulted in any substantial increases or decreases in either the amount of milk pooled or the number of producers supplying milk under the order.

Marketing conditions have changed since the Chicago Regional order was promulgated. The amount of producer milk pooled under the order nearly doubled from 7.1 billion pounds in 1969, to more than 13.1 billion pounds in 1982. The number of producers increased from an annual average of 16,639 in 1969 to 18,805 in 1982. The daily delivery of milk from each producer has increased from an annual average of 1,172 pounds in 1969 to 1,909 pounds in 1982. The sales of Class I milk (fluid milk products) have decreased from 3.6 billion pounds in 1969 to 2.9 billion pounds in 1982. The Class I utilization percentage has dropped from 50.7 percent in 1969 to 22.4 percent in 1982.[1]

Since its promulgation, the Chicago Regional order has been amended several times in response to changed marketing conditions. The pooling requirements for supply plants have been an issue in many amendatory proceedings; the minimum performance standards for supply plants have been amended five times. In September 1972, the minimum standards were decreased five percentage points for each of the months of September, October, and November. In August 1973, the performance requirements were increased by five percentage points for September, October and November. In addition, the months of January, February, and March were included in the required shipping period. Also, shipping requirements for an individual plant within a unit of supply plants were incorporated in the order. The requirements for shipments from an individual plant were designed to remedy, in part, the problem distributing plants located in the Chicago metropolitan segment of the market were experiencing in obtaining needed milk supplies from supply plants. In August 1975, the performance requirements for supply plants were decreased ten percentage points for August and September and five percentage points for October, November and December. It was found at that time that producer milk supplies had increased substantially and uneconomic movements of milk were being made by supply plants to satisfy the pooling requirements.

In an action effective on August 1, 1977, the month of August was eliminated from the required shipping period for supply plants. Also, the shipping requirement was eliminated for an individual plant within a unit of supply plants. The plentiful supply of milk available to the market was cited as the reason for eliminating the requirement for shipments from an individual plant within a unit. The removal of the requirement allowed operators of supply plant units to minimize hauling costs in supplying milk to the market.[2] In September 1982, the minimum performance standards for supply plants were reduced by five percentage points for each of the months of September, October, November, and December. The continued plentiful supplies of milk were cited as one of the reasons why the shipping standards were being further reduced at that time.

Shipping standards for supply plants have been used in the Chicago Regional market, since its promulgation, to assure the availability of milk for distributing plants. The overall system of performance requirements for supply plants has worked well in providing adequate supplies of milk at the distributing plants and assuring appropriate identification of producers associated with the market. However, the evidence introduced at the hearing indicates that marketing conditions in the Chicago Regional area have changed from those conditions present when the order was promulgated in 1968. Current marketing conditions warrant an additional method of pooling producer milk supplies under the order. The record of the hearing demonstrates that the use of supply plants with the associated performance standards may be appropriate for some handlers regulated by the order, while a system of reserve supply plants without specified

[1] Official notice is taken of *Reporter,* Chicago Regional Marketing Area, Vol. XVI–No. 8, August 1983, a monthly publication issued by the market administrator.

[2] Official notice is taken of the Assistant Secretary's decision issued July 15, 1977 (42 FR 37386).

monthly shipping requirements may be equally appropriate for other handlers.

The Central Milk Sales Agency (CMSA), a group of six cooperative associations representing more than one-half of the producers supplying milk to the Chicago Regional market, proposed eliminating the monthly performance requirements for pool supply plants. CMSA proposed the adoption of a reserve supply plant provision wherein the market administrator could issue a call for milk to move from these reserve supply plants to distributing plants if these latter plants needed milk. CMSA asserted that it would satisfy the fluid needs of the Chicago Regional market under the proposed reserve supply plant provisions, even in the absence of monthly shipping requirements.

Dean Foods Company; Hawthorn Mellody, Inc.; and Borden, Inc. (Dean et al.) opposed the elimination of the performance standards for supply plants. As an alternative, Dean et al. proposed lowering the supply plant performance standards and increasing the Director's discretionary authority to temporarily revise the standards from a maximum of 10 to a maximum of 15 percentage points. The modification of the Director's discretionary authority was considered in the Partial Final Decision issued by the Assistant Secretary on August 4, 1983, and the order subsequently was amended effective August 24, 1983. At the hearing and in his post-hearing brief, the spokesman for Dean et al. modified his position and urged the Secretary to keep the current provisions with respect to supply plants located in zones 1 through 10, albeit at the proposed lower performance levels. He further urged adoption of the proposed reserve supply plant provision for plants located in zones 11 and beyond. He said that this modified solution would continue to assure a supply of milk for fluid purposes to distributing plants located in the inner zones of the market.

These proposed differences in the method by which producer milk would be identified and pooled under the Chicago Regional Federal milk order where the principal issues considered at the hearing.

1. *Pool reserve supply plant provisions.* The Chicago Regional order should be amended to provide for a reserve supply plant provision as follows:

a. A "reserve supply plant" should be defined as any plant that is located in the marketing area or that portion of the State of Wisconsin that is not included in the marketing area of any federal milk marketing order. "Reserve supply plant" also means any plant located in the Wisconsin portion of the Upper Midwest Federal milk marketing area that has been a pool plant under the Chicago Regional order for at least three consecutive months immediately prior to the effective date of this amended order, so long as it continues such pool status.

b. A reserve supply plant must physically receive at least 47,000 pounds of Grade A milk from producers at least one day each month.

c. The operator of the reserve supply plant must file a request for pool status for the plant with the market administrator at least 15 days prior to the first day of the month in which such status is desired to be effective. After a plant has qualified as a pool reserve supply plant, such status shall continue to be effective through the third month after the month in which the operator notifies the market administrator that the plant will seek qualification as a pool supply plant (with monthly shipments) for the next consecutive three months, or until one of the following occurs: (1) The operator requests nonpool status for the plant prior to the first day of the month for which nonpool status is requested, (2) the plant subsequently fails to meet all the conditions with respect to pool reserve supply plant status, or (3) the plant qualifies as a pool plant under another federal milk marketing order.

d. The operator of a pool reserve supply plant shall supply milk from the plant to pool distributing plants, or to certain other distributing plants, whenever the market administrator announces such shipments are needed. For the purpose of meeting a shipping requirement (or "call"), qualifying shipments may be made from any plants or producer milk supplies of the handler, either within or outside the specified call area. However, qualifying shipments from plants not subject to the call must be in addition to those already being made by the handler. Shipments already being made would include shipments from other plants of the handler and in the case of a cooperative, any milk shipped directly from member producers' farms.

e. The amount of qualifying shipments shall be the net quantities of condensed skim milk and fluid milk products received at a distributing plant from or on behalf of the pool reserve supply plant.

f. The market administrator shall determine the size of any call area, which may be comprised of two or more sub-areas, and may issue more than one call percentage within each such call area as is determined necessary to supply milk to pool distributing plants within each call area.

g. A reserve supply plant must be a pool plant during each of the months of September through March in order to have status as a pool reserve supply plant during the following months of April through August.

h. The failure of a handler to comply with any announced shipping requirement, including making any significant change in marketing operations that the market administrator determines has the impact of forcing or evading such an announcement in the current month or any subsequent month, shall result in the immediate loss of pool status for the plant. A plant losing its status in the above manner or a plant that requests nonpool status may not again qualify as a pool reserve supply plant for a period of one year from the date of which pool status was last held.

The Central Milk Sales Agency (CMSA), a group of six cooperative associations representing more than one-half of the producers supplying milk to the Chicago Regional market, proposed eliminating the monthly performance requirements for pool supply plants. CMSA proposed the adoption of a reserve supply plant provision wherein the market administrator could issue a call for milk to move from the reserve supply plants to distributing plants, if these latter plants needed milk. The spokesman for CMSA maintained that some of the present supply plant provisions promote practices which subvert the plant qualification provisions of the order and do not promote orderly marketing conditions. He urged that the order's present supply plant provisions be replaced by provisions providing for reserve supply plants.

The CMSA witness said that the continued use of the Director's discretionary provision to temporarily revise the performance standards for supply plants indicated a more fundamental problem in the market and not the emergency type condition which the provision orginally was intended to cover. He said that the provision had been used 32 times since the order was promulgated in 1968, raising the shipping requirements two times and decreasing them 30 times. He indicated that the present shipping requirements were too high and that the Director's discretionary provision would be needed again during the fall months of 1983. He indicated that overuse of the provision was one reason why shipping requirements for supply plants were no longer appropriate for this market.

The spokesman for CMSA stated that the principal objective of all supply organizations on the Chicago Regional market was to qualify the milk of producers supplying the market. He said that qualification of milk as producer milk allows it to share in the relatively higher prices obtained from the sale of fluid milk products. He said that the act of qualifying milk as producer milk has value because the handler pooling the producer milk can draw out of the marketwide pool the difference between the zoned uniform price and the Minnesota-Wisconsin manufacturing milk price, often without shipping any milk. The witness expressed CMSA's view that the present supply plant performance provisions were not promoting orderly marketing conditions and should be eliminated.

He said that three methods were used in the market to achieve producer milk qualification, namely, shipping, leasing, and/or satelliting. He described how each of the methods was being misused by proprietary handlers and cooperative associations in the Chicago Regional market. The witness alleged that most of the handlers, including cooperative associations as well as proprietary handlers, in the Chicago Regional market had abused the performance provisions by selling qualification of producer milk.

The spokesman described some of the ways that pool qualification could be sold. For example, under the shipping method, the operator of a supply plant could pay a handler operating a pool distributing plant to receive sufficient quantities of milk for fluid purposes from the supply plant to qualify the latter plant for pooling. The handler would guarantee to pool all the milk received at the supply plant. However, most of the milk would stay at the supply plant and be used to produce manufactured milk products, which tends to lower the value of the pool.

A more complicated method of selling qualification, the witness explained, was for the regulated handler to lease the receiving room of a supply plant at a nominal contractual rate of one dollar per year. The handler would add that location to another supply plant or plants operated by him to form a unit of supply plants, as authorized by the order. The regulated handler would use the unit pooling provisions to qualify the milk received at all locations in his supply plant unit, sometimes without requiring any shipments from one or more of such leased or owned facilities. The witness explained that, as previously described, the milk not needed for fluid purposes by the handler would remain for use by the manufacturing facility associated with the leased receiving room and would not be available to other fluid handlers. According to CMSA's spokesman, the manufacturing plant operator pays a feee per hundredweight to the regulated handler to qualify the milk received at the leased facility. Thus, the regulated handler gains both the right to require shipments of milk from the leased facility and the qualification fee from the operator of the manufacturing plant. In return, the operator of the manufacturing plant is assured that the milk received at the receiving location near his plant is priced under the order. It was CMSA's opinion that these and other practices of selling qualification subvert the pool plant qualification provisions of the order and do not promote orderly marketing.

The CMSA witness also said that the practices of satelliting milk at pool supply plants undermines the pool plant qualification provisions of the order. He explained that milk pooled through the satellite procedure is Grade A producer milk that is received and manufactured at a nonpool plant, except for the one day each month during September through March that the milk must be shipped to and received at a pool supply plant. In many instances the satellited milk is transferred back to the manufacturing facility on the same day it is shipped to the pool supply plant, according to the witness. If the pool plant is in a unit of supply plants, he explained, it could be that none of this milk is ever shipped to or used by fluid handlers. He noted that the milk is pooled and thus draws the uniform price. He maintained that the current performance provisions for supply plants promote these types of uneconomic movements of milk, and that such movements have nothing to do with servicing the fluid sector of the market.

The CMSA witness further stated that the sale of qualification of producer milk fosters inequities among handlers by affecting the uniformity of prices paid for milk among competing handlers. He pointed out that a handler who sells qualification has a money income of as much as 18 thousand dollars a month that other handlers do not have. It was the witness's opinion that one of the purposes of the federal milk marketing order system is to obtain pricing equity among milk handlers, and that obtaining income by selling qualification is not consistent with that purpose.

Another reason for the elimination of the supply plant performance requirements given by the CMSA spokesman was that the market structure has changed in the Chicago Regional marketing area since the order was promulgated. He said that few distributing plants continue to operate in the City of Chicago and those plants require few shipments of tanker milk from supply plants. He said the closing of a bottling plant in February 1983 was typical of what had been happening in the market. When the plant closed, most of its packaged fluid milk sales were shifted to another handler's plant that receives most of its milk by direct shipment from dairy farms. Thus, he explained, the need for tanker milk decreased even though the fluid milk sales had remained in the market. The witness also reviewed instances where the packaged fluid milk sales had shifted to handlers regulated by other federal milk orders. Again, fewer shipments were needed from supply plants regulated by the Chicago Regional order. The witness maintained that the closing of distributing plants in Chicago and the resulting need for fewer shipments from supply plants support CMSA's opinion that performance requirements for supply plants are no longer appropriate for the Chicago Regional order.

The CMSA witness said the order's supply plant shipping requirements force distant milk to move while closer milk is available to the fluid market. He illustrated how the order requires supply plants or units of supply plants located in the outer zones (zones 10 through 16) to ship the minimum percentage of their milk receipts to distributing plants, even though other supply plants located in the inner zones (zones 1 through 9) have milk supplies available in excess of their required minimum shipments. As an example, the witness said that during the 1982–83 qualifying period (September through March), 62.5 million pounds of tanker milk were shipped from proprietary plants located in zone 10 and beyond, while 350 million pounds of milk were available at plants located in zones 1 through 9. The witness stated that CMSA had traditionally endorsed the requirement for all such milk to move for the purpose of pool qualification. However, due to the ever increasing costs of transporting milk, CMSA has changed its philosphy, the witness said, and now recommends that the Secretary not continue such requirements.

The CMSA spokesman proposed that the order be amended to replace the current performance standards for supply plants with provisions for pooling reserve supply plants. He said that a reserve plant provision, together

with a call provision, would insure that fluid handlers would have the ability to get needed supplies of Class I milk for their operations. He said CMSA's proposed amendments were designed to identify those plants and producers whose association with the marketing area is such as to warrant their sharing in the market's higher valued Class I utilization. He said the proposed amendments were aimed at promoting efficiencies in the marketing of milk by reducing uneconomic movements merely to gain producer milk status and, hence, be pooled under the order.

The CMSA spokesman proposed that a reserve supply plant be required to satisfy the following criteria: (1) The plant must be approved by an appropriate health authority for the receipt of Grade A milk, (2) the plant must be located in the marketing area or in the currently unregulated portion of the State of Wisconsin, and (3) the plant must demonstarate at least one day each month the ability to receive at least 47,000 pounds of uncommingled Grade A milk receipts direct from producers assigned to and pooled at such plant. He also proposed that any plant located in the Upper Midwest (Order 68) marketing area and currently regulated under the Chicago Regional milk marketing order be "grandfathered-in" as a pool reserve supply plant under the Chicago Regional order, provided it maintained pool status under the Chicago Regional order.

The witness said the 47,000-pound requirement was necessary because that size is an efficient over-the-road tanker volume. If a call were issued, the reserve supply plant would need to assemble a load of milk of at least that size to economically transport it to plants in the call area. The witness said the 47,000 pounds of uncommingled Grade A milk could be delivered to the reserve supply plant by more than one smaller-sized milk pick-up truck. As long as the Grade A milk received at the plant was kept separate from any non-Grade A milk and could be transshipped to a distributing plant for Grade A fluid purposes, the witness said, that plant would demonstrate it was willing, ready, and able to ship milk to the fluid market. He also said that the uncommingled requirement would demonstrate continued association with the fluid market on a monthly basis.

The CMSA spokesman proposed that once qualified as a pool reserve supply plant, the plant should not be required to ship milk unless a call were issued by the market administrator upon the request of one or more distributing plants. He said the operator of a pool reserve supply plant would agree to supply milk for Class I use to pool distributing plants, partially regulated distributing plants, or to plants of producer-handlers whenever the market administrator announced that such shipments were needed. The witness said that before making such an announcement, the order should provide for the market administrator to investigate the need for such shipments, either on his own initiative or at the request of interested persons. If the investigation showed that such shipments were needed, the market administrator would issue a notice stating that a shipping announcement was being considered and inviting data, views, and arguments with respect to the proposed shipping announcement.

At the hearing, the CMSA spokesman proposed that the order not limit the size of any call percentage that might be announced by the market administrator. In the post-hearing brief the attorney for CMSA stated that, based on the record evidence, CMSA had concluded that the call percentage should not exceed the preceding year's Class I utilization percentage of the order for the same month in which the call percentage would be applicable. He held that such a limitation would serve to avoid disruption of manufacturing operations at pool reserve plants in the area affected by the call and to equitably apportion among such plants the manufacturing margin losses that result from supplying milk to the fluid sector.

The CMSA witness urged that the size of the call area be the smallest geographical area necessary to secure the needed milk supplies for Class I use at the distributing plants in the call area. He suggested the area could be as small as a part of a county, and could include only one distributing plant and one reserve supply plant. The witness said that the length of the call period could be part of a month, but that he anticipated that the normal call period would be on a monthly basis.

The witness proposed that the net shipment provision of the order not be operative during the time of any call period. He expressed a view that the net shipment provision would have no function in the order. If it were retained, the witness foresaw the possibility that some milk would not be able to be qualified if a call for milk were issued and other milk moved to fill the needed requirements. The witness also urged that the order not contain any diversion limitations for pool reserve supply plants. He said that such a plant should have unlimited diversion privileges since it would be required to ship only when it as located in an announced call area and, therefore, was subject to a call.

The CMSA witness proposed that any pool reserve supply plant that failed to comply with any shipping requirement prescribed by the market administrator lose its pool status for the month in which it failed to comply. He said that any such pool reserve supply plant, which failed to comply or which elected to be a nonpool plant, should not again qualify as a pool plant for a period of a year from the date on which pool status was lost or relinquished. The witness also said that under the proposal any operator of a pool reserve supply plant would cause his plant to lose its pool status for that month if he changed his marketing operations in a manner that would have the impact of forcing or evading any announced call. Any such plant would be prohibited for one year for holding pool status as a reserve supply plant.

The CMSA spokesman said that for the purpose of complying with the shipping requirement pursuant to any announced call, the order should provide that the qualifying shipments of milk for Class I use may be made to pool distributing plants, producer-handler plants, partially regulated distributing plants and to other order distributing plants. The witness proposed that the supply plant unit concept be retained in the order so that the qualifying shipments could be made from any plant of a supply plant unit whether the shipping plant was within or outside the call area. The witness said if a plant outside of the call area made shipments on behalf of a plant within the call area, then the location adjustment credit on any such movement should be limited to the location adjustment applicable to the plant in the call area. The witness explained that the unit concept has proved to be an efficient mechanism to enable multiple plant operators to supply the fluid requirements of the market. The witness said that a multi-plant operator might wish to maintain the manufacturing schedule at a plant within any announced call area and furnish milk from another plant located in a more distant zone. The spokesman said that restricting the location adjustment, as he proposed, would allow maximum flexibility to the operator of a unit of pool reserve supply plants in meeting any shipping requirements while relieving the Chicago Regional pool producers of the cost burden of excessive location adjustment credits paid out of pool funds.

The CMSA spokesman proposed that the order continue to provide the

opportunity for pooling by a supply plant whose location prohibits it from meeting the definitional requirement for a reserve supply plant's location. He said such a plant could be a pool supply plant if it made qualifying shipments of more than 50 percent of its producer milk receipts each month. He said the shipping requirement of more than 50 percent of receipts was appropriate in view of the clearly adequate, if not excessive, amount of milk associated with the Chicago Regional market. He said that such a plant should be required to ship every month to demonstrate its continued association with the market.

The CMSA witness under cross-examination acknowledged that an alternative pooling method would be to have the order provide for both types of supply plants located in the marketing area, i.e., regular supply plants with specified shipping percentages and reserve supply plants subject to a call provision. In this manner, a plant could maintain pool supply plant status by shipping the minimum percentage of its receipts to distributing plants and not be subject to a call for additional shipments of milk. He indicated that CMSA would have no objection to this modification. He indicated that CMSA believed this dual supply plant system would work, but, however, CMSA felt that more appropriate amendments to the order were to simply eliminate specified performance standards for any supply plant and provide for reserve supply plants located in the marketing area or in the federally unregulated portion of the State of Wisconsin.

The CMSA witness concluded his testimony by citing CMSA's long-term involvement with servicing the market and its dedication to continue to serve the milk handlers regulated by the Chicago Regional order. He stated that CMSA would not deny fluid handlers the milk necessary for their fluid needs and would continue to provide supplies of milk for handlers' needs at competitive prices. He said that the proposals made by CMSA should be adopted so that the industry would no longer pay for required milk shipments from distant plants when nearer plants have milk supplies available and are ready, willing, and able to ship.

A spokesman for Farmers Union Milk Marketing Cooperative (FUMMC) said that his organization supported elimination of shipping requirements for supply plants and had so testified at previous amendatory hearings for the Chicago Regional order. He maintained that access to the pool had gained economic value and that qualification of milk had been bought, sold and brokered. He said that FUMMC long had believed that inequities resulted from the sale of qualification and noted that the problems had gotten a little worse. The witness stated that FUMMC supported the overall concept of the proposed reserve supply plant provisions, but that certain modifications should be made.

The FUMMC spokesman said that requiring a pool reserve supply plant to receive at least 47,000 pounds of uncommingled Grade A milk one day each month was unnecessary in two aspects. He said the prohibition on commingling Grade A milk with Grade B milk would result in costly actions a handler would undertake to satisfy the order's requirements, but which would prove nothing. He contended that the operator of a reserve supply plant would know in advance if any of his plant's Grade A producer milk supplies were needed for fluid purposes. Accordingly, he said, the plant operator could keep sufficient supplies of Grade A producer milk needed for fluid purposes separate from any ungraded milk on those days when qualifying shipments would be made. Other days, when the plant's milk receipts would be used to produce manufactured dairy products, the plant operator could commingle his milk supplies. The FUMMC spokesman said that to require uncommingled Grade A milk receipts one day each month would be unnecessary when the milk would not be transshipped for use in fluid milk products that day. He further held that the uncommingled requirement would lead to inefficient milk assembly routes and urged that the order not require such inefficiencies.

The FUMMC spokeman said that the receipt requirement of 47,000 pounds of milk one day each month was unnecessarily high. He proposed instead that the requirement be 25,000 pounds of Grade A milk. He said that this size truck is used to pick up milk at farms and that this volume should be used for the reserve supply plant minimal requirement. He noted in his post-hearing brief that the receipt requirement of 25,000 pounds would facilitate existing farm pickup practices and the use of the order provisions whereby milk diverted by a supply plant to a pool distributing plant counts as a qualifying shipment of milk from the supply plant (divert-transfer).

The witness proposed that the amount of any announced call be limited to a percentage of a plant's producer receipt equal to the marketwide Class I utilization percentage during the same month of the previous year. He expressed the view that a limit on the call percentage would insure that no plant in any zone, regardless of its proximity to Class I sales, would be required to ship more than its pro rata share of the market's Class I needs. In its post-hearing brief, FUMMC opposed any restriction in the size of the call area. The brief stated that the "smallest and closest" area restriction for a call area, as proposed by CMSA, could be used as justification to call more milk from a particular reserve supply plant and could cause competitive inequities among neighboring supply plants.

The spokeman for FUMMC proposed, absent adoption of the reserve supply plant provision, that the Secretary reduce the shipping performance standards for supply plants, as proposed by Dean et al. In his post-hearing brief, the spokeman stated that the supply plant shipping percentage for each month should be equal to the marketwide Class I utilization percentage for the same month of the preceding year. The spokesman said that this change would be helpful in reducing uneconomic movement of milk.

Marigold Foods, Inc. (Marigold, a proprietary handler, also supported the proposed reserve supply plant provisions with some modifications. The Marigold spokesman agreed with the FUMMC spokesman that any call percentage should be limited to the marketwide Class I utilization percentage for the same month of the previous year. He also said the requirement to receive at least 47,000 pounds of uncommingled Grade A milk one day each month was unnecessary. The Marigold witness expressed the view that once a reserve supply plant had obtained pool status, it should keep such status until it elected nonpool status or failed to satisfy any announced call by the market administrator.

The Marigold witness said that his company supported the reserve supply plant concept because Marigold wanted the practices of selling qualification of milk eliminated. The spokesman said his company had sold qualification and that he believed the practice created differences in the cost of Grade A milk paid by Marigold and other competing handlers.

The spokeman for Lakeshore Federated Dairy Cooperative (Lakeshore), a federation of three dairy cooperatives, and Woodstock Progressive Milk Producers Association, a separate cooperative organization, said that the concept of a reserve supply plant and its associated call provisions should be considered at another hearing when all provisions of the Chicago Regional order could be reviewed and

updated. He also said that the location adjustments in the order were outdated and need to be increased, in particular. He said that the CMSA proposals were broader than necessary to assure the pooling of producer milk on the Chicago Regional market.

The Lakeshore witness said that his organizations favored keeping the supply plant provisions now contained in the order until a more complete review of the order could be held. He said his organizations supported a lowering of the performance standards for supply plants as an alternative to adopting the reserve supply plant provisions at this time.

The National Farmers Organization (NFO) opposed the proposed reserve supply plant provision as well as the elimination of performance standards for supply plants. In its post-hearing brief, NFO said that the Chicago Regional market was characterized by a milkshed which is almost exclusively to the north and west of Chicago. It said that the milk suply is located in rural areas, relatively far from the primary population centers and distributing plants that serve the fluid market. NFO maintained that the Chicago Regional market continues to rely on supply plants to assemble and transfer milk to distributing plants, and this know system should not be haphazardly discarded. NFO said that the consideration of a reserve supply plant provision,with an associated call provision, should be delayed until a hearing is held to review the order in its entirety, including such provisions as basing point, and location differentials.

The NFO witness urged certain modification if the Secretary decided to adopt the reserve supply plant concept. He said that the estimated marketwide Class I utilization percentage for the month should be the maximum amount that any call percentage could be. He also opposed including the words "smallest and closest" in the description of any call area. The witness opposed requiring uncommingled Grade A milk to be received one day a month by a reserve supply plant. However, he said the NFO supported the position that, once a plant was qualified as a pool reserve plant, it should maintain such status until the plant failed to meet a call issued by the market administrator.

A spokesman for Dean Foods Company, who also represented Hawthorn Mellody, Inc.; Borden, Inc., and four other proprietary handlers (Dean et al.), opposed the elimination of the performance standards for supply plants, as proposed by CMSA. The spokesman for Dean et al. said that the fluid milk needs of the Chicago market have been satisfied by the performance provisions for supply plants as contained in the order. He said that his group favored increasing the amount (from 10 percentage points to 15 percentage points) by which the Director of the Dairy Division could not temporarily increase the supply plant shipping requirements. He contended that this proposed change was the only action necessary in this proceeding. He said that his group recommended that the shipping requirements for supply plants be reduced the full 15 percentage points during the September 1983 through March 1984 period, as contained in proposal number 4 of the hearing notice, but that the order's minimum shipping standard for each month not be reduced permanently by 15 percentage points.

The witness said that two attributes of the current supply plant system demonstrate its usefulness and the need to keep the present supply plant provisions as part of the Chicago Regional order. He said one attribute was the assurance by a supply plant that a sufficient quantity of milk would reach pool distributing plants. The witness said that such assurance was gained through the use of the mandatory shipping percentages and the Director's discretionary authority to temporarily revise the shipping percentages. The second attribute, which the witness claimed promoted orderly marketing, was that a supply plant had to demonstrate its ability to provide pure and wholesome milk for the market. He said the milk handlers needed to know upon whom they could rely for a dependable supply each month. Without the shipping requirements, he said, handlers could not be assured of a pure and wholesome supply of milk.

The Dean et al. witness said that the group of handlers he represented opposed the reserve supply plant provision, as proposed by CMSA, because his group did not know what changes might occur in the amount handlers would be charged for tanker milk in the absence of shipping requirements for supply plants. He expressed the view that the availability of milk had helped to keep the plant charges moderate in the past. The witness expressed concern whether fluid milk handlers would be able to get sufficient milk without paying an excessive amount for plant charges, if the performance requirements for supply plants were eliminated. That concern would be even greater, he explained, if the supplies of producer milk on the Chicago Regional market decreased in response to any future changes in national dairy legislation, and if operators of milk manufacturing plants in Wisconsin wished to keep their plants operating at an efficient and economic level of operations. He said the uncertainty about future plant charges was central issue to the group of handlers he represented.

In his post-hearing brief, the witness said performance requirements assure consumers an adequate supply of pooled milk and help to keep plant charges at realistic levels. He maintained that performance requirements are fundamental to the federal milk order regulatory system.

The witness for Dean et al. said that an appropriate modification to reflect his group's position would be to have the Chicago Regional order provide for supply plants with stated, monthly performance requirements and for reserve supply plants with the associated call provision. He said that supply plants would be located in the first 10 zones and reserve supply plants should be restricted to zones 11 and beyond. The witness said the current order's performance requirements would be appropriate under his modified supply plant system, if the Director's discretionary provision were increased as he proposed. In this manner, he claimed, the performance requirements on supply plants would assure milk supplies to handlers located in the nearby zones of the Chicago Regional market.

In his post-hearing brief, the witness said a call imposed on the closest geographic area could increase substantially the performance requirements of handlers operating reserve supply plants in the call area. He implied that he was opposed to any restriction in the size of the call area.

A spokesman for Hawthorn Mellody, Inc., testified in support of the positions taken by the Dean et al. witness at the hearing. He added that any call for milk should include the Class II milk needs as well as the Class I milk needs at distributing plants in the call area. He said that if a handler had his own system of milk supplies, such a handler should have the privilege of using his own supply for Class II purposes and call on reserve supply plants for his Class I needs. The spokesman also said that any announced call percentage should be limited to the current order's performance requirements for supply plants.

In his post-hearing brief the spokesman for Hawthorn Mellody, Inc., supported the Dean et al. brief. He also proposed that a service charge, to be paid by reserve supply plants for the benefit of qualifying without shipping

any milk, be included in any reserve supply plant provision. He also supported allowing unit pooling among proprietary plant handlers and cooperative associations.

Kraft, Inc., an operator of five supply plants regulated by the order, supported a lowering of the performance standards for supply plants as contained in proposal number 4 of the hearing notice. The Kraft witness said that the order should retain performance requirements for pool supply plants to equitably allocate the burden of shipping and to maintain the responsibility for involvement in moving milk to the fluid market. He said the general problem of increasing production without increased fluid demand was the background for the proposals considered at the hearing. He said that the current order's shipping requirements were too high and that the Director's discretion to adjust the requirements was inadequate. Kraft's position was that the shipping standards should be retained but at a lower level, and that the amount of the Director's discretionary authority should be increased.

The Kraft witness said that its opposition to the reserve supply plant concept was that it would upset the existing equitable relationships between supply plants. He said eliminating required shipments except when a call would be issued, and restricting the size of the call area to the smallest and closest area possible were reasons Kraft believed the relationships would be changed. He said that with the removal of minimal performance standards, distant plants would be able to participate in the pool with no incentive whatsoever to make shipments or to arrange for another supplier to ship their pro rata share. He said that distant supply plants would disengage from the fluid market with little concern that they would be called upon to make shipments or that any required shipments would be substantial, if the call were extended to such plants. The witness said that as a result of the above disengagement of distant plants, supply plants located closer to the fluid market would be forced to ship a much greater amount of milk to prevent a call or as a result of a call.

The Kraft spokesman said another reason it opposed the proposed reserve plant concept was the potential harmful effects on plant operators who had invested in buildings and had planned business expansion based on the 15-year history of modest shipping requirements under the order. He said that an artificial demand for more milk from certain plants by force of regulation could upset the daily operations as well as the long run planning by operators of plants so affected. In its post-hearing brief, Kraft said that some supply plant operators had made considerable investments in manufacturing facilities and now rely upon a consistent and predictable quantity of milk for manufacturing purposes. This is done, he explained, in order to process efficiently the surplus Grade A milk production associated with the Chicago Regional market. Kraft said that a significant change in the volume of milk required to be shipped by such plants could result in inequities between plants, lost efficiencies, additional hauling and procurement expenses, and possible plant closings. It was Kraft's view that the adoption of the reserve supply plant system with the elimination of the stated monthly performance standards for supply plants could threaten the viability of millions of dollars in private investments.

As an alternative, the Kraft witness said that if the Secretary would provide for both types of supply plants in the Chicago Regional order, Kraft would support such a finding. He said that a handler should qualify a plant as a pool supply plant based on the current order's performance requirements or as a pool reserve supply plant with the possibility that its milk would be subject to a call. The Kraft witness explained that either type of status would carry with it a responsibility to supply the fluid market without being required to give up a disproportionate share of a plant's milk supply.

In its post-hearing brief, Kraft repeated its support for both types of supply plants. Kraft said that if acceptable guidelines for the market administrator would be developed for him to follow in establishing a call, and if limits were encompassed in the reserve supply plant provision, it believed such a provision would enhance the orderly and efficient handling of milk in the Chicago Regional market area. Kraft proposed that the amount of any call announced by the market administrator not exceed the current minimum shipping requirements for supply plants regulated by the order, i.e., 25 percent of its receipts in September, 30 percent in October and November, and 20 percent in all other months.

Kraft said that the reserve supply plant provision should contain a penalty mechanism, i.e., loss of pool plant status for at least one year, for plants of handlers who make significant changes in marketing operations or who force the need for a call. Kraft said that this provision could help to assure cooperation among handlers in serving the needs of distributing plants.

Kraft opposed including in the proposed definition of a reserve supply plant that the plant assemble a tankerload of uncommingled Grade A milk. Kraft said that no function would be served by the uncommingled milk requirement without regard to the actual need for such milk by distributing plants.

Kraft, in its post-hearing brief, said that the supply plant provisions should be continued and that plants which regularly shipped milk to distributing plants during the preceding 12 months should be pooled as supply plants without being exposed to a call. Kraft modified its position taken at the hearing and said the performance requirements for such plants should equal the marketwide Class I utilization percentage for the same month of the preceding year.

Kraft also proposed at the hearing and in its post-hearing brief that the Secretary modify the standards for unit pooling to permit handlers by agreement to form a unit of supply plants. The Kraft spokesman said the order should permit proprietary handlers and cooperative associations to form supply plant units for qualifying purposes without plant lease or ownership requirements. He said that this modification would allow the market's suppliers of fluid milk maximum flexibility to select the most practical and efficient source and location of milk shipments without regulatory intervention dictating that shipments should come from a particular source or location. The spokesman said that this modification of unit pooling would meet many of the objectives of efficiency sought by CMSA without removing from handlers the opportunity to decide which plant or plants may be the most efficient and equitable source for fluid milk shipments.

In its brief, Kraft said that such units, as it proposed, currently exist between proprietary handlers as well as between proprietary and cooperative handlers on a de facto basis as a result of complex leasing arrangements. Kraft said that these leases involve token consideration and are colloquially considered to be "sham" arrangements, entered into because of the form of unit pooling currently provided in the order. It said the elimination of the acknowledged sham would not affect existing pricing, pooling and marketing arrangements between handlers who have leasing arrangments. Kraft concluded that the unit pooling modification would provide greater opportunity for all handlers to

seek maximum efficiency in providing an equitable share of fluid milk to distributing plants.

A spokesman for the Trade Association of Proprietary Plants (TAPP), an organization of milk manufacturing plants in Wisconsin and Illinois, recommended that both supply plants and reserve supply plants be considered pool plants under the order. He said if the order provided operators of supply plants with a choice of pooling methods, many of the problems and issues discussed at the hearing could be resolved to most handlers' satisfaction. He identified the issues to be: (1) Providing an adequate supply of milk at reasonable handling charges, (2) eliminating qualification fees by pyramiding and leasing arrangements, (3) reduction in satelliting fees, (4) avoiding discrimination against manufacturing plants located nearest to Chicago, and (5) eliminating unnecessary and uneconomic movements of milk for qualification purposes.

The TAPP spokesman supported reducing the performance standards for supply plants and increasing the amount of the Director's discretionary authority, as proposed by Dean et al. in the notice of hearing. He also supported keeping the order's unit pooling provision for units of supply plants established by an individual proprietary handler and by multiple cooperatives. He supported Kraft's proposal to permit proprietary handlers and cooperative associations to form supply plant units on a contractual basis without plant leasing and ownership requirements.

In his post-hearing brief, the TAPP spokesman said that allowing units to be composed of cooperative-owned and/or private supply plants would have many advantages in terms of being equitable, flexible, simple, and economically sound. He maintained that allowing such units would permit more efficient movements of milk and enable supply plants (either cooperative or private) in the distant zones to fulfill their shipping responsibility by paying a fee to plants in nearer zones that are willing and able to ship the milk on their behalf. In this manner, he explained, closer-in handlers would share qualification of milk with more distant plant operators. He said that agreements to share marketing and shipping responsibility could be solved by the movement of money instead of the movement of more distant milk. He maintained that the market could organize the milk supply function in the most efficient manner if the Kraft proposal were adopted.

The TAPP spokesman offered several modifications to the proposed reserve supply plant provisions. He said that the uncomingled Grade A receipt requirement was not needed to assure milk quality or the performance ability of the plant. He agreed with the FUMMC witness that a plant operator would know when any milk was needed for fluid purposes and could, at that time, keep the Grade A milk supplies separate from ungraded milk.

The TAPP spokesman proposed that the supply plants regulated by the order as of August 31, 1983, be deemed to have satisfied all qualification standards under the order with no further shipping requirements, unless a call is issued by the market administrator. He said that any plant which was not a pool plant on August 31, 1983, should be required to ship at least 45,000 pounds of milk to a pool distributing plant to establish its association and qualification as a pool reserve supply plant under the order. By this procedure he maintained that currently unregulated plants could become eligible to be reserve supply plants under the order.

The spokesman proposed that the call percentage for a reserve supply plant should not exceed the Class I utilization percentage for the same month of the previous year. He opposed restriction of a call area to the smallest and closest area possible to fill the need for the call, and said the maximum percentage of a plant's milk receipts that could be called by the market administrator should be specified in the order. He said his suggested maximum would spread the call over a larger area, thereby eliminating possible competitive inequity problems between reserve supply plants. He said that without spreading the size of the call area to include more plants, the normal processing and marketing of products by plants inside the call area could be disrupted by a high call percentage.

The TAPP spokesman proposed that no preestablished qualification units of reserve supply plants, operated either by multi-cooperatives or a proprietary handler, be permitted to satisfy any announced call. He said the order must place some shipping responsibility on a reserve supply plant to encourage the plant to comply with the spirit and intent of any announced call. He said an exception to not allowing units would be a multi-plant handler whose plants could be treated as a unit. If such a handler had supply and/or reserve supply plants inside and outside an announced call area, he said the handler should be permitted to fulfill a call on a plant in the call area with shipments from a plant outside the area, but that any qualifying shipments must be in addition to the shipments already being made by the plant outside the area. He supported the CMSA proposal that the amount of the location adjustment applicable to the milk movement be the lesser to the amount applicable at the plant in the call area or at the plant that made the qualifying shipment.

He said the order should provide that two handlers could combine their plants, whether supply plants or reserve supply plants, to fill their combined call shipping obligation with the prior approval of the market administrator. In this way, he explained, a reserve supply plant that was subject to a call could have additional shipments of milk made on its behalf and could comply with the intent of the call.

The TAPP spokesman opposed the elimination of the net shipment provision for qualifying shipments made by reserve supply plants in response to an announced call. He said the responsibility to have milk shipped to the market rested on the individual reserve supply plant. He said the net shipment provision was necessary to insure that distributing plants received milk for fluid use when a call was issued.

The TAPP spokesman proposed that a reserve supply plant lose its pool status for a year if the operator of that plant failed to comply with any announced call requirement on such a plant or changed its operations which had the effect of evading or forcing such an announcement. The witness said this requirement would aid in carrying out the intent of any call.

Beatrice Foods Company (Beatrice), which operates a supply plant regulated by the order, opposed the adoption of CMSA's proposals and supported the Dean et al. proposals. The Beatrice witness explained that the plant, which is located at Beloit, Wisconsin, manufactures a large variety of specialty dry milk products. Beatrice was concerned, the witness said, that because its plant was located in a nearby zone (zone 5), an issuance of a call would disrupt the supply of milk available at its plant, especially if the call required a high percentage of the plant's milk receipts to be shipped. He said that the plant's production schedules would be disrupted by such a call. Also, the witness said that Beatrice would not recover the full cost of the milk shipped in response to a call. He said Beatrice pays premium costs, high quality milk incentives, and hauling costs totalling approximately 25 cents per hundredweight over the order's

minimum class prices. He maintained that these costs would not be recovered by the price Beatrice would receive for milk that was called for fluid bottling.

The Beatrice witness proposed that if the CMSA's reserve supply plant proposals were adopted, no more than five percent of a plant's receipts should be subject to a call. He said that a manufacturing plant could ship this amount of its receipts without disrupting its production process. He also proposed that an exception be created in the proposed reserve supply plant provision to exempt plants, such as Beatrice's Beloit plant, which purchase less than nine million pounds of milk each month from the requirements of any call. He said that small supply plants located "close-in" to the Chicago area would suffer the most from production disruption in the event of a call and need the above proposed exemption.

A spokesman for Berner Cheese Corporation and Pleasant View Cheese Corporation opposed the adoption of CMSA's proposals. The witness explained that each company operates a nonpool plant which manufacturers Italian-type cheeses. He said the Berner plant was located near Dakota, Illinois, and the Pleasant View plant was near Rock City, Illinois. In addition to the manufacturing plant, he said Pleasant View owns a Grade A receiving station (a supply plant), which is approximately 50 feet from its manufacturing plant. He said that this supply plant is leased to a handler regulated by the order, who combines this plant, located in zone 6, with other supply plants it operates to form a unit of supply plants, as provided in the order. He said milk received at this pool plant is shipped to the handler for fluid use and diverted to the nonpool cheese plants at Dakota and Rock City, Illinois.

The Berner spokesman agreed with the Beatrice spokesman that if the proposed reserve supply plant provisions were adopted and at some future time a call for milk were issued, milk supplies would not be available to manufacturing plants located in the nearby zones. He maintained that production schedules could be disrupted, orders would be unfilled, and that capital investments his company had made would not be recovered. In addition, he said that his company would need to replace for manufacturing purposes any milk that it was required to ship in response to a call. He maintained it could not recover from the market the full cost of such milk replacement.

The Berner spokesman proposed that the maximum amount for any call on reserve supply plants be the current shipping standards for supply plants. He said that these amounts have worked in the past and the industry had accommodated itself to those levels.

A spokesman for Kent Cheese Company, which operates a nonpool Italian-style cheese manufacturing plant, opposed the adoption of CMSA's proposals and supported the Dean et al. proposals. The spokesman explained that Kent Cheese leases its Grade A receiving room as a supply plant to a handler regulated by the order. He said the handler combines this supply plant, located in zone 7, with other supply plants it operates to form a unit of supply plants, as provided by the order. He said that no milk had been shipped from this supply plant to the handler's pool distributing plant for a period of time.

The witness said that the concept of pooling supply plants had been a stabilizing factor for manufacturing plants. He said the contractual leasing arrangement, such as the one of which Kent Cheese was a part, was a protective device for proprietary milk manufacturers. He maintained that severe economic adjustments would occur if supply plant units were eliminated.

The Kent Cheese spokesman said that adoption of the proposed reserve supply plant provisions could have significant adverse impacts on competition, employment, and capital investments. He said the proposed call provision, if implemented, could result in increased costs of milk for his company; could disrupt plant production schedules; could interrupt filling of commercial orders and could result in lost markets, lost margins, or plant closings. He alleged that the CMSA proposals were unfair and inequitable.

The Kent Cheese witness said that the Dean et al. proposals would have a minor impact on his company. He said that he would not have any problem with the rapid implementation of those proposals in an expedited manner.

Kolb-Lena Cheese Company, the operator of a supply plant regulated by the order, opposed the adoption of CMSA's proposals in two post-hearing briefs. A spokesman opposed any change in the order that would directly or indirectly affect the supply of milk for his company in the Illinois counties of Stephenson and Jo Daviess. The spokesman said that since its plant was located 120 miles west of Chicago in zone 7, the removal of any milk from its area would be discriminatory and could force his business into financial difficulties. He said that the company recently had started operating a new 3 million dollar cheese factory and needed adequate supplies of milk to keep the plant operating efficiently. He maintained that his company produced and marketed cheese which was equally important to the consumer as was bottled milk.

The Wisconsin Cheese Makers Association (WCMA) in a post-hearing brief opposed the adoption of CMSA's proposals and supported the Dean et al. proposals. WCMA said it believed Federal milk orders had two purposes. The first was to provide equity to all farmers choosing to meet fluid standards and participate in the pool. The second was to insure that an adequate supply of milk is available for fluid needs at a reasonable cost to bottlers and consumers. WCMA said it opposed CMSA's proposals because it believed the proposals would not reduce inefficient and uneconomic movements of milk, nor treat equitably all producers or plants. WCMA said the Dean et al. proposals would reduce uneconomic movements of milk and would keep the responsibility to supply the fluid markets on all supply plants.

WCMA supported the Kraft proposal that the order provide for supply plant units to be established by multiple proprietary handlers and cooperative associations without plant leasing or ownership requirements. He maintained that the above proposal would allow all of the market's suppliers of fluid milk the maximum flexibility to select the most practical and efficient source of milk to meet the market's needs.

Oberweis Dairy, Inc., a regulated handler under the order, opposed the elimination or any reduction of the qualification provisions of the order. The Oberweis spokesman said that the present requirements were an incentive for sales of milk to his company. He alleged that the removal of shipping requirements would increase the amount of handling charges he would have to pay to have milk delivered to his plant.

The underlying issues of this proceeding concern finding an efficient means to pool large quantities of Grade A milk, insuring that the fluid needs of the market are satisfied, and reducing any uneconomic shipments of milk. Manufacturing plant operators that have Grade A milk supplies which are surplus to the fluid needs of the market want to pool these supplies of milk in order to share in the higher valued returns generated by the sale of fluid milk products. Such plant operators want this source of money to help them pay producers a competitive price for milk. Without this source of funds, these handlers would be forced to pay a competitive price for milk from their

operating margins or run the risk of losing their Grade A milk supplies. Moreover, keen competition exists among manufacturing plant operators for supplies of Grade A milk for manufacturing uses in the Chicago area.

The statements of proponents and others describe a market situation where plants are leased and operated for the primary purpose of pooling milk. Plants are leased for as little as one dollar per year in some instances. In other cases, one or two days' production of milk of a producer is hauled to a poolplant to qualify the milk for pooling. The rest of the producer's production during the month is delivered to a manufacturing plant that is the usual market outlet for that milk. Most of these arrangements result in manufacturing plant operators paying a per hundredweight fee to a pool plant operator to receive sufficient milk from the unit of manufacturing plants or from the individual plants so that all the milk supplies normally associated with the manufacturing plants can be pooled. Many, if not all, of these arrangements exist because the order requires supply plants to ship milk to pool distributing plants in order to qualify as pool plants.

The Chicago Regional order, like most federal milk orders, provides for a marketwide pool. Thus, the total classified use value of all the milk pooled is divided by the hundredweights of milk pooled to establish the minimum uniform price to producers. Handlers that use a greater proportion of their milk in the higher valued uses pay into a producer equalization fund. Handlers that use a greater proportion of their milk in the lower valued uses (manufacturing uses) draw monies from the equalization fund in order to pay their producers the minimum order uniform price. Thus, manufacturing plant operators that can pool their milk supplies can receive from the pool the difference between the order's zoned uniform price and the Class III price for all of the Grade A milk that they can attach to the pool. Through this means, such operators are able to obtain milk for manufacturing use at the Class III price while paying the producers of the milk the higher blend price. For this reason, manufacturing plant operators are willing to pay for the assurance that their milk supplies will participate in the pool. Distributing plant operators in many cases are able to sell pool qualification for use by the manufacturing plant operators.

In order to assure that the market's fluid milk needs are met, the current order requires supply plants to ship milk during certain months of the year. However, as supplies have increased and Class I needs have stayed relatively stable or declined, the proportions of the total milk supplies that need to be shipped have declined. This has resulted in greater pressure to pool milk without having to ship it to a distributing plant. Moreover, increases in the costs of transporting milk have made it even more imperative that milk not move to the fluid market unless it is needed. Nevertheless, the order has required shipments by supply plants to distributing plants. Cooperative associations have been able to achieve some economies through the unit pooling provisions that permit milk to move from only certain supply plants, rather than from each supply plant operated by cooperatives.

Manufacturing plants want to pool their milk supplies and are willing to pay for pool qualification. Some distributing plant operators have qualification to sell, and they do. Much of this occurs because the order requires supply plants to ship milk to distributing plants; yet much of the milk at supply plants does not move to distributing plants. Many of the market practices that have developed because of this situation are contrary to the basic purpose of supply plant performance requirements.

These requirements were developed to get milk to the fluid outlets and to help identify the milk that is to be priced and pooled under the order. Supply plants, which are assembly points for milk, have served to associate milk with the fluid market. Shipments from these plants to distributing plants have identified the milk as part of the market's fluid supply. Milk was pooled and priced at these plant locations as a result of the assembly and shipping functions occurring at the plants.

The record demonstrates that the marketing conditions have changed in the Chicago Regional order. Fewer bottling plants remain in the City of Chicago. A substantial portion of the processing and packaging capacity of fluid milk products in the city area has moved to locations nearer the supply areas. In addition, larger quantities of milk are received on a direct-shipped basis from farms at distributing plants. There now is less need for the order to require all supply plants to satisfy the performance standards to accomplish the association and identification functions.

The problem of selling pool qualification manifests itself in the many ways that handlers have devised over the years to assure the pool status of larger supplies of milk, some of which have been accommodated by amendments to the order. Nevertheless, certain abuses have been identified. The order should be changed so that the market can operate without the need for such devices, which should improve the overall marketing efficiency.

It is clear that current order provisions at times do result in shipments of milk being made from distant supply plants, even when milk is available at supply plants closer to the distributing plants that need it. If such shipments were not made, some milk would be unable to pool. Yet it is obvious that there is a benefit to pooling, as described earlier, that offsets the additional costs of milk hauling and handling involved to get the milk pooled.

It was alleged at the hearing that deriving income from selling pool qualification is contrary to the uniform pricing requirements of the Agricultural Marketing Agreement Act. Regardless of any impact on uniform pricing that results, it is possible to lessen the dependence upon such practices by making certain changes in the order's pooling provisions.

One approach suggested as a modification of other proposals would permit cooperative associations and proprietary handlers to jointly form pool supply plant units. Those favoring this approach maintained that marketing arrangements between handlers, subject to approval by the market administrator, could serve to ensure adequate supplies of milk at distributing plants without requiring uneconomic shipments of milk. Through such arrangements, the proprietary operator of a single supply plant could arrange for another plant to meet the shipping requirements, so milk could be moved from the most advantageous location among two or more supply plants. Such arrangements now are permitted for cooperative associations in order to permit improved marketing efficiencies.

The record indicates that milk shipments made in order to qualify for pool status originate from distant proprietary supply plants that may not be combined with other supply plants to form a unit. Nevertheless, the suggestion to allow proprietary and cooperative handlers to jointly form units should not be adopted. A different approach, which is set out in the following discussion, is being taken. Accordingly, no further discussion on formation of units is required.

The Chicago Regional market and some of its characteristics have previously been described, although briefly, elsewhere in this decision, as have certain previous amendment

proceedings. Over the years, the order generally has been moving, through a series of amendments, towards accommodating the pooling of all available Grade A milk supplies with less and less demonstration of association with the Class I needs of the market. This has been done in response to industry desires to pool more milk and do it more efficiently, particularly during the last 10 or so years. During most of that period, milk supplies were increasing, the number of bottling plants was decreasing, and the costs of moving milk were increasing sharply, due in large part to higher energy prices.

The market as it exists today has fewer bottling plants, more milk, and therefore, less need for supply plant milk. Moreover, the supply areas for the principal population centers in the marketing area contain both supply plants and manufacturing plants. Some of the latter, if not most, utilize Grade A milk. The record shows that there are manufacturing plants that pool Grade A milk but which seldom, if ever, ship milk to distributing plants for fluid uses. In some cases, such plants arrange to pool their milk supplies through one of the various pooling devices described earlier. Such plants in some cases represent substantial investments in manufacturing capabilities designed to operate most efficiently at or near full capacity. Some manufacturing plants produce specialty products and operate on a regular production schedule in order to meet customer orders in a timely fashion. These plants depend on regular deliveries of milk, rather than depending on supplies of milk that are available only on days that bottling plants do not need the milk. Many of these plants are intermingled among other plants that exist primarily to assemble milk for the fluid market. The benefits of pooling, linked with the type of plants in this market, have led to the development of some of the practices that are of concern in this proceeding, and which occur within a market environment where only about one-fourth or less of the market's Grade A milk supplies are utilized as Class I milk. It also appears that much of the milk supply could be delivered directly from farms to plants without going through other plants. Handlers and cooperatives should consider using the direct-delivery methods wherever it is feasible.

In view of the above, and recognizing that the industry seeks improved marketing efficiencies along with the elimination of certain questionable marketing practices, it is concluded that the order should provide that a plant operator may, if a plant meets certain basic requirements, choose to pool a plant as a supply plant, or as a reserve supply plant. Either choice will carry with it certain benefits and responsibilities. Thus, a handler should be able to evaluate the benefits and risks in deciding which pooling method is better suited to the handler's particular situation. This should give handlers greater operating flexibility and provide a way to assure that milk will be available for fluid uses at distributing plants. At the same time, the provisions adopted offer an opportunity for the market to operate more efficiently. Producer milk should move in response to the needs of the market. It is anticipated that milk produced in the outer zones will remain at plants located in the outer zones and be utilized in manufactured dairy products at those locations. Similarly, it is anticipated that sufficient milk supplies, which are located in zones closer to the population centers of the market, will be made available to distributing plants for fluid uses.

Although the order would continue to contain a supply plant provision, it would be changed from the current supply plant provision. A discussion of those changes is presented in issue number two of this decision. The remaining discussion of this issue is directed to the new provisions for reserve supply plants and a call provision.

Berner Cheese Co., which operates an unregulated cheese manufacturing plant, in its post-hearing brief maintained that the Agricultural Marketing Agreement Act of 1937, as amended, does not authorize a "call" provision as proposed by CMSA.

This argument is rejected. Section 608(c) (7)(D) of the Act provides that an order may contain terms and conditions incidental to, and not inconsistent with, other provisions of the Act if such terms and conditions are necessary to effectuate the other provisions of the order.

One of the underlying purposes of the Act is to establish orderly marketing conditions for dairy farmers. The Act authorizes a number of specific means for achieving this, including the pooling of milk on a marketwide basis. Through this pooling procedure, all producers in the market share equitable in both the market's high-valued fluid sales and the reserve milk supplies that necessarily must be available in the fluid market but which return only the lower manufacturing value. History has demonstrated that in the absence of marketwide pooling the burden of the lower-valued reserve supplies falls unevenly on various groups of producers. This tends to result in various disorderly conditions in the market that are harmful not only to producers but to handlers and consumers as well.

The provisions adopted herein for defining a reserve supply plant, along with a mechanism for assuring that the milk supplies at those plants will be available to the fluid market if needed, are consistent with the concept of marketwide pooling. The basic purpose of these provisions is to pool milk that is part of the identified reserve milk supplies for this market in a way that contributes to the maintenance of stable and orderly marketing conditions. This would be accomplished by providing that milk will only have to be shipped by reserve supply plants if there is a demonstrated need for additional milk for Class I use. Thus, market efficiency should be enhanced because milk will no longer need to be shipped merely to qualify for pool status. The reserve supply plant and all provisions adopted herein, although incidental to other terms of the order, certainly are consistent with other provisions of the order and are necessary to fully effectuate the other provisions of the order that serve to promote stable and orderly marketing conditions.

It was suggested at the hearing that supply plants in zones 1 through 10 should be required to ship milk to distributing plants and those in zones 11 through 16 would be recognized as reserve supply plants. Such a division of the market into two areas subject to different pooling standards probably would alleviate most of the concerns that are the subject of this proceeding. There obviously is more than enough milk produced in zones 1 through 10 to meet the total Class I needs of the market.

However, such a division at best would be somewhat arbitrary. Moreover, it would also be inflexible; i.e., handlers would not have any choice of pooling provisions. Although it is uncertain how many plants will choose to be supply plants and how many will pool as reserve supply plants, the industry should be given an opportunity to supply the market's Class I needs through whatever means that appear to be most feasible. Accordingly, the suggestion to require shipments by supply plants in the nearer zones and adopt a call provision for more distant plants is not adopted.

At the outset, it must be noted that CMSA's proposal for including reserve supply plant provisions in the order did

not state specific language to implement the proposal. The proponents indicated that the reserve supply plant provisions of the Upper Midwest order should serve as a basic model for the language in this order. This suggestion has been followed, but certain portions of that language were unsuited to the provisions being adopted herein on the basis of this proceeding and as related to the marketing conditions in the Chicago market.

Reserve supply plant: A reserve supply plant would be a plant (as plant is defined in the order) that is located in the marketing area or in the unregulated portion of Wisconsin. It also would be a plant located in the Wisconsin portion of the Upper Midwest marketing area that had been a pool plant under the Chicago order for at least three months at the time an amended order incorporating this provision becomes effective. This latter point differs somewhat from CMSA's proposal as stated in testimony and its post-hearing brief, but it is, however, consistent with CMSA's intent.

CMSA proposed that the reserve supply plant provision initially include those plants that were pool plants under the Chicago order at the time of the hearing and that were located anywhere in the Upper Midwest marketing area. As practical matter, those plants are located in the Wisconsin portion of the Upper Midwest marketing area. The order language adopted reflects that fact.

The opportunity to choose pool reserve supply plant status, however, should not be limited to just those plants that were Order 30 pool plants at the time of the hearing. If the reserve supply plant provisions had been adopted on an expedited basis as proposed, the proposed reference to pool status at the time of the hearing may have been appropriate. Since that was not the case, a reasonable approach under the circumstances would be to provide that plants located in the Wisconsin portion of the Upper Midwest marketing area may elect pool reserve supply plant status at such time when those provisions become effective, if the plants have been Order 30 pool plants for at least three months prior to that effective date. If such plants lose pools status as reseve supply plants for any reason, they would not be eligible for such status again. Such a plant could, however, qualify as a pool supply plant in any month that it met the shipping requirements for supply plants. As adopted, this provision may accommodate the continued pooling of milk regularly associated with the Chicago order, but which may be qualified through a different plant or plants under the revised order. This assumes some arrangements to pool leased facilities and to pool milk through satellites will change after the order is amended.

The operator of a reserve supply plant would be required to file a request for pool status at least 15 days before the first day of the month that pool status is desired. This would provide the market administrator an opportunity to inspect the plant and facilities and determine the plant's ability to meet the requirements for pool plant status.

A pool reserve supply plant must demonstrate its continued ability to perform if a call for shipments is issued by the market administrator. Thus, the order should require that each such plant must receive at least 47,000 pounds of Grade A milk from dairy farmers at least one day each month. Such milk need not be received in a single load, nor must it be uncommingled. Meeting this requirement will provide a reasonable indication that the plant has sufficient supplies of Grade A milk available to ship at least one tanker of milk each day, which it could be called upon to do. CMSA proposed the 47,000-pound requirement and also proposed that the milk must be received uncommingled with non-Grade A milk.

The 47,000-pound figure represents an economical size of load to move between plants. If a plant can assemble that much milk, then it can ship that much milk. Other interested parties suggested a 25,000-pound daily receipt requirement, or indicated that no such requirement could be justified on the basis that compliance with such rules is costly and accomplishes nothing. These arguments are rejected. The principal factor in granting pool status to a reserve supply plant should be that the plant is able to ship milk if it is needed, and to ship a load large enough to represent efficient hauling. A plant should not be pooled regularly only to discover, when a call is issued, that it cannot assemble enough Grade A milk to ship to another plant or plants. Thus, the 47,000-pound figure is a minimal requirement to specify and to meet so that a plant and its producers may obtain the benefits of pool participation.

It is not necessary in meeting the 47,000-pound requirement to also require that such milk be received in uncommingled form. In the event a call is issued, handlers would have some lead time to arrange for haulers to pick up loads of Grade A milk to be received and subsequently moved to distributing plants in compliance with a call. If such arrangements cannot be made, then the plant would be unable to meet the call, in which case it would lose its status as a pool plant for the month, and it would lose its ability to be a pool reserve supply plant for one year. The potential loss of pool status should provide an incentive for handlers to be prepared to meet a call.

Another provision adopted would preclude a plant from switching back and forth between pool status as a supply plant and as a reserve supply plant. When the operator of a plant requests and qualifies for pool reserve supply plant status, that status would continue until the plant becomes a pool plant under another order, the operator requests nonpool status, the plant fails to meet any "call" for shipments announced by the market administrator, or the plant operator decides to qualify the plant as a supply plant. In the latter case, the operator would inform the market administrator that the plant will qualify as a supply plant for three consecutive months, beginning after the end of the third month following the month in which such notice was given. Once the switch to supply plant status is made, the plant would not be able to change to pool reserve supply plant status until it had been pooled as a supply plant for three months. Thus, a plant operator will have to make a commitment to pool on one basis or the other for a minimum period of three months. If the plant subsequently failed to qualify as a supply plant during the months such status had been indicated, except due to conditions beyond the handler's control, the plant would lose its pool status and would not be eligible for pool status as a reserve supply plant for one year. However, the plant could qualify as a pool supply plant in any other month that it made the shipments required for such status.

If the operator of a pool reserve supply plant fails to meet a call, or requests nonpool status for such plant, that plant would not be able to pool under the reserve supply plant provision for one year. However, it is noted that if a reserve supply plant qualified as a pool plant under another order, it could revert to pool reserve supply plant status the following month. If the provision to preclude switching status were not included, a reserve supply plant could simply avoid compliance with a call by notifying the market administrator that the plant would meet the supply plant shipping requirements for that month. Also, if this were allowed, it would be meaningless to announce a call percentage greater than

the shipping requirement for supply plants. A commitment to serve the market in one or the other supply plant capacities should help maintain regular deliveries to distributing plants for fluid use.

TAPP, in its post-hearing brief, suggested that a regular supply plant should lose its pool status for one year if the plant operator made any significant change in marketing operations that the market administrator determines has the effect of evading or forcing a call on reserve plants. TAPP also urged that this same penalty be applied to reserve supply plants if the same determination could be made.

Such a provision is included for reserve supply plants. It is appropriate that if the operator of a reserve supply plant changes operations in such a way as to either evade or force a call, such plant should not be eligible for pool status as a reserve supply plant for one year. The one year depooling penalty should be extended to include any reserve supply plant involved in actions that aid or abet the evasion or forcing of a call by another reserve supply plant. This is consistent with the concept that the privilege of pool participation carries with it a responsibility to ship milk for fluid use, if needed. It is not appropriate, however, to attempt to apply such a penalty to regular supply plants, since such plants must qualify each month by making shipments of milk for fluid uses.

It must be recognized that once the market administrator announces a call, it may not be possible for each reserve supply plant in the call area to find a pool distributing plant outlet to receive the required milk shipments. Accordingly, shipments to pool distributing plants, other order plants, producer-handler plants, and partially regulated distributing plants; should, within certain limitations, be treated as qualifying shipments. Credit for shipments to partially regulated distributing plants should be limited to the amount of milk that receives a Class I classification at the transferee plant. Similarly, credits for shipments to plants fully regulated under other Federal orders should be limited to a quantity equal to the quantity of milk shipped to pool distributing plants during the month, and should not include any milk shipped for agreed Class II or Class III uses. Such flexibility in complying with a call was requested by CMSA and comports with provisions now applicable to supply plants. Such flexibility, however, makes it feasible to leave intact the order's net-shipments provisions and to make them applicable to shipments by pool reserve supply plants.

For the purpose of meeting a call for shipments, qualifying shipments may be made from any plants or producer milk supplies of the handler, either within or outside the call area. However, qualifying shipments from plants not subject to the call must be in addition to those already being made by the handler to distributing plants. Shipments already being made would include shipments from other plants of the handler and in the case of a cooperative, any milk shipped directly from producers' farms. When a handler ships milk from a plant other than the one subject to the call, any location adjustment would be limited to whichever plant location receives the lesser location adjustment.

This does not provide fully for "unit pooling" since it does not recognize shipments already being made from one plant of the handler not subject to the call as satisfying a shipping requirement on another plant that is subject to the call. To recognize such shipments already being made from another plant could relieve a multiple plant handler from having to supply any milk in response to a call. Thus, each plant operated by a handler must qualify on its own performance; but to implement operating efficiency, qualifying shipments need not originate from the plant on which the call is made. This will allow maximum flexibility in meeting any shipping requirement on a reserve supply plant.

The provision of the order that now protects plant operators against loss of pool status for up to two months when performance standards cannot be met because of circumstances beyond the control of the handler operating the plant should be extended to apply also to pool reserve supply plants.

A reserve supply plant should be granted pool status as such during the months of April through August only if the plant was a pool plant during each of the preceding months of September through March. This will preclude a reserve supply plant from seeking pool status during the spring flush production months but not during the other months when a call would be more likely.

CMSA's proposal would not have provided for a "maximum" call percentage that would prevent calling on a reserve supply plant to ship all or most of its milk to other plants. The CMSA post-hearing brief, however, stated that any call shoud not exceed the market's Class I use level for the same month of the previous year. As noted earlier, several interested parties urged that a "cap" be placed on the market administrator's authority to call for milk shipments.

The provisions for a reserve supply plant adopted herein would allow a call at not more than twice the applicable shipping standard for that month for supply plants. Thus, if the supply plant shipping requirement for the month was 25 percent (based on marketwide Class I use one year ealier), then any call announced by the market administrator for the month could not exceed 50 percent of a reserve supply plant's milk supply. During 1982, the marketwide utilization of producer milk in Class I averaged about 23 percent and varied from 19 percent to 26 percent. Accordingly, the maximum call percentages would have varied from 38 percent to 52 percent.

The current supply plant pooling provisions basically require all handlers that operate supply plants to perform to the same degree in supplying milk to meet the market's needs for fluid (Class I) milk. Through the unit pooling provisions, cooperatives and multiple plant handlers have an opportunity to effect certain efficiencies in meeting the overall shipping requirements. Thus, handlers eligible to form units may, for example, choose to ship milk from the nearest available plant in their operations instead of having to ship a specified percentage of each supply plant's receipts. However, there are handlers who cannot take advantage of the unit pooling provisions because they operate only one supply plant. These plants, unless leased to another handler, generally must ship their share of the market's Class I milk needs from wherever the plant is located.

Under this arrangement, equity of supply performance between handlers is achieved to a higher degree than if pooling standards had been developed that would minimize the movements of milk needed for Class I use. However, the cost of supplying the market's Class I needs may be higher.

If the principal consideration involved in setting pooling standards is to minimize transportation costs, then the milk would have to move from those farms and/or plants located closest to the fluid milk plants that need milk. Under the marketing conditions that exist in this market, such an approach would cause serious problems for manufacturing plants located in the close-in zones. Moving the nearest milk to distributing plants for Class I use would provide efficiency in transportation, but may be less equitable in terms of performance. Some close-in plants probably would have to

give up all their milk supply, while more distant plants probably would not need to give up any milk.

It is hoped that the system of pooling supply plants provided herein will facilitate the achievement of both performance equity and cost efficiency in getting the fluid segment of the market adequately supplied with milk. Nevertheless, there may be a tendency towards less performance equity under the reserve supply plant concept. Plants that choose to pool as regular supply plants will have to ship the specified percentage of receipts each month. However, reserve supply plants would be required to ship milk only when a call for shipments would be announced by the market administrator. In order to try to maintain a balance between equity of performance and handling efficiencies, the equity aspect is a consideration in allowing a call provision to be twice the level of shipments required of supply plants.

Testimony at the hearing and views expressed in briefs indicated the industry's general position that a maximum call percentage approximating the marketwide Class I use levels would be appropriate. This reflects general concern that manufacturing plants that chose to pool as reserve supply plants could have their production schedules unexpectedly disrupted, if a call was issued. Other concerns expressed were related to obtaining milk supplies to replace those that would be shipped away from the plant in resposne to a call. These concerns involved finding available replacement supplies and the expected higher costs in securing such supplies.

Beatrice Foods Co., as noted earlier, urged that any call should be limited to five percent of a supply plant's receipts. If such a limit were not adopted, Beatrice then urged an exemption from any call for supply plants that purchase less than 9,000 pounds of milk per month. The basis for that position is that small supply plants located close to the Chicago area would suffer most from production disruption in the event of a call.

Such an exemption is not provided. Several plant operators expressed concerns about the adverse impacts on small businesses due to disruption of production patterns and the cost of obtaining milk to replace milk shipped in response to a call. These concerns are understandable. Nevertheless, the milk being utilized by such plants is a part of the total supply of reserve milk associated with the Chicago Regional market. There is no basis for treating such supplies differently from other reserve milk supplies.

The options being afforded to handlers under the provisions adopted herein should help alleviate some of those concerns. For example, a manufacturing plant may find it more feasible to pool as a supply plant than as a reserve supply plant. As a supply plant, the operator would know how much milk had to be shipped each month. Producer milk supplies could be developed so that the plant's usual manufacturing schedule could be accommodated, while at the same time the plant could regularly supply milk to other plants for Class I uses. Under such an operating mode, the plant would not be subject to a call, and the operator would not need to be concerned about production disruptions.

Moreover, although the maximum call percentage substantially exceeds the levels suggested, such maximum does provides assurance that no supply plant will be entirely stripped of its supplies of milk, unless, of course, marketwide utilization were to increase to 50 percent Class I. Such a development is not expected in the forseeable future.

These options, discussed above, presume that a plant operator will choose to pool the plant. However, a handler also could consider whether to keep the plant pooled. Nonpool status would avoid having to deal with the types of concerns mentioned above. Thus, another option always available to a handler is to depool the plant and avoid any responsibility to supply the market with milk for fluid purposes.

There are two principal determinations that must be dealt with in adopting a reserve supply plant concept. One, outlined above, is whether the order should restrict the amount of milk that such a plant may be required to "give up" in order to comply with a call and thus retain its pool status. The other issue centers on how to define a "call area." The call area would include the distributing plants that need milk for Class I uses, And the reserve supply plants that would be required to make qualifying milk shipments in response to a call.

These two questions are interrelated. If, as CMSA proposed, the "call area" would be defined as the smallest and closest area that could provide the needed milk, then a limit on the call percentage would be inconsistent with that concept. Under such a narrow definition, it would be possible that a single plant would be called upon to ship its entire milk supply. On the other hand, limiting the call percentage could avoid calling a plant's entire milk supply, but may well result in a larger call area in order to include more plants.

The market administrator should have considerable flexibility in defining a call area and in setting a call percentage. The market administrator is expected to be knowledgeable about the supply and demand conditions for Class I milk, including which plants sell milk to other plants and which plants are potential suppliers of additional milk. The market administrator is also likely to have an understanding of contractual arrangements that may exist between the parties in the market. Thus, the market administrator is well prepared to investigate a call for milk and to decide what to require should a call appear to be warranted.

Thus, the market administrator should be free to structure a call in a fashion that reflects as many facets of the supply-demand situation as possible. He should be allowed to decide, for example, that the call area is to be a single area, or that it may be made up of more than one separate and distinct sub-areas. Also, it should be clear that the market administrator may prescribe varying call percentages within the call area, or even if feasible, within a sub-area. Flexibility such as that adopted herein should serve to secure milk for needed fluid milk uses, while at the same time avoiding overly burdensome shipping requirements for those plants that would be subject to call. This approach should serve the desired purpose of a reserve supply plant concept without placing undue performance burdens upon those plants that choose to be pool reserve supply plants.

At the same time, it is necessary to recognize that there are certain benefits and risks associated with either approach to pooling supply plants. The operator of a plant that chooses to ship sufficient proportions of the plant's milk supplies to qualify each month as a supply plant will know about one year in advance what the shipping percentage will be. The benefit, of course, is that the producers who supply the plant with milk will participate in the pool. The plant operator can plan a specific level of operations well in advance and be reasonably assured of attaining that level of operations.

The operator of a plant that is pooled as a reserve supply plant, on the other hand, would have less assurance that all of its supplies will be regularly available for use in the plant. However, there would be no disruption of normal operations due to a call in any month that a call was not announced. In such a case, the plant operator would have the benefits of pool participation without having to give up any supplies of milk.

It is assumed, however, that the market mostly will be adequately supplied with milk without frequent announcement of a call. Thus, it would be expected that reserve supply plants, particularly those with manufacturing capabilities, would generally be able to retain their milk supplies, and would not regularly be performing the service of supplying milk for the fluid market. The market administrator should be able to call on such plants, as needed, to ship milk at a greater rate than is required of supply plants that ship milk each month. If a reserve supply plant operator is unwilling to operate under such terms, the option to pool instead as a supply plant after a three-month delay would be available. Moreover, the plant would have to be committed to pooling as a supply plant for at least three months.

Supply a provision is necessary to ensure that plants do not switch back and forth from pool reserve supply plant to pool supply plant status. Handlers should make a commitment to serve the market as a reserve supplier, and then be held to that choice, but with a reasonable opportunity to change that decision.

To provide the market administrator some guidelines for administration of the call provision, it may be helpful to discuss a few examples that anticipate certain operating concerns. These examples are merely illustrative and are not intended to be exhaustive or exclusionary as guidelines.

The operator of a reserve supply plant must make qualifying shipments of milk whenever the market administrator announces that such shipments are needed. To this end, it is provided that the market administrator may announce a shipping requirement any time it is found that milk pooled at reserve plants is needed for Class I use in the market. If the market administrator has reason to believe a shipping requirement is needed, a notice shall be issued stating that a shipping requirement is being considered and inviting data, views, and arguments with respect to the proposed announcement of a shipping requirement.

It is presumed that such a notice will be issued because the operator(s) of one or more pool distributing plants have asked the market administrator to issue a call for milk shipments on the basis that adequate supplies for Class I use are not otherwise available. In conducting an investigation to determine whether such shipments might be appropriate, the market administrator would be expected to check with the market's suppliers to establish the availability of milk for Class I use.

A call should not be considered on behalf of any handler who operates a pool distributing plants(s) in the suggested call area and who has sufficient milk available to cover the expected Class I use at such distributing plant(s). Handlers should not be allowed to use milk from their own sources for Class II or Class III purposes and then expect the market administrator to issue a call for reserve supply plants operated by other handlers to ship milk. This is because the Class I needs of the market must command the highest priority of demand on available milk supplies. To provide otherwise could result in a call being issued to move milk from a manufacturing plant (reserve supply plant) to a distributing plant for Class II use.

A handler's milk supplies should be directed first to Class I uses. If additional milk is needed for Class II or III uses, such supplies should be obtained from another Class II or III source.

Nevertheless, in evaluating a request for a call, the market administrator should recognize that more milk will be needed than just the projected level of Class I use, due to shrinkage, separation of milkfat, and other factors. The record provides not direct guidance regarding what an appropriate level of allowance may be. However, the plant location adjustment credits provided on milk transferred between pool plants suggest that an allowance of 10 percent would be consistent. Accordingly, the market administrator should take such an allowance into account when evaluating a call request.

It is clear from the record that there has existed for some time in the Chicago Regional market an over-order service charge structure. Such a structure is neither mandated nor precluded by the statute that authorizes the Secretary to implement Federal milk marketing orders. The question that arises in this discussion is how such over-order service charges relate to the issuance of a call for shipment by the market administrator.

Two situations should be considered. First, assume the market administrator finds market suppliers willing to ship milk at the current market level of over-order charges to the plant(s) that request a call. In such a case, and handler's unwillingness to pay the current level of service charges should not be considered by the market administrator as a justifiable reason for issuing a notice that a call for shipments is being considered. On the other hand, the market administrator should consider such a notice if he finds that suppliers are willing to ship milk to the requesting handler(s) only at an over-order charge in excess of the amount prevailing in the marketplace. The purpose of this discussion is to indicate that the call provision will operate with consideration of the effective level of service charges in the market. Over-order charges will be considered by the market administrator, but the order provisions will not be used to either undergird or undercut a particular level of charges for services.

It also should be noted that the issuance of a call will not serve to guarantee any particular plant(s) a supply of milk for Class I use. Although it is anticipated that the plants needing milk would get it when a call is issued, the market administrator lacks the authority to direct any reserve supply plant to ship milk to any particular distributing plant. Nevertheless, the "call area" and the "call percentage" announced by the market administrator reasonably would define an area such that shipments from reserve supply plants in the area would likely move to distributing plants in the area. If the operation of these order provisions fails to secure adequate supplies for Class I use, then it may be necessary to consider further changes to the order in the future.

These pooling provisions should provide handlers a useful set of alternatives. The benefits and disadvantages of each method of pooling supply plants can be weighed. In addition, these provisions should make it possible to assure adequate supplies to meet the fluid milk (Class I) needs of the market without at the same time requiring distant milk to move when nearer supplies are available.

There no longer should be a need for the provision of the order whereby a cooperative association may request pool status for a plant on the basis that at least 50 percent of the milk of the association's members is delivered to other handler's pool distributing plants. the reserve supply plant provisions adopted herein provides essentially the same opportunity for cooperatives to pool plants without being required to regularly ship milk to pool distrubuting plants. It is noted, moreover, that the pool plant provisions of the Upper Midwest order do not contain the provision in question here. Thus, action to delete the provision for pooling cooperative association plants is consistent with the Upper Midwest order provisions that were suggested as model language for the reserve supply plant provisions in the Chicago Regional order.

2. *Performance standards for supply plants.* The minimum shipping standard for each pool supply plant for each month should be the marketwide Class I utilization percentage during the same month of the previous year. The current order provisions for unit pooling of supply plants and for the authority of the Director of the Dairy Division to revise the shipping requirements and/or diversion allowances for supply plants for a temporary period would no longer be necessary and therefore are removed.

The present minimum shipping percentages for pool supply plants are 25 percent for September, 30 percent for October and November, and 20 percent for all other months. Also, a supply plant that meets the shipping requirements for pool plant status during each of the months of September through March may continue to be a pool plant without shipments to pool distributing plants during the following months of April through August. Basically, the percentages represent the amount of a supply plant's receipts from producers that must be delivered to pool distributing plants.

The present order provides that two or more supply plants may be considered a unit for meeting the performance standards of the order, if certain requirements are satisfied. The plants included in the unit must be located in the marketing area or in Wisconsin, and must be owned or fully leased and operated by the handler establishing the unit. Also, two or more cooperative associations are permitted to establish a unit of supply plants, composed of plants operated by such cooperatives, by filing with the market administrator a written contractual agreement obligating each plant of the unit to ship milk as directed by such cooperatives. Finally, the handler or cooperatives establishing a unit must inform the market administrator prior to September 1 each year of those pool plants that will compose the unit for the period of September through August of the following year.

The present order provides also that the Director of the Dairy Division may increase or decrease, on a temporary basis, the supply plant shipping percentages by up to 15 percentage points for any of the months of September through March. A temporary revision may be made if, after investigation, it is found that such revision is necessary to obtain needed shipments or to prevent uneconomic shipments of milk to distributing plants. Similary, the Director has the authority to make temporary adjustments in the order's diversion allowances. Such allowances represent the amount of milk from producers that may be delivered directly from farms to nonpool plants and still be pooled and priced under the order. Milk that is so diverted from pool plants normally is being disposed of in surplus uses. This provision (§ 1030.7(b)(5)) is referred to herein as the Director's discretionary authority.

The positions taken by the different participants at the hearing have been stated at length under the discussion concerning the pool reserve supply plant provisions. The germane proposals relating to performance standards for supply plants are reiterated here in summarized form for convenience.

CMSA proposed eliminating all performance requirements for supply plants located in the marketing area. For a supply plant outside the area, CMSA proposed that each plant would have to ship more than 50 percent of its producer milk receipts each month to pool distributing plants to be a pool plant. CMSA proposed eliminating the Director's discretionary authority, since its proposed call provision would be executed by the market administrator.

Dean et al. submitted proposals included in the hearing notice to keep the minimum shipping percentage for supply plants and reduce it by 15 percentage points for each of the months of September through March. The spokesman for Dean et al., however, stated that the proposed reduction of 15 percentage points was for September 1983 through March 1984 only and was not intended to be a permanent reduction. He urged that the current provisions be maintained with respect to supply plants located in zones 1 through 10.

Several other witnesses supported a permanent change in the shipping standards for supply plants. Some supported a reduction of 15 percentage points, while others proposed establishing the minimum shipping percentage to be equal to the marketwide Class I utilization percentage for the same month of the previous year.

One handler opposed any change in the minimum performance standards for supply plants.

All participants who supported retaining performance standards for supply plants also, by inference, supported retention of the Director's discretionary authority. The issue of whether to modify the amount of the Director's discretionary authority from 10 percentage points to 15 percentage points was considered in the Partial Final Decision issued by the Assistant Secretary on August 4, 1983. The issue of whether to retain the Director's discretionary authority is considered herein.

The present supply plant system was promulgated as part of the Chicago Regional order in 1968. Shipping standards for supply plants have been used in the market to assure the availability of milk for distributing plants. Performance standards, based on association of pooled milk supplies with fluid milk outlets in the market, have been needed in the past to assure that milk is made available to such outlets. The record of the hearing demonstrates that the use of supply plants with the associated performance standards may be appropriate for some handlers regulated by the order, while a system of reserve supply plants without specified monthly shipped requirements may be equally appropriate for other handlers.

Under the pooling system adopted herein, it is not possible to determine what level of shipments to require in order to assure fluid milk handlers that they will have adequate supplies. Given this situation, the most feasible approach appears to be to specify shipments from supply plants at a level that approximates the market's Class I uses of milk, which vary seasonally. If such a standard is too low to attract enough milk, the market administrator could issue a call for milk to be shipped by reserve supply plants. If, on the other hand, experience shows that too much milk is being shipped, it may be necessary for some plants to switch from supply plant to reserve supply plant status.

It is desirable to have seasonal variation in the pooling standards, since production varies seasonally while fluid demand is relatively stable throughout the year. The provision adopted herein ties the performance standard for supply plants to the Class I utilization of the market and, accordingly, provides a variable pooling standard reflecting seasonality of production. The monthly Class I utilization percentage for the market in a given month likely would not differ appreciably from the utilization percentage of the corresponding month of the previous year.

The present order provides that a supply plant that satisfies the pooling requirements during each of the months of September through March shall be a pool plant during each of the following months of April through August. Under the pooling system adopted herein, a supply plant would have to satisfy the minimum performance requirement each month of the year. Thus, milk should be made available for fluid purposes on a

continuous basis from supply plants. Requiring supply plants to meet a shipping requirement each month also is consistent with CMSA's suggested model language (the Upper Midwest order provisions) for adopting reserve supply plant provisions.

To coincide with the changes in the pooling standards for supply plants, conforming changes should be made in the limits on the amount of milk that may be diverted from pool supply plants to nonpool plants. The current provisions limit diversions by handlers to nonpool plants to not more than 70 percent during the months of September, October and November, and 80 percent during the months of December through March, of the total quantity of producer milk of each handler.

Several witnesses testified that with a change in the supply plant shipping percentages, a corresponding change in the diversion limits would be appropriate.

The maximum percentage diversion limit each month for a pool plant should equal the combined Class II and III utilization percentages in the same month of the preceding year. This system will provide built-in flexibility, automatically providing for seasonal changes in supply and demand. Establishing a maximum diversion allowance for each month is consistent with requiring supply plants to meet a shipping requirement each month. From a practical standpoint, this provision will affect only supply plants and reserve supply plants since, in effect, pool distributing plants are subject to different pooling standards.

It is not expected—with such a large market—that the utilization will change appreciably from one year to the next; thus, use of data for the same month of the preceding year should be appropriate as a measure of the market's Class I needs.

The proposal that a supply plant located outside the marketing area be required to ship more than 50 percent of its producer receipts each month to maintain pool status should not be adopted. The witness for CMSA who proposed the above requirement said that the order was more than adequately supplied with milk for Class I purposes. He maintained that any plant outside the marketing area needed to perform monthly at a high level to demonstrate its association with the Chicago Regional market. There is no persuasive evidence in the record that a supply plant located outside the marketing area should be required to ship a greater percentage of its producer receipts than a supply plant located in the marketing area. Thus, the proposal is denied.

The provisions providing for a handler to form a supply plant unit or for cooperatives by contractual agreement to form a supply plant unit should be deleted from the order. The supply plant unit concept was adopted to realize savings in hauling costs by enabling multi-plant operators to supply the market from the plants located closest to the bottling plants. Also, it was adopted to gain greater returns for producers by using reserve supplies in the more remunerative products processed by certain plants while shipping milk from plants that otherwise would be processing milk into less remunerative products.

Under the pooling system adopted herein, the operator of each milk plant will choose the pooling option that better represents the operator's interests at a particular time. If the choice is to pool the plant as a supply plant, the operator assumes responsibility for shipping milk from that plant to the fluid market each month of the year, or at least each month that such plant is pooled as a regular supply plant. If reserve supply plant status is chosen, the operator accepts the responsibility to ship milk in the event a call is announced, but not before that time. Milk will move to the fluid sector according to the decisions made by the operators of supply plants and reserve supply plants. Thus, under the pooling system herein adopted the units pooling concept, although still valid, is no longer essential to maintain orderly marketing.

Similarly, the Director's discretionary authority to revise for a temporary period the shipping percentages and/or diversion allowances for supply plants is no longer necessary and should be dropped. A supply plant operator will know approximately ten and one-half months in advance the minimum percentage of its plant's receipts that will need to be shipped in order to satisfy the pooling requirements for a supply plant. As stated earlier, if too little milk is supplied for fluid use, the market administrator may issue a call for milk from reserve supply plants. No additional milk would need to be shipped by supply plants that have already satisfied the minimum performance requirement for that month. Thus, the provisions providing for the Director's discretionary authority should be removed from the order.

3. *Producer delivery requirements.* The order should be changed to require that each producer must deliver at least one day's production each month to the pool plant that reports such milk as producer milk as a means of establishing eligibility for diversion. The current order requires that during September through March, at least one day's production must be physically received during each month at the pool plant from which diverted.

CMSA proposed adoption of such a change in conjunction with the other proposal to amend the basic pooling provisions for supply plants. The CMSA spokeman testified that, in CMSA's view, requiring the entire production of a 24-hour period to be received and physically unloaded into the pool plant that reports that milk as producer milk would identify those producers on the market who are ready, willing, and able to respond to the fluid market in the event of a call. He held that such a requirement is minimal and that to supply anything less from the individual dairy farm would represent less than "true market association." Moreover, he stated that the proposed "touch-base" requirement would serve to preclude artificial association with the market by distant producers who could not be relied upon to serve the fluid needs of the market if their milk were needed.

The spokesmen for Dean Foods Company and Hawthorn-Mellody gave qualified support for this proposal. The Dean spokesman stated that, if the reserve supply plant and call provisions were adopted, then the proposed producer delivery requirements would be appropriate to establish the minimum level of performance necessary to participate in the marketwide pool.

Witnesses for several handlers strongly opposed adoption of the proposed change in touch-base requirements. Most expressed the view that such provisions would result in uneconomic and unnecessary shipments of milk. It also was maintained that such requirements do not relate to actual shipments of milk to fill Class I needs of the market and, moreover, are unrelated at all to the marketing of milk for fluid use. One witness pointed out that the Upper Midwest order has no touch-base provisions and expressed the view that such provisions are not needed in this market. Another witness maintained that the producer touch-base proposal would be detrimental to a small business because it would require uneconomic movements of milk, and it would impose extra handling costs and unnecessary administrative effort.

Kraft, Inc.'s post-hearing brief urged that the touch-base proposal be rejected. The brief stated Kraft's view that in the Chicago market "* * * an abundance of Grade A milk production that far exceeds fluid demand * * *" argues against the adoption of such provisions. Kraft also argued that in these circumstances, touch-base provisions

are "token regulatory requirements" unrelated to fluid need, which would burden the market administrator with additional auditing and verification tasks.

The Farmers Union Milk Marketing Cooperative's brief urged that the touch-base proposal be modified to require physical receipt of each producer's milk at the facility where it is reported as producer milk once, rather than once each month. The brief maintained that the record demonstrates that some handlers would have to uneconomically alter their routes one day each month in order to meet the proposed requirement.

A brief filed by the Wisconsin Cheesemakers Association stated that organization's views in opposition to the one-day-a-month touch-base proposal. The Association argued that, "What is important is that the producer's farm maintain its Grade A permit, not that once a month their milk is received where it is pooled."

TAPP's brief expressed the view that it is not necessary to show association with the market and that a touch-base requirement wastes time, money, and effort, and reduces the quality of milk by unnecessary handling. The brief further maintained that the only purpose of such a proposal would be to create a hardship, a qualification obstacle, and additional costs for reserve plants that do not regularly ship fluid milk to market because such milk may seldom, or never, be needed by the market. The brief also stated that "All producers have a right to participate and have a market for Grade A milk."

The CMSA proposal differs from the current provision in two aspects. First, the one-day-a-month requirement would apply to each producer each month, rather than just during each month of September through March as now required. Second, the delivery of one day's production each month would be required to be made to the plant where that milk is reported as a receipt of producer milk for which the plant operator is the handler responsible under the order for paying producers.

The changes proposed by CMSA should be adopted. Other provisions also being recommended for adoption will further serve to accommodate the pooling of milk associated with the market. For example, shipping requirements for supply plants will still be provided, but a handler could choose whether to pool a plant as a supply plant or as a reserve supply plant. If a handler elects to pool a plant as a reserve supply plant, there are no specific shipping requirements. Such a plant may choose not to ship any milk unless the market administrator issues a call. Thus, some reserve supply plants, particularly those located in the outer zones, may regularly be pool plants without having to ship any milk to the fluid market unless a call for milk is issued. Such plants, nevertheless, would be required to demonstrate an ability to respond to a call by receiving a specified quantity of Grade A milk one day each month, thereby establishing an association with the market.

Individual producers likewise should demonstrate their association with a pool plant. requiring one day's production from each producer to be received and physically unloaded at the plant where such milk is reported as a receipt of producer milk will serve the purpose of identifying which producers are associated with which plants. It also will serve to demonstrate the marketability of their milk each month.

It is recognized that such a requirement probably will result in some minimal movements of milk that otherwise would not take place. It also is recognized that certain benefits are to be obtained from participation in the marketwide pool by plants and producers. If the cost of inconvenience of such minimal requirements outweight such benefits, then those plants and producers so affected may choose not to pool their milk.

A major purpose of an order is to ensure an adequate supply of milk for the fluid market. It is consistent with that purpose to assure the availability of those supplies through minimal performance standards for individual producers. Moreover, the appropriateness of such standards under the conditions existing in this market is not dependent upon the Class I utilization percentage. Whether supplies are large or small compared to fluid use is not a major consideration in this case. What is more important is that when a call is issued, the milk needed to meet that call will be available. The provisions adopted herein are intended to help provide that assurance of availability.

It should be noted, too, that the presence, absence, or differences from similar provisions in any other order is not a factor in deciding what provisions should be adopted for this order. It is not the provisions of the other orders that are before the Secretary in this proceeding.

In its post-hearing brief, CMSA modified its position on what should be required to comply with the touch-base requirement. Instead of specifying the entire production of a 24-hour period, the brief stated that one delivery, at least one day each month, should be sufficient to demonstrate true market association for a dairy farmer whose milk is picked up at the farm more frequently than once each day.

This suggested modification of the proposal should not be adopted. The record in this proceeding provides no basis for concluding that producers whose milk is picked up more frequently should be able to establish market and plant association with a lesser proportion of their production than those producers whose milk is picked up less frequently.

5. *Need for emergency action on one or more of the above issues.* Emergency action, i.e., omitting a recommended decision, is not warranted with respect to proposals one, two and three. An earlier partial decision on issue four was issued on an emergency basis so that, if needed, uneconomic shipments of milk could be avoided during the fall and winter months of 1983–84. The order subsequently was amended to provide the Director with greater discretionary authority to temporarily revise the supply plant shipping standards.

The proposals by CMSA, along with modifications suggested by other interested parties, would, if adopted, significantly change the method of pooling milk under the Chicago Regional order. As the foregoing sections of this decision disclose, far-reaching changes are being adopted. The order provisions to implement these actions are complex, interrelated, and rather lengthy. Thus, the industry must have the opportunity to review the decision and the order language proposed, and to file comments.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions 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 Chicago Regional 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 commercial activity specified in, a marketing agreement upon which a hearing has been held.

List of Subjects in 7 CFR Part 1030

Milk marketing orders, Milk, Dairy products.

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 Chicago Regional marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

1. Section 1030.6 is revised to read as follows:

§ 1030.6 Supply plant and reserve supply plant.

Except as provided in paragraph (c) of this section, "supply plant" and "reserve supply plant" are defined as follows:

(a) "Supply plant" means a plant from which a Grade A fluid milk product is shipped or transshipped during the month to another plant. Such supply plant shall be equipped with storage capacity sufficient to hold the largest quantity of fluid milk product either received in the plant or shipped from the plant as a single load during the month, except that no storage capacity shall be maintained in a plant described in § 1030.4(a).

(b) "Reserve supply plant" means a plant that is located in the marketing area or in that portion of the State of Wisconsin that is not included in the marketing area of any federal milk marketing order. This definition shall include any plant located in the Wisconsin portion of the Upper Midwest federal milk order marketing area that was a pool plant for at least three consecutive months immediately preceding the effective date of this paragraph so long as it continues to maintain pool status.

(c) Any plant located on the premises of a pool distributing plant pursuant to § 1030.7(a) shall not be considered a supply plant or a reserve supply plant unless it is located in a building that is entirely separate from the distributing plant.

2. Section 1030.7 is revised to read as follows:

§ 1030.7 Pool plant.

Except as provided in paragraphs (d) and (f) of this section, "pool plant" means:

(a) A distributing plant or unit described in paragraph (a)(4) of this section from which during the month the disposition of fluid milk products specified in paragraph (a)(2) of this section is not less than 10 percent of the receipts specified in paragraph (a)(1) of this section and from which the disposition of fluid milk products specified in paragraph (a)(3) of this section as a percent of the receipts specified in paragraph (a)(1) of this section is not less than 45 percent in each of the months of September, October, November, and December, 35 percent in each of the months of January, February, March, and August, and 30 percent in all other months.

(1) The total Grade A fluid milk products, except filled milk, received during the month at such plant, including producer milk diverted to nonpool plants and to pool supply plants and pool reserve supply plants pursuant to § 1030.13, but excluding producer milk diverted to other pool distributing plants, receipts of fluid milk products in exempt milk, packaged fluid milk products and bulk fluid milk products by agreement for Class II and Class III uses from other pool distributing plants, and receipts from other order plants and unregulated supply plants which are assigned pursuant to § 1030.44(a)(8)(i)(*a*) and (ii) and the corresponding step of § 1030.44(b).

(2) Packaged fluid milk products, except filled milk, disposed of as either route disposition in the marketing area or moved to other plants from which it is disposed of as route disposition in the marketing area. Such disposition is to be exclusive of receipts of packaged fluid milk products from other pool distributing plants.

(3) Packaged fluid milk products, except filled milk, disposed of as either route disposition or moved to other plants. Such disposition is to be exclusive of receipts of packaged fluid milk products from other pool distributing plants.

(4) A unit consisting of at least one distributing plant and one or more additional plants of a handler at which milk is processed and packaged or manufactured shall be considered as one plant for the purpose of meeting the requirements of this paragraph if all such plants are located within the State of Wisconsin or that portion of the marketing area within the State of Illinois, and if, prior to the first day of the month, the handler operating such plants has filed a written request for such plants to be considered a unit with the market administrator.

(b) A supply plant from which the quantity of fluid milk products (except filled milk) and condensed skim milk shipped or transshipped and received and physically unloaded into plants described in paragraph (d) of this section as a percent of the Grade A milk received at the plant from dairy farmers (except dairy farmers described in § 1030.12(b)) and handlers described in § 1030.9(c), including producer milk diverted pursuant to § 1030.13, but excluding packaged fluid milk products that are disposed of from such plant as route disposition, is not less than the marketwide Class I utilization percentage for the same month of the preceding year, subject to the conditions set forth in paragraph (d) of this section.

(c) A reserve supply plant, subject to the following conditions:

(1) At least 47,000 pounds of Grade A milk from producers are received and physically unloaded into the plant at least one day each month;

(2) The operator of the plant has filed a request with the market administrator for pool plant status at least 15 days prior to the first day of the month in which such status is desired to be effective. Upon becoming qualified as a pool plant pursuant to this paragraph, such status shall continue to be effective through the third month following the month in which the operator notifies the market administrator that the plant will seek qualification as a pool plant

pursuant to paragraph (b) of this section for the next consecutive three months, unless the operator requests nonpool status for the plant prior to the first day of the month for which nonpool status is requested, the plant subsequently fails to meet all the conditions of this paragraph, or the plant qualifies as a pool plant under another order.

(3) Subject to the conditions set forth in paragraph (d) of this section, the operator of the reserve supply plant supplies fluid milk products (except filled milk) and/or condensed skim milk to pool distributing plants located within an area(s) designated by the market administrator as the "call area" in compliance with any announcement by the market administrator requesting a minimum level(s) of shipments, as further provided below:

(i) The market administrator may require such supplies of milk products from operator(s) of any pool reserve supply plant(s) within the call area whenever he finds that milk supplies for Class I use at one or more pool distributing plants within the call area are needed from one or more plants qualifying under this paragraph. Such requirement(s) shall be expressed as a percent of the Grade A milk received at the plant from dairy farmers (except dairy farmers described in § 1030.12(b)) and handlers described in § 1030.9(c), including producer milk diverted pursuant to § 1030.13, but excluding packaged fluid milk products that are disposed of from such plant(s) as route disposition, but such percent shall not exceed twice the percentage shipping requirement for a pool plant pursuant to paragraph (b) of this section. Before making such a finding, the market administrator shall investigate the need for such shipments either on his own initiative or at the request of interested persons. If his investigation shows that such shipments might be appropriate, he shall issue a notice stating that a shipping announcement is being considered and inviting data, views, and arguments with respect to the proposed shipping announcement;

(ii) A plant must have been a pool plant under this order during each of the preceding months of September through March to be a pool plant under this paragraph during the following months of April through August; and

(iii) Failure of a handler to comply with any announced shipping requirement, including making any significant change in his marketing operations that the market administrator determines has the impact of forcing or evading such an announcement, shall result in immediate loss of pool status for the plant pursuant to this paragraph. Such loss of pool status also shall apply to any other reserve supply plant that the market administrator determines was utilized by any handler to aid or abet the forcing or evading of such announcement. A plant losing pool status in this manner, or a plant that requests nonpool status, or that elects to qualify as a pool supply plant for three consecutive months and fails to so qualify during any of such months, may not again qualify as a pool plant pursuant to this paragraph for a period of one year from the date on which pool status was last held.

(d) Qualifying shipments pursuant to the requirements of paragraph (c)(3)(i) of this section may be made to the following plants, except that shipments from a reserve supply plant to plants described in (d)(1), (d)(2), (d)(3), or (d)(4) of this paragraph that are outside the call area may count as if delivered to a pool distributing plant within the call area if the market administrator is notified of the amount of any such commitments to ship milk prior to such notice:

(1) Pool plants described in paragraph (a) of this section, subject to the following conditions:

(i) The quantity of condensed skim milk and fluid milk products moved (including milk diverted) from supply plants and reserve supply plants to each distributing plant that is a pool plant pursuant to paragraphs (a) or (e) of this section that shall count towards meeting the shipping requirements of this paragraph shall be a net quantity assignable at each such pool plant pro rata to supply plants and reserve supply plants in accordance with total receipts from such plants. The net quantity shall be computed by subtracting from the quantity of fluid milk products and condensed skim milk received from supply plants and reserve supply plants the following:

(*a*) The quantity of condensed skim milk not disposed of in a fluid milk product and the quantity of fluid milk products in the form of bulk milk and skim milk moved from the pool distributing plant to pool supply plants and/or pool reserve supply plants plus any such bulk shipments to nonpool plants as Class II or Class III milk other than:

(*1*) Transfers or diversions classified pursuant to § 1030.40(b)(3); and

(*2*) Transfers or diversions on New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving, Christmas, and on any Saturday if no milk is received at the pool distributing plant from a supply plant or a reserve supply plant, in an amount not in excess of 120 percent of the average daily receipts of producer milk pursuant to § 1030.13(a) at the plant during the prior month, less the quantity of producer milk diverted pursuant to § 1030.13(d) on such day. If no producer milk was received in the distributing plant during the prior month, the average daily receipts during the current month shall be used for this purpose; and

(*b*) If milk is diverted from the pool distributing plant on the date of the receipts from the supply plant or the reserve supply plant, the quantity so diverted, except any diversion of milk (not to exceed 3 days' production of any individual producer) made because of any emergency situation such as a breakdown of trucking equipment or hazardous road conditions if such emergency is reported to the market administrator.

(ii) Qualifying shipments from reserve supply plants to pool distributing plants within the call area may originate from any plant or producer milk supplies of the handler. The computation of location adjustments pursuant to § 1030.52(c) (8), (9), and (10) shall be based on the location of the plant subject to the call or the location of the plant(s) from which shipments are actually made in compliance with the call, whichever results in the lesser location adjustment on such shipments.

(iii) Shipments from sources other than the reserve supply plant(s) subject to the call and milk supplies for which a cooperative association is the handler pursuant to § 1030.9(c) must be in addition to any shipments already being made by the handler and may not result from shifting milk supplies from a pool distributing plant outside the call area to one within the call area; and

(iv) The operator of a supply plant may include as qualifying shipments deliveries to pool distributing plants directly from farms of producers pursuant to § 1030.13(d).

(2) Plants of producer-handlers;

(3) Partially regulated distributing plants, except that credit for such shipments shall be limited to the amount of milk which receives a Class I classification at the transferee plant; and

(4) Distributing plants fully regulated under other Federal orders, except that credit for such shipments shall be limited to the quantity of milk shipped to pool distributing plants during the month. Credits for shipments to other order plants shall not include any such shipments made on the basis of agreed-upon Class II or Class III utilization.

(e) Any plant that qualifies as a pool plant in each of the immediately preceding three months pursuant to

paragraph (a) of this section or the shipping percentages in paragraphs (b) or (c) of this section that is unable to meet such performance standards because of unavoidable circumstances determined by the market administrator to be beyond the control of the handler operating the plant, such as a natural disaster (ice storm, wind storm, flood), fire, breakdown of equipment, or work stoppage, shall be considered to have met the minimum performance standards during the period of such unavoidable circumstances, but such relief shall not be granted for more than two consecutive months.

(f) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant or exempt distributing plant;

(2) A plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless it is qualified as a pool plant pursuant to paragraph (a), (b), (c), or (e) of this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area as route disposition and to pool plants qualified on the basis of route disposition in this marketing area than is so disposed of in the marketing area regulated pursuant to such other order; and

(3) That portion of a plant that is physically separated from the Grade A portion of such plant, and is not approved by any regulatory agency for the receiving, processing, or packaging of any fluid milk product for Grade A disposition.

3. In § 1030.13, paragraphs (d)(1), (d)(2), (d)(3), and (d)(6) are revised to read as follows:

§ 1030.13 Producer milk.

* * * * *

(d) * * *

(1) Milk from a dairy farmer shall not be eligible for diversion unless at least one day's production is received and physically unloaded during the month at the pool plant where such milk is reported as producer milk;

(2) Milk from a dairy farmer who was not a producer during the previous month shall not be eligible for diversion until at least one day's production is received and physically unloaded at the pool plant where such milk is reported as producer milk;

(3) Milk diverted to a nonpool plant(s) for the account of the operator of a pool plant, or a handler described in § 1030.9(b), shall not exceed the market's combined Class II or Class III utilization percentage for the same month of the preceding year of the total quantity of producer milk for which it is the handler (or, in the case of a cooperative the producer milk that the cooperative association causes to be delivered to or diverted from pool plants);

* * * * *

(6) Any milk diverted in excess of the limits prescribed in paragraph (d)(3) of this section shall not be producer milk. The diverting handler may designate the dairy farmers whose diverted milk will not be producer milk. Otherwise, the milk last diverted—in lots of an entire day's production—shall be excluded first in determining which dairy farmer's milk should not be producer milk; and

* * * * *

4. In § 1030.30, the introductory text of paragraph (a) and (a)(3) are revised to read as follows:

§ 1030.30 Reports of receipts and utilization.

* * * * *

(a) Each handler, with respect to each of his pool plants (except that if a handler so requests and the request is approved by the market administrator, a single report for supply plants and/or reserve supply plants and a single report for distributing plants may be filed), shall report the quantities of skim milk and butterfat contained in or represented by:

* * * * *

(3) Receipts of fluid milk products and bulk fluid cream products from pool plants of other handlers (or other pool plants, as applicable), including a separate statement of the net receipts from each supply plant and/or from each reserve supply plant, computed pursuant to § 1030.7(d)(1)(i);

* * * * *

5. In § 1030.41, the introductory text of paragraph (a) is revised to read as follows:

§ 1030.41 Shrinkage.

* * * * *

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant (or at all of a handler's supply plants and/or reserve supply plants combined or at all of a handler's distributing plants combined if such reports are filed pursuant to § 1030.30) to the respective quantities of skim milk and butterfat:

* * * * *

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

Signed at Washington, D.C. on April 9, 1984.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 84-9867 Filed 4-11-84; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 841

Licensing Government-Owned Inventions in the Custody of the Department of the Air Force

AGENCY: Department of the Air Force, DOD.

ACTION: Proposed rule.

SUMMARY: The Department of the Air Force proposes to revise part 841, Subchapter D, Title 32 of the Code of Federal Regulations. This proposed revision prescribes the policies, administrative requirements, procedures, terms, and conditions for licensing of rights in federally owned patents and patent applications vested in the United States of America in the custody of the Air Force. This revision is necessary to assure that the Department of the Air Force is consistent with the General Services Administration rule, which implements the applicable public law. This is intended to provide information necessary for submitting all requests for a license under an Air Force invention.

DATE: Comments must be received by May 14, 1984.

ADDRESS: HQ USAF/JACP, Washington, D.C. 20324.

FOR FURTHER INFORMATION CONTACT: Mr. Garvert, HQ USAF/JACP, Washington, D.C. 20324, telephone (202) 693–5710.

SUPPLEMENTARY INFORMATION: This is a complet revision made according to Public Law 96–517 and the General Services Administration regulation on Licensing of Federally Owned Inventions, 41 CFR 101–4, Pubic Law 96–517 dated December 12, 1980, established the policy and objective of the Congress to promote the utilization of inventions arising from federally supported research and development and authorized the Administrator of General Services to promulgate regulations specifying the terms and conditions upon which any federally owned invention may be licensed. The Department of the Air Force has determined that this part is not a major

rule as defined by Executive Order 12291; is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354); and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

Authority: 10 U.S.C. 8012.

List of Subjects in 32 CFR Part 841

Authority delegations (Government agencies), Inventions and patents, law.

The revised part 841 is proposed to read as follows:

PART 841—LICENSING GOVERNMENT-OWNED INVENTIONS IN THE CUSTODY OF THE DEPARTMENT OF THE AIR FORCE

Subpart A—General Information

Sec.

Subpart B—Restrictions and Conditions for Licensing and Types of Licenses

Subpart C—Licensing Procedures

Subpart D—Transfer of Custody of Government Inventions and Confidentiality of Information

Authority: 10 U.S.C. 8012.

Subpart A—General Information

§ 841.0 Purpose.

This regulation prescribes the policies, administrative requirements, procedures, terms, and conditions for licensing of rights in federally owned patents and patent applications vested in the United States of America in the custody of the Department of the Air Force. It is consistent with General Services Administration Licensing of Federally Owned Inventions, 41 CFR 101–4, which implements Pub. L. 96–517. It applies to all requests for a license under an Air Force invention.

§ 841.1 Air Force policy.

Federally owned inventions in the custody of the Department of the Air Force normally will best serve the public interest when they are developed to the point of practical application and made available to the public in the shortest possible time. Nonexclusive, partially exclusive, or exclusive licenses for the practice of these inventions may be granted to applicants who agree to develop and/or market the inventions. All Air Force inventions normally will be made available for the granting of licenses to responsible applicants.

§ 841.2 Execution of licenses.

Nonexclusive, partially exclusive, or exclusive licenses will be executed on behalf of the Department of the Air Force by the Secretary or by anyone to whom this authority is delegated.

§ 841.3 Delegation of authority.

The administration of this part is delegated to The Judge Advocate General, who may redelegate the administration of this part to the Chief, Patents Division, Office of The Judge Advocate General. All communications received in any Air Force activity requesting information regarding the licensing of a Government invention will be acknowledged and sent without further action directly to HQ USAF/JACP, Wash. DC 20324.

§ 841.4 Definitions.

(a) "Air Force invention" means an invention, plant, or design which is covered by a patent or patent application in the United States, or a patent, patent application, plant variety protection, or other form of protection in a foreign country, title to which has been assigned to or otherwise vested in the United States Government and in the custody of the Department of the Air Force.

(b) "Small business firm" means a small business concern as defined in section 2 of Pub. L. 85–536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration.

(c) "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

(d) "United States" means the United States of America, its territories and possessions, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 841.5 Royalties.

(a) Royalties may or may not be charged under nonexclusive licenses granted to US citizens and US corporations on Government inventions; however, the Department of the Air Force may require other considerations when a royalty is not charged.

(b) Normally, an exclusive or partially exclusive license on an Air Force invention will contain a royalty provision and/or other consideration flowing to the Government.

Subpart B—Restrictions and Conditions for Licensing and Types of Licenses

§ 841.6 Restrictions and conditions.

The following restrictions and conditions apply to all licenses granted under this part:

(a) *Restrictions.* (1) A license may be granted only if the applicant has supplied the Air Force with a satisfactory plan for development or marketing of the invention, or both, and with information about the applicant's capability to fulfill the plan.

(2) A license granting rights to use or sell under an Air Force invention in the United States shall normally be granted only to a licensee who agrees that any product embodying the invention or produced through the use of the invention will be manufactured substantially in the United States.

(b) *Conditions.* Licenses shall contain such terms and conditions as the Air Force determines are appropriate for the protection of the interests of the Federal Government and the public and are not in conflict with law or this part. The following terms and conditions apply to any license:

(1) The duration of the license shall be for a period specified in the license agreement, unless sooner terminated according to provisions therein.

(2) The license may be granted for all or less than all fields of use of the invention or in specified geographical areas, or both.

(3) The license may extend to subsidaries of the licensee or other parties if provided for in the license but shall be nonassignable without approval of the Air Force, except to the successor of that part of the licensee's business to which the invention pertains.

(4) The license may provide the licensee the right to grant sublicenses under the license, subject to the approval of the Air Force. Each sublicense shall make reference to the

license, including the rights retained by the Government, and a copy of each sublicense shall be furnished to the Air Force.

(5) The license shall require the licensee to carry out the plan for development or marketing of the invention, or both, to bring the invention to practical application within a period specified in the license, and to continue to make the benefits of the invention reasonably accessible to the public.

(6) The license shall require the licensee to report, at least annually, on the utilization or efforts at obtaining utilization that are made by the licensee, with particular reference to the plan submitted.

(7) Licenses may be royalty-free or for royalties or other consideration.

(8) When the licensee agrees that any products embodying the invention or produced through use of the invention will be manufactured substantially in the United States, the license shall recite such agreement.

(9) The license shall provide for the right of the Air Force to terminatre the license, in whole or in part, if:

(i) The Air Force determines that the licensee is not executing the plan submitted with its requests for a license and the licensee cannot otherwise demonstrate to the satisfaction of the Air Force that it has taken or can be expected to take within a reasonable time effective steps to achieve practical application of the invention;

(ii) The Air Force determines that such action is necessary to meet requirements for public use specified by Federal regulations issued after the date of the license and such requirements are not reasonably satisfied by the licensee;

(iii) The licensee has willfully made a false statement of or willfully omitted a material fact in the license application or in any report required by the license agreement; or

(iv) The licensee commits a substantial breach of a covenant or agreement contained in the license.

(10) The license may be modified or terminated consistent with this part upon mutual agreement of the Air Force and the licensee.

(11) Nothing relating to the grant of a license, nor the grant itself, shall be construed to confer upon any person, any immunity from or defense under the antitrust laws or from a charge of patent misuse, and the acquisition and use of rights pursuant to this subpart shall not be immunized from the operation of state or Federal law by reason of the source of the grant.

(12) The license shall contain a provision that the government makes no representation or warranty as to the validity of any licensed patent or patent application, or of the scope of any of the claims contained therein, or that the exercise of the license will not result in the infringement of any other patent and that the Government assumes no liability whatsoever resulting from the exercise of the license.

§ 841.7 Nonexclusive licenses.

Each Air Force invention normally will be made available for the granting of nonexclusive licenses, subject to the provisions of any other license, including those in § 841.8, and subject to the following condition: the nonexclusive license may also provide that, after termination of a period specified in the license agreement, the Air Force may restrict the license to the fields of use or geographic areas, or both, in which the licensee has brought the invention to practical application and continues to make the benefits of the invention reasonably accessible to the public. However, such restriction shall be made only in order to grant an exclusive or partially exclusive license according to this part.

§ 841.8 Exclusive and partially exclusive licenses.

Each Government invention may be made available for the granting of an exclusive or partially exclusive license subject to the following restrictions and conditions:

(a) *Restrictions.* Exclusive or partially exclusive licenses may be granted on federally owned inventions as follows:

(1) Three months after notice of the invention's availability has been announced in the **Federal Register**; or

(2) Without such notice where the Air Force determines that expeditious granting of such a license will best serve the interest of the Federal Government and the public; and

(3) In either situation specified in paragraph (a) (1) or (2) only if:

(i) Notice of a prospective license, identifying the invention and the prospective licensee, has been published in the **Federal Register**, providing opportunity for filing written objections within a 60-day period;

(ii) After expiration of the 60-day period and consideration of any written objections received during the period, the Air Force makes the determinations required by § 841.15 favorably to the applicant; and

(iii) The Air Force has given first preference to any small business firms submitting plans that are determined by the agency to be within the capabilities of the firms and as equally likely, if executed, to bring the invention to practical application as any plans submitted by applicants that are not small business firms.

(b) *Conditions.* In addition to the provisions of § 841.6, the following terms and conditions apply to domestic exclusive and partially exclusive licenses:

(1) The license shall be subject to the irrevocable royalty-free right of the Government of the United States to practice and have practiced the invention on behalf of the United States and on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement with the United States.

(2) The license shall reserve to the Air Force the right to require the licensee to grant sublicenses to responsible applicants, on reasonable terms, when necessary to fulfill health or safety needs.

(3) The license shall be subject to any licenses in force at the time of the grant of the exclusive or partially exclusive license.

(4) The license may grant the licensee the right of enforcement of the licensed patent pursuant to the provisions of 35 U.S.C. 29, as determined appropriate in the public interest.

§ 841.9 Additional licenses.

Nothing in this part will preclude the Air Force from granting licenses for Air Force inventions which are the result of an authorized exchange of rights in the settlement of patent disputes. The following exemplify circumstances wherein such licenses may be granted:

(a) In consideration of the settlement of an interference;

(b) In consideration of a release of a claim of infringement; or

(c) In exchange for or as part of the consideration for a license under adversely held patents.

§ 841.10 Foreign licenses.

(a) Exclusive or partially exclusive licenses may be granted on an Air Force invention covered by a foreign patent, patent application, or other form of protection, provided that:

(1) Notice of a prospective license identifying the invention and prospective licensee has been published in the **Federal Register**, providing opportunity for filing written objections within a 60-day period and following consideration of such objections;

(2) The Air Force has considered whether the interests of the Federal Government or United States industry in foreign commerce will be enhanced; and

(3) The Air Force has not determined that the grant of such license will tend substantially to lessen competition or

result in undue concentration in any section of the United States in any line of commerce to which the technology to be licensed relates, or to create or maintain other situations inconsistent with antitrust laws.

(b) In addition to the provisions of § 841.6, the following terms and conditions apply to foreign exclusive and partially exclusive licenses:

(1) The license shall be subject to the irrevocable, royalty-free right of the United States Government to practice and have practiced the invention on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement with the United States.

(2) The license shall be subject to any licenses in force at the time of the grant of the exclusive license.

(3) The license may grant the licensee the right to take any suitable and necessary action to protect the licensed property on behalf of the United States Government.

Subpart C—Licensing Procedures

§ 841.11 Publication requirements.

The Department of the Air Force will cause to be published in the **Federal Register**, and at least one other publication that the Air Force deems would best serve the public interest, a list of Government inventions in the custody of the Department of the Air Force available for licensing under the conditions specified in Subpart B.

§ 841.12 Request for a license.

Requests for a license under an Air Force invention should be addressed to the Chief, Patents Division, HQ USAF/JACP Wash DC 20324.

§ 841.13 Contents of a license application.

An application for a license will include:

(a) Identification of the invention for which the license is desired including the patent application serial number or patent number, title, and date, if known;

(b) Identification of the type of license for which the application is submitted;

(c) Name and address of the person, company, or organization applying for the license and the citizenship or place of incorporation of the applicant;

(d) Name, address, and telephone number of the representative of the applicant to whom correspondence should be sent;

(e) Nature and type of applicant's business, identifying products or services which the applicant has successfully commercialized, and approximate number of applicant's employees;

(f) Source of information concerning the availability of a license on the invention;

(g) A statement indicating whether the applicant is a small business firm as defined in § 841.4 above;

(h) A detailed description of the applicant's plan for development or marketing of the invention, or both, which should include:

(1) A statement of the time, nature, and amount of anticipated investment of capital and other resources which applicant believes will be required to bring the invention to practical application;

(2) A statement as to applicant's capability and intention to fulfill the plan, including information regarding manufacturing, marketing, financial, and technical resources;

(3) A statement of the fields of use for which applicant intends to practice the invention; and

(4) A statement of the geographic areas in which the applicant intends to manufacture any products embodying the invention and geographic areas where applicant intends to use or sell the invention, or both;

(i) Identification of licenses previously granted to applicant under federally owned inventions;

(j) A statement containing the applicant's best knowledge of the extent to which the invention is being practiced by private industry or Government, or both, or is otherwise available commercially; and

(k) Any other information which applicant believes will support a determination to grant the license to applicant.

§ 841.14 Published notices.

A notice that the prospective exclusive or partially exclusive licensee has been selected will be published by the Department of the Air Force in the **Federal Register**, and a copy of the notice will be sent to the Attorney General. The notice will include:

(a) Identification of the invention;

(b) Identification of the selected licensee; and

(c) A statement that the licenes will be granted unless any written objection is received within 60 days.

§ 841.15 Determination to grant or deny exclusive or partially exclusive licenses.

(a) After the notice is published in the **Federal Register** that a prospective exclusive or partially exclusive licensee has been selected and the 60 days for filing written objections has expired, a decision will be made whether to grant or deny the license considering all arguments and evidence of record. A memorandum of the decision will be prepared and shall include:

(1) An identification of the invention, type of license desired, and name and address of the party applying for the license;

(2) The name and address of all third parties who objected to the granting of the license, if any;

(3) A brief statement of the reasons for the objections, if any;

(4) A discussion of the relative merits of the license application vs. the objections filed by third parties, if any;

(5) Determinations, and reasons supporting the determinations, whether:

(i) The interests of the Federal Government and the public will be served by the proposed license, in view of the applicant's intentions, plans, and ability to bring the invention to practical application or otherwise promote the invention's utilization by the public;

(ii) The desired practical application has not been achieved or is not likely expeditiously to be achieved under any nonexclusive license which has been granted on the invention;

(iii) Exclusive or partially exclusive licensing is a reasonable and necessary incentive to call forth the investment of risk capital and expenditures to bring the invention to practical application or otherwise promote the invention's utilization by the public;

(iv) The proposed terms and scope of exclusivity are not greater than reasonably necessary to provide the incentive for bringing the invention to practical application or otherwise promote the invention's utilization by the public;

(v) The grant of such license will tend substantially to lessen competition or result in undue concentration in any section of the country in any line of commerce to which the technology to be licensed relates, or to create or maintain other situations inconsistent with the antitrust laws; and

(vi) The interest of the United States Government or industry in foreign commerce will be enhanced, if the license request is under a foreign patent, patent application, or other form of protection.

(6) The signature of the individuals making the determinations.

(b) A record of the determinations to grant or deny an exclusive or a partially exclusive license shall be maintained by the Patents Division.

§ 841.16 Modification and termination.

Before modifying or terminating a license, other than by mutual agreement, the Air Force shall furnish the licensee and any sublicensee of record a written

notice of intention to modify or terminate the license, and the licensee and any sublicensee shall be allowed 30 days after such notice to remedy any breach of the license or show cause why the license should not be modified or terminated.

§ 841.17 Appeals.

A party whose application for a license has been denied, a licensee whose license has been modified or terminated, in whole or in part, or a party who timely filed a written objection in response to the notice required in § 841.8 and § 841.10 and who can demonstrate to the satisfaction of the Air Force that such party may be damaged by the agency action, may appeal to The Judge Advocate General, any decision or determination concerning the grant, denial, interpretation, modification, or termination of a license. The appeal must be in writing and submitted within 60 days from the date the decision or determination was mailed to the party.

Subpart D—Transfer of Custody of Government Inventions and Confidentiality of Information

§ 841.18 Transfer procedure.

Under certain circumstances it may be in the best interest of the Air Force to enter into an agreement to transfer its custody of any invention to another Government agency for purposes of administration including the granting of licenses pursuant to this part. Such transfers will be made on a case-by-case basis.

§ 841.19 Confidentiality of plans and reports.

Title 35 U.S.C. 209 provides that any plan submitted pursuant to § 841.13 above and any report required by § 841.6 may be treated by the Air Force as commercial and financial information obtained from a person and priviledged and confidential and not subject to disclosure under 5 U.S.C. 552.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 84-9851 Filed 4-11-84; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD3-84-14]

Regatta; United Way Trophy Race, Barnegat Bay, New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: Special Local Regulations are being proposed for the United Way Trophy Race on Barnegat Bay being sponsored by the Offshore Performance Association to be held on June 9, 1984 between the hours of 11:00 a.m. and 3:00 p.m. The Coast Guard is considering the issuance of this regulation to provide for the safety of participants and spectators on navigable waters during the event.

DATES: Comments must be received on or before May 29, 1984.

ADDRESSES: Comments should be mailed to Commander (b) Third Coast Guard District, Governors Island, New York, NY 10004. The comments will be available for inspection and copying at the Boating Safety Office, Building 110, Governors Island, New York, NY. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LTJG D. R. Cilley, (212) 668-7974.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and address, identify this notice (CGD-84-14) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LTJG D. R. Cilley, Project Officer, Boating Safety Office, and Ms. MaryAnn Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Proposed Regulations

The second annual United Way Trophy is a powerboat race event to be held on Barnegat Bay, New Jersey on June 9, 1984. It is sponsored by the Offshore Powered Association. There will be one, 4 lap, 60 mile National Powerboat Association (N.P.B.A.) sanctioned race. The course has been laid out so that there should be little or no interference with vessel traffic in the Intercoastal Waterway (I.C.W.). The sponsor is providing in excess of 40 patrol vessels in conjunction with Coast Guard and local resources to patrol this event. In order to provide for the safety of life and property, the Coast Guard will restrict vessel movement in the race course area and will establish special anchorages for the spectator fleet.

Economic Assessment and Certification

This proposed regulation is considered to be nonsignificant in accordance with DOT Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5). Its economic impact is expected to be minimal since this event will draw spectator craft into the area for the duration of the event. This should easily compensate area for the duration of the event. This should easily compensate area merchants for the slight inconvenience of having navigation restricted. Based upon this assessment it is certified in accordance with Section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this regulation will not have a significant economic impact on a substantial number of small entities. Also, the regulation has been reviewed in accordance with Executive Order 12291 of February 17, 1981, on Federal Regulation and has been determined not to be a major rule under the terms of that order.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations by adding a temporary § 100.35-300 to read as follows:

§ 100.35-300 United Way Trophy Race.

(a) *Regulated Area:* Barnegat Bay, New Jersey in the area bounded by 39 degrees 55' on the north latitude, 39 degrees 48' on the south, the Intercoastal Waterway on the west and Island Beach on the east, together with all navigable waterways connecting with this area.

(b) *Effective Period:* This proposed regulation will be effective from 10:00 a.m. to 3:00 p.m. on June 9, 1984. In case of postponement, the raindate will be June 10, 1984 and this regulation will be in effect for the same time period.

(c) *Special Local Regulations:*

(1) One high speed powerboat race will be held within the regulated area

described above. Mariners shall use extreme caution when transiting the area and shall adhere closely to the charted I.C.W.

(2) All persons or vessels not registered with sponsor as participants or not part of the regatta patrol are considered spectators. Spectator vessels must be at anchor within the designated spectator area or moored to a waterfront facility in a way that will not interfere with mariners transiting the Intercoastal Waterway in Barnegat Bay.

(3) The spectator fleet will be held behind special race course buoys provided by the sponsor in the following areas:

(i) Between the race course and Island Beach State Park in the area north of Tices Shoal.

(ii) Between the race course and the ICW in the area from Holly Park to Forked River.

(4) No spectator or press boats shall be allowed out onto or across the race course without Coast Guard escort.

(5) The sponsor of the race shall anchor race committee boats at each of the five (5) turns. Checkpoints will be positioned so that race participants will pass no closer to the Intercoastal Waterway than 200 feet. Special markers will be provided by the sponsor to separate the course from the ICW.

(6) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(7) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

(46 U.S.C. 454; 49 U.S.C. 1655(b); 49 CFR 1.46(b) and 33 CFR 100.35)

Dated: April 6, 1984.

J. L. Fear,

Captain, U.S. Coast Guard, Acting District Commander, Third Coast Guard District.

[FR Doc. 84-9884 Filed 4-11-84; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD13 84-04]

Establishment of Special Local Regulations for the Harbor Fair Offshore Race in Seattle, Washington

AGENCY: Coast Guard, DOT.

ACTION: Notice or proposed rulemaking.

SUMMARY: The Coast Guard is considering the promulgation of special local regulations for a part of Elliott Bay to be in effect from 1100 to 1700, June 23, 1984. This action is required to permit the conducting of an approved marine event. It is intended to restrict general navigation in the area for the safety of the spectators and participants in the event.

DATE: Comments must be received on or before May 29, 1984.

ADDRESSES: Comments should be mailed to Commander (bb), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, WA 98174. Comments may also be hand delivered to this address. The comments will be available for inspection and copying at the Thirteenth Coast Guard Office, Room 3262, 815 Second Avenue, Seattle, Washington 19874. Normal office hours are between 8:00 A.M. and 4:00 P.M., Monday through Friday, except on holidays.

FOR FURTHER INFORMATION CONTACT: LCDR J. M. Hammond, Boating Safety Office (206-442-7355).

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD13 84-04) and the specific section of the proposal to which their comments apply, and give the reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentation will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this proposal are LCDR J. M. Hammond, USCG Project Officer, Thireenth Coast Guard District Boating Safety Office, and LT A. W. Bogle, USCG, Project Attorney, Thirteenth Coast Guard District Legal Office.

Discussion of Proposed Rule

The Harbor Fair Offshore Race, sponsored by the Western Offshore Racing Association, is scheduled to be held from 1100 to 1700 on June 23, 1984. The race participants will be operating approximately twenty high speed boats in the 19-40 foot size range. The race starts between Pier 70 and the grain terminal, proceeds southeast along the shoreline to a position just off Waterfront Park and then northeasterly to the vicinity of Four Mile Rock, back to Waterfront Park and to the original starting point. The high speeds are a potential danger to spectator boats, waterfront property, and shoreside spectators. For this reason, access to commercial facilities along the proposed race course will be restricted and the use of the Smith Cove Anchorage (East and West) will not be permitted during the race. The assigned U.S. Coast Guard Patrol Commander will control the movement of all traffic.

By the authority contained in Title 46, U.S. Code, Section 454, as implemented by Title 33, Part 100, U.S. Code of Federal Regulations, a Special Local Regulation controlling navigation on the waters is required. By the same authority, the waters involved will be patrolled by vessels of the U.S. Coast Guard. Coast Guard Officers and/or Petty Officers will enforce the regulation and cite persons and vessels in violation.

Economic Assessment and Certification

This proposed regulation is considered to be nonsignificant in accordance with DOT Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.0 of 5-22-80). An economic evaluation of the proposal has not been conducted since its impact is expected to be minimal because the regulations will significantly affect only spectators and participants in the race and applies to a small area of Elliott Bay for a limited period of time. Additionally, any adverse economic consequences to businesses affected by this regulation are expected to be minimal due to the short duration of the race the offsetting economic benefits anticipated to such businesses from the presence of a large number of shore spectators expected to attend the event. Based upon this assessment, it is certified in accordance with Section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that

these rules, if promulgated, will not have significant economic impact on a substantial number of small entities. Also, this regulation has been reviewed in accordance with Executive Order 12291 of February 17, 1981, on Federal regulations and has been determined not to be a major rule under the terms of that order.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Proposed Regulation

In consideration of the foregoing the Coast Guard is proposing to amend part 100 of Title 33, Code of Federal Regulations, by adding § 100.35–1301, to read as follows:

§ 100.35–1301 Elliott Bay/Harbor Fair offshore race.

(a) This regulation will be in effect on June 23, 1984 between the hours of 1100 Pacific Daylight Time and 1700 Pacific Daylight Time.

(b) The Coast Guard will maintain a patrol consisting of active and auxiliary Coast Guard vessels in the below described area. This patrol will be under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander is empowered to forbid and control movement of vessels on the race course and in the adjoining water areas immediately prior to, during, and after the race for such time as he finds it necessary for the safe and orderly conduct of the progam.

(c) The area where the Coast Guard will restrict general navigation by this regulation during the hours it is in effect is:

(1) The waters of Elliott Bay enclosed by S.E. corner of Pier 54 (47–36–15N 122–20–20W), westerly to 47–36–15N 122–21–00W, then northwesterly to 47–37–52N 122–24–53W, then north northeasterly to Four Mile Rock, then following the shoreline easterly and southerly to the S.E. corner of Pier 54.

(d) Use of the Smith Cove Anchorages (East and West) will not be permitted during the hours this regulaton is in effect.

(e) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signalled shall stop and shall comply with the orders of the patrol vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(46 U.S.C. 454; 49 U.S.C. 1655(b); 33 CFR 100.35; 49 CFR 1.46(b))

Dated: April 10, 1984

C. M. Holland

CAPT, U.S. Coast Guard, Executive Secretary, Marine Safety Council, By direction of the Commander, 13th Coast Guard District

[FR Doc. 84–9926 Filed 4–11–84; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 166

[CGD 84–010]

Port Access Routes, Gulf of Mexico

AGENCY: Coast Guard, DOT.

ACTION: Notice of Study; Correction.

SUMMARY: On March 19, 1984, the Coast Guard published a notice of study pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1223 and 1224) for selected areas of the Gulf of Mexico. (49 FR 10127). The study designated two alternative routing measures being contemplated for the Galveston Approach area. However, one longitude position for the second alternative is incorrect as published. This document corrects the notice of study to accurately depict the geographic area of the proposed alternative.

FOR FURTHER INFORMATION CONTACT: Lt. Commander M.W. Brown, (504) 589–6901.

SUPPLEMENTARY INFORMATION: On page 10128 of Volume 49 of the **Federal Register** change the longitude position in the second column, second table from 94°44'00" to read 93°44'00".

H. H. Kothe,

Acting Chief, U.S. Coast Guard, Office of Navigation.

[FR Doc. 84–9836 Filed 4–11–84; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Parts 181 and 183

[CGD 83–012]

Certification, Safe Loading and Flotation Standards

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: This notice proposes miscellaneous amendments to the Certification Regulations in Subpart B of Part 181 and the Safe Loading and Flotation Standards in Subparts C, E, G and H of Part 183 of Title 33, Code of Federal Regulations. The Coast Guard undertook a review of its regulations governing construction standards which apply to the manufacture of recreational boats in an effort to reduce the burden of existing regulations without sacrificing safety. Based upon the review effort, several sections have been determined to no longer be necessary, or have limited value in improving boating safety. These proposed amendments would revise or remove these sections of the Certification regulations and the Safe Loading and Flotation Standards to relieve the regulatory burden upon recreational boat manufacturers. Changes in the actual weights of currently manufactured outboard motors would be reflected in the table used to determinine safe loading capacities and the amount of required flotation material and would require the installation of additional flotation material in some boats.

DATES: Comments must be received on or before May 29, 1984.

ADDRESSES: Comments should be submitted to Commandant (G–CMC/44), (CGD 83–012), U.S. Coast Guard, Washington, D.C. 20593. Comments will be available for examination at the Marine Safety Council (G–CMC/44), Room 4402, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C. 20593, between 8 am and 4 pm, Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Alston Colihan, Office of Boating, Public, and Consumer Affairs (G–BBS/43), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593 (202) 426–1065, between 8 am and 4 pm Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data or arguments. Each comment submitted should include the name and address of the person submitting it, identify this notice [CGD 83–012 and the specific section of the proposal to which the comment applies, and give the reasons for the comment. Those desiring acknowledgement that their comment has been received should enclose a stamped, self-addressed postcard or envelope. The proposal may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on the proposal. Copies of all written comments received will be available for examination by interested persons. No public hearing is planned, but one may be held at a time and place to be set in a later notice in the **Federal Register** if written requests for a hearing are received and it appears that an

opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this proposal are Mr. Alston Colihan, Project Manager, Office of Boating, Public, and Consumer Affairs, and LT. Sandra Sylvester, Project Attorney, Office of the Chief Counsel.

Discussion of the Proposed Amendment

The National Boating Safety Advisory Council has been consulted and its opinions and advice have been considered in the formulation of this proposed rule. The transcripts of the proceedings of the National Boating Safety Advisory Council at which this proposed rule was discussed are available for examination in Room 4304, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. The minutes of the meetings are available from the Executive Director, National Boating Safety Advisory Council, c/o Commandant (G–BBS), U.S. Coast Guard, Washington, D.C. 20593.

This proposal is in accordance with the provisions of Executive Order No. 12291. It will make the Certification, Safe Loading and Flotation regulations more cost-effective without sacrificing the safety assured by the regulations. The majority of these proposed amendments involve the deletion of requirements that are no longer applicable.

Sections 181.15 (c) and (d) prescribe requirements concerning the certification label, if the stability warning labels required by § 183.23 are displayed. § 183.23 was revised during previous rulemaking [45 FR 2029] and no longer requires the stability warning labels. Therefore, the references to § 183.23 in § 183.15 (c) and (d) would be deleted.

The applicability of the dry stability test under §§ 183.39(a)(2) and 183.41(a)(2) would be restricted to inboard, inboard/outdrive and outboard boats with a maximum persons capacity of less than 550 pounds, because compliance testing during the past 10 years has shown that the limits imposed by the stability test in §§ 183.39(a)(2) and 183.41(a)(2) usually do not affect the persons capacity for the larger boats (i.e. those with a persons capacity of 550 lbs. or larger). These larger boats typically have a wider beam and are therefore more stable. National Boating Safety Advisory Council recommends deleting this requirement for larger boats in order to save the cost of performing the test required in §§ 183.39(a)(2) and 183.41(a)(2) on boats where it has been shown to have a negligible impact.

Subpart E of Part 183 and Tables 183.67(a) and 183.67(b) apply to boats the construction or assembly of which began after July 31, 1973, but before August 1, 1978. Under the proposal, Subpart E and the tables would be deleted because they no longer apply to boats that are currently being manufactured.

Table 4 in Subpart H of Part 183 is used to calculate the maximum weight capacity of outboard powered boats subject to the Safe Loading Standard in Subpart C and the amount of flotation material required for each boat subject to the Flotation Standard in Subparts G and H of Part 183. The actual weights of new outboard motors are significantly different from the weights in the existing table. While motors smaller than ten horsepower generally weight less than the existing Table 4 indicates, some outboard motors have increased in weight from two to as much as seventy-four pounds. As a result, some manufacturers are overrating their boats' maximum weight capacities and are not providing sufficient flotation material. Under the proposal, a new Table 4 which contains accurate weights for new outboard motors and related equipment would be substituted for the present one.

Regulatory Evaluation

These regulations have been reviewed under the provisions of Section 2 of Executive Order No. 12291 and have been determined not to be a major rulemaking. Additionally, these regulations have been determined to be nonsignificant in accordance with the guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of May 22, 1980). A full economic evaluation is not considered necessary since the impact of these regulations is expected to be minimal. The Coast Guard estimates that 2,000 boat models have a rated capacity of more than 550 pounds of persons. The elimination of the requirement for conducting the dry stability test for each of these models will result in an estimated total savings to the boating industry of $200,000 per year. The proposed amendments to the Flotation Standard would result in only minor increases in the costs of manufacturing some boats. Using 1982 sales estimates, forty percent of the 236,000 outboard boats manufactured would be subject to an increase in the amount of flotation material required with the publication of a new Table 4 in Subpart H. Some boats with low horsepower ratings would require less flotation material because the weights for those motors have decreased. As a result, the publication of a new Table 4 in Subpart H would amount to an average increased cost of $8.00 per boat.

Since the cost per boat is minimal, in accordance with Section 605(b) of the Regulatory Flexibility Act (94 Stat. 1164), it is certified that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Boat builders will be given two years before a final rule would become effective and any design modifications necessary to accommodate additional flotation material can be incorporated in normal model year changes.

List of Subjects in 33 CFR Parts 181 and 183

Marine safety.

PART 181—[AMENDED]

In consideration of the foregoing, the Coast Guard proposes to amend Parts 181 and 183 of Title 33, Code of Federal Regulations to read as follows:

1. By removing and reserving § 181.15(c) and revising § 181.15(d) to read as follows:

§ 181.15 Contents of labels.

* * * * *

(c) [Reserved]

(d) Except as provided in paragraph (e) of this section, the manufacturer may, in addition to the information required by paragraphs (a) and (b) of this section, display on the certification label any or all of the following information:

* * * * *

PART 183—[AMENDED]

2. By revising § 183.39(a) to read as follows:

§ 183.39 Persons capacity: Inboard and inboard-outdrive boats.

(a) The persons capacity in pounds marked on a boat that is designed to use one or more inboard engines or inboard-outdrive units for propulsion must not exceed:

(1) The maximum weight capacity determined under § 183.33 for the boat; or

(2) For boats with a maximum persons capacity less than 550 pounds, the maximum persons capacity determined in the following manner:

* * * * *

3. By revising § 183.41(a) to read as follows:

§ 183.41 Persons capacity: Outboard boats.

(a) The persons capacity in pounds marked on a boat that is designed to use one or more outboard motors for propulsion must not exceed:

(1) The maximum weight capacity determined under § 183.35 for the boat minus the motor and control weight, battery weight (dry), and full portable fuel tank weight from Table 4 of Subpart H of this Part; or

(2) For boats with a maximum persons capacity less than 550 pounds, the maximum persons capacity determined in the following manner:

* * * * *

§§ 183.61–183.67 [Removed]

4. By removing and reserving Subpart E (§§ 183.61–183.67) of Part 183, including Table 183.67(a), "Weights of Outboard Motor and Related Equipment for Various Boat Horsepower Ratings," and Table 183.67(b), "Factors for Converting Various Boat Materials from Dry to Submerged Weight."

5. By revising Table 4 in Subpart H of Part 183 to read as follows:

TABLE 4.—WEIGHTS (POUNDS) OF OUTBOARD MOTOR AND RELATED EQUIPMENT FOR VARIOUS BOAT HORSEPOWER RATINGS

	Column No.					
	Motor and control weight		Battery weight		Full portable fuel tank weight	1+3+5
	Dry	Swamped	Dry	Sub-merged		
Boat horsepower rating	1	2	3	4	5	6
0.1 to 2	25	20				25
2.1 to 3.9	40	34				40
4.0 to 7	60	52			25	85
7.1 to 15	90	82	20	11	50	160
15.1 to 25	125	105	45	25	50	220
25.1 to 45	170	143	45	25	100	315
45.1 to 60	235	195	45	25	100	380
60.1 to 80	280	235	45	25	100	425
80.1 to 145	405	352	45	25	100	550
145.1 to 275	430	380	45	25	100	575
275.1 and up	605	538	45	25	100	750
Transoms designed for twin motors						
50.1 to 90	340	286	90	50	100	530
90.1 to 120	470	390	90	50	100	660
120.1 to 160	560	470	90	50	100	750
160.1 to 290	810	704	90	50	100	1,000
290.1 to 550	860	760	90	50	100	1,050
550.1 and up	1,210	1,076	90	50	100	1,400

(46 U.S.C. 4302; 49 CFR 1.46(n)(1))

Dated: April 9, 1984.

J. A. McDonough, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 84-9833 Filed 4-11-84; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF DEFENSE

Department of the Army Corps of Engineers

33 CFR Part 207

San Diego Bay, California, Naval Restricted Area

AGENCY: U.S. Army Corps of Engineers.

ACTION: Correction and extension of time.

SUMMARY: On 27 January 1984, the Corps of Engineers published a proposed rule in the **Federal Register** (49 FR 3491–3492) soliciting comments on a proposed Naval Restricted Area in San Diego Bay, California. In that notice, the coordinates which establish the perimeter of the restricted area contained errors in Stations Numbered 7 and 8, and because those errors caused some confusion about the boundaries of the restricted area, the proposal is corrected and the comment period extended.[1]

DATE: Written comments must be received on or before April 27, 1984.

ADDRESS: HQDA, DAEN–CWO–N, Washinton, D.C. 20314.

FOR FURTHER INFORMATION CONTACT: Mr. Glenn C. Lukos at (213) 688–5606 or Mr. Ralph T. Eppard at (202) 272–0200.

SUPPLEMENTARY INFORMATION: The Corps of Engineers proposes to establish a naval restriced area at the Naval Amphibious Base, Coronado, California. The restricted area is necessary for the safety of lives and property due to growing congestion of military and private vessels in those waters adjacent to the amphibious base. A portion of the restricted area extending 120 feet from the peirheads and from the shoreline where no piers exist, will be closed to all persons and vessels except those owned by, under hire to, or performing work for, the Naval Amphibious Base. The remainder of the restricted area will be open to vessel traffic provided transit through the area is made by the most direct route and without unnecessary delay.

It is not necessary for any person or organization which has submitted comments in response to the 27 January 1984, Notice of Proposed Rulemaking to resubmit those same comments in response to this notice. The Corps will consolidate all comments received and consider all comments in reaching a final decision on this matter.

For clarity the proposed rule is reprinted in its entirety.

Note.—This proposed regulation is issued with respect to a military function of the Defense Department; is not a major rule within the meaning of Executive Order 12291, and accordingly, the provisions of Executive Order 12291 do not apply. The Corps of Engineers certifies pursuant to Section 605(b) of the Regulatory Flexibility Act of 1980, that this regulation will not have a significant economic impact on a substantial number of entities.

Dated: April 5, 1984.

Approved:

Michael Volpe,

Colonel, Corps of Engineers, Executive Director of Civil Works.

List of Subjects in 33 CFR Part 207

Navigation, Water transportation and Marine carriers.

Section 207.611 is added to 33 CFR to read as follows:

§ 207.611 San Diego Bay, California: Naval restricted area.

(a) The Area. The water of the Pacific Ocean in Middle San Diego Bay in an area extending from the northern and eastern boundary of the Naval Amphibious Base about 0.1 nautical miles and 0.6 nautical miles from the southern shoreline and basically outlined as follows:

Station	Latitude	Longitude
1	32°40'33" N.	117°10'02.4" W.
2	32°40'34.7" N.	117°09'54" W.
3	32°40'46" N.	117°09'44.2" W.
4	32°41'00" N.	117°09'24.6" W.
5	32°40'20" N.	117°08'36.7" W.
6	32°40'00" N.	117°09'00" W.
7	32°39'18" N.	117°08'45" W.
8	32°39'16" N.	117°08'48.5" W.

(b) The Regulations.

[1] A map of the area is filed as part of the original document.

(1) Swimming, fishing, mooring or anchoring shall not be allowed within the restricted area.

(2) A portion of the restricted area extending 120 feet from pierheads and from the low water mark on shore where piers do not exist is closed to all persons and vessels except those owned by, under hire to, or performing work for, the Naval Amphibious Base.

(3) All vessels entering the restricted area shall proceed across the area by the most direct route and without unnecessary delay.

(4) The regulations in this section shall be enforced by the Commanding Officer, Naval Amphibious Base, Coronado, California and such agencies as he/she shall designate.

Authority: (33 U.S.C. 1).

[FR Doc. 84-9499 Filed 4-11-84; 8:45 am]
BILLING CODE 3710-92-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[A-5-FRL 2564-6]

Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of comment period.

SUMMARY: The purpose of this action is to give notice that the public comment period for the notice published February 24, 1984 (49 FR 6926), regarding the State of Ohio's request to redesignate the air quality status of 16 counties for total suspended particulates (TSP) has been extended from March 26, 1984, to June 25, 1984. The EPA is taking this action because an extension was requested by the State of Ohio and the Regional Air Pollution Control Agency.

DATE: The comment period is extended from March 26, 1984, to June 25, 1984.

FOR FURTHER INFORMATION CONTACT: Delores Sieja, Regulatory Analysis Section, Air Programs and Radiation Branch, EPA, Region V, 230 S. Dearborn Street, Chicago, Illinois 60604, (312) 886-6038.

SUPPLEMENTARY INFORMATION: This notice extends the period for submitting comments on the notice published February 24, 1984 (49 FR 6926). That notice proposes to disapprove the State of Ohio's request to redesignate the air quality status of 16 counties for TSP unless the State submits the requested data outlined in the notice.

The State of Ohio and the Regional Air Pollution Control Agency in Ohio have requested an extension of time in gathering the requested data. EPA has decided that an extension of the public comment period is reasonable and the public comment period is hereby extended to June 25, 1984.

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

Dated: April 5, 1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 84-9806 Filed 4-11-84; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84-293; RM-4611]

FM Broadcast Station in Oak Beach, New York; Proposed Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to assign Channel 276A to Oak Beach, New York, as a first local FM service, in response to a petition filed by Long Island Music Broadcasting Corporation.

DATES: Comments must be filed on or before May 31, 1984, and reply comments on or before June 15, 1984.

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

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Notice of Proposed Rulemaking

In the Matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Oak Beach, New York), MM Docket No. 84-293, RM-4611.

Adopted: March 26, 1984.
Released: April 9, 1984.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is a petition for rule making [1] requesting the assignment of Channel 276A to Oak Beach, New York, as a first FM allocation, in response to a request filed by Long Island Music Broadcasting Corporation ("petitioner"). Petitioner failed to express a willingness to apply for the channel, if assigned to Oak Beach, New York, as required by Commission policy. This deficiency should be corrected in petitioner's comments.

2. Earlier petitions requesting the assignment of Channel 276A to Bay Shore, New York, a nearby community, were denied on two occasions. The history of the Bay Shore proposals expands a period of approximately 15 years, and the circumstances surrounding the previous denials have been discussed extensively in various documents.[2] However, we shall provide a brief summary of the events which led to those denials as well as the basis for the instant request for an assignment to Oak Beach, New York.

3. In 1970, the Commission, acting in response to a request, assigned Channel 276A to Bay Shore, New York, with a site restriction on Fire Island, a National historic landmark (Docket No. 18345). Due to spacing requirements, the close proximity of the Atlantic Ocean, and environmental considerations, that area was the only available location for a transmitter site from which a city-grade signal could be provided to the community by utilizing a 300' tower. Meanwhile, the National Environmental Policy Act [3] was enacted which, *inter alia*, directed affected agencies to interact by invoking or implementing an environmental impact statement process before deciding on actions that would have a significant effect on the quality of the human environment. As a result of that authority, the Department of Interior objected to the location of a transmitter on Fire Island from an esthetic viewpoint since the proposal required the erection of a 300 ft. tower. In light of the unavailability of an alternate site to accomodate the proposal the Commission ruled that the environmental impact outweighed retaining the channel in the Table of Assignments. Thus, the assignment of Channel 276A to Bay Shore, New York, was rescinded.

4. In 1982 the Commission was again requested to assign Channel 276A to Bay Shore with the same site restriction of Fire Island. However, in view of the prior circumstances surrounding the lack of a suitable location, the Commission

[1] The request was embodied in a "Supplement" to a "Petition for Modification and/or Petition to Reopen Proceedings and Request to Reinstate Channel 276A at Bay Shore, New York."

[2] See Docket No. 18345, 20 F.C.C. 2d 988 (1970); 25 F.C.C. 2d 877 (1970); and Docket No. 82-350, 47 FR 29858; and *Report and Order*, Mimeo. No. 32815, released February 14, 1983.

[3] 42 U.S.C. 4321-4347 (1969).

again required the petitioner to provide documented evidence from the appropriate governmental authorities indicating consent to the location of a transmitter on Fire Island. Petitioner failed to present any documented evidence on this issue, as requested. Thus, the petition to assign Channel 276A to Bay Shore, New York, was denied.

5. In its instant petition, petitioner relies on the previous findings of the Commission which determined that Channel 276A could be assigned to Bay Shore, provided the transmitter was located on Fire Island. Doubleday Broadcasting Corporation, Inc. [4] ("Doubleday"), licensee of FM Station WAPP (Channel 278), Lake Success, New York, filed an opposition thereto to which the petitioner responded. Petitioner has now provided documented evidence to demonstrate that it has obtained the required permission to utilize the Fire Island site. Specifically, petitioner advises it has an agreement with the National Park Service, acting on authority of the National Historic Preservation Act of 1980, to lease a portion of the Fire Island Lighthouse as its operating tower, in exchange for the use of the proceeds therefrom to restore the structure.

6. However, by its own admission, petitioner's engineering statement reveals that the use of such structure would result in the provision of a 70 dBu signal to less than half of the Bay Shore community. This, it stated, was attributable to the fact that in order to minimize the environmental impact, it proposed to place its antenna atop the Fire Island Lighthouse. While this would increase the height of that structure by 25 feet, resulting in an overall antenna height of 205 feet HAAT, such reduction from its original proposal would also alter the predicted coverage pattern of its signal. Therefore, petitioner indicated therein, that it would seek a waiver of § 73.315(a) of the Rules.

7. Thereafter, apparently recognizing the deficiency of its proposal, petitioner filed a "Supplement" to its modification request, proposing the alternate assigment of Channel 276A to Oak Beach, New York, from which the city grade coverage requirements of §§ 73.207 and 73.315 could be met by utilizing the proposed transmitter atop the Fire Island Lighthouse.

8. Petitioner's engineering statement acknowledges that Oak Beach is not an incorporated community, and that its location was determined by using "U.S.G.S. 7½ minute maps." However, in reply comments, [5] petitioners states that "Gilgo-Oak Beach" is the officially designated name of the community, and that it is included in the 1980 U.S. Census as a "place." Although not officially identified as to source, petitioner states that the population of Oak Beach (383), increases dramatically during the summer months. Moreover, petitioners claims that Oak Beach "is a part of the Hamlet of Copiague, a part of the Town of Bablon," and that "Copiague has a population of 20,686 residing within the proposed service area of the station." Therefore, petitioner claims that "as a Census Designated Place Oak Beach , within its hamlet, is a geographically identifiable population grouping. Citing *Revision of FM Assignment Policies and Procedures*, 90 F.C.C. 2d 88 (1982)."

9. Contrary to petitioner's claim, we cannot verify that either "Gilgo-Oak Beach" nor "Oak Beach" is listed as a "place" in the 1980 U.S. Census. Pursuant to § 307(b) of the Communications Act of 1934, as amended, the Commission requires that the proponent demonstrate the existence of a geographically identifiable population grouping in order to acquire community status. Generally, if the community is listed in the Census, or is incorporated, that is sufficient to satisfy its status. In the absence of such recognizable community status, the petitioner is required to provide the Commission with sufficient information to demonstrate that such a place has social, economic or cultural indicia to qualify as a "community" for assignment purposes. See *Ansley, Alabama*, 46 FR 58688, published December 3, 1981; *Cascade Village, Colorado*, 48 FR 19917, published May 3, 1983; *Red Rock, Georgia*, 48 FR 36170, published August 9, 1983, and cases cited therein. In this regard, petitioner should submit more information about this place including any businesses, social organizations, or governmental units that identify themselves with Oak Beach.

10. In view of the above, and based on the information submitted by petitioner, the Commission does not believe that a final determination can be made as to the status of Oak Beach as a community. Therefore, we believe it appropriate to further investigate this matter through the solicitation of comments. Accordingly, petitioner is requested to provide information to demonstrate how Oak Beach may qualify as a "community" for assignment purposes.

11. In view of the foregoing, the Commission seeks comments on the proposal to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules, with regard to Oak Beach, New York, as follows:

City	Channel No.	
	Present	Proposed
Oak Beach, New York		276A

12. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of countinuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

13. Interested parties may file comments on or before May 31, 1984, and reply comments on or before June 15, 1984, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel, or consultant, as follows: Scott H. Robb, Esq., Robb and Kuhns, 25 Central Park West, Suite 1B, New York, New York 10023, (Counsel for Petitioner).

14. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), and 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

15. For further information concerning this proceeding, contact Nancy V. Joyner or Ralph H. Smith (engineer). However, members of the public should note that from the time a *Notice of Proposed Rule Making* is issued until the matter is no longer subject to Commission consideration, or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other that comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte*

[4] Most of the issues addressed in the opposition comments of Doubleday are now moot since they pertain to Bay Shore. However, Doubleday will have an opportunity to comment on the revised proposal to assign Channel 276A to Oak Beach, New York.

[5] Petitioner filed reply comments in response to Doubleday's comments (see fn 4, *supra*).

presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.61, 0.204(b) and 0.283 of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this appendix is attached. Proponents(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice of this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 84-9780 Filed 4-11-84; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84-295; RM-4597]

FM Broadcast Stations in Salamanca, New York, and Bradford, Pennsylvania; Proposed Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: At the request of Altair Communications, Inc., the Commission proposes to substitute Channel 252A for Channel 261A at Salamanca, New York, and substitute Channel 261A for 252A at Bradford, Pennsylvania. The action would enable a first FM operation in Salamanca.

DATES: Comments must be filed on or before May 31, 1984, and reply comments on or before June 15, 1984.

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

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Notice of Proposed Rule Making

In the Matter of Amendment of Section 73.202(b), Table of Assignments, FM Broadcast Stations (Salamanca, New York, and Bradford, Pennsylvania) MM Docket No. 84-295, RM-4597.

Adopted: March 26, 1984.

Released: April 9, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it a petition for rule making filed by Altair Communications, Inc. ("petitioner") seeking the substitution of FM Channel 252A for Channel 261A at Salamanca, New York, and of Channel 261A for Channel 252A at Bradford, Pennsylvania. Both channels can be assigned in compliance with the Commission's minimum distance separation requirements. Petitioner has stated its intention to apply for Channel 252A at Salamanca, if assigned.

2. Petitioner states that the substitution of channels is necessary to alleviate the existing siting problems for Channel 261A at Salamanca. Due to the operation of Station WDCX at Buffalo, New York, the transmitter site is restricted to an area 7 miles south of Salamanca which it states falls within the Allegany State Park. In addition to the problems attendant with attempting to locate a transmitter on state-owned land, it states that the terrain between the transmitter site and the community of license would present shadowing problems. Since the assignment of Channel 252A to Salamanca would require a site restriction of only 4.9 miles and to the southeast of the community, Altair states that it would have much greater flexibility in choosing a site. Petitioner further states that Channel 261A at Bradford would present no transmitter site problems.

3. While Channel 252A at Bradford is currently unoccupied, there are three applications pending for its use.[1] A staff study shows that Channel 261A can be assigned to Bradford in compliance with the Commission's separation requirements and would require no site changes by any of the Bradford applicants.

4. In view of the fact that the requested substitution of channels could provide Salamanca with an earlier inauguration of its first local fulltime service, the Commission believes it is appropriate to propose amendment of

[1] The applicants for Channel 252A at Bradford are: Mountain Media, Inc. (BPH-830222AG); Donald J. Fredeen (BPH-830707AE); and Bradcomm, Inc. (BPH-870714BB).

the FM Table of Assignments, § 73.202(b) of the rules, with respect to the following communities:

City	Channel No.	
	Present	Proposed
Salamanca, New York	261A	252A
Bradford, Pennsylvania	252A	261A

5. If the channel changes proposed herein are ultimately adopted, each of the Bradford applicants will be required to amend their applications to specify operation on the new channel. However, as the change does not constitute a major amendment, each applicant will retain its cut-off protection. Therefore, it is requested that the Secretary send a copy of this *Notice of Proposed Rule Making* to each of the applicants listed below:

Mountain Media, Inc., c/o Lauren A. Colby, Esq., 532 Pearl Street, Frederick, Maryland 21701

Donald J. Fredeen, c/o James A. Koerner, Esq., Baraff, Koerner, Olender & Hochberg, 2033 M Street, NW., Suite 203, Washington, D.C. 20036

Bradcomm, Inc., c/o Frederick A. Polner, Esq., Rothman, Gordon, Foreman & Groudine, 300 Grant Building, Pittsburgh, Pennsylvania 15219

6. Canadian concurrence must be obtained since the communities involved are located within 320 kilometers (200 miles) of the U.S.-Canadian border.

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

8. Interested parties may file comments on or before May 31, 1984, and reply comments on or before June 15, 1984, and are advised to read the Appendix for the proper procedures. A copy of such comments should be served on the petitioner, as follows: Thomas W. Fletcher, Esq., Cole, Raywid & Braverman, 1919 Pennsylvania Avenue, NW., Suite 200, Washington, D.C. 20006, (Counsel to petitioner).

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

10. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Assignments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See §1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See §1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 84-9781 Filed 4-11-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-297; RM-4596]

FM Broadcast Station in Eastland, Texas; Proposed Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the assignment of FM Channel 249A to Eastland, Texas, as its second FM assignment, at the request of Breckenridge Broadcasting Company.

DATES: Comments must be filed on or before May 31, 1984, and reply comments on or before June 15, 1984.

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

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Notice of Proposed Rulemaking

In the Matter of Amendment of § 73.202(b), Table of Assignment, FM Broadcast Stations (Eastland, Texas) MM Docket No. 84-297, RM-4596.

Adopted: March 26, 1984.
Released: April 9, 1984.

By the Chief, Policy and Rules Division.

1. Before the Commission is a petition for rule making, filed by Breckenridge Broadcasting Company ("petitioner"), seeking the assignment of FM Channel 249A to Eastland, Texas, as that community's second FM assignment. Petitioner has stated its intention to apply for use of the channel, should it be assigned. The channel can be assigned in compliance with the Commission's minimum distance separation and other technical requirements.

2. In view of the fact that Eastland could receive its second local FM service, the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Assignments, Section 73.202(b) of the Commission's Rules, for the following community:

City	Channel No.	
	Present	Proposed
Eastland, Texas	244A	244A and 249A.

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

4. Interested parties may file comments on or before May 31, 1984, and reply comments on or before June 15, 1984, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows: Jeffrey D. Southmayd, Esq., Southmayd & Powell, 1764 Church Street, NW., Washington, D.C. 20036, (Counsel to petitioner).

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend § 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

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

Appendix

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth inthe *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with they proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at it headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 84-9782 Filed 4-11-84; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-298; RM-4613]

TV Broadcast Station in Minden, Louisiana; Proposed Changes Made in Table

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to assign UHF Television Channel 21 to Minden, Louisiana, as its first television service, in response to a petition filed by Saul Dresner.

DATES: Comments must be filed on or before May 31, 1984, and reply comments on or before June 15, 1984.

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

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Notice of Proposed Rule Making

In the Matter of Amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations (Minden, Louisiana) MM Docket No. 84-298, RM-4613.

Adopted: March 26, 1984.
Released: April 9, 1984.

By the Chief, Policy and Rules Division.

1. A petition for rule making has been filed by Saul Dresner ("petitioner") requesting the assignment of UHF television Channel 21 to Minden, Louisiana, as the community's first television service. Petitioner submitted information in support of the proposal and indicated his interest in applying for the channel, if assigned. Channel 21 can be assigned to Minden in compliance with the minimum distance separation requirements and other technical criteria.

2. Minden (population 15,084)[1], seat of Webster County (population 43, 631), is located in northwestern Louisiana, approximately 48 kilometers (38 miles) northeast of Shreveport, Louisiana.

3. Based on the information provided by the petitioner, we believe that an adequate showing has been made to propose the assignment of a first television channel to Minden, Louisiana. Comments are invited on the proposal to amend the Television Table of Assignments, § 73.606(b) or the Rules, with regard to the following community:

City	Channel No.	
	Present	Proposed
Minden Louisiana		21+

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before May 31, 1984, and reply comments on or before June 15, 1984, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel, or consultant, as follows: Edward M. Johnson & Associates, Inc., One Regency Square, Suite 450, Knoxville, Tennessee 37915.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b) and 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheurele, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a *Notice of Proposed Rule Making* is issued until the matter is no longer subject to Commission consideration, or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 305)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later

[1] Popluation figures were extracted from the 1980 U.S. Census.

than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b), and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 84-9785 Filed 4-11-84; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 654 and 658

Stone Crab and Shrimp Fishery Management Plans of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of amendments and request for comments.

SUMMARY: NOAA issues this notice that the Gulf of Mexico Fishery Management Council has submitted amendments to the fishery management plans (FMPs) for the Stone Crab Fishery and the Shrimp Fishery of the Gulf of Mexico for review by the Secretary of Commerce. Comments are invited from the public on the amendments and any other documents made available.

DATE: Comments will be accepted until June 22, 1984.

ADDRESSES: Send comments to Jack T. Brawner, Regional Director, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702. Copies of the amendments, the environmental assessment, and regulatory impact review/initial regulatory flexibility analysis are available upon request from the Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, Regional Plan Coordinator, 813-893-3722.

SUPPLEMENTARY INFORMATION: This FMP was prepared under the provisions of the Magnuson Fishery Conservation and Management Act.

This amendment proposes measures for managing the Stone Crab and Shrimp Fishery Management Plans in the Gulf of Mexico and consists of two measures which provide a flexible system with rapid response time for addressing conflicts in the fishery conservation zone off the coasts of Citrus, Hernando and Pasco Counties, Florida in future years. The receipt date for this amendment is April 9, 1984. Proposes regulations for this amendment will be published in 30 days.

(16 U.S.C. 1801 et seq.)

List of Subjects in 50 CFR Parts 654 and 658

Fisheries.

Dated: April 9, 1984.

Roland Finch,

Director, Office of Resource Management, National Marine Fisheries Service.

[FR Doc. 84-9873 Filed 4-9-84; 4:59 pm]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 49, No. 72
Thursday, April 12, 1984

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committees on Adjudication, Administration, Governmental Processes, Regulation, Rulemaking; Public Meetings

Committee on Adjudication

Date: Thursday, May 3, 1984. Time: 10:00 a.m. Location: 2120 L Street, NW, Suite 500, Wash., D.C. Agenda: Consideration of revised recommendation on agency experience under the Government in the Sunshine Act. Consultant: Prof. David M. Welborn. Contact: Richard K. Berg, 202–254–7065.

Committee on Administration

Date: Monday, April 30, 1984. Time: 9:30 a.m. Location: 400 Maryland Ave., SW, Room 7002, Wash., D.C. Agenda: Consideration of (1) draft study by Professor George Bermann on agency handling of monetary claims under the Federal Tort Claims Act; (2) draft report by Boasberg, Klores, Feldesman & Tucker on procedural questions raised by the Debt Collection Act; and (3) status of Philip J. Harter's study on agency alternatives to trial-type hearings. Contact: Charles Pou, Jr., 202–254–7065.

Committee on Governmental Processes

Date: Thursday, May 3, 1984. Time: 10:00 a.m. Location: Room 4121, Department of the Treasury, 15th Street and Pennsylvania Avenue, NW, Washington, D.C. Agenda: Further consideration of a draft recommendation on product recalls (*see* 49 FR 9904), based in part on a report by Professor Teresa Schwartz of the George Washington University Law School and Robert Adler, Esq. Contact: David M. Pritzker, 202–254–7065.

Committee on Regulation

Date: Tuesday, May 1, 1984. Time: 9:30 a.m. to 12 noon. Location 2120 L Street, NW, Wash., D.C., Room 540. Agenda: (1) Consideration of comments received on a tentative recommendation on procedures for siting of large scale industrial project (*see* 49 FR 10935). Consultant: Gregory L. Ogden. (2) Consideration of a revised recommendation on representation by non-lawyers in agency proceedings. Consultant: Jonahtan Rose. Contact: William C. Bush, 202–254–7065.

Committee on Rulemaking

Date: Wednesday, May 2, 1984. Time: 2:00 p.m. Location: Offices of Hughes, Hubbard and Reed, 1201 Pennsylvania Avenue, NW., Suite 300, Wash., D.C. Agenda: Consideration of draft study by Dean Paul Verkuil and proposed recommendations on immigration adjudication procedures (*see* 49 FR 9738). Contact: Michael W. Bowers, 202–254–7065.

Public Participation

Attendance at the committee meetings is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days in advance of the meeting. The committee chairman may permit members of the public to present appropriate oral statements at the meeting. Any member of the public may file a written statement with a committee before, during, or after the meeting. Minutes of the meetings will be available on request to the contact persons. The contact persons' mailing address is: Administrative Conference of the United States, 2120 L Street, NW, Suite 500, Washington, D.C. 20037. These meetings are subject to the Federal Advisory Committee Act (Pub. L. 92–463).

Richard K. Berg,
General Counsel.

April 4, 1984.

[FR Doc. 84–9791 Filed 4–11–84; 8:45 am]
BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Public Availability of Report on the Closed Meeting Activities of Advisory Committee

Pursuant to the provisions of the Department of Agriculture's Committee Management regulations, an advisory committee of the Department which, through administrative error, held an unannounced meeting has prepared a report on the activity of that meeting. Copies of the report have been filed at the following location: Federal Advisory Committee Desk, Federal Documents Section, Exchange and Gift Division, Library of Congress, Washington, D.C. 20540.

The name of the subject committee is listed below: National Arboretum Advisory Council.

Done at Washington, D.C., this 9th day of April 1984.

Loretta A. Owens,
Committee Management Officer.

[FR Doc. 84–9869 Filed 4–11–84; 8:45 am]
BILLING CODE 3410–03–M

Forest Service

Montoro Gold Mine Project German Gulch, Deerlodge National Forest; Butte-Silver Bow County, Montana

The Department of Agriculture Forest Service will jointly with the Montana Department of State Lands prepare an Environmental Impact Statement for the development of the proposed German Gulch Gold Mine on the Butte Ranger District.

A range of alternatives will be formulated and considered. One of these will be nondevelopment of this site. Other alternatives will consider alternate sites and designs for facilities, waste dumps, and tailings disposal.

Federal, State, and local agencies, individuals, or organizations interested or affected by the decision are invited to participate in the scoping process to include:

1. Identification of issues to be addressed.
2. Elimination of insignificant issues.
3. Identification of indirect impacts.
4. Identification of cumulative impacts.

5. Determination of cooperating agencies and assignment of responsibilities.

The forest Supervisor will hold public meetings at a time and place to be announced and advertised.

Frank Salomonsen, Forest Supervisor, Deerlodge National Forest is the responsible official.

The analysis is expected to take four months after all information necessary is received.

Written comments and suggestions concerning the analysis should be sent to Frank Salomonsen, Forest Supervisor, Deerlodge National Forest, P.O. Box 400, Butte, Montana 59703 by May 24, 1984.

Questions about the proposed action and Environmental Impact Statement should be directed to Jim Shelden, Lands and Minerals Staff Officer, Deerlodge National Forest, 406–496–3452.

Dated: April 3, 1984.

Frank E. Salomonsen,

Forest Supervisor.

[FR Doc. 84–9831 Filed 4–11–84; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee of the American Marketing Association; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, as amended by Pub. L. 94–409), we are giving notice that the Census Advisory Committee of the American Marketing Association will convene on May 3, 1984, at 9:30 a.m. in Room 2424, Federal Building 3 at the Bureau of the Census in Suitland, Maryland.

The Census Advisory Committee of the American Marketing Association advises the Director, Bureau of the Census, regarding the statistics that will help in marketing the Nation's products and services and on ways to make the statistics the most useful to users.

The Committee is composed of 15 members appointed by the President of the American Marketing Association.

The agenda for the meeting, which is scheduled to adjourn at 4:15 p.m., is: (1) Introductory remarks by the Director, Bureau of the Census, including staff changes and major budget and program developments; (2) obtaining expert advice; (3) update on the service sector; (4) promotion program for the 1982 economic censuses; (5) update on planning for the 1990 census, including pretest plans and geographic coding update; (6) valuation of noncash benefits and their effect on poverty estimates; (7) general discussion, questions, and recommendations; and (8) plans and date for the next meeting.

The meeting is open to the public, and a brief period is set aside for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Committee Control Officer at least 3 days prior to the meeting.

Persons planning to attend and wishing additional information concerning this meeting or who wish to submit written statements may contact the Committee Control Officer, Mr. James M. Aanestad, Bureau of the Census, Room 2641, Federal Building 3, Suitland, Maryland. (Mail address: Washington, D.C. 20233.) Telephone (301) 763–7347.

Dated: April 9, 1984.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 84–9890 Filed 4–11–84; 8:45 am]

BILLING CODE 3510–07–M

International Trade Administration

Consolidated Decision on Application for Duty-Free Entry of Electron Microscopes

Correction

In FR Doc. 84–8908 beginning on page 13395 in the issue of Wednesday, April 4, 1984, make the following corrections:

1. On page 13396, first column, second paragraph, fourth line, "JEM–1200CX" should read "JEM–200CX".

2. On the same page, first column, third paragraph, fourth line, "JEM–200EX" should read "JEM–1200EX".

BILLING CODE 1505–01–M

Walter C. McCrone Associates, Inc., et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 83–182. Applicant: Walter C. McCrone Associates, Inc., Chicago, IL 60616. Instrument: Electron Microscope, Model JEM–200CX and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use: See notice at 49 FR 7841. Instrument ordered: March 31, 1983.

Docket No. 84–54. Applicant: New York State Department of Health, Albany, NY 12220. Instrument: Electron Microscope, Model EM 420T. Manufacturer: Philips Gloeilampenfabrieken, The Netherlands. Intended use: See notice at 49 FR 7841. Application received by Commissioner of Customs: December 22, 1983.

Docket No. 84–55. Applicant: Duke University, Durham, NC 27710. Instrument: Electron Microscope, Model EM 420T with Accessories. Manufacturer: Philips Electronic Instruments, The Netherlands. Intended use: See notice at 49 FR 7841. Application received by Commissioner of Customs: December 29, 1983.

Docket No. 84–61. Applicant: University of Maryland, College Park, MD 20742. Instrument: Electron Microscope, Model JEM–100CX with Accessories. Manufacturer: JEOL, Japan. Intended use: See notice at 49 FR 7842. Application received by Commissioner of Customs: January 25, 1984.

Docket No. 84–62. Applicant: Hospital of the Good Samaritan, Los Angeles, CA 90017. Instrument: Electron Microscope, Model JEM–100CX with Accessories. Manufacturer: JEOL, Japan. Intended use: See notice at 49 FR 7842. Instrument Ordered: November 22, 1983.

Docket No. 84–66 Applicant: Veterans Administration Medical Center, Jackson, MS 39216. Instrument: Electron Microscope, Model JEM–100CX with Accessories. Manufacturer: JEOL Ltd., Japan. Intended use: See notice at 49 FR 8055. Instrument ordered: November 25, 1983.

Docket No. 84–71. Applicant: The Children's Hospital, Denver, CO 80218. Instrument: Electron Microscope, Model EM 109 and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: See notice at 49 FR 8055. Instrument ordered: December 30, 1983.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or of any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

(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. 84-9049 Filed 4-11-84; 8:45 am]

BILLING CODE 3510-DS-M

University of Iowa, et al.; Consolidated Decision on Applications for Duty-Free Entry of Accessories for Foreign Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 84-15. Applicant: The University of Iowa, Iowa City, IA 52242. Instrument: High Resolution Goniometer ±60° Tilt. Manufacturer: Carl Zeiss, West Germany. Intended use: See notice at 48 FR 57582. Advice submitted by: National Institutes of Health: February 9, 1984.

Docket No. 84-17. Applicant: U.S. Department of Commerce, Washington, DC 20234. Instrument: Primary Beam Mass Filter. Manufacturer: Cameca, France. Intended use: See notice at 48 FR 56817. Advice submitted by: National Institutes of Health: February 9, 1984.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments, for the purposes for which the instruments are intended to be used, is being manufactured in the United States.

Reasons: These are compatible accessories for instruments previously imported for the use of the applicants. In each case, the instrument and accessory were made by the same manufacturer. NIH advises us that the accessories are pertinent to the intended uses and that it knows of no comparable domestic accessories.

We know of no domestic accessories which can be readily adapted to the previously imported instruments.

(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. 84-9050 Filed 4-11-84; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Statement of Organization, Practice and Procedures (SOPPs)

Pursuant to Section 302(f)(6), of the Magnuson Fishery Conservation and Management Act (Pub. L. 94-265, as amended), each Regional Fishery Management Council is responsible for carrying out its functions under the Act in accordance with such uniform standards as are prescribed by the Secretary of Commerce. Further, each Council must publish and make available publicly its SOPPs.

The Mid-Atlantic Fishery Management Council's SOPPs originally were published in 42 FR 30578, on June 16, 1977, and were revised on December 28, 1981 (46 FR 62674) and January 28, 1983 (48 FR 4022), respectively. Excerpts resulting from a third revision of the Council's SOPPs are published below. The complete SOPPs will be made available to the public upon written request to the Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, North and New Streets, Dover, Delaware 19901 (phone number: (617)-231-0422).

Dated: April 6, 1984.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology National Marine Fisheries Service

V. Officers and Terms Office

A.3. Special Elections

In the event that the Chair cannot fulfill the Chair's obligations for the balance of the Chair's term, a special election will be held at the next scheduled Council meeting to fill the position of Chair. In the event that the Vice Chair cannot fulfill the Vice Chair's obligations for the balance of the Vice Chair's term, a special election will be held at the next scheduled Council meeting to fill the position of Vice Chair. The procedures for nominations and elections set forth above will be followed for special elections.

VII. Meetings and Hearings

A. General

The Council will meet at the call of the Chair of the Council or upon request of a majority of the voting members. In the latter case, the Council members who want the meeting communicate in writing to the Executive Director in the form of individual letters or a petition. When ten signatures are received, the Executive Director (1) informs the Chair and (2) arranges for the meeting.

VIII. Advisory Panels and Scientific and Statistical Committee

A. Advisory Panels

Advisors shall be appointed as needed to assist the work of the Council and will ordinarily be named to work with a particular Council committee. Such advisors will constitute Advisory Panels as required by Section 302(g)(2) of the Magnuson Act.

1. *Objectives and Duties.* When requested by the Council, through the Council Chair or the Executive Director, Advisory Panels shall:

a. Advise the Council on the assessments and specifications contained in each fishery management plan for each fishery within the Council's geographical area of concern, with particular regard to: (1) The capacity and the extent to which the fishing vessels of the United States will harvest the resources considered in fishery management plans, (2) the effect of such fishery management plans on local economies and social structures, (3) potential conflicts between user groups of a given fishery resource, (4) the capacity and the extent to which United States fish processors will process that portion of an optimum yield harvested by United States fishing vessels, and (5) enforcement problems peculiar to each fishery with emphasis on the expected need for enforcement resources;

b. Advise and/or prepare comments for the Council on (1) fishery management plans or amendments thereto during preparation of such plans or amendments by the Council, and on (2) fishery management plans prepared by the Secretary and transmitted to the Council for review;

c. Advise the Council on current trends and developments in fishery matters; and

d. Perform such other necessary and appropriate advisory duties as may be required by the Council to carry out its functions under the Act.

. Advisory Panel members shall attend Council meetings and public hearings on fishery management plans and amendments thereto as authorized by the Council Chair.

2. *Members.*

a. Advisory Panel members shall be nominated for membership by Council members, be appointed by the Council Chair, and shall serve at the pleasure of the Council Chair.

b. Advisory Panels shall be composed of persons who are either actually engaged in the harvesting or processing of, or are knowledgeable and interested in the conservation and management of,

the fisheries to be managed. Advisory Panels shall also reflect expertise and interest from the standpoint of geographical distribution, industy and other user groups, and the economic and social groups encompassed in the Council's geographical area of concern.

c. Advisory Panel members shall be notified of meetings at least 10 days in advance of the each meeting. Advisory Panel members who cannot attend a scheduled meeting shall advise the Executive Director.

3. *Administrative Provisions.* The Council shall pay the actual expenses of the members of the Advisory Panels, in accordance with controlling law, except that expenses of federal employees shall be paid at the discretion of the Council, while engaged in the performance of Council business.

B. Scientific and Statistical Committee

The Council will establish a Scientific and Statistical Committee.

1. *Objectives and Duties.* When requested by the Council, through the Council Chair or the Chair's designee, the Committee shall:

a. Provide expert scientific and technical advice to the Council on the development of fishery management policy, on establishing the goals and objectives of fishery management plans or amendments thereto, and on the preparation of such plans or amendments thereto;

b. Assist the Council in the development, collection, and evaluation of such statistical, biological, economical, social, and other scientific information as is relevant to the Council's development and amendment of any fishery management plan;

c. Assist the Council in determining what statistical biological, economical, social or other scientific information is needed for the development of a management plan that meets the requirements of the Act; and shall advise the Council as to the best way of obtaining this information, including identifying entities with ongoing research programs that may be able to develop the needed information;

d. Advise the Council on preparing comments on any fishery management plan or amendments thereto prepared by the Secretary or Secretary's delegate which are transmitted to the Council pursuant to Section 304(c)(2) of the Act;

e. Draft, or comment on, any proposed regulations which the Council deems necessary to implement any fishery management plan or amendment to a fishery management plan which is prepared by the Council;

f. Assist the Council in establishing criteria for judging plan effectiveness;

g. Submit to the Council: (1) Such reports as the Committee deems appropriate; and (2) such reports as are requested by the Council; and

h. Perform such other necessary and appropriate duties as may be required by the Council to carry out its functions under the Act.

Members of the Committee shall attend Council meetings as requested by the Council Chair.

2. *Members and Chair.*

a. The Committee shall have no more than 12 members, all of whom shall be nominated for membership on the Committee by Council members, shall be appointed to the Committee by a majority vote of the Council, and serve at the pleasure of the Council.

b. The Committee shall be composed of experts in the biological, statistical, econimical, social, and other relevant disciplines from the Federal, State, and private scientific communities and whatever other source the Council deems appropriate.

c. Members of the Committee shall be appointed by the Council for a period of two years, and may be reappointed at the pleasure of the Council. Vacancy appointments shall be for the remainder of the unexpired term of the vacancy.

d. Committee members shall be notified of meetings at least 10 days in advance of each meeting. Committee members who cannot attend a scheduled meeting shall advise the Executive Director. The terms of members who are absent for three meetings without notifying the Executive Director in advance of the absence and without a reasonable excuse shall be automatically revoked.

e. The Committee Chair shall be appointed by the Council Chair.

f. The Committee Vice Chair shall be elected by the members of the Committee.

3. *Administrative Provisions.*

a. The Committee shall meet as a whole, or in part, at the call of the Committee Chair, with the approval of the Council Chair, as often as necessary to fulfill the Committee's responsibilities, taking into consideration time and budget constraints.

b. The Committee shall report to the Council Chair or the Chair's designee.

c. The Executive Director of the Council shall, upon request of the Committee Chair, provide such staff and other support as the Council considers necessary for Committee activities, within budgetary limitations.

d. The Council shall pay the actual expenses of the Committee members, in accordance with controlling law, except that expenses of Federal employees shall be paid at the discretion of the Council, while engaged in the performance of Council business.

IX. Administrative Management System

A. Administrative Control Procedures Regarding Conflict of Interest

The Council is responsible for maintaining high standards of ethical conduct among themselves and its staff. The word employee in this section means full- or part-time permanent or temporary employees of the Council, but does not mean Council members. Such standards will include but not be limited to the following:

7. No Council member or employee of the Council shall participate directly or indirectly through decision, approval or disapproval, recommendations, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering advice, investigation, auditing, or otherwise, in any

a. Proceeding or application;

b. Request for ruling or other determination;

c. Claim or controversy; or

d. Other matter pertaining to any contract, grant, subcontract, or subgrant and any solicitation or proposal therefore

where, to his knowledge, there is a financial interest possessed by

a. Himself or his immediate family (spouse, children, grandchildren, parent, and brothers, sisters and in-laws);

b. A business other than a public agency in which he or a member of his immediate family serves as an officer, director, trustee, partner, or employee; or

c. Any person or business with whom he or a member of his immediate family is negoitating or has an arrangement concerning prospective employment. Notice of this prohibition shall be conspicuously set forth in every contract and solicitation therefore.

8. Any employee or Council member who has or obtains any benefit from any contract with a business in which the employee or Council members have a financial interest, shall report such benefit to the full Council or he shall be in violation of the ethical standards of this Section. However, this provision shall not apply to a contract with a business where the employee's or Council's interest in the business has been placed in an independently managed trust. Notice prohibition shall be conspicuously set forth in every contract or solicitation therefor.

9. No Council member or employee of the Council shall either solicit or accept

anything of monetary value, gratuities, or favors for or because of:

a. An official action taken, or to be taken, or which could be taken; or

b. A legal duty performed or to be performed, or which could be performed; or

c. A legal duty violated or to be violated, or which could be violated.

10. It is improper for any payment, gratuity or benefit to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order. Subcontractor means any recipient of an agreement or purchase order to perform any part of the work or to make or furnish any goods or services required for the performance of a Council funded contract.

D. Accounting and Budgetary Control Procedures

3. The Council shall bond its employees in an amount adequate to safeguard the Council's interests. The total funds, on deposit and cash on hand, shall not, at any time, exceed the amount of the bond unless specifically authorized by the Council.

F. Standards for Compensation and Other Personnel Actions

4. *Staff Training.* On-the-job or part-time education (undergraduate or postgraduate college level) training assignments are made by the Executive Director as required by changed job requirements and as budgeted funds permit. Employees desiring Council support for on-the-job training or education assignments shall submit a written request through their supervisor to the Executive Director containing details of a justification for the assignment. In evaluating a request the Executive Director will consider the extent to which the course or degree pursued relates to the field in which the employee is now working or may reasonably be expected to work; the relationship between the employee's work schedule and the educational schedule; and funding available in the budget. Training must be authorized in advance in order to be reimbursed, with reimbursement made upon satisfactory completion of the course. Allowable costs are: (a) Training materials; (b) textbooks; (c) fees charged by the educational institution; and (d) tuition charged by the educational institution, or in lieu tuition, instructors' salaries and the related share of indirect cost of the educational institution to the extent that the sum thereof is not in excess of the tuition which would have been paid to the participating educational institution.

X. Amendments to Statement of Operating Practices and Procedures

This Statement of Operating Practices and Procedures may be amended from time to time by majority vote of the voting members present and voting, provided notice of the specific proposed change has been sent in writing to all members of the Council at least ten (10) days in advance of the meeting in which the matter shall be presented. However, notice provisions of this section may be waived by the Council.

[FR Doc. 84-9883 Filed 4-11-84; 8:45 am]

BILLING CODE 3510-22-M

Office of Science and Technology

President's Commission on Industrial Competitiveness; Meetings

AGENCY: Office of Economic Affairs, Commerce.

ACTION: Notice of meetings.

SUMMARY: This notice announces the forthcoming meetings of the President's Commission on Industrial Competitiveness (Commission). The Commission was established by Executive Order 12428 on June 28, 1983 and its charter was approved on August 23, 1983. The Commission shall review means of increasing the long-term competitiveness of United States industries at home and abroad, with particular emphasis on high technology, and provide appropriate advice to the President through the Cabinet Council on Commerce and Trade and the Department of Commerce.

TIME AND PLACE: April 30, and May 1, 1984, Westin Hotel, Renaissance Center, Jefferson Street, Detroit, Michigan 48243.

The full Commission will meet on April 30, 1984 from 8:00–10:00 a.m. to address competitive strategy issues, and on May 1, 1984 from 8:00–12:30 p.m. to consider specific recommendations forwarded by the four subcommittees on the issues described below.

The following subcommittees of the Commission will meet Monday, April 30, 1984, from 10:00–12:00 a.m. and from 1:00–3:30 p.m. The subcommittees may, if necessary, reconvene on May 1, 1984 from 2:00–3:30 p.m.:

Committee on Research, Development and Manufacturing, which will address issues on Federal contractor ownership of patents and the relationship of Federal laboratories and the steel industry in promoting technology improvement.

Committee on International Trade and Marketing, which will address issues on trade law reform, trade reorganization, export promotion, exchange rates and export incentives.

Committee on Human Resources, which will address issues on engineering education, labor-management cooperation, employment security, business school curriculum, partnerships in education and education technology.

Committee on Capital Resources, which will report on the status of several issues addressing the cost of capital.

Public Participation: The meeting will be open to public attendance. A limited number of seats will be available for the public on first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: J. Paul Royston, President's Commission on Industrial Competitiveness, 736 Jackson Place, N.W., Washington, DC 20503, telephone: 202–395–4527 on substantive issues or Marilyn McLennan, Chief, Information Management Division, 202–377–4217, on issues regarding administration of the Commission.

Dated: April 9, 1984.

Egils Milbergs,

Executive Director, President's Commission on Industrial Competitiveness.

[FR Doc. 84-9892 Filed 4-11-84; 8:45 am]

BILLING CODE 3510-18-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Soliciting Public Comment on Bilateral Textile Consultations With Barbados on Category 649

April 9, 1984.

On March 29, 1984, the United States Government, under Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), requested the Government of Barbados to enter into consultations concerning exports to the United States of man-made fiber brassieres in Category 649, produced or manufactured in Barbados.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations with Barbados, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of man-made fiber brassieres in Category 649, produced or manufactured in Barbados and exported to the United States during the twelve-month period which began on March 29, 1984 and extends through

March 28, 1985 at a level of 539,348 dozen.

A summary market statement follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of man-made fiber brassieres in Category 649, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Barbados

Category 649—Brassieres, etc. Man-Made Fiber

Imports of Category 649 from Barbados were 576,683 dozen during the year ending January 1984. This was 20.6 percent above the 478,055 dozen imported a year earlier. January 1984 imports, at 55,119 dozen were 209.9 percent higher than 12 months earlier.

Domestic production of Category 649 declined from 19,630,000 dozen in 1981 to 18,495,000 dozen in 1982. Imports of Category 649 also declined in 1982 to 12,039,000 dozen from 13,256,000 in 1981. However, imports in 1983 regained most of the lost ground and year ending January 1984 imports were 14.2 percent higher than the previous year's level. The import to production ratio in 1982 was 65.1 percent, the second highest level on record.

[FR Doc 84-9809 Filed 4-9-84; 2:17 pm]
BILLING CODE 3510-DR-M

Soliciting Public Comment on Bilateral Textile Consultations With Taiwan To Review Trade In Category 605pt

April 9, 1984.

On March 22, 1984 the American Institute in Taiwan requested consultations with the Coordination Council for North American Affairs concerning exports from Taiwan in Category 605pt., (only TSUSA Number 310.9140). This request was made on the basis of the agreement of November 18, 1982, concerning trade in cotton, wool, and man-made fiber textiles and textile products from Taiwan.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with Taiwan, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of textile products in Category 605pt., produced or manufactured in Taiwan and exported to the United States during the twelve-month period which began on January 1, 1984 and extends through December 31, 1984.

The Committee for the Implementation of Textile Agreements reserves the right to invoke import controls on this category, as defined in the agreement concerning cotton, wool and man-made fiber textile products from Taiwan.

A summary market statement follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

Anyone wishing to comment or provide data or information regarding the treatment of Category 605pt. under the bilateral agrement, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in this category, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet cetain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection of the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 533(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Taiwan

Category 605pt.—Man-Made Fiber Sewing Thread—March 1984

U.S. imports of Category 605pt., TSUSA No. 310.9140 from Taiwan were 754,407 pounds during the year ending January 1984, up 263 percent from the 207,660 pounds imported a year earlier. Taiwan is the largest supplier of TSUSA No. 310.9140, accounting for 37 percent of the total year ending January 1984 imports.

The polyester sales thread industry and market are being adversely affected by imports. Production declined from 7.1 million pounds in 1981 to 5.7 million in 1982 to an estimated 5.6 million in 1983. Imports increased from 743,000 pounds to 905,000 pounds to 1,751,000 pounds, respectively, over the period. Imports for year ending January 1984 were 2,057,000 pounds. The ratio of imports to production increased three-fold, rising from 10.5 percent in 1981 to 31.3 percent in 1983.

April 9, 1984.

[FR Doc. 84-9810 Filed 4-9-84; 2:16 pm]
BILLING CODE 3510-DR-M

Withdrawal of Call on Category 641 (Women's Girls' and Infants' Woven Blouses) From India

On January 10, 1984 a notice was published in the **Federal Register** (49 FR 1267) announcing that on December 30, 1983 the Government of the United States had requested the Government of India to enter into consultations concerning exports to the United States of textile products in Category 641 (woven blouses of man-made fibers), produced or manufactured in India. The purpose of this notice is to announce that the United States Government has concluded that there is no need to establish a specific limit on Category 641 at this time. Should it become

necessary to discuss this category further with the Government of India at a later date, notice will be published in the **Federal Register**).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-9611 Filed 4-9-84; 2:16 pm]

BILLING CODE 3510-DR-M

Announcing an Import Control Level for Certain Man-Made Fiber Textile Products From Thailand

April 9, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 13, 1984. For further information contact Gordana Slijepcevic, International Trade Specialist (202) 377-4212.

Background

On January 10, 1984 a notice was published in the **Federal Register** (49 FR 1267) announcing that, on December 30, 1983, the United States Government had requested the Government of Thailand to enter into consultations concerning exports to the United States of man-made fiber gloves and mittens in Category 631. Pending consultations, the United States has decided, to control imports in this category at the previously announced level of 187,734 dozen pairs for goods exported during the twelve-month period which began on January 1, 1984. The outcome of consultations with the Government of Thailand will be published in the **Federal Register**.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

SUPPLEMENTARY INFORMATION: On December 12, 1983 a letter from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs was published in the **Federal Register** (48 FR 55309) which established levels for certain cotton, wool and man-made fiber textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1984. In the letter which follows this notice an additional level is being established for Category 631 during the same twelve-month period.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

April 9, 1984.

Committee for the Implementation of Textile Agreements

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

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 7, 1983 concerning cotton, wool and man-made fiber textile products, produced or manufactured in Thailand and exported during 1984.

Effective on April 13, 1984, paragraph 1 of the directive of December 7, 1983 is hereby amended to include a level of 187,734 dozen pairs [1] for man-made fiber textile products in Category 631, exported during the twelve-month period which began on January 1, 1984.

Textile products in Category 631 which have been exported to the United States prior to January 1, 1984 shall not be subject to this directive.

Textile products in Category 631 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-9853 Filed 4-11-84; 8:45 am]

BILLING CODE 3510-DR-M

Controlling Imports of Certain Man-Made Fiber Apparel from Mexico

April 9, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, as issued the directive published below to the Commissioner of Customs to be effective on April 13, 1984. For further information contact William Boyd, International Trade Specialist (202) 377-4212.

Background

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979, as amended and extended, between the Governments of the United States and Mexico, the Government of the United States has decided to control imports of man-made fiber hosiery in Category 632, produced or manufactured in Mexico and exported during the agreement year which began on January 1, 1984 at a level of 97,215 dozen pairs. The level has been adjusted by 54,959 dozen pairs to account for overshipments in the category during 1983. Charges have also been made to reflect imports exported during January 1984 amounting to 4,599 dozen. As the data become available, further charges will be made to account for the period which began on February 1, 1984 and extends to the effective date of the action, as well as thereafter. The letter from the Chairman of CITA tot he Commissioner of Customs, which follows this notice implements this action.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

April 9, 1984.

Committee for the Implementation of Textile Agreements

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

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 2, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979, as amended and extended between the Governments of the United States and Mexico; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 13, 1984, entry into the United States for consumption and withdrawal from warehosue for consumption of man-made fiber textile products in Category 632, produced or manufactured in Mexico and exported on and after January 1, 1984 and extending through December 31, 1984, in excess of 97,215 dozen pairs.[1]

Textile products in Category 632 which have been exported to the United States prior to January 1, 1984 shall not be subject to this directive.

Textile products in Category 632 which have been released from the custody of the

[1] The level of restraint has not been adjusted to reflect any imports exported after December 31, 1983.

[1] The level of restraint has not been adjusted to reflect any imports exported after December 31, 1983. During January 1984, imports in this category have amounted to 4,599 dozen pairs.

U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

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

The Committee for the Implmentation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincrely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-9852 Filed 4-11-84; 8:45 am]

BILLING CODE 3510-DR-M

Export Visa Stamp for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products From Haiti

April 6, 1984.

On February 19, 1984 a notice was published in the Federal Register (49 FR 7430), announcing, among other things, that effective on April 1, 1984, the Government of Haiti was changing its visa stamp used for merchandise subject to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of April 2, 1982 with the United States.

The purpose of this notice is to advise the public that the Committee for the Implementation of Textile Agreements has determined the new stamp was intended for use only with textile products subject to the Generalized System of Preferences (GSP). Accordingly, in the letter to the Commissioner of Customs which follows this notice, the Chairman of the Committee for the Implementation of Textile Agreements cancels the directive of February 23, 1984 and directs the U.S. Customs Service to accept the previously authorized visa stamp. A facsimile of the correct stamp is published as an enclosure to that letter.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 6, 1984.

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

Dear Mr. Commissioner: This directive cancels and supersedes the directive of February 23, 1984, which concerned the export visa stamp used by the Government of Haiti for certain cotton, wool and man-made fiber textile products, produced or manufactured in Haiti and exported to the United States.

This is to clarify that the enclosed visa stamp is the proper stamp authorized by the Government of Haiti for cotton, wool and man-made fiber textile products in Categories 300–369, 400–469 and 600–669, produced or manufactured in Haiti and exported on and after April 18, 1980.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foregoing affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Export Visa Used by the Government of the Republic of Haiti for Cotton, Wool and Man-Made Fiber Textiles and Apparel Exported to the United States

[FR Doc. 84-9854 Filed 4-11-84; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force Academy Board of Visitors; Meeting

Pursuant to section 9355, Title 10, United States Code, the Air Force Academy Board of Visitors will meet at the Air Force Academy, Colorado Springs, Colorado, May 10–12, 1984. The purpose of the meeting is to consider morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy.

A portion of the meeting will be open to the public on May 11, 1984, from 9:00 a.m. to 11:45 a.m. Other portions of this meeting will be closed to the public to discuss matters analogous to those listed in subsections (2), (4), and (6) of section 552b(c), Title 5, United States Code. These closed sessions will include: attendance at cadet classes and panel discussions with groups of cadets and military staff and faculty officers involving personal information and opinions, the disclosure of which would result in a clearly unwarranted invasion of personal privacy. Closed sessions will also include executive sessions involving discussions of personal information, including financial information, and information relating solely to internal personnel rules and practices of the Board of Visitors and the Academy. Meeting sessions will be held in the Superintendent's Conference Room Harmon Hall, USAF Academy.

In addition to the open meeting session, the public is welcome to attend a press conference scheduled for 12:00 noon on May 12, 1984, in the Falcon Room, USAF Academy Officers' Open Mess.

For further information, contact Major David W. Keith, Headquarters, U.S. Air Force (MPPA), Washington, D.C. 20330, at (202) 697–7116.

Winnibel F. Holmes,

Air Force Federal Register, Liaison Officer.

[FR Doc. 84-9848 Filed 4-11-84; 8:45 am]

BILLING CODE 3910-01-M

Corps of Engineers/Department of the Army

Intent To Prepare a Draft Supplement to the Final Environmental Impact Statement for the Construction of an Earth Fill Dam and Reservoir at the Proposed Frank Jackson State Park, Covington County, Alabama

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent to Prepare a Draft Supplement to the Final Environmental Impact Statement (DSFEIS).

SUMMARY:

1. Description of Proposed Action

The proposed action is to prepare a DSFEIS relative to a permit application by the State of Alabama, Department of Conservation and Natural Resources, Parks Division, for construction of an earth fill dam and reservoir at the proposed Frank Jackson State Park, near the city of Opp, Covington County, Alabama. The action includes construction of an earth fill dam approximately 3,000 feet in length with a

small hydroelectric plant and a 1,086-acre reservoir on Lightwood Knot Creek. The reservoir would become part of a 2,225-acre State park for residents of the area, the State of Alabama, and tourists traveling through the State. The draft supplement presents additional data regarding mitigation of wetland losses, recreational need for the project, as well as additional details regarding project impacts which are deemed significant data relevant to environmental concerns.

2. Alternatives to the Proposed Action

In responding to this permit application, the U.S. Army Corps of Engineers has available three alternatives. These are: issue the permit, issue the permit with conditions, or deny the permit. The alternatives shown in the FEIS are no action, development in some degree other than that proposed, and development at alternative sites. No other alternatives have been developed.

3. Description of the Scoping Process

The details of the early scoping process were revealed in the Notice of Intent to prepare the DEIS for the project which appeared in the **Federal Register** on September 13, 1979. Since that time the FEIS on the project has been prepared and the Notice of Availability of the FEIS appeared in the **Federal Register** on August 5, 1983. No scoping has taken place since the comments were received on the FEIS.

4. Scoping Meeting

No additional scoping meetings are scheduled.

5. DSFEIS Preparation

It is estimated that the DSFEIS will be available to the public in June 1984.

ADDRESS: Questions about the proposed action and DSFEIS can answered by: Mr. R. Douglas Nester, PD–EE, U.S. Army Engineer District, Mobile, Post Office Box 2288, Mobile, Alabama 36628.

Dated: March 28, 1984.

Partick J. Kelly,

Colonel, CE, District Engineer.

[FR Doc. 84–9847 Filed 4–11–84; 8:45 am]

BILLING CODE 3710-CR-M

Department of the Navy

Navy Resale System Advisory Committee; Partially Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Navy Resale System Advisory Committee will meet on April 30, 1984, in the Amelia Island Plantation Executive Conference Center, Jacksonville, Florida. The meeting will consist of two sessions; the first from 8:00 to 8:50 a.m., and the second from 9:00 a.m. until 3:45 p.m. The purpose of the meeting is to examine policies, operations, and organization of the Navy Resale System and to submit recommendations to the Secretary of the Navy. Topics to be discussed at the meeting will include organization of the Resale System, planning, financial management, merchandising, field support, and industrial relations.

The first session of the meeting, which will involve nonprivileged matters relating to the Navy Resale System, will be open to the public. The second session will be closed to the public. The Secretary of the Navy has determined in writing that the public interest requires that the second session of the meeting be closed to the public because it will involve discussion of matters relating solely either to internal agency personnel rules and practices, or to trade secrets and confidential commercial or financial information. These matters fall within the exemptions listed in sections 552b (c)(2), (c)(4), and (c)(9)(B) of title 5, United States Code.

For further information concerning this meeting contact: Captain J. R. Akers, SC, U.S. Navy, Naval Supply Systems Command, Arlington, Virginia 22202. Telephone: (202) 695–5457.

Dated: April 9, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84–9841 Filed 4–11–84; 8:45 am]

BILLING CODE 3810-AE-M

Chief of Naval Operations; Executive Panel Advisory Committee; Terrorism Task Force; 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 Terrorism Task Force will meet on May 2, 1984, from 9 a.m. to 5 p.m., at 2000 North Beauregard Street, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of the meeting is to evaluate alternative U.S. strategies to combat state supported terrorism. The entire agenda for the meeting will consist of discussions of key issues related to terrorism and the formulation of an updated Navy Policy on Terrorism and Counter/Anti-Terrorism. 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 552(c)(1) of Title 5, United States Code.

For further information concerning this meeting contact: Commander M. B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217. Telephone number (202) 696–4870.

Dated: April 19, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84–9838 filed 4–11–84; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research 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 Naval Research Advisory Committee Working Group on Navy-Supported University Laboratories will meet on May 1, 1984, at the University of Miami, Rosenstiel School of Marine and Atmospheric Science, Miami, Florida. Sessions of the meeting will commence at 9:00 a.m. and terminate at 4:30 p.m. on May 1, 1984. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to discuss and review the Navy's use of university laboratories in undersea warfare. All sessions of the meeting will be devoted to discussion, review and finalization of the final report utilizing classified undersea warfare information. These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The Secretary of the Navy has therefore 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: Commander M. B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217. Telephone number (202) 696–4870.

Dated: April 9, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84-9837 Filed 4-11-84; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research 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 Naval Research Advisory Committee Working Group on Amphibious Operations will meet on May 8 and 9, 1984, at the Office of Naval Research, Arlington, Virgina. Sessions of the meeting will commence at 9:30 a.m. and terminate at 4:30 p.m. on May 8, 1984; and commence at 8:30 a.m. and terminate at 11:30 a.m. on May 9, 1984. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to review material presented at previous meetings and discuss future briefings to be received by the Working Group. These matters consititute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. 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: Commander M. B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217. Telephone number (202) 696–4870.

Dated: April 9, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84-9839 Filed 4-11-84; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Partially Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Naval Research Advisory Committee Panel on Environmental Support will meet on May 2 and 3, 1984, at the U.S. Naval Observatory, Washington, D.C. The first session of the meeting will commence at 8:30 a.m. and terminate at 1:00 p.m. on May 2, 1984. The second session will commence at 1:00 p.m. and terminate at 2:00 p.m. on May 2, 1984. The third session will commence at 2:00 p.m. and terminate at 5:00 p.m. on May 2, 1984. The fourth session will commence at 8:30 a.m. and terminate at 9:15 a.m. on May 3, 1984. The fifth session will commence at 9:15 a.m. and terminate at 5:00 p.m. on May 3, 1984. The second session from 1:00 p.m. to 2:00 p.m. on May 2, 1984 and the fourth session from 8:30 a.m. to 9:15 a.m. on May 3, 1984 will be open to the public. The remaining three sessions will be closed to the public.

The purpose of the meeting is to receive various briefings relating to an assessment of the Navy's environmental support in the design, development, test, operational planning, and employment of naval systems. The open sessions will consist of an overview presentation by the Office of Naval Research and a presentation on Manpower. The remaining sessions of the meeting will consist of classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The Secretary of the Navy therefore has determined in writing that the public interest requires that the first, third, and fifth 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 Stated Code.

For further information concerning this meeting contact: Commander M. B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217, Telephone number (202) 696–4870.

Dated: April 9, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84-9840 Filed 4-11-84; 8:45 am]

BILLING CODE 3810-AE-M

Secretary of the Navy's Advisory Board on Education and Training (SABET); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Secretary of the Navy's Advisory Board on Education and Training will meet at the Langford Resort Hotel, 235 East New England, Winter Park, Florida, on May 2, 3, and 4, 1984. Sessions of the meeting will commence at 2:00 p.m. and terminate at 5:00 p.m. on May 2 (orientation session for new members), commence at 8:00 a.m. and terminate at 5:00 p.m. on May 3, and commence at 8:00 a.m. and terminate at 11:00 a.m. on May 4. The May 3 session will include a visit to the Naval Training Equipment Center, Orlando, Florida, at 3:00 p.m. All sessions will be open to the public.

The purpose of the meeting will be to receive advice from civilian members of the Board concerning the broader utilization of training technology within the Department of the Navy. The Board will hear briefings on instructional technology and tour the Naval Training Equipment Center laboratories. The working session of the Board, on May 4, will include a briefing and discussions of the Quality Control and Technical Assistance Program of the Naval Education and Training Command, an update of the math/science/computer volunteer and certification program and a discussion of implementation initiatives for instructional technology.

For further information concerning this meeting contact: Dr. Martha Brownlee (Code 00A1), Professional Assistant to the Principal, Civilian Advisor on Naval Education and Training, NAS, Pensacola, Florida 32508, Telephone number (904) 452–4394.

Dated: April 9, 1984.

William F. Roos, Jr.,

Lieutentant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84-9842 Filed 4-11-84; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Disabled Individuals

AGENCY: Department of Education.

ACTION: Correction notice.

On March 20, 1984, an application notice establishing closing dates for transmittal of applications for the Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Serverely Disabled Individuals was published at 49 FR 10332–10333.

On page 10332, first column, under *Closing date for transmittal of applications*, the closing date is changed to read "May 8, 1984".

Dated: April 9, 1984.

Maureen E. Corcoran,

General Counsel.

[FR Doc. 84-9859 Filed 4-11-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Manufacturing Energy Consumption Survey; Extension of Submission Date for Comments

AGENCY: Office of Energy Markets and End Use, Energy Information Administration, DOE.

ACTION: Extension of submission date for comments on the proposed Manufacturing Energy Consumption Survey.

SUMMARY: On February 27, 1984, the DOE published a notice (49 FR 7188) soliciting written comments on the design and development of a Manufacturing Energy Consumption Survey. The deadline for receipt of these comments was April 12, 1984. This deadline has been extended through May 12, 1984. For further information regarding this extension or the survey in general, contact Mr. John L. Preston at (202) 252-1128.

ADDRESSES: Comments should be submitted in writing to: Mr. John L. Preston, Office of Energy Markets and End Use, Energy Information Administration, DOE, Room 1F-093, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Preston, (202) 252-1128.

Issued in Washington, D.C., April 6, 1984.

J. Erich Evered,

Administrator, Energy Information Administration.

[FR Doc. 84-9863 Filed 4-11-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project Nos. 2849-006, et al.]

Hydroelectric Applications (South Columbia Basin Irrigation District, et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1a. Type of Application: Amendment of License.

b. Project No.: 2849-006.

c. Date Filed: January 12, 1984.

d. Applicant: South Columbia Basin Irrigation District et al.

e. Name of Project: Main Canal Headworks Power Plant.

f. Location: Adjacent to the Main Canal Headworks intake structure at the U.S. Department of the Interior, Bureau of Reclamation's Day Falls Dam in Grant County, Washington.

g. Filed Pursuant to: The Federal Power Act and § 4.200 of the Commission's regulations.

h. Contact Person: Mr. Russell Smith, Secretary-Manager, South Columbia Basin Irrigation District, P.O. Box 1006, Pasco, Washington 99301.

i. Comment Date: May 18, 1984.

j. Description of Project: The revised project would consist of: (1) A 375-foot-long diversion channel; (2) a forebay extending ⅔ of the way through the dam, crossed by a concrete T-beam bridge to maintain the existing highway SR-2 across the dam; (3) an intake structure extending through the remaining ⅓ of the dam; (4) a downstream connected directly to the intake structure, located immediately downstream of the toe of the dam and containing a generating unit rated at 26 MW; (5) a 375-foot-long tailrace; (6) a 6.9/115-kV transformer in a switchyard adjacent to the powerhouse; and (7) a 470-foot-long, 115-kV transmission line.

The revised project would have a total rated capacity of 26 MW and an average annual generation of 86.4 GWh at an estimated 1983 cost of $38,050,000.

k. Purpose of Project: Power would be marketed to the Cities of Seattle and Tacoma, Washington.

l. This notice also consists of the following standard paragraphs: B, C, and D1.

2a. Type of Application: Application for Relicense (5 MW or Less).

b. Project No.: 1940-001.

c. Date Filed: December 30, 1983.

d. Applicant: Wisconsin Public Service Corporation.

e. Name of Project: Tomahawk Hydro Project.

f. Location: On the Wisconsin River near Tomahawk, Lincoln County, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)-825(r).

h. Contact Person: Mr. E. R. Mathews, Senior Vice President, Power Supply and Engineering, Wisconsin Public Service Corporation, 700 North Adams Street, P.O. Box 700, Green Bay, Wisconsin 54305.

i. Comment Date: May 29, 1984.

j. Description of Project: The existing Tomahawk Hydro Project would consist of: (1) An existing 27-foot-high reinforced concrete dam consisting of a powerhouse section approximately 67 feet long, a sluice gate section approximately 9 feet long, a tainter gate section approximately 267 feet long, a slab and buttress section approximately 160 feet long, a northwest abutment section approximately 60 feet long; (2) an existing reservoir having a surface area of approximately 2,733 acres with a usable storage capacity of 1,367 acrefeet; (3) a powerhouse with a total installed capacity of 2.6 MW and producing an average annual energy output of 12,370 MWh; and (4) appurtenant facilities. Energy produced at the project would be used in the Applicant's distribution system. The Tomahawk Hydro Project affects approximately 4.988 acres of U.S. lands.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.

3a. Type of Application: Amendment of License.

b. Project No.: 2738-007.

c. Date Filed: January 10, 1984.

d. Applicant: New York State Electric & Gas Corporation.

e. Name of Project: Saranac River Project.

f. Location: Saranac River in Clinton County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 971(a)-825(r).

h. Contact Person: Mr. A. E. Kintigh, Vice President—Generation, New York State Electric & Gas Corporation, 4500 Vestal Parkway East, Binghamton, New York 13902.

i. Comment Date: May 16, 1984.

j. Description of Project: The Aplicant proposes to amend the license at two of the developments of the Saranac River Project.

At the Mill "C" development, the Applicant proposes to install a 4,023-kW generator in lieu of the authorized installation of a 3,400-kW generator. This will result in a total installed generating capacity of 6.273 MW. The proposed modification will also include the removal of the 6.6-kV connection between Mill "C" and the Kent development. A new 700-foot-long, 6.6-kV transmission line will be constructed from the Mill "C" Station to the Mill "C" Substation.

The Applicant estimates that the proposed addition of the 4,023-kW generating unit will increase the development's average annual energy generation by 11.771 GWh to a total of 27.758 GWh.

At the Kent Falls development, the Applicant proposes to install a 6,460-kW generating unit in lieu of the authorized installation of a 4,200-kW generator. This will result in a total installed

generating capacity of 12.86 MW. The proposed modification will also include the installation of a 390-foot-long, 6.6–kV transmission line, to be constructed from the Kent Falls Station to the Kent Falls Upper Substation. The Applicant also proposes that the existing Kent Falls Lower Substation and the 46-kV line to the Kent falls Upper Substation will be removed.

The Applicant estimates that the proposed addition of the 6,460-kW generating unit will increase the development's average annual energy generation by 18.69 GWh to a total of 67.63 GWh.

k. Purpose of Project: The project would continue to be operated to provide power for the Applicant's system.

l. This notice also consists of the following standard paragraphs: B and C.

4a. Type of Application: License (Over 5 MW).

b. Project No.: 3943–003.

c. Date Filed: September 29, 1983.

d. Applicant: Village of Channahon.

e. Name of Project: Dresden Island Lock and Dam.

f. Location: Illinois River, Will County, Illinois.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Robert A. Rogina, Beling Consultants, Inc., N. Larkin Ave., at Plainfield Road, Joliet, Illinois 60435.

i. Comment Date: May 29, 1984.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineer's Dresden Island Lock and Dam Project No. 3943 and would consist of: (1) A proposed intake structure constructed by modifying the existing dam headgate section; (2) a proposed powerhouse located adjacent to the right dam abutment and containing 4 generating units of 1,900 kW capacity each; (3) a proposed tailrace channel approximately 70 feet wide and 90 feet long; (4) a proposed 700-foot-long 34.5-kV transmission line to connect with an existing transmission system; and (6) appurtenant facilities.

k. Purpose of Project: The estimated average annual generation of 63,740,000 kWh would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

5a. Type of Application: License (Over 5 MW).

b. Project No.: 4031–002.

c. Date Filed: September 29, 1983.

d. Applicant: City of Peru.

e. Name of Project: Starved Rock Lock and Dam Project.

f. Location: Illinois Waterway, LaSalle County, Illinois.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Henry Mayer, Beling Consultants, Inc., 1001 16th Street, Moline, Illinois 61265.

i. Comment Date: May 29,1984.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Starved Rock Lock and Dam Project No. 4031 and would consist of: (1) A proposed intake structure constructed by modifying the existing dam deadgate bays; (2) a proposed powerhouse located on the downstream side of the dam headgate section and containing 4 generating units of 1,900 kW capacity each; (3) a proposed tailrace channel approximately 90 feet wide and 100 feet long; (4) a proposed 600-foot-long 34.5–kV transmission line to connect with an existing transmission system; and (5) appurtenant facilities.

k. Purpose of Project: The estimated average annual generation of 50,330,000 kWh would be used by the City of Peru electrical system.

l. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

6a. Type of Application: Preliminary Permit.

b. Project No.: 4886–001.

c. Date Filed: December 27, 1983.

d. Applicant: Quincy-Columbia Basin Irrigation District, et al.

e. Name of Project: Sand Hollow.

f. Location: Partially on private lands subject to a U.S. Bureau of Reclamation easement, on the Royal Branch Canal Wasteway, near Vantage, in Grant County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Tom Cotton, Manager, Quincy-Columbia Basin Irrigation District, P.O. Box 188, Central Avenue South, Quincy, Washington 98848.

i. Comment Date: June 7, 1984.

j. Description of Project: The proposed project would consist of: (1) An 8-foot-high concrete diversion structure at elevation 940 feet; (2) a 14,400-foot-long diversion canal with capacity of 85 cfs; (3) an intake structure; (4) an 800-foot-long, 36-inch-diameter steel penstock; (5) a powerhouse containing a single generator with a rated capacity of 1,700 kW and an annual energy production of 8.7 GWh at elevation 600 feet; (6) a 5-mile-long, 13.8-kV transmission line to the Grant County P.U.D. No. 2 Jericho Substation; and (7) a 3-mile-long and a .5-mile-long access road.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a 36-month preliminary permit to conduct engineering, economic and environmental studies to ascertain project feasibility and to support an application for a license to construct and operate the project. Applicant has stated that no new roads are necessary and that drilling is not anticipated as part of the studies. The estimated cost of permit activities is $42,100.

k. Purpose of Project: Power may be marketed to local utilities.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

7a. Type of Application: Preliminary Permit.

b. Project No.: 4887–001.

c. Date Filed: December 27, 1983.

d. Applicant: Quincy-Columbia Basin Irrigation District, et al.

e. Name of Project: CCL4 Hydroelectric Project.

f. Location: Partially on private lands subject to a U.S. Bureau of Reclamation easement, on CCL4 Wasteway and DCC1 Wasteway, near Royal City, in Grant County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Tom Cotton, Manager, Quincy-Columbia Basin Irrigation District, P.O. Box 188, Central Avenue South, Quincy, Washington 98848.

i. Comment Date: June 8, 1984.

j. Description of Project: The proposed project would consist of: (1) A 10-foot-high, 20-foot-long concrete diversion structure on DCC1 Wasteway at elevation 840 feet; (2) a 6-foot-high, 13-foot-long concrete diversion on CCL4 Wasteway at elevation 830 feet; (3) a 2.5-mile-long diversion canal from the DCC1 diversion structure; (4) a .2-mile-long diversion canal from the CCL4 diversion structure; (5) one intake structure at the end of the two canals; (6) a 120-foot-long, 36-inch-diameter penstock; (7) a powerhouse at elevation 678 feet containing a single generator with a rated capacity of 600 kW and an annual energy production of 3.1 GWh; (8) a 3-mile-long, 13.8-kV transmission line to the Royal Substation of Grant County PUD No. 2; and (9) a 2.8-mile-long access road and a .6-mile-long access road to project facilities.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a 36-month preliminary permit to conduct engineering, economic and environmental studies to ascertain project feasibility and to support an application for a license to construct and operate the project. Applicant has stated that no new roads are necessary and that drilling is not anticipated as part of the studies. The estimated cost of permit activities is $42,100.

k. Purpose of Project: Power may be marketed to local utilities.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

8a. Type of Application: Minor License.

8b. Project No.: 5091–001.

8c. Date Filed: April 25, 1983.

8d. Applicant: Trans Mountain Construction Company.

8e. Name of Project: Keystone.

8f. Location: On Keystone Creek near the Town of Dillon in Summit County, Colorado.

8g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

8h. Contact Person: Mr. Herbert C. Young, 123 S. Paradise Road, Golden, Colorado 80401.

8i. Comment Date: May 29, 1984.

8j. Description of Project: The proposed project would consist of: (1) A new diversion dam about 6 feet high and less than 3 feet in length, and constructed with boulders 2 to 3 feet in diameter; (2) a small pool measuring 15 by 25 by 4 feet deep; (3) a new intake structure with a trash and fish screen and slide-type control gate; (4) a new plastic or steel penstock, 16 inches in diameter, 5,500 feet long and buried in 2 feet of soil; (5) a new powerhouse, 12.5 feet square, containing one 60-kw turbine-generator unit operating under a head of 240 feet; (5) a small tailrace; (7) a new buried 480-volt transmission line 600 feet long; and (8) appurtenant electrical and mechanical facilities.

The entire project is located on land managed by the U.S. Forest Service in the Arapahoe National Forest and would occupy 3.53 acres of land. This application for license was filed during the term of the Applicant's permit for Project No. 5091.

8k. Purpose of Project: The average annual generation of 175,000 kWh would be sold to the Public Service Company of Colorado.

8l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

9a. Type of Application: License (Over 5 MW).

9b. Project No.: 5226–001.

9c. Dated Filed: June 29, 1983.

9d. Applicant: Incorporated County of Los Alamos.

9e. Name of Project: El Vado Hydro Project.

9f. Location: On Rio Chama in Rio Arriba County, New Mexico.

9g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

9h. Contact Person: Mr. Ronald C. Jack, County Administrator, Incorporated County of Los Alamos, 2300 Trinity Drive, P.O. Box 30, Los Alamos, New Mexico 87544.

9i. Comment Date: June 4, 1984.

9j. Description of Project: The proposed project would utilize the existing Middle Rio Grande Conservancy District's El Vado Dam and Reservoir, operated and maintained by the U.S. Bureau of Reclamation (USBR), and would consist of: (1) An existing gravel fill dam, 175 feet high and 1,325 feet long, with crest elevation at 6,914.5 feet m.s.l.; (2) a reservoir having an area of 3,380 acres and a storage capacity of 196,500 acre-feet at normal water surface elevation of 6,902 feet m.s.l.; (3) an existing outlet works to be rehabilitated as intake structure and penstock; (4) a new powerhouse, at an abandoned valve house site, to contain a turbine-generator unit with a total rated capacity of 6,000 kW; (5) a tailrace returning flow to the river a short distance downstream of the dam; (6) a new 12-miles-long 69-kV transmission line; and (7) appurtenant facilities. The Applicant estimates that the average annual energy output would be 22,000,000 kWh. Project energy will be utilized by the Applicant. Applicant is Permittee for Project No. 5226.

9k. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

10a. Type of Application: Exemption (5 MW or less).

b. Project No.: 6758–001.

c. Date Filed: January 9, 1984.

d. Applicant: Holden Village, Inc.

e. Name of Project: Railroad Creek.

f. Location: On Railroad Creek, near Chelan, in Chelan County, Washington, and occupying U.S. lands within Wenatchee National Forest.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708.

h. Contact Person: Werner Janssen, Holden Village, Inc., Chelan, Washington 98816.

i. Comment Date: May 16, 1984.

j. Description of Project: The proposed project would consist of: (1) A 6.5-foot-high, 50-foot-long concrete-wood buttress diversion weir; (2) a 5,300-foot-long, 30-inch-diameter steel penstock; (3) a powerhouse containing one generating unit rated at 325 kW; (4) a 4.5-mile-long transmission line; and (5) an access road. The average annual energy generation is estimated to be 2.6 million kWh.

An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

The Applicant has requested a waiver of § 4.102(1)(2)(iii)(A) of the regulations, which states that the height of the diversion structure is limited to twice the penstock diameter.

k. Purpose of Project: Power would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

11a. Type of Application: Major License (5 MW or less).

b. Project No.: 7282–001.

c. Date Filed: July 14, 1983.

d. Applicant: Roaring Creek Ranch.

e. Name of Project: Roaring Creek Water Power Project.

f. Location: On Roaring Creek, near town of Montgomery Creek, in Shasta County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John Downs, Roaring Creek Ranch, 1110 Shasta Street, Redding, California 96001.

i. Comment Date: June 8, 1984.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high, 35-foot-long diversion structure at elevation 1,655 feet; (2) a 42-inch-diameter, 5,100-foot-long pipeline/penstock; (3) a powerhouse containing one generator unit with a rated capacity of 2,000 kW operating under a head of 291 feet; (4) a 0.25-mile-long, 12.3–kV transmission line to connect to an existing Pacific Gas & Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 9.11 million kWh which would be sold to PG&E. The project cost has been estimated to be about $3.8 million. The project is bounded by private lands and, therefore, provides negligible recreational facilities, except for some fishing in the upper part of the project area near the Cove Road Bridge.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

12a. Type of Application: License (Under 5 MW).

b. Project No.: 7663–000.

c. Date Filed: September 30, 1983.

d. Applicant: The Metropolitan District.

e. Name of Project: Richards Corner Project.

f. Location: On the East Branch of the Farmington Rive, the Nepaug River, and the Phelps Brook in Litchfield and Hartford Counties, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Bernard A. Batycki, District Manager, The Metropolitan

District, 555 Main Street, Hartford, Connecticut 06101.

i. Comment Date: May 29, 1984.

j. Description of Project: The proposed project would consist of the Richards Corner Development and the Nepaug Development.

The Richards Corner Development would consist of: (1) The 70-foot-high and 800-foot-long Richards Corner Dam; (2) Lake McDonough with a surface area of 390 acres at the flow line elevation of 422.5 feet NGVD; (3) an intake structure at the east side of the dam; (4) a new 3-foot-diameter and 290-foot-long penstock; (5) a new powerhouse with 2 turbine-generator units with a total capacity of 150 kW; (6) a new 150-foot-long 480-volt transmission line; and (7) other appurtenances.

The Nepaug Development would consist of: (1) The 600-foot-long and 110-foot-high Nepaug Dam; (2) the 1,200-foot-long and 90-foot-high Phelps Brook Dam; (3) the 640-foot-long and 30-foot-high East Dike; (4) the Nepaug Reservoir with a surface area of 850 acres at the Nepaug Dam's flow line elevation of 482.5 feet NGVD; (5) an intake structure at the east side of the Nepaug Dam; (6) a new 2-foot-diameter and 35-foot-long penstock; (7) a new powerhouse with 2 turbine-generator units with a total capacity of 100 kW; (8) a 40-foot-long 480-volt transmission line; and (9) other appurtenances.

Applicant owns all existing project facilities. It estimates an average annual generation of 1,850,000 kWh.

k. Purpose of Project: Project energy would be sold to Northeast Utilities.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

13a. Type of Application: Preliminary Permit.

b. Project No.: 7764–000.

c. Date Filed: October 25, 1983.

d. Applicant: All American Canal Associates.

e. Name of Project: Charles Deloney Hydropower Project.

f. Location: On All American Canal, near Town of El Centro, in Imperial County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 719(a)–825(r).

h. Contact Person: Mr. J. Kirk Rector, Senior Vice President, Diversified Products, No. 500 CFS Center, 324 South State Street, Salt Lake City, Utah 84111.

i. Comment Date: June 1, 1984.

j. Description of Project: The proposed project would consist of: (1) The existing U.S. Bureau of Reclamation's 27-foot-high, 130-foot-long concrete drop structure located on All American Canal; (2) a new 170-foot-long channel; (3) a new powerhouse with a total installed capacity of 3.6 MW; (4) a 200-foot-long tailrace channel; and (5) a 200-foot-long, 34.5-kV transmission line. The Applicant estimates that the average annual energy generation would be 28.9 GWh and sold to the local utilities.

A peliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, evironmental and economic studies, and also prepare an FERC license application at an estimated cost of $125,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

14a. Type of Application: Preliminary Permit.

b. Project No.: 7777–000.

c. Date Filed: October 25, 1983.

d. Applicant: Iron Mountain Associates.

e. Name of Project: Sharon Compton Hydropower Project.

f. Location: On Spring Creek, near town of Redding, in Shasta County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. J. Kirk Rector, Senior Vice President, Diversified Products, No. 500 CFR Center, 324 South State Street, Salt Lake City, Utah 84111.

i. Comment Date: January 1, 1984.

j. Description of Project: The proposed project would consist of: Alternative I—(1) A 42-inch-diameter, 4,200-foot-long diversion intake pipeline at elevation 1,800 feet; (2) a 30-inch-diameter, 2,100-foot-long penstock; (3) a powerhouse with a total installed capacity of 1,150 kW operating under a head of 660 feet; and (4) of 0.5-mile-long transmission line from the power house to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 5.03 GWh to be sold to PG&E.

Alternative II—(1) A 36-inch-diameter, 3,200-foot-long diversion intake pipeline at elevation 1,135 feet; (2) a 30-inch-diameter, 1,300-foot-long, penstock (3) a powerhouse with a total installed capacity of 972 kW operating under a head of 555 feet; and (4) an approximately 1-mile-long transmission line from the powerhouse to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 4.3 GWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary premit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $125,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

15a. Type of Application: Preliminary Permit.

b. Project No.: 7779–000.

c. Date Filed: October 27, 1983.

d. Applicant: Timothy F. Holt, Pamela L. Holt, and Ben J. Barbot.

e. Name of Project: Galena Creek Water Power Project.

f. Location: On Galena Creek, near town of Reno, Washoe County, Nevada.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Timothy F. Holt, 290 Galena Pines Road, Reno, Nevada 89511.

i. Comment Date: June 7, 1984.

j. Description of Project: The proposed project would consists of : (1) A 4-foot-wide and 4-foot-deep, 9,200-foot-long diversion ditch at elevation 5,320 feet; (2) a 10-inch-diameter, 940-foot-long penstock; (3) a powerhouse with a total capacity 300 kW operating under a head of 400 feet; and (4) a 500-foot-long transmission line from the powerhouse to an existing Sierra Pacific Power Company (SPPC) transmission line. The Applicant estimates the average annual energy generated at 1.4 million kWh to be sold to SPPC.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of an 18-month prelimiary permit to conduct technical, environmental and economic studies, and also prepare a FERC license application at an estimated cost $13,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

16a. Type of Application: Preliminary Permit.

b. Project No.: 7862–000.

c. Date Filed: November 21, 1983.

d. Applicant: Everyready Machinery Co., Inc. & McCallum Enterprises, Inc.

e. Name of Project: Littleville Dam.

f. Location: Middle Branch of the Westfield River, in Hampshire and Hampden Counties, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: E. J. McCallum, Jr., Everyready Machinery Co., Inc. and McCallum Enterprises, Inc., P.O. Box 1780, Bridgeport, Connecticut 06601–1780.

i. Comment Date: June 7, 1984.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Littleville Dam, Reservior and outlet works and would

be comprised of either Alternative 1 or Alternative 2.

Alternative 1—would consist of: (1) Use of an existing 48-inch-diameter, 800-foot-long penstock; and (2) a proposed concrete powerhouse, approximately 30-feet square, with an installed capacity of 800-kW.

Alternative 2—would consist of: (1) A proposed 5-foot-diameter, 500-foot-long penstock; and (2) a proposed concrete powerhouse approximately 30-feet square, with an installed capacity of 1,000-kW.

In addition, both alternatives would include the following: (1) A proposed tailrace, approximately 30 feet wide and 40 feet in length; (2) a new switchyard; (3) a proposed 2,400-volt tramsmission line, approximately 150 feet long; (4) a new access road; and (5) appurtenant facilities. Applicant estimates that the average annual generation would amount to either 2,674,000 kWh or 2,911,000 kWh.

k. Purpose of Project: The Appplicant anticipates that project energy will be sold to the Western Massachusetts Electric Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $25,000.

17a. Type of Application: Preliminary Permit.

b. Project No.: 7871–000.

c. Date Filed: November 25, 1983.

d. Applicant: Ross Associates.

e. Name of Project: Paint Creek.

f. Location: At the U.S. Army Corps of Engineers' Paint Creek Dam on Paint Creek in Ross and Highland Counties, Ohio.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Joel Kirk Rector, 4832, Colony Circle, Salt Lake City, Utah 84117.

i. Comment Date: June 7, 1984.

j. Description of Project: The proposed project would utilize the Corp's Paint Creek Dam and outlet tunnel and would consist of: (1) A proposed 250-foot-long, 10-foot diameter penstock; (2) a proposed powerhouse containing 1 turbine/generator unit with an installed capacity of 8 MW; (3) a proposed 155-foot-long tailrace; (4) a proposed ½-mile-long, 12-kV transmission line; and (5) appurtenant facilities. The estimated average annual generation would be 35,000 MWh.

k. Purpose of Project: Project energy would be sold to either Ohio Edison or local municipalities.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorized construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $125,000.

18a. Type of Application: Preliminary Permit.

b. Project No.: 7894–000.

c. Date Filed: December 5, 1983.

d. Applicant: Ernest Smith and Everett Tice.

e. Name of Project: Gunpowder II.

f. Location: Gunpowder Creek, Caldwell County, North Carolina.

g. File Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Ernest Smith, Route 4, Box 149, Spartanburg.

i. Comment Date: June 4, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing 24-foot-high, 100-foot-long concrete buttress dam; (2) an existing power intake; (3) an existing powerhouse in which a proposed 125 kW generating unit would be installed; (4) a proposed transformer/substation to be connected with the existing distribution grid; and (5) appurtenant facilities.

k. Purpose of Project: The estimated average annual generation of 640,000 kWh would be sold to Duke Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $20,000.

19a. Type of Application: Preliminary Permit.

b. Project No.: 7929–000.

c. Date Filed: December 19, 1983.

d. Applicant: Richard D. Ely.

e. Name of Project: Willimantic #1 Project.

f. Location: On the Willimantic River in Windham County, Connecticut.

g. File Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Richard D. Ely, Glass River Power Company, P.O. Box 474, Storrs, Connecticut 06268–0474.

i. Comment Date: May 29, 1984.

j. Description of Project: The proposed project would consist of: (1) The existing 22-foot high 200-foot long stone masonry Willimantic Dam #1 owned by American Thread; (2) a reservoir with negligible storage capacity; (3) an existing intake structure at the Northwest side dam; (4) 3 existing 8-foot wide and 4-foot high penstocks 12.75 feet long; (5) an existing power house with 3 new units with a total capacity of 546-kW; (6) an existing 250-foot long tailrace; and (7) other appurtenances. Applicant estimates an average annual generation of 1,600,000 kWh.

k. Purpose of Project: Project energy would be sold to either American Thread or Northeast Utilities.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 3 years during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $25,000.

a. Type of Application: Conduit Exemption.

b. Project No.: 7935–000.

c. Date Field: December 29, 1983.

d. Applicant: Aminoil Inc.

e. Name of Project: Aminoil.

f. Location: Geysers KGRA, Castle Rock Springs Field, near Lincoln Rock, in Lake County, California.

g. Filed Pursuant to: Section 30 of the Federal Power Act, 16 U.S.C. 823(a).

h. Contact Person: Mr. C. J. Von Hoene, Aminoil Inc., Geothermal Resources Area, P.O. Box 11279, Santa Rosa, California 95406.

i. Comment Date: May 16, 1984.

j. Description of Project: The proposed project would utilize excess condensate from Pacific Gas and Electric Company's (PG and E) Geysers Steam Electric Power Plant prior to well injection disposal. The proposed project would consist of an 8-inch-diameter, 50-foot-long penstock, and a powerhouse containing a single turbine-generating unit with an installed capacity of 120 kW and an estimated average annual generation of 0.88 GWh. A 3,500-foot-long, 2.3-kV transmission line would connect the project to a PG and E line. Project power would be sold to PG and E. Applicant estimates construction cost at $250,00.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

a. Type of Application: Preliminary Permit.

b. Project No. 7950-000.

c. Date Filed: January 3, 1984.

d. Applicant: Idaho Natural Energy, Inc.

e. Name of Project: North Fork Boise River.

f. Location: In the Boise National Forest, on the North Fork Boise River, near Idaho City, in Boise and Elmore Counties, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Jeff Burt, Bingham Engineering, 165 Wright Brothers Drive, Salt Lake City, Utah 84116.

i. Comment Date June 7, 1984.

j. Description of Project: The proposed project would consist of: (1) A 9-foot-high diversion structure at elevation 5,360 feet; (2) a 20,500-foot-long, 5-foot-diameter pipeline; (3) a powerhouse containing a single generator with a rated capacity of 10,000 kW and an annual energy production of 30 GWh at elevation 4,840 feet; and (4) a 15-mile-long transmission line to an existing line.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a 24-month preliminary permit to conduct engineering, economic and environmental studies to ascertain project feasibility and to support an application for a license to construct and operate the project. Application has stated that no new roads are necessary. The estimated cost of permit activities is $200,000.

k. Purpose of Project: Power may be marketed to the Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

22a. Type of Application: Preliminary Permit.

b. Project No.: 7956-000.

c. Date Filed: January 4, 1984.

d. Applicant: Madera Hydro Partners.

e. Name of Project: Buchanan Dam.

f. Location: On Chowchilla River in Madera County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: William Fowler, Mitex, Inc., 91 Newbury Street, Boston, Massachusetts 02116.

i. Comment Date: June 4, 1984.

j. Description of Project: The proposed project would be located at the base of the existing U.S. Army Corps of Engineers' 200-foot-high Buchanan Dam and would consist of: (1) A junction chamber in the outlet tunnel of the Buchanan Dam; (2) a 6-foot-diameter penstock; (3) a powerhouse containing a single Francis-type turbine-generating unit, operating under a head of 159 feet with a rated capacity of 3,000 kW; (4) an outdoor switchyard connecting with an existing 12-kV transmission line of Pacific Gas and Electric Company (PG&E).

A preliminary permit does not authorize construction. The Applicant seeks a 24-month permit to study the feasibility of constructing and operating the project. No new roads would be constructed to conduct these studies which are estimated to cost $70,000.

k. Purpose of Project: The estimated 5,600 MWh produced annually by the proposed project would be sold to an investor owned or public utility company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

23a. Type of Application: Conduit Exemption.

b. Project No.: 7963-000.

c. Date Filed: January 3, 1984.

d. Applicant: City of Jersey City, New Jersey.

e. Name of Project: Jersey City Waterworks.

f. Location: Jersey City Water Treatments Plant in Parsippany-Troy Hills, Morris County, New Jersey.

g. Filed Pursuant to: Section 30 of the Federal Power Act (16 U.S.C. 823(a)).

h. Contact Person: Patrick J. Lawler, Lawler, Matusky & Skelly Engineers, One Blue Hill Plaza, Pearl River, New York 10965.

i. Comment Date: May 16, 1984.

j. Description of Project: The proposed project would be located at the existing Jersey City Water Treatment Plant and would consist of: (1) A proposed 17-foot by 24-foot reinforced concrete generating station with an installed capacity of 315 kW; (2) a proposed 16-foot-long, 84-inch-diameter pipe; and (3) appurtenant facilities. The estimated average annual energy would be 1,708 MWh. This application was filed pursuant to a preliminary permit held by the Applicant for Project No. 5989-000.

k. Purpose of Project: Project energy would be used for operations at the Water Treatment Plant, with excesses being sold to Jersey Central Power & Light Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

a. Type of Application: Preliminary Permit.

24b. Project No.: 7957-000.

c. Date Filed: January 10, 1984.

d. Applicant: Donald E. Doss.

e. Name of Project: Jerusalem Creek Water Power Project.

f. Location: On Jerusalem Creek, near Town of Ono, in Shasta County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Donald E. Doss, 1918 West Street, Redding, California 96001.

i. Comment Date: June 1, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing 6-foot-high diversion structure owned by Southern Pacific Land Company with spillway elevation at 1,900 feet; (2) an existing 2.3-mile irrigation ditch; (3) a 24-inch-diameter, 1,650-foot-long penstock; (4) a powerhouse with a total installed capacity of 900 kW operating under a head of 500 feet; and (5) a 1.4-mile-long, 12-kV transmission line connecting to an existing 12-kV Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates that the average annual energy generation would be 6.3 GWh and sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 24-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $40,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

25a. Type of Application: Minor License.

b. Project No.: 7969–000.

c. Date Filed: January 3, 1984.

d. Applicant: Thomas M. McMaster.

e. Name of Project: Falls Creek Water Power.

f. Location: On Falls Creek, within Mt. Baker-Snoqualmie National Forest in Whatcom County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Thomas M. McMaster, Post Office Box 1252, 1490 Donnelly Road, Mt. Vernon, Washington 98273.

i. Comment Date: June 7, 1984.

j. Description of Project: The proposed project would consist of: (1) A 10-foot-high, 50-foot-long reinforced concrete diversion structure with crest elevation 2,495 feet; (2) a 16-inch-diameter, 3,260-foot-long steel penstock; (3) a powerhouse at elevation 2,000 feet containing one generator rated at 0.4 MW, producing an average annual output of 1.76 GWh; (4) a 50-foot-long tailrace; (5) a 4.5-mile-long, 55-kV transmission line; and (6) access roads to the powerhouse and diversion structure totalling 400 feet in length. Applicant estimates that the project will cost $800,000.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

26a. Type of Application: Preliminary Permit.

b. Project No.: 7975–000.

c. Date Filed: January 20, 1984.

d. Applicant: Los Gatos Associates.

e. Name of Project: The Terrie Cox.

f. Location: On Los Gatos Creek in Santa Clara County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. J. Kirk Rector, CFS Financial Corporation, 324 South State Street, Suite 500, Salt Lake City, Utah 84111.

i. Comment Date: June 7, 1984.

j. Description of Project: The proposed project would consist of (1) The existing 208-foot-high, 850-foot-long, Lexington Dam and Reservoir of Santa Clara Valley Irrigation District, with a storage capacity of 20,210 acre-feet and a surface area of 519 acres; (2) a 30-foot-diameter, 50-foot-long penstock; (3) a powerhouse containing a single generating unit, operating under a head of 140 feet, with a total installed capacity of 840 kW; (4) a 12-kV, 450-foot-long transmission line connecting with an existing transmission line of the Pacific Gas and Electric Company (PG&E).

The Applicant seeks issuance of a 36-month permit to study the feasibility of constructing and operating the project. These studies would not require construction of any new roads and are estimated to cost $125,000.

k. Purpose of Project: The estimated 2.46 GWh generated annually by the proposed project would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

27a. Type of Application: Preliminary Permit.

b. Project No.: 7985–000.

c. Date Filed: January 16, 1984.

d. Applicant: Michael J. Skopos.

e. Name of Project: Sierra Buttes.

f. Location: On Independence Ravine, a tributary to the North Fork Yuba River, near Sierra City, in Sierra County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Michael J. Skopos, 8927 Renoir Court, Fair Oaks, California 95628.

i. Comment Date: June 1, 1984.

j. Description of Project: The proposed project would consist of: (1) A 3-foot-high, 5-foot-long concrete seal at an abandoned underground mine opening; (2) a 18-inch-diameter, 6,000-foot-long steel pipeline/penstock; (3) a powerhouse located on Independence Ravine at elevation 4,000 feet MSL containing a single turbine-generator unit with a rated capacity of 1,270 kW and producing an estimated average annual generation of 6.0 GWh; and (4) a tailrace. The proposed project would affect Tahoe National Forest lands. Project power would be used to operate a precious metal mine.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks a 36-month permit to study the feasibility of constructing and operating the project and estimates the cost of the studies at $35,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

28a. Type of Application: Preliminary Permit.

b. Project No.: 8002–000.

c. Date Filed: January 26, 1984.

d. Applicant: CFS Hydroelectric Associates.

e. Name of Project: Gabrielle Parkinson Hydroelectric Project.

f. Location: On Indian Valley Creek, near Town of Hyampom, within Trinity National Forest, in Trinity County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. J. Kirk Rector, CFS Properties Inc., 324 South State Street, Suite 500, Salt Lake City, Utah 84111.

i. Comment Date: June 1, 1984.

j. Description of Project: The proposed project would consist of: (1) A 2-foot-high, 30-foot-long diversion structure at elevation 2,730 feet msl; (2) a 4-foot-diameter, 5,200-foot-long pipeline; (3) a 4-foot-diameter, 3,010-foot-long penstock; (4) a powerhouse containing one generating unit with a rated capacity of 2,500 kW operating under a head of 650 feet; and (5) a 2.5-mile-long, 12-kV transmission line from the powerhouse to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates average annual energy generation at 7.2 GWh to be sold to PG&E.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

29a. Type of Application: Preliminary Permit.

b. Project No.: 8004–000.

c. Date Filed: January 26, 1984.

d. Applicant: Robert W. Shaw.

e. Name of Project: Gilead.

f. Location: Androscogging River, Town of Gilead, Oxford County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Robert W. Shaw, 4 Parsons Street, Colebrook, New Hampshire 03576.

i. Comment Date: June 7, 1984.

j. Competing Application: Project No. 7913–000. Filed: December 12, 1983. Due Date: April 2, 1984.

k. Description of Project: The proposed project would consist of: (1) A new 372-foot long, 25-foot high timber crib dam; (2) a new 70 acre reservoir at elevation 695 feet M.S.L. with no usable storage capacity; (3) a new powerhosue located on the southern river bank with turbine-generators with a total rated capacity of 3 NW; (4) a new transmission line; and (5) appurtenant facilities. The project would generate up to 23,000,000 kWh annually.

l. Purpose of Project: Energy produced at the project would be sold to Central Maine Power Company.

m. This notice also consists of the following standard paragraphs: A8, A9, B, C, and D2.

n. Proposed Scope and Cost of Studies Under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 18 months. The work performed under this preliminary permit would consist of gathering necessary data, completing surveys and environmental studies, obtaining necessary Federal, State and

local permits, and preparing necessary documentation for the Commission's licensing requirements. Applicant estimates that the cost of works to be performed under the permit would not exceed $44,000.

30a. Type of Application: Preliminary Permit.

b. Project No: 8006–000.

c. Date Filed: January 30, 1984.

d. Applicant: Grenfell Hydroelectric Associates.

e. Name of Project: Belding Dam.

f. Location: On the Flat River in Ionia County, Michigan

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. David Grenfell, Grenfell Hydroelectric Associates, RR 1, P.O. Box 361–D, Iron Mountain, Michigan 49801.

i. Comment Date: June 7, 1984.

j. Description of Project: The proposed project would consist of: (1) The existing Belding Dam, owned by the City of Belding, Michigan; (2) an existing 15-foot-high fixed crest weir; (3) an existing reservoir having a storage capacity of 500 acre-feet and a surface elevation of 760.8 feet M.S.L.; (4) a proposed powerhouse containing a single generating unit having a rated capacity of 350; kW; (5) the existing 24-kV transmission line, located in the close vicinity of the dam, owned by Consumers Power Company; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 1.8 GWh.

k. Purpose of Project: The most likely market for the energy derived at the proposed project would be Consumers Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 18 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $27,000.

31a. Type of Application: Preliminary Permit.

b. Project No.: 8008–000.

c. Date Filed: January 30, 1984 and amended February 24, 1984.

d. Applicant: Greenwich Associates.

e. Name of Project: Lower Greenwich.

f. Location: Battenkill River, Town of Greenwich, Washington County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Joel Kirk Rector, 4832 Colony Circle, Salt Lake City, Utah 84117.

i. Comment Date: June 7, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing 10-foot-high, 250-foot-long concrete gravity dam; (2) an existing 11-acre reservoir with no usable storage capacity at elevation 310.0 feet M.S.L.; (3) an existing canal system to be refurbished; (4) an existing powerhouse located on the north river bank inside an existing mill complex to be refurbished to contain new turbine-generators with a total rated capacity of 675 kW; (5) a 2,000-foot-long transmission line and; (6) appurtenant facilities. The project would generate up to 3,360,000 KWh annually. The dam is owned by Sky Bel, Inc.

k. Purpose of Project: Energy produced at the project would be sold to Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The work proposed under the preliminary permit would inlcude economic analysis, preparation of preliminary engineering plans and a study of environmental impacts. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $125,000.

32a. Type of Application: Preliminary Permit.

b. Project No.: 8012–000.

c. Date Filed: January 30, 1984.

d. Applicant: Mason & Parker Mfg. Co., Inc.

e. Name of Project: Hunts Pond Dam Project.

f. Location: On the Millers River in the Town of Winchendon, Worcester County, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Charles Andrews, Mason & Parker Mfg. Co., Inc., P.O. Box 246, 28 Front Street, Winchendon, Massachusetts 01475.

i. Comment Date: May 29, 1984.

j. Description of Project: The proposed project would consist of: (1) The existing Hunts Pond Dam, a concrete dam 16 feet high and 184 feet long; (2) the impoundment having a surface area of 13 acres, a storage capacity of 120 acre-feet, and a normal water surface elevation of 952 feet NGVD; (3) a new 7-foot-diameter steel penstock 400 feet long; (4) a new powerhouse containing one generating unit with a capacity of 175-kW; (5) an existing tailrace channel 5 feet deep, 40 feet wide, and 400 feet long; (6) a new underground transmission line, 50 feet long; and (7) appurtenant facilities. The Applicant estimates the average annual generation would be 850,000 kWh. The Applicant owns the dam and all existing project facilities.

k. Purpose of Project: All project power would be sold to either the Massachusetts Electric Company or other local utilities.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time Applicant would investigate the engineering, economic, and environmental aspects of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for license or exemption from licensing. The Applicant estimates the cost of the studies under permit would be $40,000.

33. a. Type of Application: Preliminary Permit.

b. Project No.: 8018–000.

c. Date Filed: February 1, 1984.

d. Applicant: City of Redding.

e. Name of Project: Cottonwood Power.

f. Location: At the Corps of Engineers' proposed Dutch Gulch and Tehama Dams on Cottonwood Creek in Shasta and Tehama Counties, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Robert E. Courtney, City Manager, City of Redding, 760 Parkview Avenue, Redding, California 96001.

i. Comment Date: May 29, 1984.

j. Description of Project: The proposed project would consist of: (1) A powerhouse, at the base of the proposed Dutch Gulch Dam, containing three generating units with a total rated capacity of 17.6 MW, operating under a maximum head of 215 feet; (2) a powerhouse, at the base of the Tehama Dam, containing three generating units with a total rated capacity of 7.8 MW, operating under a maximum head of 190

feet; and (3) two 34.5-kV overhead transmission lines, 8 and 2 miles long, connecting the powerhouses with the Western Area Power Administration (WAPA) transmission lines near the project.

A 3-year preliminary permit for this project was previously issued, under FERC Project No. 3595 designation, to the City of Redding and expired on January 31, 1984.

k. Purpose of Project: Project energy would be wheeled by WAPA and sold to the Applicant's customers within the City of Redding.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

34a. Type of Application: Preliminary Permit.

b. Project No.: 8028–000.

c. Date Filed: February 2, 1984.

d. Applicant: East Sidney Associates.

e. Name of Project: East Sidney Project.

f. Location: On Ouleout Creek in the Town of East Sidney, Delaware County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Joel Kirk Rector, East Sidney Associates, 500 CFS Center, 324 South State Street, Suite 500, Salt Lake City, Utah 84111.

i. Comment Date: June 4, 1984.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' East Sidney Dam and reservoir, and would consist of: (1) A new 10-foot-diameter steel penstock 150 feet long; (2) a new powerhouse containing, one generating unit having a capacity of 1,110 kW; (3) a new tailrace 30 feet wide and 30 feet long; (4) a new 12–kV transmission line 235 feet long; and (5) appurtenant facilities. Applicant estimates the average annual generation would be 4.46 GWh. The dam and reservior is owned and operated by the U.S. Army Corps of Engineers.

k. Purpose of Project: All project power would be sold to the New York State Gas and Electric Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time the Applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under permit would be $125,000.

35a. Type of Application: Preliminary Permit.

b. Project No.: 8029–000.

c. Date Filed: February 2, 1984.

d. Applicant: CFS Hydroelectric Associates.

e. Name of Project: Burk Childers.

f. Location: On Long Ravine, a tributary to the West Branch Feather River, near Stirling City, in Butte County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. J. Kirk Rector, 324 South State Street, Suite #500, Salt Lake City, Utah 84111.

i. Comment Date: June 4, 1984.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high, 30-foot-long concrete diversion structure located at the mouth of Pacific Gas and Electric Company's (PG&E) Hendricks Ditch tunnel on Long Ravine; (2) a 48-inch-diameter, 4,000-foot-long penstock; (3) a powerhouse containing a single turbine-generator unit with a rate capacity of 1,000 kW and producing an estimated average annual generation of 5.3 GWh; (4) a 10-foot-wide by 50-foot-long tailrace; and (5) 0.5 miles of 12-kV transmission line to connect to the existing PG&E Stirling City line. Project power would be sold to PG&E. The project would be located on lands owned by Diamond International Corporation.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks a 36-month permit to study the feasibility of constructing and operating the project and estimates the cost of the studies at $125,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

36a. Type of Application: Preliminary Permit.

b. Project No.: 8032–000.

c. Date Filed: February 2, 1984.

d. Applicant: CFS Hydroelectric Associates.

e. Name of Project: Carol Schillinger.

f. Location: On Butte Creek, near Stirling City, in Butte County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. J. Kirk Rector, 324 South State Street, #500, Salt Lake City, Utah 84111.

i. Comment Date: June 1, 1984.

j. Description of Project: The proposed project would consist of: (1) A 5-foot-high, 40-foot-long concrete diversion structure located on Butte Creek at elevation 4,800 feet MSL; (2) 38,000 feet of 36-inch-diameter pipeline/penstock; (3) a powerhouse located on Butte Creek at elevation 3,350 feet MSL containing a single turbine-generator unit with a rated capacity of 7,200 kW and producing an estimated average annual generation of 38.0 GWh; (4) a 10-foot-wide by 100-foot-long tailrace; and (5) 5.7 miles of 12-kV transmission line to connect to the existing Pacific Gas and Electric Company's (PG&E) DeSabla Substation line. Project power would be sold to PG&E. The project would occupy Lassen National Forest and Diamond International Corporation lands.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks a 36-month permit to study the feasibility of constructing and operating the project and estimates the cost of the studies at $125,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

37a. Type of Application: Preliminary Permit.

b. Project No.: 8033–000.

c. Date filed: February 2, 1984.

d. Applicant: Thompson Associates.

e. Name of Project: West Thompson Lake Project.

f. Location: On the Quinebaug River, in Windham County, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Joel Kirk Rector, Thompson Associates, 500 CFS Center, 324 South State Street, Suite 500, Salt Lake City, Utah 87111.

i. Comment Date: June 4, 1984.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' West Thompson Dam and Reservoir and would consist of: (1) A new 10-foot-diameter steel penstock 600 feet long; (2) a new powerhouse containing two generating units with a total capacity of 2,260 kW; (3) a new tailrace 10 feet wide and 50 feet long; (4) a new 12-kV transmission line 6,000 feet long; and (5) appurtenant facilities. Applicant estimates the average annual generation would be 7.62 GWh. The dam reservoir are owned and operated by the U.S. Army Corps of Engineers.

k. Purpose of Project: All project power would be sold to the Connecticut Light and Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time the Applicant would perform studies to determine the feasibility of the project.

Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under permit would be $125,000.

38a. Type of Application: Preliminary Permit.

b. Project No.: 8041–000.

c. Date Filed: February 2, 1984.

d. Applicant: City of Ione, California.

e. Name of Project: Sutter Creek (Ione Dam).

f. Location: On Sutter Creek in Amador County, California.

g. Contact Person: Mr. Robert Clayton, Mayor, City of Ione, California, P.O. Box 95640, Ione, California 95640.

h. Comment Date: June 4, 1984.

i. Description of Project: The proposed project would consist of:

(1) A new 170-foot-high, earth-filled dam to be called Ione Dam at elevation 330 feet;

(2) A new 40-foot-high, 200-foot-long, earth-filed dike;

(3) The Myron Questo Reservoir to have a storage capacity of 30,000 acre-feet at pool elevation 490 feet;

(4) A new powerhouse to contain a single generating unit with an installed capacity of 1,125 kW, under an operating head of 170 feet; and

(5) A 4,000-foot-long, 12.5–kV transmission line connecting with an existing Pacific Gas and Electric Company's (PG&E) transmission line.

A preliminary permit does not authorize construction. The Applicant seeks a 36-month permit to study the feasibility of constructing and operating the prject. No new roads will be constructed for conducting these studies which are estimated to cost $400,000.

j. Purpose of Project: The estimated 9 million kWh generated annually by the proposed project would be sold to either a public-owned or investor-owned utility.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

39a. Type of Application: Exemption (5MW or Less).

b. Project No.: 8042–000.

c. Date Filed: February 2, 1984.

d. Applicant: Rubi Hydro Partners.

e. Name of Project: Rubi Mine Hydroelectric.

f. Location: On Shirttail Creek, partially within U.S. Bureau of Reclamation land in Placer County, California.

g. Filed Pursuant to: Energy Security Act of 1980, Section 408 (16 U.S.C. 2705 and 2708 *as amended*).

h. Contact Person: David C. Auslam, Jr., Auslam & Associates, Inc., 3327 Longview Drive, Suite 250, North Highlands, California 95660.

i. Comment Date: May 17, 1984.

j. Description of Project: The proposed project would consist of: (1) A 9-foot-high diversion structure at elevation 1,300 feet; (2) a 54-inch-diameter, 6,300-foot-long penstock; (3) a powerhouse at elevation 940 feet containing a generating unit with a rated capacity of 2 MW; (4) a tailrace diverting water back into Shirttail Creek; and (5) a 1.5-mile-long transmission line tying into Pacific Gas and Electric Company's line. The average annual energy generation is estimated to be 7.5 million kWh.

k. Purpose of Project: Power would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

40a. Type of Application: Preliminary Permit.

b. Project No.: 8047–000.

c. Date Filed: February 6, 1984.

d. Applicant: Summit Hydropower.

e. Name of Project: Willimantic #2 Project.

f. Location: On the Willimantic River in Windham County, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Duncan Broatch, Summit Hydropower, P.O. Box 122, Putnam, Connecticut 06260.

i. Comment Date: May 29, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing upper granite block dam 11 feet high and 200 feet long impounding a small reservior; (2) an existing intake structure at the north side of the dam; (3) an existing 500-foot-long canal; (4) an existing 310-foot-long and 11-foot-diameter penstock; (5) a mill building near the foot of a lower dam housing 2 units which would be refurbished, or if not feasible, new units would be installed with a total capacity of 450 kW; (6) a 150-foot-long tailrace; (7) an existing 250-foot-long transmission line; and (8) other appurtenances. The lower dam impounds a small reservoir and is a 12-foot-high and 150-foot-long granite block structure. All existing facilities are owned by American Thread Company. Applicant estimates an average annual generation of 2,089,260 kWh.

k. Purpose of Project: Project energy would be sold to Northeast Utilities Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $10,000.

41a. Type of Application: Preliminary Permit.

b. Project No.: 8055–000.

c. Date Filed: February 6, 1984

d. Applicant: Michiana Hydro-Electric Power Corporation.

e. Name of Project: Nevada Mills Power Project.

f. Location: On Crooked Creek, in Steuden County, Indiana.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Charles S. Hayes, 1634 E. Jefferson, South Bend, Indiana 46617.

i. Comment Date: May 29, 1984.

j. Description of Projects: The proposed project would consist of: (1) An existing concrete dam that is approximately 944-feet high; (2) a proposed brick constructed powerhouse containing two generating units rated at 50 kW each; (3) an existing reservoir; (4) a proposed 5000–volt transmission line; and (50 appurtenant facilities. The estimated average annual energy output for the project would be 657,000 kWh.

k. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $11,500.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

42a. Type of Application: Preliminary Permit.

b. Project No.: 8056–000.

c. Date Filed: February 6, 1984.

d. Applicant: Michiana Hydro-Electric Power Corporation.

e. Name of Project: Mongo Power Project.

f. Location: On the Pigeon River, in LaGrange County, Indiana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Charles S. Hayes, 1634 E. Jefferson, South Bend, Indiana 46617.

i. Comment Date: May 29, 1984.

j. Description of Project: The project would consist of: (1) An existing concrete dam that is approximately 13 feet high; (2) an existing reservoir; (3) a proposed brick constructed powerhouse containing one generating unit rated at 125 kW; (4) a proposed 5,000-volt transmission line; and (5) appurtenant facilities. The estimated average annual energy output for the project would be 821,250 kWh.

k. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $11,500.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

43a. Type of Application: Preliminary Permit.

b. Project No.: 8057–000.

c. Date Filed: February 6, 1984.

d. Applicant: Michiana Hydro-Electric Power Corporation.

e. Name of Project: Ontario No. 2 Power Project.

f. Location: On the Pigeon River, in LaGrange County, Indiana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Charles S. Hayes, 1634 E. Jefferson,South Bend, Indiana 46617.

i. Comment Date: May 29, 1984.

j. Description of Project: The project would consist of: (1) An existing concrete dam that is approximately 15-feet high; (2) an existing reservoir; (3) a proposed brick constructed powerhouse containing one generating unit rated at 100 kW; (4) a proposed 5,000-volt transmission line; and (5) appurtenant facilities. The estimated average annual energy output for the project would be 657,000 kWh.

k. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $11,500.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

44a. Type of Application: Preliminary Permit.

b. Project No.: 8076–000.

c. Dated Filed: February 13, 1984.

d. Applicant: Noah Corporation.

e. Name of Project: Opekiska Project.

f. Location: At the U.S. Army Corps of Engineers' Opekiska Lock and Dam on the Monongahela River in Monongalia County, West Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Howard M. Hickey, President, Noah Corporation, P.O. Drawer 640, Aiken, South Carolina 29802.

i. Comment Date: June 7, 1984.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Opekiska Lock and Dam and would consist of: (1) A new intake structure at the west side of the dam; (2) a new powerhouse with 2 turbine-generator units with a total capacity of 4,500 kW; (3) a short tailrace; (4) a 4,000-foot-long 25-kV transmission line; and (5) other appurtenances. Applicant estimates an average annual generation of 18,000,000 kWh.

k. Purpose of Project: Project energy would be sold to the Monongahela Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $100,000.

45a. Type of Application: Preliminary Permit.

b. Project No.: 8081–000.

c. Dated Filed: February 13, 1984.

d. Applicant: Willow Springs Water District.

e. Name of Project: Cole Creek Water and Power.

f. Location: On Cole Creek, within the Eldorado National Forest, in Amador County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Roy Mason, Route 1, Box 28A, Plymouth, California 96559.

i. Comment Date: May 29, 1984.

j. Description of Project: The proposed project would consist of: (1) A 160-foot-high earthfilled dam at elevation 6,590 feet; (2) a reservoir with gross storage capacity of 31,000 acre-feet; (3) a 14-foot-diameter, 3,960-foot-long tunnel; (4) two 8-foot-diameter, 4,800-foot-long pipes; (5) two 8-foot-diameter, 5,600-foot-long penstocks; (6) a powerhouse containing two generating units with a combined rated capacity of 14.5 MW operating under a head of 2,500 feet; and (7) a 2-mile-long, 110-kV transmission line connecting the project with the existing Pacific Gas and Electric Company's Salt Springs Substation, part of FERC Project No. 137.

Applicant also proposes to study, as an alternative to the above scheme, a pump storage project with a total installed capacity of 131 MW, that would in addition to the above facilities, utilize the Salt Springs Reservoir of Project No. 137.

k. Purpose of Project: Project energy would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

46a. Type of Application: Preliminary Permit.

b. Project No.: 8115–000.

c. Date Filed: February 8, 1984.

d. Applicant: BBB Power Associates, Inc.

e. Name of Project: Meadow Creek.

f. Location: In the Nez Perce National Forest, on Meadow Creek, near Lowell, in Idaho County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Jeff Burt, Bingham Engineering, 165 Wright Brothers Drive, Salt Lake City, Utah 84116.

i. Comment Date: June 8, 1984.

j. Description of Project: The proposed project would consist of: (1) A 9-foot-high diversion structure at elevation 2,800 feet; (2) a 30,700-foot-long, 6-food-diameter penstock; (3) a powerhouse at elevation 2,000 feet containing generating equipment with a rated capacity of 15.5 MW and an average annual energy production of 55 GWh; and (4) a 15-mile-long transmission line

to an existing Washington Water Power Company line.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a 24-month preliminary permit to conduct engineering, economic and environmental studies to ascertain project feasibility and to support an application for a license to construct and operate the project. Applicant has stated that no new roads are necessary. Drilling is not anticipated as part of the studies. The estimated cost of permit activities is $225,000.

k. Purpose of Project: Power may be marketed to Washington Water Power Company.

211. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

47a. Type of Application: Preliminary Permit.

b. Project No.: 8113–000.

c. Date Filed: February 8, 1984.

d. Applicant: BBB Power Associate, Inc.

e. Name of Project: Fish Creek.

f. Location: In the Clearwater National Forest, on Fish Creek, near Lowell, in Idaho County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Jeff Burt, Bingham Engineering, 165 Wright Brothers Drive, Salt Lake City, Utah 84116.

i. Comment Date: June 8, 1984.

j. Description of Project: The proposed project would consist of: (1) A 9-foot-high diversion structure at elevation 2,520 feet; (2) a 13,300-foot-long, 6-foot-diameter penstock; (3) a powerhouse at elevation 2,040 containing generating equipment with a rated capacity of 10 MW and an average annual energy production of 30 GWh; and (4) a 23-mile-long transmission line to an existing Washington Water Power Company line.

A preliminary permit, if issued, does not authoirize construction. Applicant seeks a 24-month preliminary permit to conduct engineering, economic and environmental studies to ascertain project feasibility and to support an application for a license to construct and operate the project. Applicant has stated that no new roads are necessary. Drilling is not anticipated as part of the studies. The estimated cost of permit activities is $230,000.

k. Purpose of Project: Power will be marketed to the Washington Water Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

48a. Type of Application: Preliminary Permit.

b. Project No.: 8079–000.

c. Date Filed: February 13, 1984.

d. Applicant: Lake Placid Village, Inc.

e. Name of Project: North Elba.

f. Location: On the Chubb River, in the Village of Lake Placid, Essex County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Contact Person: Mr. Robert J. Peacock, Mayor, Lake Placid Village, Inc., 301 Main Street, Lake Placid, New York 12946.

i. Comment Date: June 7, 1984.

j. Competing Application: Project No. 7472–000. Date Filed: July 29, 1983.

k. Description of Project: The proposed project would consist of: (1) An existing 20-foot high concrete dam with a total length of 136 feet; (2) an existing intake structure, located at the north abutment of the dam; (3) a reservoir with an estimated storage capacity of 100 acre-feet at a water surface elevation of 1,706 feet, m.s.l.; (4) approximately 800 feet of existing steel penstock with a diameter of 5 feet, 6 inches; (5) an existing 15-foot-diameter surge tank; (6) an existing concrete powerhouse, about 30 feet by 40 feet, requiring minor modifications, and with a proposed installed capacity of 265 kW; (7) an existing tailrace; (8) a new switchyard; (9) either one of two proposed transmission plans—(a) a 4.16-kV transmission line, approximately 100 feet long; or (b) a 115-kV transmission line approximately one mile long and (10) appurtenant facilities. Applicant estimates that the average annual generation would be 880,000 kWh. The owner of the dam, powerhouse and related facilities in the Village of Lake Placid, New York.

l. Purpose of Project: The Applicant anticipates that project energy will be either sold to Niagara Mohawk Power Corporation, or utilized in its municipal electric system.

m. This notice also consists of the following standard paragraphs: A8, A9, B, C, D2.

n. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $30,000.

49a. Type of Application: License (Major).

b. Project No.: 3701–001.

c. Date Filed: August 22, 1983.

d. Applicant: Yakima-Tieton Irrigation District.

e. Name of Project: Tieton Dam.

f. Location: At the U.S. Bureau of Reclamation's Tieton Dam on the Tieton River, Near Yakima, in Yakima County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Contact Person: Mr. Warren Dickman, Manager, Yakima-Tieton Irrigation District, Route 6, Box 193, Yakima, Washington 98908.

i. Comment Date: May 18, 1984.

j. Description of Project: The proposed project would consist of: (1) The modification of the existing outlet facilities of the U.S. Bureau of Reclamation's existing 319-foot-high Tieton Dam; (2) a powerhouse containing two generating units, each rated at 6.8 MW; and (3) a 3-mile-long transmission line. The average annual energy generation is estimated to be 49.5 million kWh. The construction cost is $14.2 million.

The application was filed pursuant to a preliminary permit.

k. Purpose of Project: Power would be sold to Pugent Sound Power and Light Co.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, D2.

50a. Type of Application: Exemption (5 MW or Less).

b. Project No.: 7466–000.

c. Date Filed: July 27, 1983.

d. Applicant: Oliver M. and Gail M. Cron.

e. Name of Project: Hamon Canyon.

f. Location: On Hamlin Canyon Creek in Butte County, California.

g. Filed Pursuant to: Energy Security Act of 1980, Section 408 (16 U.S.C. 2705 and 2708 *as amended*).

h. Contact Person: Mr. and Ms. Cron, 530 Hillcrest Road, Paradise, California 95969.

i. Comment Date: May 14, 1984.

j. Description of Project: The proposed project would consist of: (1) A 5-foot-wide, 5-foot-long, and 3-foot-high intake structure at elevation 1,540 feet; (2) a 12-inch-diameter, 180-foot-long penstock; (3) a powerhouse containing a generating unit with a rated capacity of 5 kW; and (4) a 108-foot-long transmission line tying into an existing Pacific Gas and Electric Company line. The average annual energy generation is estimated to be 8,640 kWh.

k. Purpose of Project: Power would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

51a. Type of Application: Preliminary Permit.

b. Project No.: 8007–000.

c. Date Filed: January 30, 1984.

d. Applicant: Franklin Associates.

e. Name of Project: Franklin Falls.

f. Location: Pemigewasset River, near the town of Franklin, Merrimack and Belknap Counties, New Hampshire.

g. Filed Pursuant to: 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. J. Kirk Rector, 324 South State Street, Salt Lake City, Utah 84111.

i. Comment Date: May 18, 1984.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Franklin Falls flood control dam and would consist of a new 1,000-foot-long penstock of undetermined material or diameter, a new powerhouse containing turbine-generators with a total rated capacity of 5 MW located near the spillway at the west dam abutment and a 2,500-foot-long 33-kV transmission line. The project would generate up to 21,900,000 kWh.

k. Purpose of Project: Energy produced at the project would be sold to the Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope and Cost of Studies under Permit: A preliminary does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license. Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time it would perform surveys and geologic investigations, determine the economic feasibility of the project, reach final agreement on sale of project power, secure financing commitments, consult with Federal, State and local government agencies concerning the potential environmental effects of the project, and prepare an application for an FERC license, including an environmental report. Applicant estimates the cost of the work under the permit would be $125,000.

Competing Applications

A1. Exemption for Small Hydroelectric Power Project under 5MW Capacity—any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectric Power Project under 5MW Capacity—any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will not be accepted in response to this notice.

A3. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelectric exemption or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit exemption application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit: Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A6. Preliminary Permit: No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A7. Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file

such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; which ever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications on notices of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application just conform with 18 CFR 4.33 (a) and (d).

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) A preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

B3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act, to file within 45 days from the date of

issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: Apr. 19, 1984.

Kenneth F. Plumb,

Secretary.

[FR Doc. 9767 Filed 4-11-84; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of February 13 through February 17, 1984

During the week of February 13 through February 17, 1984, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy.

Appeal

John W. Shaver N., 02/14/84, HFA-0198

John W. Shaver N. filed an appeal from a denial by the Director of the Houston Office of the DOE Economic Regulatory Administration (the Director) of a Request for Information which Shaver had submitted under the Freedom of Information Act. Pursuant to Exemptions 4, 5, 7(A) and 7(E) of the Act, the Director withheld information pertaining to a Notice of Probable Violation issued to The Permian Corporation and regarding settlement negotiations conducted by the DOE and Permian. In considering the Appeal, the DOE determined that the Director had failed to provide adequate descriptions of several responsive documents, and had further failed to properly justify withholding many of the documents. In addition, the DOE found that in some instances the denial issued to Shaver failed to indicate clearly which exemptions were claimed for withheld documents, and further found that responsive documents appeared to exist in DOE offices not searched by the Director. This portion of the denial was therefore remanded for an additional search for responsive documents and for a more complete justification for the withholding of certain documents. In addition, the Director was ordered to indicate where Shaver could obtain copies of the final version of a consent order and stipulation signed by the DOE and Permian and the Notice of Probable Violation issued to Permian. Finally, the DOE determined that certain draft documents were properly withheld in their entirety pursuant to Exemption 5. Accordingly, the Appeal was granted in part.

Request for Modification and/or Rescission

Economic Regulatory Administration/Entex Petroleum, Inc., 02/16/84, HRR-0069

The Economic Regulatory Administration (ERA) filed an Application for Modification of a Remedial Order (RO) issued to Entex Petroleum, Inc. The RO found that Entex sold crude oil at prices in excess of ceiling prices and therefore required the firm to make direct refunds to its overcharged purchasers. Interest on unrefunded overcharges was to be computed at specified rates through January 31, 1978, and subsequently at the rate of six percent per year. The ERA asked that these remedial provisions be modified. In considering the ERA request, the DOE found that in view of decontrol of crude oil prices, the direct refund provision of the RO no longer assured that those who ultimately absorbed the Entex overcharges would receive the refunds. The DOE therefore determined that these overcharges should be distributed through a special refund proceeding pursuant to 10 CFR Part 205, Subpart V. Further, the DOE found that in order to assure complete restitution, the RO should be modified to require Entex to pay interest at the prime rate as of February 1, 1980.

Supplemental Order

Getty Oil Company, 02/17/84, HRX-0099

Getty Oil Company filed revised discovery requests in connection with an enforcement proceeding involving the firm. The DOE found that Getty's requests for documents concerning "payment" or "nonpayment" of certain price differentials were relevant to the issues remaining in the enforcment proceeding. Accordingly, the revised discovery requests were granted.

Refund Applications

Standard Oil Company (Indiana)/John Clay, et al., RF21-1678, et al.

The DOE issued a Decision and Order concerning three Applications for Refund filed by retailers of Amoco motor gasoline. The firms elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). The DOE investigated the information submitted by the firms and discovered that the information was invalid. Accordingly, the Applications for Refund were denied. Further, information which the DOE obtained from Amoco strongly suggested that the applications might be fraudulent. The DOE therefore referred these matters to the United States Attorney for further investigation and possible criminal prosecution.

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays. There are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

April 6, 1984.

[FR Doc. 84-9864 Filed 4-11-84; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of March 12 Through March 16, 1984

During the week of March 12 through March 16, 1984, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy.

Appeal

The Knoxville News, 3/15/84, HFA-0210

The Knoxville News filed an Appeal from a partial denial by the Authorizing Official of the DOE's Oak Ridge Operations Office of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the initial determination to withhold portions of the requested documents under Exemptions 4 and 5 of the FOIA was proper. The material withheld pursuant to Exemption 4 consisted of three contract proposals submitted in response to a DOE Request for Proposal. The DOE determined that such proposals are confidential subsequent to selection of a firm for contract negotiation but prior to the awarding of a contract. With respect to Exemption 5, the DOE found that the withheld material contained numerical scores used by the Evaluation Board during the selection process. As such, these scores reflect the opinions and recommendations of the Evaluation Board, were part of the deliberative process, and therefore were properly withheld under Exemption 5. During the consideration of the Appeal, however, two submitters informed the DOE that they no longer objected to the release of certain information submitted with the proposals. Accordingly, the Appeal was denied in part and granted in part.

Refund Applications

Standard Oil Company (Indiana)/Diesel Automobile Association, 3/16/84, RF21-8199

The DOE issued a Decision and Order concerning an Application for Refund filed by the Diesel Automobile Association (DAA), which claimed to represent all owners and operators of diesel automobiles and light-duty diesel vehicles in connection with their purchases throughout the United States of Amoco diesel fuel. In considering the application, the DOE concluded that the submission was not appropriate for the first stage of the Amoco special refund proceeding since the DAA failed to provide information either on identifiable applicants or specific purchase volumes. Accordingly, the DOE dismissed the DAA's Application for Refund, but permitted the Association to file an application in the second stage of the Amoco special refund proceeding.

Standard Oil Company (Indiana)/Doug Asher Oil Company, 3/13/84, RF21-12290

On March 6, 1984, the Office of Hearings and Appeals received a letter from Bassman & Mitchell, Chartered, on behalf of Doug Asher Oil Company, Inc. (Asher), in which the firm stated that it had received two checks corresponding to the identical refund claim (RF21-12243). The DOE had granted Asher a $45 refund on December 19, 1983, based on the firm's purchase of 119,804 gallons of Amoco middle distillates. *See Standard Oil Co. (Indiana)/Doug Asher Oil Co., Inc.*, 11 DOE ¶ 85,206 (1983). On February 9, 1984, the DOE also granted a duplicate refund of $45 to Asher. In order to remedy this excessive payment, Bassman & Mitchell has remitted the $45 refund granted to Asher pursuant to the February 9, 1984 Decision. This money will be credited to the Amoco escrow account at the Department of the Treasury.

Standard Oil Company (Indiana)/Niedert NationaLease, Inc., 3/12/84, RF21-10755, RF21-10756

The DOE issued a Decision and Order concerning Applications for Refund filed by Neidert NationaLease, Inc. (Neidert), a consumer of Amoco motor gasoline and middle distillates. Neidert elected to apply for refunds based upon the presumptions of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering the applications, the DOE concluded that Neidert should receive a refund of $968 based upon the total volume of its eligible Amoco motor gasoline purchase (Case No. RF21-10756).

With respect to Neidert's purchases of middle distillates, however, the DOE determined that Neidert's application should be dismissed (Case No. RF21-10755). Under the terms of a 1980 consent order, Amoco made direct refunds to certain end-user customers for their purchases of middle distillates. Records supplied to the DOE by Amoco indicated that Neidert received a direct payment from Amoco in June 1980 in connection with the middle distillate purchase volume claimed by the firm in its Application for Refund. The DOE determined, therefore, that Neidert was ineligible for any additional refunds in this proceeding.

Standard Oil Company (Indiana)/Quik Stop No. 9, 3/14/84, RF21-11763

The DOE issued a Decision and Order granting a supplemental refund to B&B Oil Company, Inc., for sales of Amoco motor gasoline made to consumers through Quik Stop No. 9, one of 12 retail stations owned by the firm. B&B elected to apply for a supplemental refund based upon the presumption of injury and formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). Since B&B had already received a refund based on the wholesaler's 34 percent portion of the volumetric refund amount (including accrued interest), the refund granted in this Decision was based on the 6 percent difference between the retailer's 40 percent share and the wholesaler's 34 percent share of the volumetric refund amount. In considering this application, therefore, the DOE concluded that B&B should receive a supplemental refund based upon the total number of gallons sold to consumers through Quik Stop No. 9. The refund granted in this proceeding is $87.

Protective Order

The following firms filed an Application for Protective Order. The application, if granted, would result in the issuance by the DOE of the proposed Protective Order submitted by the firm. The DOE granted the following application and issued the requested Protective Order as an Order of the Department of Energy:

Company Name and Case No.

Ashland Oil, Inc., Atlantic Richfield Company—HEJ-0047

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

April 5, 1984.

[FR Doc. 84-9885 Filed 4-11-84; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Order Filed; Period of February 6 Through March 23, 1984

During the period of February 6 through March 23, 1984, the notice of objection to proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

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

All requests to participate in these proceedings should be filed with the Office of Hearing and Appeals, Department of Energy, Washington, D.C. 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

April 4, 1984.

Appendix

Doma Corporation, Abilene, Texas, HRO-0209

On March 19, 1984, Doma Corporation, Abilene, Texas 79606, filed a Notice of Objection to an Amended Proposed Remedial Order which the DOE Dallas, Texas District Office of Enforcement issued to the firm on February 7, 1984. In the Amended PRO the Dallas District found that during the period November 1973 to June 1977, Doma changed unlawful prices for crude oil in violation of 10 CFR 212.10, 212.93. According to the Amended PRO the Doma violations resulted in $3,466,675.67 of overcharges.

[FR Doc. 84-9862 Filed 4-11-84; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

CMM, Inc., et al.; Opinion and Order

In re Applications of CMM, INC., Danville, Illinois; MM Docket No. *84–287*, File No. BPCT–830217KN; GEORGE E. GUNTER, Danville, Illinois; MM Docket No. *84–288, File No. BPCT–830328KH; For Construction Permit.*

Memorandum Opinion and Order

Adopted: March 22, 1984.

Released: *April 5, 1984.*

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 CMM, Inc. (CMM) and George E. Gunter (Gunter) for authority to operate a new commerical television station on Channel 68, Danville, Illinois; petitions to deny filed by Springfield Independent Television Co., Inc. (WRSP) licensee of WRSP-TV, Channel 55, Springfield, Illinois, against each of the applications; a statement filed by the Association of Maximum Services Telecasters, Inc.; a "Joint Request for Approval Settlement Agreement and Dismissal of Application"; and related pleadings.[1]

2. On April 29, 1983, The Association of Maximum Service Telecasters, Inc. (AMST) filed a statement with respect to the site proposed by both applicants alleging that the site is short-spaced by approximately 7.3. miles to the reference point for Channel 53, Pontiac, Illinois. Our review of the technical proposals submitted by the applicants reveals no short-spacing to either the reference point for Channel 53, or to pending proposals for the Pontiac allocation.

3. WRSP claims standing as a party in interest under section 309(d) of the Communications Act of 1934, as amended, on the grounds that it would compete with the successful applicant for audience and revenues in its coverage area. Springfield, however, is more than 100 miles from Danville, and our examination of the coverage area of WRSP–TV and the proposals in this case does not indicate that there would be any overlap of the Grade B contour of either Danville proposal with the Grade B contour of Station WRSP. Accordingly, petitioner has not demonstrated the basis for its allegation that there would be competition for audience and revenues between its station and the Danville proposals. Therefore, the petitions will be dismissed for lack of standing. Nevertheless, they will be considered on their merits as informal objections filed pursuant to § 73.3587 of the Commission's Rules.

4. WRSP states that CMM's application indicates that CMM is a Tennessee corporation and that the Tennessee General Statutes require that corporations organized under its laws have at least one director. The Commission further notes that the statute also requires that a corporation have at least two officers. CMM's application, Section II, item 5(a), shows that Mike Miller is the sole stockholder, but the office or officers which he holds, if any, have not been disclosed. No other names are listed. Section 73.3514(a) requires applicants to provide all information called for by FCC forms, unless the information is inapplicable. Accordingly, appropriate issues will be specified to determine the identities and qualifications of the corporate officers and directors and to examine CMM's compliance with § 73.3514(a).

5. WRSP raises a question regarding CMM's failure to comply with Section II, item 9, which inquires whether there are any documents, instruments, contracts or understandings relating to ownership or future ownership rights. If the answer to item 9 is "yes", an exhibit explaining the particulars must be provided. CMM answered "yes" to item 9, but did not include the required information. Accordingly, CMM will be required, within 20 days after this Order is released, to submit an amendment which demonstrates CMM's compliance with item 9, to the presiding Administrative Law Judge.

6. WRSP further contends that neither CMM for Gunter possesses the financial ability to construct its proposed facility since each has several other pending applications for broadcast facilities. (CMM has submitted applications for

[1] A "Joint Request for Approval Settlement Agreement and Dismissal of Application" (agreement) was filed on August 23, 1983. The agreement was filed on behalf of Local Majority Television (Local) and George E. Gunter, competing applicants for Channel 30, Odessa, Texas, and the applicants in this proceeding. The agreement provides for the dismissal of Gunter's application in Odessa, Texas, in return for dismaissal of CMM's application in Danvillle, Illinois. The Odessa applications had been designated for hearing (D83–781), released August 9, 1983) before the agreement was filed. Consequently, the Mass Media Bureau is without authority to act on the agreement to the extent that it calls for action on applications which are pending in hearing. Therefore, the Danville applications are being designated for hearing. In these unusual circumstances, the Acting Chief Administrative Law Judge may wish to assign this case to the same Administrative Law Judge who is presiding over the Odessa proceeding, as the most expeditious manner of resolving these interrelated cases.

six additional television stations and six FM stations; Gunter has submitted six other applications for television stations.) WRSP asserts that the Commission's certification procedure should not be followed in these cases. However, the fact that an applicant may have several pending applications is no reason to question the authenticity of its certification. WRSP has not offered any evidence that CMM and Gunter do not have access to sufficient funds to construct and operate as proposed. WRSP's allegations are speculative and lack specificity. Accordingly, we do not find that a financial issue against either applicant is warranted.

7. WRSP also alleges that both staffing proposals are unrealistic and incapable of effectuation. CMM and Gunter each plans to operate its station with less than 5 full-time employees. CMM will broadcast approximately 130 hours a week, which means that based on a 7-day week, the station would be in operation about 19 hours a day, of which almost 2½ hours would be local programming. Gunter states that this proposal is realistic in light of present day automation techniques and computer technology. Gunter's station will operate approximately 127 hours per week, which means that, based on a 7-day week, the station would be in operation about 18 hours a day, of which 1 hour would be local programming.

8. The Commission has no rigid rules or standards prescribing personnel or staff requirements; there is only a general policy that there be a reasonable likelihood that an applicant can effectuate its proposed operation with its staff. *Bisbee Broadcasters, Inc.*, 48 FCC 2d 291, 292–293 (1974). An 18 or 19-hour broadcast day, in our view, would require at least 2 shifts. Under these circumstances, we believe that a valid question is raised as to whether such an operation can be effectuated with a full-time staff of 4 or less persons. Accordingly, an appropriate issue will be specified.

9. In addition to the foregoing contentions, WRSP states that Gunter's application is also technically deficient. Item 10, Section V–C of the application requires that the applicant submit a map which includes the proposed station's predicted Grade A and Grade B contours; the area and population within the Grade B contour; and a scale of miles. In response to this item, Gunter refers to an Exhibit 2, but the exhibit does not contain the required information. Gunter will be required to submit the information required by item 10, Section V–C, FCC Form 301.

10. CMM has not specified the population within its predicted Grade B contour as required by item 10, Section V–C. Accordingly, CMM will be required to submit an amendment with the information to the presiding Administrative Law Judge within 20 days after this Order is released.

11. Since the applicants have not completed item 10, Section V–C, we are not able to determine if there would be a significant difference in the size of the area and population that each proposes to serve. The presiding Administrative Law Judge will consider any significant difference in the areas and populations served under the standard comparative issue.

12. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications 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.

13. 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, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to CMM, Inc.:

(a) The number, identity and legal qualifications of the officers and directors;

(b) Whether the applicant complied with § 73.3514(a) of the Commission's Rules; and

(c) In light of the evidence adduced pursuant to the foregoing issues, the effect of any omissions on the applicant's basic or comparative qualifications.

2. To determine with respect to CMM, Inc., and George E. Gunter:

(a) The size, composition, duties and hours of the staff proposed by each applicant;

(b) In light of the evidence adduced pursuant to the foregoing, whether there is a reasonable likelihood that each applicant can effectuate its proposal with the staff proposed.

3. To determine which of the proposals would, on a comparative basis, better serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

14. It is further ordered, That the petitions to deny filed by Springfield Independent Television Co. Inc., are dismissed, and when considered as informal objections filed pursuant to § 73.3587 of the Commission's Rules, are granted to the extent indicated herein and are otherwise denied.

15. It is further ordered, That, Springfield Independent Television Co., Inc. is made a paryt respondent to this proceeding.

16. It is further ordered, That CMM, Inc. shall submit the exhibit required by item 9, Section II, FCC Form 301, to the presiding Administrative Law Judge, within 20 days after this Order is released.

17. It is further ordered, That CMM, Inc. and George E. Gunter shall each submit the information required by item 10, Section V–C, FCC Form 301, to the presiding Administrative Law Judge, within 20 days after this Order is released.

18. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent 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 present evidence on the issues specified in this Order.

19. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 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 § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 84-9773 Filed 4-11-84; 8:45 am]

BILLING CODE 6712-01-M

Look and Live, Inc., et al.; Hearings

Hearing Designation Order

Adopted: March 22, 1984.

Released: April 5, 1984.

In re Application of LOOK AND LIVE, INC., Jacksonville, Florida; MM Docket No. 84-289, File No. BPED-830603AO; Req: 88.7 MHz, Channel 204C; 5 kW (H&V); 500 feet HAAT and FAMILY STATIONS, INC., Fernandina Beach, Florida; MM Docket No. 84-290, File No. BPED-830603AP; Req: 88.7 MHz, Channel 204C; 65 kW (H&V); 286 feet HAAT For Construction Permits.

By the Chief, Audio Services Division.

1. The Commission by the Chief, Audio Services Division, acting pursuant to delegated authority, has before it the mutually exclusive applications listed above. These applications are mutually exclusive because each applicant's proposed facility would cause objectionable interference within the other's proposed 1 mV/m contour as defined by § 73.509 of the Commission's Rules.

2. Each applicant would also receive interference within its proposed 1 mV/m contour from the authorized facilities of New Covenant Educational Ministries, Inc., as specified in Construction Permit BPED-820816AM. In addition, the proposed facility of Look and Live, Inc. ("Look") would cause interference within the authorized 1 mV/m contour of New Covenant Educational Ministries, Inc. In our processing of the application that resulted in the grant of that Construction Permit, we determined that the amounts of interference to be caused and received by the facility proposed by New Covenant Educational Ministries, Inc. were *de minimis* and waivable. Our rationale, set forth in our *Memorandum Opinion and Order* (FCC Mimeo 1982, released January 23, 1984) granting Construction Permit BPED-820816AM, is in harmony with Commission precedent and stated policy. The waivers granted in that *Memorandum Opinion and Order, supra,* are extended here to cover the interference received within the proposed 1 mV/m contour of Family Stations, Inc. ("Family") and the interference caused and received by Look.

3. Rules § 73.2080(c) requires each applicant for a construction permit for a new broadcast facility who employs or proposes to employ five or more full-time employees to file with the Commission descriptions of programs designed to provide equal employment opportunities for specific minority groups enumerated in that section and subsection. In its application, Look has, in response to Question 1 of Section VI, attempted to use the Commission's Model EEO Program to satisfy the filing requirements of the quoted section of our Rules. However, Look has provided no examples of:

(a) Organizations to be contacted systematically, both orally and in writing, which specialize in minority and women candidates, for the encouragement of referral of qualified minority and female applicants;

(b) Employment services to be dealt with which refer job candidates without regard to their race, color, religion, national origin or sex; and

(c) Area schools and colleges with significant minority and female enrollments which will be included in the recruiting of prospective employees from educational institutions.

Furthermore, there is some ambiguity as to whether Look will actually employ five or more full-time employees. Look makes no direct statement in Section VI that it will have five or more full-time employees, but an inference to that effect can be made from its filing of an EEO Program, albeit a flawed one. However, Look states in Exhibit D of its application that it currently has (presumably full-time) staff of three, with three additional persons providing technical and maintenance assistance on a part-time basis. Look further states that additional staff requirements are expected to be minimal and will be met initially by a volunteer staff. It is therefore unclear whether or not Look will employ five or more full-time staffers and is required to file an EEO Program. Accordingly, Look will be ordered to file with the Administrative Law Judge, within thirty (30) days of the release of this Order, either certification that it will have less than five full-time employees or an EEO Program which includes the examples called for in the Commission's Model EEO Program if that Model is employed, or, if another program is employed, which complies with the requirements of Rules Section 73.2080. Upon receipt of the material, the Administrative Law Judge will be able, on his own motion, to specify an EEO issue against Look or take such other action as he deems appropriate.

4. Rules § 73.561(a) requires all noncommercial educational FM stations to operate at least 36 hours per week, at least five (5) hours of operation in at least six (6) days of the week, except in certain situations not applicable here. In response to Question 2, Section IV, Family refers to its Exhibit 6 as a proposed weekly programming schedule. However, Family's Exhibit 6 lists only fifteen (15) minutes per day of programming Monday through Friday, only two (2) hours and two (2) minutes of programming on Sunday, and no programming on Sunday, for a total listed programming of three (3) hours and seventeen (17) minutes per week. Accordingly, Family's programming proposal does not meet the requirements of Rules § 73.561(a), and Family will be ordered to file with the Administrative Law Judge, within thirty (30) days of the release of this Order, an augmented programming proposal which complies with the requirements of that Section.

5. The Federal Aviation Administration has objected to Family's proposed height increase of an existing structure on the ground that the proposal violates F.A.A. Regulations Part 77 obstruction standards.

6. Rules § 73.316(e) requires those whose proposed antennas will be near other FM or certain TV antennas to include in their applications a showing as to the expected effect, if any, of such proximate operation. Furthermore, the Commission is concerned about possible interference resulting from the interaction of FM signals with the signals of licensees operating in other services. Therefore, Question 11(a) of Section V-B requires an applicant to submit, among other things, the transmitter location and call letters of all known radio stations (except amatuer and citizens band licensees) within two (2) miles of the proposed transmitter site. Question 2 of Section V-G requires a submission of the call letters of other authorized and proposed stations within the immediate vicinity of the proposed site or at that site. Family, in its Exhibit El and in response to Question 2, Section V-G, acknowledges the existence of communications facilities on the tower it proposes to increase in height and to use, but fails to provide the call letters of those facilities. Rules § 73.3514(a) compels Family to furnish that information, and it will be ordered to file such with the Administrative Law Judge within thirty (30) days of the release of this Order. Family might also need, on the basis of the contents of the ordered submission, to amplify its statement in its Exhibit El concerning frequency relationships between the existing and proposed facilities.

7. Neither applicant has indicated that an attempt has been made to negotiate a share-time arrangement. Therefore, an

issue will be specified to determine whether a share-time arrangement between the applicants would be the most effective use of the frequency, and thus better serve the public interest. *Grandfalloon Denver Educational Broadcasting, Inc.*, 43 FR 49560, published October 24, 1978. Our action specifying a share-time issue is not intended to preclude the applicants, either before the commencement of the hearing or at any time during the course of the hearing, from participating in negotiations with a view toward establishing a share-time arrangement themselves.

8. The respective proposals, although for different communities, would serve substantial areas in common. Consequently, in addition to determining, pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient, and equitable distribution of radio service, a contingent comparative issue will also be specified.

9. Family has filed two amendments after the "B" cut-off date of November 9, 1983, the last day for filing minor amendments as of right. The two amendments, filed on December 8, 1983 and January 12, 1984, contain updated statements of ownership and control of broadcast facilities and of pending applications of Family Stations, Inc. Family has not filed for leave to amend its application in this matter. However, pursuant to §1.65 of the Commission's Rules, the amendments will be accepted for filing. However, Family will not be allowed to gain any comparative advantage that would result from the filing of these amendments.

10. Because the applicants are competing for noncommercial educational facilities, the standard areas and populations issue will be modified in accordance with the Commission's action in *New York University*, FCC 67–673, released June 8, 1967, 10 RR 2d 215 (1967). Thus, the evidence adduced with respect to this issue will be limited to available noncommercial educational FM signals within the respective proposed service areas.

11. Except as indicated by the issues specified below or added by the Administrative Law Judge on his own motion, the applicants are qualified to construct and operate their proposed facilities However, the proposals are mutually exclusive, so they must be designated for hearing in a consolidated proceeding.

12. 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 whether there is a reasonable possibility that a hazard to air navigation would result from the increase in tower height of an existing structure as proposed by Family;

2. To determine whether a share-time arrangement between the applicants would result in the most effective use of the specified channel and thus better serve the public interest, and, if so, the terms and conditions thereof.

3. To determine the number of other reserved-channel, noncommercial educational FM services available in the proposed service area of each applicant, and the areas and populations to be served thereby.

4. To determine, in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient, and equitable distribution of radio service.

5. To determine, in the event it is concluded that a choice between applicants should not be based solely on considerations relating to Section 307(b), the extent to which each of the proposed operation will be integrated into the overall educational operations and objectives of the respective applicants, or whether other factors in the record demonstrate that one applicant will provide a superior FM educational broadcast service.

6. To determine, which of the proposals would, on a comparative basis, better serve the public interest.

7. To determine, in light of the evidence adduced with respect to the foregoing issues, which of the applications, if either, should be granted.

12. It is further ordered, That the waiver granted to New Covenant Educational Ministries, Inc., in our *Memorandum Opinion and Order, supra*, is extended to cover the interference which would be received within the proposed 1 mV/m contour of Family, the interference that would be received within the proposed 1 mV/m contour of Look, and the interference that would be received by New Covenant Educational Ministries, Inc., within the proposed 100 mV/m contour of Look.

13. It is further ordered, That Look shall, within thirty (30) days or the release of this Order, either:

(a) Certify to the Administrative Law Judge that it will employ less than five people on a full-time basis; or

(b) File with the Administrative Law Judge either:

(i) An augmented Model EEO Program which includes examples called for in that program on pages (v) and (vi) of Section VI of its application; or

(ii) A new EEO Program which complies with the requirements of Rules § 73.2080.

14. It is further ordered, That Family shall, within thirty (30) days of the release of this Order, file with the Administrative Law Judge an augmented programming proposal which complies with § 73.561(a) of the Commission's Rules.

15. It is further ordered, That Family shall, within thirty (30) days of the release of this Order, file with the Administrative Law Judge an engineering amendment containing adequate responses to Question 11(a) of Section V–B and Question 2 of Section V–G with respect to all authorizes radio transmitters (except amateur and citizens band) within two (2) miles of Family's proposed antenna site and on the existing tower that Family proposes to modify.

16. It is further ordered, That the Federal Aviation Administration is made a party to this proceeding with respect to the air-hazard issue only.

17. It is further ordered, That the amendments filed by Family on December 8, 1983 and January 12, 1984 are accepted for filing, to the extent that Family gains no comparative advantage resulting from the filing and acceptance of those amendments.

18. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to § 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 hearing and to present evidence on the issues specified in this Order.

19. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and the manner prescribed in that Section of our Rules, and shall advise the Commission of the publication of such notice as required by Rules § 73.3594(g).

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84–9772 Filed 4–11–84; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket No. 84-325, Filed No. BPCT 8310 18KF, et. al.]

Applications; John R. Powley, et. al.; Hearing Designation Order

In re Applications of: JOHN R. POWLEY, MM Docket No. 84-325, File No BPCT-831018KF; L. E. O. Broadcasting, Inc., MM Docket No. 84-326, File No. BPCT-831219KG; Barbara Chavez and Robert Vinson, d/b/a Seaford Television Company. MM Docket No. 84-327, File No. BPCT-831219KO; for construction permit for new TV station, Channel 38, Seaford, Delaware.

Adopted: March 26, 1984.
Released: April 5, 1984.

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 John R. Powley [Powley], L.E.O. Broadcasting, Inc. [L.E.O.], and Barbara Chavez and Robert Vinson, d/b/a Seaford Television Company [STC] for authority to construct a commercial television station on Channel 38, Seaford, Delaware.

2. Section V-C, item 10, FCC Form 301, requires that an applicant submit figures for the area and population within its predicted Grade B contour. Powley has not submitted these figures. Consequently, we are unable to determine whether there would be a significant difference in the size of the area and population that each applicant proposes to serve. Powley will be required to submit an amendment showing the required information, within 20 days after this Order is released, to the presiding Administrative Law Judge. The presiding Administrative Law Judge will consider any significant difference in the areas and populations served under the standard comparative issue.

3. No determination has been made that the tower heights and locations proposed by L.E.O. and STC [1] would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

4. STC's application indicates that grant of its application would constitute a major environmental action within the meaning of Section 1.1305 of the Commission's Rules. The applicant, however has not submitted an environmental narrative statement which contains all of the information required by § 1.1311 of the Rules. Accordingly, STC will be required to file, within 20 days of the release of this Order, its environmental narrative statement with the presiding Administrative Law Judge. In addition, a copy shall be filed with Chief, Video Services Division, who will then proceed in accordance with the provisions of § 1.1313(b). Accordingly, § 1.1317 of the Rules will be waived to the extent that the comparative phase of the case will be allowed to begin before the environmental phase is completed. See *Golden State Broadcasting Corp.*, 71 F.C.C. 2d 299 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980).

5. Section 73.2080(c) of the Commission's Rules requires applicants employing at least five persons full-time to file with the Commission programs designed to provide equal employment opportunities. STC indicates that it will employ five or more full-time employees. However, STC has not submitted an EEO program. Accordingly, STC will be required to submit a copy of its EEO program to the presiding Administrative Law Judge, within 20 days after this Order is released.

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications 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.

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, to be held before an Administrative Law Judge at a time and place to be specified in subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by L.E.O. Broadcasting, Inc. and Barbara Chavez and Robert Vinson d/b/a Seaford Television Company would each constitute a hazard to air navigation.

2. If a final environmental impact statement is issued with respect to Seaford Television Company which concludes that the proposed facilities are likely to have and 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.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, That John R. Powley shall submit an amendment stating the area and population within his predicted Grade B contour, within 20 days after this Order is released, to the presiding Administrative Law Judge.

9. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

10. It is further ordered, That, Barbara Chavez and Robert Vinson d/b/a Seaford Television Company shall submit an environmental narrative statement which contains the information required by § 1.1311 of the Rules to the presiding Administrative Law Judge within 20 days after this Order is release.

11. It is further ordered, That Barbara Chavez and Robert Vinson d/b/a Seaford Television Company shall file its Equal Employment Opportunity Program with the presiding Administrative Law Judge within 20 days after this Order is released.

12. It is further ordered, That § 1.1317 of the Commission's Rules is waived to the extent indicated herein. Within 30 days of the release of this Order, Seaford Television Company shall submit an amended environmental narrative statement required by § 1.1311 of the Rules to the presiding Administrative Law Judge, with a copy to the Chief, Video Services Division.

13. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 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.

14. It is further ordered, That the applicants herein shall, pursuant to § 311(a)(2) of the Communications Act of 1934, as amended, and § 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 § 73.3594(g) of the Rules.

[1] Commission is not in receipt of FAA's determination for the tower proposed by L.E.O. and STC.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 84-9774 Filed 4-11-84; 8:45 am]

BILLING CODE 6712-01-M

Suspension of Filing of Applications for 18 GHz Band

April 5, 1984.

Effective April 6, 1984, the Commission will not accept any additional applications for operations on the frequencies between 17,700 MHz and 19,700 MHz (18 GHz band) until further notice, except for timely filed applications which are mutually exclusive with one or more properly filed applications submitted on or before April 5, 1984.

The Commission is considering petitions to adopt a new channel plan for the 18 GHz band in Gen. Dockets 79-188 and 82-334. Until this matter is resolved, except as noted above, no new broadcast, cable television relay, common carrier, or private operational-fixed microwave applications, or amendments to pending applications, will be accepted for filing. Similarly, no pending applications for the 18 GHz band will be processed for grant until further notice.

Applicants for the private operational-fixed microwave service (OFS) are reminded that OFS applications are not considered to be filed with the Commission until they are received at the Commission's Licensing Division in Gettysburg, PA.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-9778 Filed 4-11-84; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL HOME LOAN BANK BOARD

Federal Savings and Loan Advisory Council; Meeting

Pursuant to Section 10(a) of Public Law 92-463, entitled the Federal Advisory Committee Act, notice is hereby given to the Meeting of the Federal Savings and Loan Advisory Council on Monday, April 16, and Tuesday, April 17, 1984. The meeting will commence at 9:00 a.m. April 16; and 9:00 a.m. April 17. The meetings will be held at the Sir Francis Drake Hotel, Powell and Sutter Streets, San Francisco, California.

Monday, April 16

9:00 a.m.—Opening of Council Meeting
12:15 p.m.—Lunch
1:30 p.m.—Committees Meet
5:00 p.m.—Adjourn

Tuesday, April 17

9:00 a.m.—Committees Meet
12:00 noon—Adjourn

The meeting of the Federal Savings and Loan Advisory Council is open to the public.

Edwin J. Gray,

Chairman.

[FR Doc. 84-9843 Filed 4-11-84; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

First NH Banks, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throught the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 1, 1984.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *First NH Banks, Inc.*, Manchester, New Hampshire; to engage *de novo* through its subsidiary, FirstBank Mortgage Corp., Manchester, New Hampshire, in the origination, sale and servicing of loans and the arrangement of commercial real estate equity financing, serving the New England States of Vermont, Connecticut, Maine, Massachusetts, New Hampshire, and Rhode Island.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First National Bank Holding Corporation*, Pensacola, Florida; to engage through its subsidiary, First National Mortgage Corporation, Pensacola, Florida, in making and servicing loans, and leasing personal property.

Board of Governors of the Federal Reserve System, April 6, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-9783 Filed 4-11-84; 8:45 am]

BILLING CODE 6210-01-M

Nor-Evan Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. 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.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 3, 1984.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Nor-Evan Corporation,* Evanston, Illinois; to acquire 80 percent of the voting shares of the The Elgin National Bank, Elgin, Illinois.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Central Banc System, Inc.,* Granite City, Illinois; to acquire 100 percent of the voting shares of The Farmers & Merchants National Bank of Carlinville, Carlinville, Illinois.

2. *Helena Bancshares, Inc.* Helena, Arkansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Helena National Bank, Helena, Arkansas.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Jefferson Bancshares, Inc.,* San Antonio, Texas; to acquire 100 percent of the voting shares of Leon Valley Bank, San Antonio, Texas, a *de novo* bank.

2. *SecurShares Incorporated,* Navasota, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of The Security State Bank, Navasota, Texas.

Board of Governors of the Federal Reserve System, April 6, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-9784 Filed 4-11-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Develop Control Monitoring Applications Criteria for Semiconductor Sensors; Open Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Date: April 25, 1984.
Time: 1:00 p.m.–4:30 p.m.
Place: Conference Room B, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Purpose: To assist in developing a protocol for the project, "Develop Control Monitoring Application Criteria for Semiconductor Sensors," through discussion of the draft protocol and responses of the Project Peer Review Group. The purpose of the project is to study the response characteristics and operational requirements of semiconductor based control monitoring systems used to help prevent worker exposure to H_2S. Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Additional information may be obtained from: Jerome P. Smith, Ph. D., Division of Physical Sciences and Engineering, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone: FTS: 684–4292, Commercial: 513/684–4292.

Dated: April 4, 1984.

James O. Mason,

Director, Centers for Disease Control.

[FR Doc. 84-9881 Filed 4-11-84; 8:45 am]

BILLING CODE 4160-19-M

Nineteenth National Immunization Conference; Open Meeting

A national Immunization Conference will be held May 21–24, 1984, at the Marriott Hotel, Boston, Massachusetts, telephone (617) 236–5800. This conference is sponsored by the Centers for Disease Control (CDC).

Federal, State, and local public health officials, as well as representatives from the private sector who are involved in the organization and implementation of immunization activity will participate. The meeting is open to the public, limited only by the space available.

The program is scheduled to begin at 8:30 a.m., Tuesday, May 21, at the Marriott Hotel.

All inquiries should be sent to: Mr. Ron Teske, Chief, Program Support Section, Division of Immunization, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, Telephones: FTS: 236–1836, Commercial: (404) 329–1836.

Dated: April 4, 1984.

James O. Mason,

Director, Centers for Disease Control.

[FR Doc. 84-9880 Filed 4-11-84; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 84N-0114]

Extremity X-Ray for Trauma Referral Criteria Panel; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the first meeting of the Extremity X-Ray for Trauma Referral Criteria Panel. This meeting is being called to assess the existing state of knowledge regarding the use of extremity radiography following trauma and to discuss approaches toward developing patient referral criteria for selected examinations.

DATES: Open sessions: April 26, 1984, 8:30 a.m. to 10 a.m., and April 27, 1984, 8:30 a.m. to 10 a.m.; closed sessions: April 26, 1984, 10:15 a.m. to 5 p.m., and April 27, 1984, 10:15 a.m. to 12 m.

ADDRESSES: The Panel meeting will be held at the Holiday Inn-Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852, 301–468–1100. Request for time to make oral presentations should be directed to the contact person at the address below.

FOR FURTHER INFORMATION CONTACT: Lireka P. Joseph, Center for Devices and Radiological Health (formerly National Center for Devices and Radiological Health) (HFZ–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4600.

SUPPLEMENTARY INFORMATION: Through the Center for Devices and Radiological Health, FDA conducts and supports research and training to minimize unproductive radiation exposure from diagnostic radiological examinations. One possible source of unproductive radiation exposure is radiological examinations that are not likely to affect patient management. To reduce the use of ineffective examinations, it is important that the referring physician have current information about when a given radiological study is likely to provide needed diagnostic information. This information can take the form of decision guidelines based on patient signs, symptoms, or history, sometimes known as "patient referral criteria."

Under one part of a program designed to facilitate the development and testing by the medical profession of patient referral criteria for diagnostic radiological examinations, FDA is providing logistical support for the convening of a small panel of clinical and scientific experts to formulate draft patient referral criteria or statements of use. A detailed description of the x-ray referral criteria development process was published in the Federal Register of June 9, 1981 (46 FR 30568).

Any interested person who wishes to request time for oral presentations during the open sessions of the meeting or who would like to submit written comments to the Panel and is unable to attend open sessions of the meeting should inform the contact person listed

above, either orally or in writing, by April 16, 1984. Persons attending the meeting who do not request time for an oral presentation will be permitted to make an oral presentation at the conclusion of an open session if time permits. Persons interested in specific agenda items to be discussed in the open sessions can ascertain such information from the contact person listed above.

A list of committee members, the meeting agenda, and the report of the Panel meeting may be reviewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m. Monday through Friday. The report of the Panel Meeting will contain minutes of the open sessions, copies of written data and views submitted to the Panel in the open sessions, and summaries of the closed sessions. Materials will be filed under the docket number appearing in the heading of this notice.

Dated: April 6, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–9766 Filed 4–9–84; 10:16 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

Medicare Program; Performance Criteria and Statistical Standards for Evaluating Intermediary Performance During Fiscal Year 1984

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: This notice would update the performance criteria and statistical standards to be used for evaluating the performance of fiscal intermediaries in the administration of the Medicare program for fiscal year 1984. The performance criteria and statistical standards have been developed from available statistical data contained in routine intermediary reports; past performance results for the intermediaries; and from substantive input from the intermediary community, HCFA central office and HCFA regional offices.

The results of these evaluations would be considered whenever we enter into, renew, or terminate an intermediary agreement; assign or reassign providers of services to an intermediary; or designate regional or national intermediaries.

DATE: To assure consideration, comments should be received by May 14, 1984.

ADDRESS: Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, Attention: BPO–36–PN, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to Room 309–G Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C., or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BPO–36–PN.

We will be issuing a final notice regarding fiscal year 1984 performance criteria and statistical standards after we have reviewed all comments we receive on this proposal.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publication, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, D.C. 20201, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202–245–7890).

FOR FURTHER INFORMATION CONTACT: Newton Dikoff, 301–594–8190.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1816 of the Social Security Act, public or private organizations and agencies may participate in the administration of Part A (Hospital Insurance) of the Medicare program under contracts with the Secretary. These agencies or organizations are known as fiscal intermediaries, and they perform bill processing and benefit payment functions for the Medicare program. Providers of services (hospitals, skilled nursing facilities (SNFs), and home health agencies (HHAs)) submit bills to these intermediaries, which determine whether the services are covered under Medicare and determine correct payment amounts. The intermediaries then make payments to the providers on behalf of the beneficiaries.

Using performance criteria and statistical standards, we previously evaluated the performance of intermediaries in such areas as bill processing, provider reimbursement, contract management, bill processing cost, bill processing timeliness and cost report settlement quality. For fiscal year 1984, we propose to add prospective payment medical review and prospective payment base year audit.

The areas of bill processing cost and timeliness are measured by using statistical standards to evaluate the efficiency of an intermediary's operation. The other areas are evaluated using performance criteria that evaluate the overall quality of an intermediary's Medicare operation.

We may initiate administrative actions as a result of the evaluation of intermediary performance under these performance criteria and statistical standards. As stated in the regulations in Subpart B of 42 CFR Part 421, we consider the results of the evaluations in determinations we make concerning—

- Entering into, renewing, or terminating agreements with intermediaries;
- Assigning or reassigning providers to intermediaries; and
- Designating regional or national intermediaries for classes of providers.
- Decisions concerning contract action are made on a case-by-case basis and depend primarily on the nature and degree of performance. More specifically, they depend on:
- Relative overall performance compared to other contractors;
- Number of criteria and standards for which superior, average, or deficient performance occurs;
- Extent of each failure; and
- Relative significance of the criteria and standards for which superior or deficient performance occurs within the overall Contractor Performance Evaluation Program (CPEP).

We will make individual contract action decisions after considering these factors in terms of their relative significance and impact on the Government's ability to efficiently administer Part A of the Medicare program.

This proposed notice reflects modifications over the fiscal year 1983 performance evaluations system in four major areas; major HCFA initiatives, emphasis on provider overpayment prevention and control, emphasis on payment safeguards and implementation of the new prospective payment system.

To the fiscal year 83 bill processing area, we would add the following elements:

- Meet targeted volume of electronic media claims (EMC) by September 30, 1984.
- Implement HCFA–1450 (UB–82)-Uniform Bill, by the date negotiated between the State Uniform Billing Committee and HCFA Regional Office.
- Report all diagnostic and surgical procedure information in accordance with intermediary manual instructions.

• Hospital inpatient bills must pass HCFA consistency edits.

• Respond appropriately to provider inquiries.

• Properly compute blended payment rate under the PPS.

• Evaluate the ranking of home health agencies (HHAs) for coverage compliance review, excluding the top 10 percent of the ranking.

• Review the accuracy of the contractor's HHA coverage compliance audits.

• Validate that the intermediary conducted an intensified prepayment review of HHA visits, where required.

• Review quarterly Reports of Benefit Savings and determine actual cost/efficiency of the utilization review (UR) system for Part A bill review.

• Utilize medical review funds.

• Furnish timely hospital discharge data to peer review organizations (PROs).

• Properly determine waiver of liability; i.e., accurate application and payment for bills denied on the basis of custodial care or services not reasonable and necessary.

• Properly adjudicate bills when Medicare is a secondary payer.

We would delete the following elements from the fiscal year 83 bill processing area:

• Prepare accurate reconsideration determinations.

• Notice of the reconsideration must provide adequate information and be furnished to appropriate parties.

We would combine the two fiscal year 83 elements, "Respond promptly to beneficiary inquiries" and "Respond accurately to beneficiary inquiries," to one element for the fiscal year 84 element, "Respond appropriately to beneficiary inquiries."

To the FY 83 provider reimbursement area, we would add the following elements:

• Properly compute, review and adjust interim rates under prospective payment for providers reimbursed using the periodic interim payment (PIP) method.

• Overpayments to providers must not exceed established threshold levels.

• Process provider requests for extension of due dates for filing cost reports in accordance with general instructions.

• Properly finalize hospital cost reports for reporting periods prior to PPS.

• Properly perform base year audits and target amount computations required by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA).

• Submit accurate cost report data for the Hospital Cost Report Information System (HCRIS).

To the FY 83 contract management area, we would add the following elements:

• Submit the budget request timely and in accordance with general instructions.

• Submit an approvable annual Small Business and Small Disadvantaged Business (SADBUS) plan timely.

• Achieve SADBUS goals and comply with SADBUS plans.

We would delete the following elements from the contract management area:

• Complete quarterly adjustments to the Medicare Time Account timely.

• Include all applicable clauses in subcontracts executed during the review period.

For FY 84, we would combine the following FY 83 elements:

• "Submit timely Time Account Adjustment Schedules" with "Complete quarterly adjustments to the Medicare Time Account(s) accurately." The FY 84 element would be "Submit timely and accurate Time Account Adjustment Schedules."

• Submit leases and other subcontracts (excluding those for EDP services) to HCFA for prior approval or give notice in accordance with the Medicare agreement and HCFA instructions" with "Submit subcontracts for EDP services or equipment to HCFA for prior approval or give notice in accordance with the Medicare agreement and HCFA instructions". The FY 1984 element would be "Submit leases and other subcontracts (including those for EDP services) to HCFA for prior approval or give notice in accordance with the Medicare agreement and HCFA instructions."

We would add two new performance areas to evaluate prospective payment medical review (discussed in Section E) and prospective payment base year audit (discussed in Section F). These two areas would evaluate an intermediary's implementation and usage of the new prospective payment system (PPS) provided for under title VI of the Social Security Amendments of 1983 (Pub. L. 98–21). The prospective payment medical review area would include three criteria with four elements in each criterion, for a total of 12 elements. The prospective payment base year audit area would contain two criteria with two elements in the first criterion and three elements in the second criterion. These two new areas would add 17 new elements to the FY 84 Contractor Performance Evaluation Program.

II. Performance Criteria

42 CFR 421.120 provides for the use of performance criteria. The categories we propose to use to evaluate the overall quality of an intermediary's performance during FY 84 are in the areas of bill processing, provider reimbursement, contract management, prospective payment medical review and prospective payment base year audit. The five areas to be evaluated would contain a total of 21 performance criteria: seven for bill processing, four for provider remibursement, five for contract management, three for prospective payment medical review and two for prospective payment base year audit. The 21 performance criteria would contain a total of 74 elements.

A. Scoring System

We would measure each of the five areas that are evaluated using performance criteria. We propose to set required levels for FY 84 as follows:

• Bill Processing—308 points.

• Provider Reimbursement—176 points.

• Contract Management—220 points.

• Prospective Payment Medical Review—132 points.

• Prospective Payment Base Year Audit—88 points.

These levels were developed by considering the results of FY 81 and FY 82 intermediary performance evaluations, reports of performance in FY 83, and performance levels expected to be achieved in FY 84. We believe that the levels would be achievable by a substantial number of intermediaries. Therefore, failure to achieve these levels would raise serious questions about the quality of the intermediary performance.

An intermediary's score in each of these five areas would be determined by adding the criteria scores within each area. Unsatisfactory performance in any of the five areas would be a factor that might lead to an overall assessment of unsatisfactory performance for the performance criteria phase of the evaluation system.

We propose, as in FY 1983, that the starting score for each of the performance criteria would be 50 points. The starting score of 50 would represent a numerical value assigned to the performances level for a criterion against which an intermediary's performance would be measured. This performance level would reflect an acceptable level of efficiency and effectiveness which could be achieved by the large majority of intermediaries. Each element within a criterion would have a method of evaluation that is used

to calculate points based on an intermediary's performance for that element. In addition, each element would carry a weight of 1.0, 1.5, or 2.0 depending on its relative importance to the criterion, and to the Medicare program. The calculated points would be multiplied by the element's weight before being applied to the criterion starting score of 50. The subsequent five sections list the performance criteria, elements, and element weights proposed for FY 1984.

If an intermediary exactly meets the requirements for each of the elements within a criterion, it would achieve the criterion starting score of 50. For performance better or worse than the levels required by the criterion's elements, calculated weighted points would either be subtracted from the starting score or added to the starting score if the intermediary is eligible for bonus points.

If an intermediary performs below the level set for the element, calculated points (after multiplying by the weight) would be subtracted from the starting score of 50. Bonus points are added to the starting score of 50 after this calculation to help further distinguish between various levels of acceptable performance within each element by intermediaries. However, we propose that an intermediary must achieve a score of 44 or higher in an entire criterion to be eligible for bonus points. We would not use bonus points in an area to help an intermediary whose performance does not achieve a score of 44 in that area. The score of 44 was selected as the level of performance expected to be achieved a criterion by a substantial number of intermediaries, following consideration of FY 81 and FY 82 evaluation scores and reports of FY 83 performance.

For each element, a quality level is specified. If contractor performance is at this level, no penalties are assessed nor bonuses awarded. Deficient or superior performance is quantified via award or assessment of bonus or penalty points, based on the degree of such performance. The number of points to be added or deducted is determined by using charts available in HCFA publication 14–2, Intermediary Manual, Part 2, Section 2900ff. Intermediaries have this manual and others interested in receiving a copy may request one by writing to: Newton Dikoff, Director, Division of Standards, room 1445 Meadows East Building, Baltimore, Maryland 21207, or by telephoning him at 301–594–8190. These charts acknowledge the uncertainty inherent in describing universe performance based on the result of a statistically valid sample. The charts also specify bonus or penalty levels for situations which do not involve sampling; i.e., the entire universe is reviewed.

As previously explained, the areas of bill processing, provider reimbursement, contract management, prospective payment medical review and prospective payment base year audit would require a score that meets or exceeds the aforementioned prescribed levels. To ensure that extremely deficient performance in a criterion would not be offset by good performance in another criterion within that same area, a criterion score of 38 would be required to be achieved. Otherwise, performance for the entire area would be considered unsatisfactory. Though achieving a score of 38 or higher in each criterion would not necessarily result in an area score above the required level, a score below 38 in any criterion would result in an unsatisfactory assessment for that area. Selection of the score of 38 was made after considering FY 81 and FY 82 evaluation scores and reports of FY 83 performance. A score below 38 represents performance at least 13 points below the acceptable performance level and reflects an unsatisfactory level of performance.

The following sections explain each area with its respective criteria and elements. Attachment A shows some examples of scoring the five areas that would be measured using the performance criteria.

B. Bill Processing

For the FY 84 evaluation period, we are proposing seven performance criteria that would be used to assess an intermediary's performance with respect to bill processing. Within these seven criteria would be a total of 28 elements. The performance criteria and their respective elements would be as follows:

(a) Criterion A—Control of bills and new Medicare billing initiatives.

(1) Element 1—Age bills from the actual date of receipt. Weight=2.0.

(2) Element 2—Meet targeted volume of electronic media claims (EMC) by 09/30/84. Weight=2.0.

(3) Element 3—Implement HCFA–1450 (UB–82), Uniform Bill, by the date negotiated between the State Uniform Billing Committee and HCFA Regional Office. Weight=1.0.

(4) Element 4—Report all diagnostic and surgical procedure information in accordance with intermediary manual instructions. Weight=1.0.

(b) Criterion B—Transmit accurate bill information to HCFA.

(1) Element 1—Hospital inpatient bills must pass HCFA utilization edits. Weight=1.0.

(2) Element 2—Outpatient bills must pass HCFA utilization edits. Weight=1.0.

(3) Element 3—SNF bills must pass HCFA utilization edits. Weight=1.0.

(4) Element 4—Hospital inpatient bills must pass HCFA consistency edits. Weight=1.5.

(c) Criterion C—Reply in an appropriate manner to beneficiary and provider inquiries.

(1) Element 1—Respond appropriately to beneficiary inquiries. Weight=1.5.

(2) Element 2—Respond appropriately to provider inquiries. Weight=1.5.

(d) Criterion D—Make correct coverage and payment determinations.

(1) Element 1—Process inpatient hospital bills not reimbursed under the prospective payment system (PPS) to ensure that coverage and payment determinations are in conformance with HCFA guidelines and instructions. Weight=1.0.

(2) Element 2—Process SNF bills to ensure that coverage and payment determinations are in conformance with HCFA guidelines and instructions. Weight=1.0.

(3) Element 3—Process HHA bills to ensure that coverage and payment determinations are in conformance with HCFA guidelines and instructions. Weight=1.0.

(4) Element 4—Process outpatient bills to ensure that coverage and payment determinations conform with HCFA guidelines and instructions. Weight=1.0.

(5) Element 5—Properly compute blended payment rate under PPS. Weight=2.0.

(e) Criterion E—Properly conduct HHA coverage compliance reviews.

(1) Element 1—Evaluate the ranking of HHAs for coverage compliance reviews, excluding the top 10 percent of the ranking. Weight=1.5.

(2) Element 2—Review the accuracy of the contractor's HHA coverage compliance audits. Weight=2.0.

(3) Element 3—Validate that the intermediary conducted an intensified prepayment review of HHA visits, where required. Weight=1.5.

(f) Criterion F—Develop and maintain a utilization review (UR) process.

(1) Element 1—Review quarterly Reports of Benefit Savings and determine actual cost/efficiency of the UR system for Part A bill review. Weight=2.0.

(2) Element 2—Process inpatient hospital bills (not reimbursed under PPS) to ensure that correct utilization determinations are made. Weight=2.0

(3) Element 3—Process SNF bills to ensure that correct utilization determinations are made. Weight=2.0.

(4) Element 4—Process HHA bills to ensure that correct utilization determinations are made. Weight=2.0.

(5) Element 5—Process outpatient bills to ensure that correct utilization determinations are made. Weight=2.0.

(6) Element 6—Utilize medical review funds. Weight=2.0.

(g) Criterion G—Furnish timely hospital discharge data to PROs, and make waiver of liability determinations, secondary payer determinations and proper dialysis payments.

(1) Element 1—Furnish timely hospital discharge data to PROs. Weight=1.5.

(2) Element 2—Properly determine waiver of liability; i.e., accurate application and payment for bills denied on the basis of custodial care or services not reasonable and necessary. Weight=2.0.

(3) Element 3—Make payment for dialysis to ESRD providers based on a determined composit rate or the approved exception rate. Weight=1.0.

(4) Element 4—Properly adjudicate bills when Medicare is a secondary payer. Weight=1.0.

C. Provider Reimbursement

Proper stewardship over Medicare reimbursable costs is an important responsibility. We propose that an intermediary be required to reimburse providers for the reasonable costs they incur in furnishing covered services to Medicare beneficiaries. This requirement would include responsibility for setting interim rates; timely identification, control and recovery of overpayment to providers; and receipt, review, audit, and settlement of provider cost reports.

For fiscal year 84, we propose a total of fifteen elements within the provider reimbursement area's four performance criteria. They would be:

(a) Criterion A—Establish interim rates and periodic interim payment (PIP) rates for providers accurately and timely.

(1) Element 1—Establish interim payment for participating hospitals to approximate Medicare reimbursable costs as closely as possible. Weight=2.0.

(2) Element 2—Establish interim payments for participating SNF's to approximate Medicare reimbursable costs as closely as possible. Weight=1.0.

(3) Element 3—Establish interim payments for participating HHAs to approximate Medicare reimbursable costs as closely as possible. Weight=1.5.

(4) Element 4—Properly compute, review and adjust interim rates under prospective payment for providers reimbursed using the PIP method. Weight=1.0.

(b) Criterion B—Identify, control and recover overpayments to providers timely.

(1) Element 1—Overpayments to providers must not exceed established threshold levels. Weight=2.0.

(2) Element 2—Recover provider overpayments timely. Weight=2.0.

(3) Element 3—Process provider requests for extension of due dates for filing cost reports in accordance with general instructions. Weight=1.0.

(c) Criterion C—Based on provider cost reports, accurately apply the Principles of Reimbursement to ensure that only reasonable and allowable costs incurred in furnishing covered services to Medicare beneficiaries are reimbursed by the Medicare program; submit accurate cost report data to the hospital cost report information system.

(1) Element 1—Properly finalize hospital cost reports for reporting periods prior to PPS. Use the Principles of Reimbursement and comply with HCFA requirements to ensure that only reasonable and allowable costs incurred in furnishing covered services to Medicare beneficiaries have been reimbursed to providers. Weight=1.5.

(2) Element 2—Properly finalize SNF cost reports. Use the Principles of Reimbursement and comply with HCFA requirements to ensure that only reasonable and allowable costs incurred in furnishing covered services to Medicare beneficiaries have been reimbursed to providers. Weight=1.5.

(3) Element 3—Properly finalize HHA, rural health clinic and outpatient physical therapy cost reports. Use the Principles of Reimbursement and comply with HCFA requirements to ensure that only reasonable and allowable costs incurred in furnishing covered services to Medicare beneficiaries have been reimbursed to providers of services. Weight=1.5.

(4) Element 4—Properly perform base year audits and target amount computations required by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). Weight=1.5.

(5) Element 5—Submit accurate cost report data for the Hospital Cost Report Information System (HCRIS). Weight=1.5.

(d) Criterion D—Settle provider cost reports timely.

(1) Element 1—Hospital FY 82 cost reports must be settled by the end of FY 84. Weight=2.0.

(2) Element 2—SNF FY 1982 cost reports must be settled by the end of FY 84. Weight=1.5.

(3) Element 3—HHA FY 82 cost reports must be settled by the end of FY 84. Weight=1.5.

D. Contract Management

We propose that an intermediary would be required to protect the Medicare program and the public interest by properly managing Federal funds for both benefit payments and cost of administration. We would require this effort to be in accordance with the agreement with the Secretary, the Federal procurement regulations, and HCFA instructions. In addition, prevention of fraud and abuse is an important facet of this responsibility.

There would be five performance criteria, which contain a total of fourteen elements. They would be:

(a) Criterion A—Equitably charge and control allowable Medicare administrative expenses to the program.

(1) Element 1—Cost allocations must be consistent (provide reasonable assurance that comparable transactions are treated alike) and allocable (assigned or chargeable to a particular cost objective in accordance with the relative benefits received or other equitable relationship). Weight=2.0.

(2) Element 2—Control actual expenditures to the latest approved budget and have the ability to identify potential expenditures in excess of approved budget in advance of the incurrence of such expenditures. Weight=1.5.

(3) Element 3—Control administrative funds drawn to the approved Budget Distribution and in line with actual expenditures. Weight=1.5.

(b) Criterion B—Submit budget proposals and fiscal reports timely and in accordance with FCFA instructions; and maintain Medicare bank accounts through appropriate letter of credit procedures.

(1) Element 1—Submit the budget request timely and in accordance with general instructions. Weight=2.0.

(2) Element 2—Submit timely and accurate Interim Expenditure Reports. Weight=1.5.

(3) Element 3—Submit timely and accurate Time Account Adjustment Schedules. Weight=1.5.

(4) Element 4—Submit an accurate Final Administrative Cost Proposal. Weight=2.0.

(c) Criterion C—Identify and process program integrity issues in accordance with general instructions.

(1) Element 1—Process all potential fraud and abuse cases properly. Weight=2.0.

(2) Element 2—Process fraud and abuse cases involving audited provider cost reports properly. Weight=1.5.

(d) Criterion D—Comply with the subcontractual and Small Business and Small Disadvantaged Business (SADBUS) provisions of the Medicare agreement.

(1) Element 1—Submit leases and other subcontracts (including those for EDP services) to HCFA for prior approval or give notice in accordance with the Medicare agreement and HCFA instruction. Weight=2.0.

(2) Element 2—Submit an approvable annual SADBUS plan timely. Weight=1.5.

(3) Element 3—Achieve SADBUS goals and comply with SADBUS plans. Weight=1.0.

(e) Criterion E—Implement HCFA instructions accurately and timely.

(1) Element 1—Accurately and timely implement Intermediary Letters and manual transmittals issued by HCFA central office. Weight=2.0.

(2) Element 2—Implement HCFA regional office directives and recommendations accurately and timely. Weight=2.0.

E. Prospective payment Medical Review

For hospitals paid under PPS, an intermediary would be required to perform medical review activities of hospitals in a timely, accurate and cost effective manner.

There would be three performance criteria, which contain a total of twelve elements. They would be:

(a) Criterion A—Ensure that reviews of admissions/transfers are conducted as indicated and that diagnostic related groups (DRGs) are validated.

(1) Element 1—Validate that the contractor conducted a 100 percent medical review of admissions, where required. Weight=2.0.

(2) Element 2—Validate that the contractor conducted a 100 percent medical review of admissions that occur within seven calendar days of discharge from an acute care facility, where required. Weight=2.0.

(3) Element 3—Validate that the contractor conducted a 100 percent medical review of transfers to an exempt distinct psychiatric unit of an acute care facility, where required. Weight=1.5.

(4) Element 4—Validate medical appropriateness of DRG assignments. Weight=2.0.

(b) Criterion B—Ensure that admissions and transfers were medically necessary and appropriate.

(1) Element 1—Validate the determination of medical necessity and appropriateness of admissions. Weight=2.0.

(2) Element 2—Validate determination of medical necessity and appropriateness of admissions that occur within 7 calendar days of discharge from an acute care facility. Weight=2.0.

(3) Element 3—Validate the determination of medical necessity and appropriateness of transfers to an exempt unit of an acute care facility. Weight=1.5.

(4) Element 4—Validate the determination of medical necessity and appropriateness of transfer from a PPS hospital to many other hospital and validate that the contractor conducted a 100 percent medical review. Weight=2.0.

(c) Criterion C—All day and cost outliers must be reviewed for medical necessity and appropriateness; invasive diagnostic and therapeutic procedures identified as involving abuse must be subject to medical review; and admission pattern monitoring reports must be completed timely and accurately, where required.

(1) Element 1—Validate day and cost outlier determinations and validate that the contractor conducted a medical review on all day and outlier cases. Weight=1.5.

(2) Element 2—Validate the determination of the necessity of invasive diagnostic and therapeutic procedures and validate that the contractor conducted a 100 percent review of pacemaker insertion cases. Weight=1.0.

(3) Element 3—Submit timely Admission Pattern Monitoring Reports. Weight=1.0.

(4) Element 4—Submit quality Admission Pattern Monitoring Reports. Weight=2.0.

F. Prospective Payment Base Year Audit

For hospitals paid under PPS, an intermediary would be required to determine base year costs properly, correctly compute the target amount and timely notify providers of their target amount, as well as subsequent adjustments.

There would be two performance criteria, which contain a total of five elements. They would be:

(a) Criterion A—Notify timely each provider under PPS of their target amounts.

(1) Element 1—All providers must be notified according to the timeframes detailed in HCFA Publication 15–1, § 2802.D, prior their start on PPS. Weight = 2.0.

(2) Element 2—All providers whose rate was revised must receive timely notification of any change to their target amount, regardless of the reason. Weight = 2.0.

(b) Criterion B—Utilize the base period cost reports and accurately apply the principles of reimbursement to ensure that only reasonable and allowable costs are included in the PPS target amount.

(1) Element 1—Establish an adequate, well-defined, pre-audit review that identifies significant issues under PPS. Weight = 2.0.

(2) Element 2—Perform audit activity as specified in HCFA Publication 13–4, § 4200ff, in a satisfactory manner and make all required audit adjustments. Weight = 2.0.

(3) Element 3—Correctly calculate the PPS target rates, incorporating all necessary adjustments per HCFA Publication 15–1, § 2800ff. Weight = 1.5.

III. Statistical Standards

We would also use statistical standards to evaluate intermediary performance during FY 84 (October 1, 1983 through September 30, 1984). These statistical standards would be unit cost of bill processing and timeliness of bill processing. The two statistical standards would contain five elements. We would continue to evaluate the overall "quality" of intermediary performance for FY 84 by the performance criteria.

A. Scoring System

We expect to measure each of the statistical standards (unit cost and timeliness of bill processing) individually as we have in prior fiscal years. A starting score of 100 points would be assigned to each of the two standards, and we would subtract points from the starting score for intermediary performance that does not meet the levels set by the elements within the standards. The starting score of 100 points is representative of the performance level reached by about 50 percent of the intermediaries in FY 82.

An intermediary would be required to achieve a score of 75 points for each statistical standard. Attainment of 75 points represents performance at the 85th to 90th percentile of intermediaries in the FY 82 base year. If an initial score of 75 or better is attained in a standard, bonus points may be awarded for levels of performance exceeding the levels prescribed for the elements within the standards. Failure to achieve a score of 75 in any of the statistical standards may result in an overall assessment of unsatisfactory performance for the

statistical standards phase of the evaluation process.

In developing the levels required by the elements of the standards, we accounted for past intermediary performance and the need to promote the best possible performance. Moreover, should significant noncontrollable factors affect an intermediary's performance of a selected performance measure, we anticipate making an appropriate adjustment to the intermediary's score.

B. Use of Weights

As previously mentioned, the two statistical standards proposed for FY 84 contain a total of five elements: one for unit cost and four for bill processing timeliness. We propose to assign each of the five elements a weight between 0 and 1, and multiply points received in any of these elements by the weight of the element before applying them to the starting score. We propose to sue the bonus point concept in the unit cost element to provide an incentive to the intermediaries to exceed the levels prescribed by the standard's element as much as possible. (Bonus points would not be awarded for the FY 84 bill processing timeliness standard.) Because there would be only one element in the unit cost standard, we propose that it be assigned a weight of one. In the bill processing timeliness standard, we propose that the individual elements carry weights according to their relative importance within the statistical standard to beneficiaries, providers, and governmental recordkeeping requirements. In developing these weights, we have considered our experience in the processing of Medicare bills and consulted with representatives of the intermediary community.

We propose that there be four elements in the standard for bill processing timeliness: one each for inpaitent hospital, outpatient hospital, SNF, and HHA bills. We would assign relatively equal weights to the elements for each type of bill because we believe each is equally important. We propose to set the required levels of performance at different levels for each type of bill, based on actual achievements reached by intermediaries in these areas.

The following sections explain each proposed statistical standard and the respective elements in detail. Attachment B exhibits some examples of scoring the statistical standards.

C. Unit Cost Standard

We based the proposed FY 84 standard for unit cost of bill processing on FY 82 data adjusted to reflect the effect of contractor budget allowances estimated to occur in FY 84. In the calculation of unit cost per bill, we would define the numerator "cost" as the intermediary's Medicare FY 84 administrative costs. These costs include claims processing and related costs as correctly reported on the FY 84 Administrative Budget and Cost Report, lines 1 through 3. For Blue Cross plans, the numerator would include a share of Blue Cross Association administrative support costs. The denominator "bill" is defined as the intermediary's total number of processed bills for FY 84 as correctly reported on its Intermediary Workload Report.

D. Adjustment to Unit Cost

To allow for a more equitable comparison with the unit cost standard, we propose to adjust each intermediary's unit cost value for significant measurable factors that are not within the intermediary's control. Statistically acceptable techniques, such as multiple regression analysis, are used to derive the adjustment factors. We would use regression analysis or any other appropriate statistical tools to identify variables (such as the mix of claim types paid by the intermediaries) that significantly affect a given measure (such as unit cost) and to quantify the extent of such impact. Before we would compare an intermediary's unit cost with the FY 84 standard, appropriate adjustments would be made.

For FY 84, we propose to set the unit cost standard at $3.20. An intermediary with an adjusted cost of $3.20, therefore, would achieve a score of 100. The unit cost value that would achieve 75 points would be equivalent to $4.03. That is, we propose in fiscal year 84 that an intermediary have a unit cost of not more than $4.03 (after it is adjusted for noncontrollable factors that significantly affect cost) for it to satisfy the unit cost standard. We developed the levels of $3.20 and $4.03 based upon: (1) Past intermediary performance; (2) acknowledgement of noncontrollable factors that may affect cost; and (3) current and projected budgetary conditions.

Since there would be only one element that constitutes the unit cost standard, we intend to establish a weight of 1.0 for that element. The scoring formula used to subtract points for an adjusted unit cost that is above the unit cost standard or to award bonus points for a value that is below the standard would be as follows: 30 ($3.20—Performance) where the intermediary's performance is its adjusted unit cost value.

E. Timeliness of Bill Processing

We propose to define bill processing time as the length of time in calendar days from the date of initial receipt of the bill by the intermediary to the date the bill passes the intermediary's edits. The percent of bills processed within a specific timeframe would be determined in the following manner. Using the universe of bills passing by the intermediary's edits during FY 84 and required to be sent to HCFA, we would device the number of bills processed within the specific timeframe time period by the total number of bills processed, and the result would be then multiplied by 100.

Our analyses show the major noncontrollable factor affecting bill processing timeliness to be the proporation of bills by type. Therefore, instead of trying to adjust a single set of elements for these proportions, we propose to establish requirements by type of bill according to the following definitions:

- Inpatient hospital bills—HCFA–1453 forms submitted by hospitals.
- Outpatient bills—HCFA 1483 forms (Provider Billing for Medical and Other Health Services) submitted by all types of providers.
- SNF bills—HCFA–1453 forms submitted by SNFs.
- HHA bills—HCFA–1487 forms submitted by HHAs.

The FY 1984 bill processing time elements, scoring formulas, and weights are as follows:

Element	Performance requirement	Scoring formula [1]	Weight
Inpatient hospital bills:			
1. Percent processed in 30 days	98.5	4.0(PERF–98.5)	0.25
Outpatient hospital bills:			
2. Percent processed in 30 days	97.5	5.0(PERF–97.5)	.25
SNF bills:			
3. Percent processed in 30 days	92.5	2.0(PERF–92.5)	.25
HHA bills:			
4. Percent processed in 30 days	95.5	2.0(PERF–95.5)	.25

[1] The variable "PERF" refers to the intermediary's actual performance for the elements.

IV. Impact Analysis

Executive Order 12291

We have determined that this proposed notice does not meet the criteria for a major rule as defined by section 1(b) of Executive Order 12291. That is, this proposed rule will not have an annual effect on the economy of $100 million or more; cause a major increase in costs or prices for consumers, government agencies, industry, or a geographic region; or cause significant adverse effect on business, or employment.

We update these criteria and standards annually to improve an existing intermediary evaluation system. This system measures the performance of fiscal intermediaries in the administration of the Medicare program to help assure that Medicare is an efficient and cost-effective progam. These proposed changes to the evaluation process reflect modifications made in the design and emphasis of the Medicare program during FY 84, and are necessary for the proper implementation of and management control over these recent program changes. We should benefit from these modifications by maintaining the overall quality of the intermediary's performance in the areas of bill processing, provider reimbursement, contract management, prospective payment medical review and prospective payment base year audit. Our oversight of these functions makes certain that Medicare payments are made for reasonable and necessary covered care and are provided on a timely basis. Such control over our payments protects the integrity of the Trust funds and minimizes cash flow disruptions for providers.

We also estimate that no increased administrative costs will be incurred by the Federal government or the intermediaries as a result of this updating. Therefore, as none of the threshold criteria are met by the impact resulting from these proposed provisions, a regulatory impact analysis is not required.

Regulatory Flexibility Act

The Secretary certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this notice will not have a significant economic impact on a substantial number of small businesses, organizations, or government jurisdictions. The updated performance criteria and statistical standards do not add to or alter the functions that intermediaries already perform for the Medicare program and, therefore, would not increase the cost or other administrative burdens of an intermediary's Medicare operation.

We believe that the changes will, in fact, be of benefit to the intermediaries because the critieria and statistical standards used in the evaluation system will ensure a good level of preformance without placing an inordinate number of intermediaries in serious jeopardy of not satisfying the performance criteria and/or the statistical standards. In addition, all intermediaries are under contract with HCFA and these contracts provide for evaluations of intermediary performance. The evaluations, therefore, are mutually agreed to.

Lastly, we set the performance criteria and statistical standards so that the size of an intermediary does not adversely affect its ability to meet the requirements.

For these reasons, we do not believe that a regulatory flexibility analysis under the Regulatory Flexibility Act is required for this proposed annual notice.

Attachment A—Examples of Scoring the Areas Measured Using Proposed Performance Criteria

Example 1—Bill Processing

	Weighted penalty points	Weighted potential bonus points
Criterion A:		
Element 1	−2	0
Element 2	0	1
Element 3	−1	0
Element 4	−1	0
Criterion Score = 50 − 4 = 46 + 1 [1] = 47		
Criterion B:		
Element 1	−3	0
Element 2	−2	0
Element 3	0	1
Element 4	−2	0
Criterion Score = 50 − 7 = 43 [2]		
Criterion C:		
Element 1	0	0
Element 2	0	0
Criterion Score = 50		
Criterion D:		
Element 1	−3	0
Element 2	0	0
Element 3	0	0
Element 4	0	0
Element 5	0	0
Criterion Score = 50 − 3 = 47		
Criterion E:		
Element 1	0	1
Element 2	0	1
Element 3	0	0
Criterion Score = 50 + 2 = 52		
Criterion E:		
Element 1	−2	0
Element 2	0	0
Element 3	0	0
Element 4	0	0
Element 5	0	0
Element 6	−8	0
Criterion Score = 50 − 10 = 40		
Criterion G:		
Element 1	0	0
Element 2	0	0
Element 3	0	0
Element 4	0	0
Criterion Score = 50 + 1 = 51		
Billing Processing Standard Score = 47 + 43 + 50 + 47 + 52 + 40 + 51 = 330, which surpasses the required level.		

[1] Bonus point awarded since initial criterion score (i.e., 46) is above 44.
[2] Bonus point not awarded since initial score is below 44.

Example 2—Provides Reimbursement

	Weighted penalty points	Weighted potential bonus points
Criterion A:		
Element 1	−4	0
Element 2	−1	0
Element 3	−3	0
Element 4	−2	0
Criterion Score = 50 − 10 = 40		
Criterion B:		
Element 1	−3	0
Element 2	0	0
Element 3	0	0
Criterion Score = 50 − 3 = 47		
Criterion C:		
Element 1	0	0
Element 2	−3	0
Element 3	−3	0
Element 4	0	0
Element 5	0	0
Criterion Score = 50 − 6 = 44		
Criterion D:		
Element 1	−3	0
Element 2	−3	0
Element 3	0	0
Criterion Score = 50 − 6 = 44		
Provider Reimbursement Score = 40 + 47 + 44 + 44 = 175, which is below the required level.		

Example 3—Contract Management

	Weighted penalty points	Weighted potential bonus points
Criterion A:		
Element 1	0	0
Element 2	−1.5	0
Element 3	−1.5	0
Criterion Score = 50 − 3 = 47		
Criterion B:		
Element 1	0	0
Element 2	0	0
Element 3	0	0
Element 4	0	0

	Weighted penalty points	Weighted potential bonus points
Criterion Score=50		
Criterion C:		
Element 1	0	2
Element 2	0	0
Criterion Score=50+2=52		
Criterion D:		
Element 1	0	0
Element 2	0	0
Element 3	0	0
Criterion Score=50		
Criterion E:		
Element 1	−8	0
Element 2	−6	0
Criterion Score=50−14=36		
Contract Management Score=47+50+52+50+36=235; however, since Criterion E has a score below 38, the intermediary is not meeting the requirements.		

Example 4—Prospective Payment Medical Review

	Weighted penalty points	Weighted potential bonus points
Criterion A:		
Element 1	0	0
Element 2	0	0
Element 3	0	0
Element 4	0	2
Criterion Score=50+2=52		
Criterion B:		
Element 1	0	2
Element 2	0	2
Element 3	0	0
Criterion Score=50+4=54		
Criterion C:		
Element 1	0	0
Element 2	0	0
Element 3	0	0
Element 4	0	0

	Weighted penalty points	Weighted potential bonus points
Criterion Score=50		
Prospective Payment Medical Review Score=52+54+50=156, which surpasses the required level.		

Example 5—Prospective Payment Base Year Audit

	Weighted penalty points	Weighted potential bonus points
Criterion A:		
Element 1	0	0
Element 2	−14	0
Criterion Score=50−14=36		
Criterion B:		
Element 1	0	0
Element 2	0	0
Element 3	0	0
Criterion Score=50		
Prospective Payment Base Year Audit Score=35+50=86, which is below the required level.		

ATTACHMENT B—EXAMPLE OF PROPOSED SCORING OF STATISTICAL STANDARDS

Standard	Performance requirement	Performance	Subtraction (−) bonus (+) points [1]	Weight	Weighted subtraction (−) bonus (+) points	Standard score
• Unit Cost:						
1. Adjusted Unit Cost	$3.20	$3.40	−6.0	1.00	−6.0	94
• Timeliness of Bill Processing:						
2. Inpatient—30 Days	98.5%	93.5%	−20	0.25	−5.0	
3. Outpatient—30 Days	97.5	98.0	[1]———0.0	0.25	0.0	
4. SNF—30 Days	92.5	95.0	[1]———0.0	0.25	0.0	
5. HHA—30 Days	95.5	96.3	[1]———0.0	0.25	0.0	95

[1] No bill processing timeliness bonus points will be available for FY 1984.

(Sec. 1102, 1816 and 1871 of the Social Security Act (42 U.S.C. 1302, 1395h, and 1395hh))
(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: January 10, 1984.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: March 5, 1984.

Margaret M. Heckler,

Secretary.

[FR Doc. 84-9717 Filed 4-11-84; 8:45 am]

BILLING CODE 4120-03-M

Office of Human Development Services

Federal Council on the Aging; Meeting

Agency holding the meeting: Federal Council on the Aging.

Time and date: Meeting begins at 9:00 AM on Wednesday, May 2, 1984 and ends at 12:00 PM on Thursday, May 3, 1984.

Place: Auditorium (first floor), Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201 on May 2, 1984 from 9:00 AM–5:30 PM; Rooms 303–305A, Hubert H. Humphrey Building, from 9:00 AM–12:00 PM on May 3, 1984.

Status: Meeting is open to the public.

Contact person: Rita Lowry, Room 309D, HHH Building, 245–2451.

The Federal Council on the Aging was established by the 1973 Amendments to the Older Americans Act of 1965 (Pub. L. 93–29, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health and Human Services, the Commissioner of Aging and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to the Federal Advisory Committee Act (Pub. L. 92—453, 5 U.S.C. App. 1, Sec. 10, 1976) that the Council will hold a meeting on May 2 and 3, 1984 from 9:00 AM–5:30 PM and from 9:00 AM–12:00 PM respectively in the Auditorium and in Rooms 303–305A (May 3) of the Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201.

The agenda will consist of presentations on Veterans Administration programs for the elderly, and a discussion by the author of "Gaining the Dividends of Longer Life—New Roles for Older Workers." There will also by a symposium on "Supporting Caregivers Through the Workplace" with a panel of experts.

Dated: April 9, 1984.

Adelaide Attard,

Chairperson, Federal Council on the Aging.

[FR Doc. 84-9793 Filed 4-11-84; 8:45 am]

BILLING CODE 4130-01-M

Public Health Service

Ad Hoc Panel on Chemical Carcinogenesis Testing and Evaluation; Meeting

Notice is hereby given of a meeting of the Ad Hoc Panel on Chemical Carcinogenesis Testing and Evaluation, National Toxicology Program (NTP) Board of Scientific Counselors, U.S. Public Health Service, to be held May 3–4, 1984, Building 101 Conference Room, National Institute of Environmental Health Sciences, Research Triangle Park, N.C. The meeting will begin at 9 a.m. on May 3 and end the afternoon of May 4. The meeting will be held to consider submitted written comments on the draft report. It is expected that the majority of the first day's meeting will be devoted to subgroup meetings to consider specific comments. No public comments will be taken at this meeting nor will any documents be distributed. A limited number of copies of the current draft report are now available and will be available at the meeting. Attendance is limited only by space available. For further information regarding the meeting, please contact the Panel Secretary, Ms. Riley, at the address below or telephone 919–541–7621 or FTS 629–7621. The official Government representative for this meeting will be Dr. David P. Rall, NTP.

Dr. John Doull, Chairperson, Ad Hoc Panel on Chemical Carcinogenesis Testing and Evaluation, c/o Ms. Janet Riley, Secretary to the Panel, P.O. Box 12233, Research Triangle Park, NC 27709

Dated: April 6, 1984.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 84-9789 Filed 4-11-84; 8:45 am]

BILLING CODE 4101-01-M

Chemicals (13) Nominated for Toxicological Testing: Request for Comments

Summary: On February 28, 1984, the Chemical Evaluation Committee (CEC) of the National Toxicology Program (NTP) met to review 13 chemicals nominated for toxicology testing and to recommend the types of testing to be performed. With this notice, the NTP solicits public comment on the 13 chemicals listed herein.

For further information and submission of comments, contact: Dr. Victor A. Fung, Chemical Selection Coordinator, National Toxicology Program, Room 2B55, Building 31, National Institutes of Health, Bethesda, Maryland 20205, (301) 496–3511.

Supplementary information: As part of the chemical selection process of the National Toxicology Program, nominated chemicals which have reviewed by the NTP Chemical Evaluation Committee (CEC) are published with request for comment in the **Federal Register** and *NTP Technical Bulletin*. This is done to encourage individuals and groups to participate in the NTP chemical evaluation process thereby helping the NTP to make more informed decisions as to whether to select, defer or reject chemicals for testing.

Comments and data submitted in response to this request are reviewed and summarized by NTP technical staff, are forwarded to the NTP Board of Scientific Counselors for an evaluation of the nominated chemicals, and then to the NTP Exectuive Committee for its decision-making about testing. The NTP chemical selection process is summarized in the **Federal Register**, April 14, 1981 (46 FR 21818), and also in the NTP FY 1983 Annual Plan, pages 213–215.

Chemical	CAS No.	Committee recommendation
1. Chromium carbonyl.	13007-92-6	*In vitro* cytogenetics; chemical disposition study; 13-week subchronic studies.
2. Ferric ammonium ferrocyanide.	25869-00-5	*In vitro* cytogenetics; Chemical disposition, including metabolism study' 13-week subchronic studies.
3. Ferrocene	102-54-5	13-week subchronic studies, including sperm morphology vaginal cytology evaluation; carcinogenicity
4.Octamethylcyclo-tetrasiloxane.	556-67-2	No testing.
5.Octamethyltrisilox-ane.	107-51-7	Do.
6.Triphenylantimony	603-36-1	Do.
7. Atrazine	1912-24-9	Do.
8. Ordram	2212-67-1	Do.
9. Roundup	38641-94-0	Do.
10. 2,3,4,6-Tetrachlorophenol.	58-90-2	Test in *Salmonella* assay as part of class study of chlorophenols.
11. p-Chloro-α,α,α-trifluorotoluene.	98-56-6	13-week oral subchronic-studies in mice.
12. Methyl isobutyl ketone.	108-10-1	Deferred (See below).
13. Gallium arsenide.	1303-00-0	13-week subchronic studies, by intratracheal instillation.

Of the six organometallic compounds, namely, chromium carbonyl, ferric ammonium ferrocyanide, ferrocene, octamethylcyclotetrasiloxane, octamethyltrisiloxane and triphenylantimony, only ferrocene has previously been selected for any type of toxicological testing by the NTP. This chemical yielded negative and inconclusive results in two *Salmonella* studies conducted by the NTP. In *Drosophila*, ferrocene was positive for the sex-linked recessive lethal mutations and negative for reciprocal translocations. In two *in vitro* cytogenetics studies conducted by the NTP in Chinese hamster ovary cells, ferrocene was positive in one study and negative in another for chromosome aberrations and weakly positive for sister chromatid exchanges in both studies.

The four herbicides, atrazine, ordram, roundup, and 2,3,4,6-tetrachlorophenol, were previously reviewed and deferred by the CEC, pending a joint review by the Environmental Protection Agency (EPA) and NTP staff of the data submitted to the EPA Office of Pesticide Programs in support of the registration of these chemicals (**Federal Register**, March 4, 1983 (48 FR 9379)). Since that time, the EPA and the manufacturers have provided the NTP with information relevant to the testing of these compounds.

Two chemicals found in dump sites, p-chloro-α,α,α,-trifluorotoluene and methyl isobutyl ketone, were previously reviewed and deferred by the CEC (**Federal Register**, July 25, 1983 (48 FR 33748)). p-Chloro-α,α,α-trifluorotoluene was previously deferred to ascertain the extent of testing undertaken by industry following its designation by the Interagency Testing Committee (ITC) as a priority chemical. Since a 13-week oral subchronic study was already conducted on p-chloro-α,α,α-trifluorotoluene in rats the CEC recommended conducting subchronic studies only in mice. Methyl isobutyl ketone was previously deferred to determine the progress of industry sponsored testing of the chemical in genotoxicity, 13-week subchronic and teratology studies. Information pertaining to the testing of the two chemicals was provided by the EPA. At the February 28, 1984 CEC meeting, methyl isobutyl ketone was deferred pending the decision of the EPA whether to require further testing beyond the subchronic study conducted by industry.

Gallium arsenide was previously recommended by the CEC for chemical disposition studies (**Federal Register**, July 24, 1981 (46 FR 38144)). These studies have now been completed. In response to a recent request from the National Institute for Occupational Safety and Health, the CEC

reconsidered gallium arsenide for further testing.

The CEC also selected thirty compounds for testing in the *Salmonella* assay. These chemicals are additional representatives of four structural classes, chlorophenols, phenylenediamines, diarylamines and trisubstituted isocyanuric acid derivatives, that are being studied in the *Salmonella* assay by the NTP.

The CEC also approved 1,2-dibromo-4-(1,2-dibromoethyl)cyclohexane for NTP genotoxicity testing in the *in vitro* cytogenetics and mouse lymphoma assays. This compound was nominated by the ITC for these genotoxicity studies because of its structural relationship to ethylene dibromide, its potential for human exposure, and the lack of significant toxicological data on this chemical. Prior to this nomination it was tested by the NTP in the *Salmonella* assay and found to be negative.

Interested parties are requested to submit pertinent information. The following types of data are of particular relevance:

(1) Completed, ongoing and/or planned toxicological testing in the private sector including detailed experimental protocols and, in the case of completed studies, resultant data.

(2) Modes of production, present production levels, and occupational exposure potential.

(3) Uses and resulting exposure levels, where known.

(4) Results of toxicological studies of structurally related compounds.

Please submit all information in writing by (thirty days after date of publication). Any submissions received after the above date will be accepted and utilized where possible.

Dated: April 6, 1984.

David P. Rall, M. D., Ph. D.,

Director, National Toxicology Program.

[FR Doc. 84-9790 Filed 4-11-84; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Department Information Collection Activity Under OMB Review

AGENCY: Department of the Interior.

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 5301 et seq.) requires the Department 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 comments. Copies of the proposed information collection requirement, the related form, and explanatory material, may be obtained by contacting the Department's clearance office at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Department clearance officer, and the Office of Management and Budget, Interior Department, Desk Officer, Washington, D.C. 20503, telephone 202/395-7313.

FOR FURTHER INFORMATION CONTACT: David R. Potter, Office of Small and Disadvantaged Business Utilization; U.S. Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240; telephone 202/343-7437, or FTS 343-7437.

SUPPLEMENTARY INFORMATION:

Grants Programs

Title: SBE/MBE/WBE Grants Utilization Report.

Utilization Report abstract: State/local governments and businesses receiving Federal grants and cooperative agreements report quarterly on their utilization of small/minority/women's business enterprises (SBE/MBE/WBE). DOI uses the data to comply with statutory requirements, to develop plans/goals for this program, and to monitor performance to ensure that recipients award a "fair share" of subcontracts to these enterprises.

Respondents: State/local governments and businesses receiving Federal grants and cooperative agreements.

Frequency: Quarterly reporting will be required.

Annual Responses: 12,828.

Annual Burden Hours: 2.

Dated: April 2, 1984.

Charlotte Brooks Spann,

Director, Office of Small and Disadvantaged Business Utilization (OSDBU).

[FR Doc. 84-9817 Filed 4-11-84; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Indian Affairs

Proposed Finding Against Federal Acknowledgment of the United Lumbee Nation of North Carolina and America, Inc.

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 83.9(f), notice is hereby given that the Assistant Secretary proposes to decline to acknowledge that the United Lumbee Nation of North Carolina and America, Inc., c/o Mrs. Eva Reed, P.O. Box 512, Fall River Mills, California 96028, exists as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the group does not satisfy the criteria set forth in 25 CFR 83.7 and, therefore, does not meet the requirements necessary for a government-to-government relationship with the United States.

Under § 83.9(f) of the Federal regulations, a report summarizing the evidence for the proposed decision is available to the petitioner and interested parties upon written request.

Section 83.9(g) of the regulations provides that any individual or organization wishing to challenge the proposed findings may submit factual or legal arguments and evidence to rebut the evidence relied upon. This material must be submitted within 120 days of the date of this notice. Comments and requests for a copy of the report should be addressed to the Office of the Assistant Secretary—Indian Affairs, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20245, Attention: Branch of Federal Acknowledgment.

After consideration of the written agruments and evidence rebutting the proposed findings and within 60 days after the expiration of the response period, the Assistant Secretary will publish his determination regarding the petitioner's status in the Federal Register as provided in § 83.9(h).

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 84-9830 Filed 4-11-84; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Availability of the Proposed Resource Management Plan and Final Environmental Impact Statement for the Hollister Planning Area, Bakersfield District, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: Notice is hereby given of the availability of the Environmental Impact Statement/Proposed Resource Management Plan (FEIS/RMP) for 328,378 acres of BLM-administered lands within the Hollister Planning Area, encompassing Fresno, San Benito, Monterey, Madera, Merced, Stanislaus, Santa Clara, San Joaquin, Alameda,

Contra Costa, San Mateo and Santa Cruz counties in California.

SUPPLEMENTARY INFORMATION: The issues and concerns addressed in the RMP are (1) livestock grazing; (2) oil, gas and minerals; (3) fire management; (4) recreation (including access to public lands); (5) land tenure adjustments (disposal, lease, and/or exchange of public lands); (6) sensitive, rare, threatened or endangered species; (7) soil, air and water (watershed); (8) wildlife habitat; (9) cultural resources; and (10) visual resources.

The Proposed Plan concerns multiple-use management on 328,378 acres of BLM-administered lands in 16 Management Areas.

1. *Livestock Grazing*—Limit livestock forage allocations to suitable and potentially suitable areas only. Develop seven new Allotment Management Plans; improve forage conditions through prescribed burning on 22,400 acres.

2. *Oil, Gas and Minerals*—Reduce mineral segregations to 7,749 acres in the Squaw Leap Area, Clear Creek Canyon, Pinnacles Watershed, and San Benito Mountain Natural Area. The remainder of the Planning Area (320,629 acres) would remain open to mineral entry. Designate the Panoche Hills Area (18,000 acres) as an Area of Critical Environmental Concern for protection of paleontological resources.

3. *Fire Management*—Reduce wildfire hazard by prescribing burning of 78,000 acres.

4. *Recreation*—Provide recreation opportunities on 175,000 acres including the Clear Creek-condon Peak, Ciervo Hills-Joaquin Rocks, Sierra de Salinas, Ortigalita Peak, Pinnacles and Tumey Hills areas.

5. *Land tenure*—Dispose of several hundred parcels ranging from 2 to 600 acres each and totalling 15,108 acres; consolidate major public land holdings through exchange.

6. *Sensitive, Rare, Threatened or Endangered Species*—Designate two areas of critical environmental concern: the Panoche Hills and Coalinga areas (12,500 acres) for endangered animals; and the Clear Creek Area (30,000 acreas) for sensitive and unique plants.

7. *Soil, Air and Water*—Designate the Clear Creek Area (30,000 acres) as an Area of Critical Environmental Concern for asbestos hazards, critical watershed concerns, unique soils, and hobby gem and mineral values.

8. *Wildlife Habitat*—Develop four new Habitat Management Plans for Coalinga Mineral Springs, New Idria, Williams Hill and Sierra de Salinas areas; manage for uneven-aged brushfields on 25,000 acres through prescribed burning.

9. *Cultural Resources*—Develop five new Cultural Resource Management Plans for the White Creek District, Ciervo Hills/Cantua Creek Area, Mine Mountain, Fresno River and Squaw Leap areas.

10. *Visual Resources*—Protection of visual resources would be increased in the Sierra de Salinas Area, Ventana Wilderness Viewshed and Monterey County portion of the Pinnacles Management Area.

Three alternatives are considered in addition to the Proposed Action. They are: Maximize Protection, Maximize Production and Present Management (No Action). A discussion of the affected environment is briefly summarized and the environmental consequences occurring from the Proposed Action and each alternative are documented in the FEIS.

FOR FURTHER INFORMATION CONTACT:

David E. Howell, Resource Area Manager, P.O. Box 365, Hollister, CA 95024–0365

Copies of the FEIS are available for review at the following BLM offices and public libraries:

U.S. Bureau of Land Management, Hollister Resource Area, P.O. Box 365, Hollister, CA 95024–0365, (408) 637–8183

U.S. Bureau of Land Management, Bakersfield District Office, 800 Truxtun Avenue, Bakersfield, CA 93301, (805) 861–4191

San Jose City Library, Main Branch, 180 W. San Carlos, San Jose, CA 95113, (408) 277–4000

Fresno County Library, 2420 Mariposa, Fresno, CA 93703, (209) 488–3191

King City Public Library, 212 S. Vanderhurst Avenue, King City, CA 93930, (408) 385–3677

John Steinbeck Library, 110 W. San Luis, Salinas, CA 93901, (408) 758–7311

Coalinga District Library, 305 N. 4th, Coalinga, CA 93210, (209) 935–1676

Because of printing costs, copies of the complete FEIS will be sent only to directly affected local organizations, agencies, and individuals. Detailed summaries will be sent to all persons who have expressed an interest in the Hollister planning process. Copies are available upon request to the Hollister Resource Area Manager.

DATES: All parts of this plan may be protested. Protests should be sent to the Director, Department of the Interior, Bureau of Land Management, 18th and C Streets, NW., Washington, D.C. 20240, prior to the end of the 30-day protest period on May 15, 1984. All protests should include the following information:

—The name, mailing address, telephone number, and interest of the person filing the protest.

—A statement of the issue or issues being protested.

—A statement of the part or parts being protested.

—A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the records.

—A short concise statement explaining why the BLM State Director's proposed decision (Preferred Alternative) is wrong.

The Resource Management Plan, excluding any portions under protest, shall become final at the end of the 30-day protest period, on May 15. Approval shall be withheld on any portion of the plan under protest until final action has been completed on such protest. The approval process and the final resource management plan will be published with the Record of Decision in June 1984.

Dated: April 6, 1984.

Rory E. Raschen,

Acting District Manager.

[FR Doc. 84–9829 Filed 4–11–84; 8:45 am]

BILLING CODE 4310–40–M

Colorado; Filing of Plats of Survey

April 4, 1984.

The protraction diagram of the following described lands will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective May 23, 1984.

Protraction Diagram No. 41, prepared to delineate the remaining unsurveyed public lands in T. 38 N., R. 12 W., New Mexico Principal Meridian, Colorado, was approved February 27, 1984.

This diagram was prepared to meet certain administrative needs of this Bureau.

All inquiries about these lands should be sent to the Colorado State Office, Bureau of Land Management, 1037–20th Street, Denver, Colorado 80202.

Kennety D. Witt,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 84–9823 Filed 4–11–84; 8:45 am]

BILLING CODE 4310–84–M

[C-083505, C-083512]

Planning Analysis Review; Notice of Realty Action: Colorado

April 4, 1984.

AGENCY: Bureau of Land Management, Interior.

ACTION: Review of planning analysis; notice of realty action; noncompetitive sale of public land in Summit County; cancellation of small tract classification.

SUMMARY: The following public lands have been examined and identified, through a planning analysis/environmental assessment, as suitable for disposal by direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1701, 1713) at the appraised fair market value of $337,000. This notice provides opportunity for comments on the planning analysis and proposal to sell public lands. Two classifications under the Small Tract Act of 1938 would be canceled.

Sixth Principal Meridian

T. 5 S., R. 77 W.,
Sec. 6, lots 13, 14, 18, 23, 25, 29, 30, 34, 35, 36, 38, 39 42, 48, 51, 52, and 55;
Sec. 7, lots 10, 19, 22, 28, 34, 39, 42, 47, 55, 56, 59, 60, 61, 63, 65, 67, 69, 70, 72, 75, 78, 79, 80, 86, 89, 91, 92, 102, 104, 105, 106, 107, 108, 114, 116, 117, 118, 119, 121, 132, 133, 134, 136, 137, 142, 143, 144, 145, 146, 147, 148, 149, and 150;
T. 5 S., R. 78 W.,
Sec. 1, lots 18, 19, 20, 25, 26, 43, 47, 58, 60, 62, and 67;
Sec. 12, lots 14, 22, 23, 26, 29, 30, 34, 44, 45, 49, and 53.

Containing 85.67 acres in Summit County.

A comprehensive planning analysis and environmental assessment has been completed for the public land lots described above. The results are summarized briefly below:

Issues: The analysis and resulting sale proposal is intended to resolve a long-standing problem of transferring out of Federal ownership, public land lots remaining unsold from the Bureau's Ptarmigan Small Tract Area initiated in 1956 under the Small Tract Act of 1938, since repealed by the Federal Land Polcy and Management Act. The lots are interspersed with other small homesite parcels for which title was granted by the United States in the 1960's to lessees who had complied with the development requirements of a lease with option to purchase under the Small Tract Act. The lots herein proposed for sale are generally too small to comply with county building and zoning requirements as to lot size, sanitation, and related requirements. Their principal value is in plottage to persons owning contiguous land, and to the Ptarmigan Mountain Association of Property Owners, Inc. in general for access and open space. Summit County requires some of the land for road rights-of-way and for areas for storage of snow removed from vicinity roads. The land has not been used for and is not required for any Federal purpose. The size, location and physical characteristics of the scattered small parcels makes them difficult and uneconomical to manage as public land. The lots are not suitable for management by another Federal department or agency.

Planning Criteria: An evaluation was done by a team of natural resource specialists from the fields of lands, hydrology, forestry, and environmental assessment. This team of specialists used the criteria in the Federal Land Policy and Management Act concerning land disposal and evaluated the area in terms of any significant resource values that would be affected. The ultimate criterion used was the public interest. The planning analysis assumed that documents issued to transfer title in the lots out of Federal ownership as a result of the proposed sale would be subject to all valid existing rights and reservations of record and would contain a reservation to the United States for rights-of-way for ditches and canals under the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945); all minerals would be reserved to the United States under Section 209 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1719).

Alternatives: The disposal action proposed was evaluated against the alternative of retaining the area in Federal management.

Environmental Assessment: An environmental assessment was completed which analyzed the environmental, social and economic impact of the alternatives.

Preferred Alternative/Proposed Action: Following the analysis of impacts, disposal of the lots was selected as the preferred alternative and is the proposed action. The continuation of current management would not have resolved the issues and would result in continued adverse impacts to the residents of the area. The lands met the criteria for disposal and it has been determined that it would be in the public interest to dispose of these lands.

Sale Procedures: The land is being offered to the Ptarmigan Mountain Association of Property Owners, Inc., by direct sale at the appraised fair market value. No other bids or bidders will be considered at this offering.

The designated bidder, Ptarmigan Mountain Association of Property Owners, Inc., will be required to submit payment of at least 20% of the fair market value by cash, certified or cashier check, or money order to the Bureau of Land Management, 1116 Park Avenue, Kremmling, Colorado, on approximately the sixth day of June, 1984.

The balance of the appraised fair market value will be due within 30 days, payable in the same form, at the same address. Failure to submit the remainder of the payment within 30 days of receipt of the decision notice accepting the bid deposit will result in cancellation of the sale offering and forfeiture of the deposit.

Further Information and Pubic Comment

Additional information concerning this sale offering, including the planning analysis, is available for review at the Bureau of Land Management Kremmling Resource Area Office, P.O. Box 68, 1116 Park Avenue, Kremmling, Colorado 80459.

Small Tract Classification Orders Nos. 16 and 23, published as **Federal Register** Document 56–4277 in the issue for June 1, 1956 at page 3727, and Document 57–4133 in the issue for May 22, 1957 at page 3601, respectively, are hereby canceled, effective upon issuance of patents for the lots described in paragraph two of the summary above.

Any protests to the planning analysis decision to dispose of the lands must be received within 30 days of publication of this notice in the **Federal Register.** Protests shall be to: Director, Bureau of Land Management, 18th and C Streets, NW., Washington, D.C. 20240.

For a period of 45 days from the date of publication of this notice, interested parties may submit comments on the noncompetitive sale proposal to the District Manager, Craig District Office, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

H. Robert Moore,

Acting State Director.

[FR Doc. 84-9820 Filed 4-11-84; 8:45 am]

BILLING CODE 4310-JB-M

[C-28244, C-28245]

Colorado; Notice of Proposed Continuation Colorado-Big Thompson Project

April 4, 1984.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that 4,444 acres of the withdrawals made for the Colorado-Big Thompson Project be continued for a period of 50 years. The lands will remain closed to surface entry and mining but have been and will remain open to mineral leasing.

DATE: Comments or requests for hearing should be received by July 10, 1984.

ADDRESS: Comments should be sent to the State Director, Colorado State Office, 1037 20th Street, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Richard D. Tate, 303–837–2535.

The Bureau of Reclamation propose that the existing land withdrawals listed below be continued for a period of 50 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

1. Secretarial Order of September 14, 1937, as amended, which withdrew lands for the Colorado-Big Thompson Project, Green Mountain Reservoir, is hereby proposed to be continued as to the public and national forest lands described below:

[C-28244]

Sixth Principal Meridian

Arapaho National Forest

T. 2 S., R. 79 W.,
sec. 17, S½S½SW¼.

The area described aggregates approximately 40 acres of national forest land.

Sixth Principal Meridian

T. 2 S., R. 79 W.,
Sec. 18, lots 1, 2, 3, and 5, NE¼SW¼, W½ SE¼, and W½E½SE¼;
Sec. 19, lots 1, 2, 3, and 27;
Sec. 20, lots 1, 2, 4, 7, 8, 9, 11, 12, 13 and the W½ of lot 10;
Sec. 21, lots 1, W½SE¼SW¼, and SE¼SE¼SW¼;
Sec. 28, lot 3.
T. 2 S., R. 80 W.,
Sec. 11, lots 6 and 11, N½NE¼, and SW¼NE¼;
Sec. 12, W½NW¼, NE¼SW¼, S½SW¼, *NW¼SE¼, and SW¼SE¼;
Sec. 13, NW¼NE¼, N½NW¼, and SE¼SW¼;
Sec. 14, lots 1, 2, 3, 5, 6, 7, and 8, and NW¼SW¼;
Sec. 15, NE¼, NE¼NW¼, and NE¼SE¼.

*Minerals only withdrawn, surface acquired.

The area described aggregates approximately 1,761 acres of public land.

2. Secretarial Order of March 7, 1935, as amended, which withdrew lands for the Colorado-Big Thompson Project, Lake Granby, is hereby proposed to be continued as to the public and national forest lands described below:

[C-28245]

Sixth Principal Meridian

Arapaho National Forest

T. 2 N., R. 75 W.,
Sec. 15, N½N½, N½SE¼NE¼, and N½ S½SE¼NE¼;
Sec. 17, SE¼NE¼, and S½;
Sec. 18, lots 3 and 4, S½SE¼NE¼, W½ SW¼NE¼, S½NE¼SW¼NE¼, SE¼ SW¼NE¼, E½SW¼, and SE¼;
Sec. 21, NE¼;
Sec. 22, SW¼NE¼;
Sec. 23, NW¼NE¼, SE¼NE¼, E½SW¼ NE¼, N½NW¼, SW¼NW¼, and E½ NE¼SE¼.

The area described aggregates approximately 1,363 acres of national forest land.

Sixth Principal Meridian

T. 3 N., R. 75 W.,
Sec. 29, that part of the SW¼ west of the Colorado River;
Sec. 30, lots 1, 2, 3, and 4, E½W½, and SE¼, and that part of the NE¼ south and west of the Colorado River.
Sec. 32, NW¼SW¼, and that part of the NW¼ west of the Colorado River.
T. 2 N., R. 76 W.,
Sec. 13, *W½NE¼, *NW¼, *E½SW¼, *W½SE¼, and E½SE¼.

*Minerals only withdrawn, surface acquired.

The area described aggregates approximately 1,280 acres of public lands.

The purpose of the withdrawal is to protect the Colorado-Big Thompson Project. The withdrawal segregates the public land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. The forest lands will be segregated from such forms of appropriation as may by law be made of national forest land, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or the segregative effect of the withdrawal.

All persons who wish to submit comments, suggestions, or objections in connection with this continuation may present their views in writing to the State Director, within 90 days of publication date of this notice.

Notice is hereby given that a public hearing may be afforded in connection with the proposed continuations. All interested persons who desire to be heard on this proposal must submit a written request for hearing to the State Director within 90 days of publication of this notice. Upon determination by the State Director that a public hearing should be held, a notice of the time and place will be published in the Federal Register at least 30 days prior to the date of the scheduled hearing. Public hearings are scheduled and conducted in accordance with Bureau of Land Management Manual 2351.16B.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the Federal Register. The existing withdrawals will continue until such final determination is made.

Robert D. Dinsmore,

Chief, Branch of Lands & Minerals Operations.

[FR Doc. 84-9618 Filed 4-11-84; 8:45 am]

BILLING CODE 4310-JB-M

[OR 20265]

Oregon; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that a 160-acre land withdrawal for the Vale Project continue for an additional 50 years. The land(s) would remain closed to surface entry and mining but has been and would remain open to mineral leasing.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 502–231–6905.

The Bureau of Reclamation proposes that the existing land withdrawal made by the Secretarial Order of May 2, 1933, be continued for a period of 50 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The land(s) involved is located at the Beulah Reservoir approximately 45 miles west of Vale and contains 160

acres within Section(s) 9, T. 19 S., R. 37 E., W.M., Malheur County, Oregon.

The purpose of the withdrawal is to protect the Beulah Reservoir and the Vale Reclamation Project. The withdrawal segregates the land(s) from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investgations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: April 4, 1984.

Robert E. Mollohan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-9821 Filed 4-11-84; 8:45 am]

BILLING CODE 4310-33-M

[ORE-010763]

Oregon; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that a 70-acre land withdrawal for the Vale Project continue for an additional 50 years. the land(s) would remain closed to surface entry and mining but has been and would remain open to mineral leasing.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of land Management, P.O. box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Champ C. Veughan, Jr., Oregon State Office, 503-231-6905.

The Bureau of Reclamation proposes that the exising land withdrawal made by Public Land Order No. 2661 of April 23, 1982, be continued for a period of 50 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The land(s) involved is located approximately 12 miles northwest of Vale and containes 70 acres within Section(s) 4 and 10, T. 18 S., R. 43 E., W.M., Malheur County, Oregon.

The purpose of the withdrawal is to proctect recreation and irrigation facilities at the Bully Creek Reservoir which is part of the Vale Reclamation Project. The withdrawal segregates the land(s) from operation of the public land laws generally, includng the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: April 4, 1984.

Robert E. Mollohan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-9822 Filed 4-11-84; 8:45 am]

BILLING CODE 4310-33-M

[OR 22435]

Oregon; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that a 22.50-acre land withdrawal for the Owyhee Project continue for an additional 100 years. The land(s) would remain closed to surface entry and mining but has been and would remain open to mineral leasing.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503-231-6905.

The Bureau of Reclamation proposes that the existing land withdrawal made by the Secretarial Order of November 4, 1914, be continued for a period of 100 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The land(s) involved is located approximately eight miles southwest of Nyssa and contains 22.50 acres within Section(s) 20, T. 20 S., R. 46 E., W.M., Malheur County, Oregon.

The purpose of the withdrawal is to protect the Owyhee Reclamation Project. The withdrawal segregates the land(s) from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The long determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: April 5, 1984.

Robert E. Mollohan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-9826 Filed 4-11-84; 8:45 am]

BILLING CODE 4310-33-M

[OR 20263]

Oregon; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that a 160-acre land withdrawal for the Klamath Project

continue for an additional 100 years. The land(s) would remain closed to surface entry and mining but has been and would remain open to mineral leasing.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503–231–6905.

The Bureau or Reclamation proposes that the existing land withdrawal made by the Secretarial Order of January 6, 1944, be continued for a period of 100 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The land(s) involved is located approximately eight miles south of Klamath Falls and contains 160 acres within Section(s) 15, T. 40 S., R. 9 E., W.M., Klamath County, Oregon.

The purpose of the withdrawal is to protect the Melhase-Ryan Sump which is a part of the Klamath Reclamation Project. The withdrawal segregates the land(s) from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land iand its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: April 5, 1984.

Robert E. Mollohan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-9827 Filed 4-11-84; 8:45 am]

BILLING CODE 4310-33-M

Wyoming; North Fork Well, Park County Worland BLM District, Wyoming; Extension of Public Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of the public comment period on the proposed North Fork Well, Park County, Wyoming, Draft Environmental Impact Statement (49 FR 6028; February 16, 1984).

SUMMARY: This notice extends the public comment period on the proposed North Fork Well, Draft Environmental Impact Statement (DEIS), by 15 days. The final date for receiving comments to be considered in the Final Environmental Impact Statement has been changed from April 16, 1984, to May 1, 1984. Comments regarding adequacy of the DEIS should be addressed to: John Thompson, Bureau of Land Management, P.O. Box 119, Worland, Wyoming 82401. Telephone (307) 347–6151.

Edward L. Fisk,

Associate District Manager.

[FR Doc. 84-9824 Filed 4-11-84; 8:45 am]

BILLING CODE 4310-22-M

[W-87122]

Nebraska; Termination of Segregative Effect

1. On September 6, 1983, the State of Nebraska filed application to select certain public lands in lieu of school lands that were encumbered by other rights or reservations before the State's title could attach (43 U.S.C. 851–853). Effective September 6, 1983, said lands were segregated from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or Geothermal Steam Act (49 FR, No. 61; Pages 11890–11891).

The State has withdrawn its application as to the following described lands:

Sixth Principal Meridian, Nebraska

T. 33N., R. 32W.,
Sec. 31, lots 1, 3, and 4.
Containing 118.83 acres in Cherry County.

2. At 10:00 a.m. on May 14, 1984, the land will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals and classifications, and the requirements of applicable law. All valid applications received at or prior to 10:00 a.m. on May 14, 1984, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10:00 a.m. on May 14, 1984, the land will be opened to location under the United States mining laws. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

4. The lands have been and will continue to be open to applications and offers under the mineral leasing laws and Geothermal Steam Act.

5. Inquiries concerning the lands should be addressed to the Chief, Branch of Land Resources, Bureau of Land Management, Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003.

James H. O'Connor,

Acting State Director, Wyoming.

[FR Doc 84-9815 Filed 4-11-84; 8:45 am]

BILLING CODE 4310-22-M

Salmon District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Salmon District of the Bureau of Land Management (BLM) announces a forthcoming meeting of the Salmon District Grazing Advisory Board.

DATES: The meeting will be held Thursday, May 24, and Friday, May 25, 1984.

ADDRESS: The meeting will be held at the Salmon District Office, Bureau of Land Management, Conference Room, South Highway 93, Salmon, Idaho 83467.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Pub. L. 92–463 and 94–579. The agenda for the meeting is as follows:

Thursday, May 24, 1984; 8:00 a.m. Tour the Bruno Creek road alternatives at the Cyprus Thompson Creek Mine.

Friday, May 25, 1984; 9:00 a.m. The purpose of this meeting is the discussion of the Bruno Creek road alternatives and the discussion and review of cooperative management agreements. Statements from the public will also be accepted.

The meeting is open to the public. Interested persons may make oral statements to the Council between 10:00 a.m. and 10:30 a.m. on Friday, May 25, 1984, or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager at the Salmon District Office by May 21, 1984.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting. Notification of oral statements and requests for summary minutes should be sent to: Kenneth G. Walker, District Manager, Salmon District BLM, Box 430, Salmon, Idaho 83467.

Dated: April 3, 1984.

Kenneth G. Walker,

District Manager.

[FR Doc. 84-9812 Filed 4-11-84; 8:45 am]

BILLING CODE 4310-GG-M

[W-15857]

Wyoming; Proposed Withdrawal and Opportunity for Public Meeting

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 40 acres of public land for protection of the Parting of the Ways historical site. This notice closes the land for up to 2 years from surface entry and mining location but not mineral leasing.

DATE: Written comments and requests for a public meeting should be received by July 11, 1984.

ADDRESS: Comments and meeting requests should be sent to: Wyoming State Director, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Scott Gilmer, Wyoming State Office, (307) 772-2089.

On March 7, 1984, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general public land laws, including the mining laws, subject to valid existing rights:

Sixth Principal Meridian, Wyoming

T. 26 N., R. 104 W.,
Sec. 4, E½SE¼NW¼ and W½SW¼NE¼.

The area described contains 40 acres in Sweetwater County, Wyoming.

The purpose of the proposed withdrawal is to conserve the nationally significant educational and recreational values of the Parting of the Ways historical site.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or cancelled, or the withdrawal is approved prior to that date. No licenses, permits, agreements, or discretionary land use authorization of a temporary nature will be allowed on the lands without the approval of an authorized officer of the Bureau of Land Management.

Dated: April 4, 1984.

James H. O'Connor,

Acting State Director, Wyoming.

[FR Doc. 84-9814 Filed 4-11-84; 8:45 am]

BILLING CODE 4310-22-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0605, Block 86, South Timbalier Area, Offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Dulac, Louisiana.

DATE: The subject DOCD was deemed submitted on April 5, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Emile H. Simoneaux, Jr., Mineral Management Service, Gulf of Mexico Region; Rules and Production; Plans, Platform and Pipeline section, Exploration/Development Plans Unit; Phone (504) 838-0872.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: April 6, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84-9816 Filed 4-11-84; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Cities Service Oil and Gas Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Cities Service Oil and Gas Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4065, Block 669, Matagorda Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Galveston and Ingleside, Texas.

DATE: The subject DOCD was deemed submitted on April 5, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Emile H. Simoneaux, Jr., Minerals Management Service, Gulf of Mexico Region; Rules and Production; Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838–0872.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: April 6, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84–9856 Filed 4–11–84; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; McMoRan Exploration Production Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that McMoRan Offshore Exploration and Production Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 3932, Block 527, Matagorda Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Port O'Connor, Texas.

DATE: The subject DOCD was deemed submitted on April 3, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Emile H. Simoneaux, Minerals Management Service, Gulf of Mexico Region; Rules and Production; Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838–0872.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: April 14, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84–9857 Filed 4–11–84; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Tenneco Oil Exploration and Production

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 3928, Block A–65, Mustang Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Aransas Pass, Texas.

DATE: The subject DOCD was deemed submitted on April 6, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Warren Williamson, Minerals Management Service, Gulf of Mexico Region; Rules and Production; Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838–0874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: April 6, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84–9858 Filed 4–11–84; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Santa Monica Mountains National Recreational Area Advisory Commission; Meeting

Notice is hereby given that the Santa Monica Mountains National Recreation Area Advisory Commission will hold a public meeting on Tuesday, April 24, 1984 at 7:30 p.m. in the theatre of El Camino Real High School, Woodland Hills, CA.

The topics for discussion will include: Superintendent's Status Report of the Santa Monica Mountains National Recreational Area; Recommendations on the Draft Land Protection Plan; and proposed change in the Advisory Commission Bylaws.

Persons wishing to receive further information on this meeting or who wish to submit written statements may contact the Superintendent, Santa Monica Mountains National Recreation Area, 22900 Ventura Boulevard, Suite 140, Woodland Hills, California 91364.

The minutes of the meeting will be available by May 30, 1984.

David L. Jervis,

Acting Associate Director, Planning & Development National Park Service.

[FR Doc. 84–9844 Filed 4–11–84; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30442]

Norfolk and Western Railway Co.; Exemption

On March 20, 1984, Norfolk and Western Railway Company (NW) filed a notice of exemption to relocate a line through the acquisition of a one-half interest in a bridge and access trackage owned by Consolidated Rail Corporation (Conrail), and abandonment by NW of its parallel bridge over the Buffalo River, Buffalo, Erie County, NY. This transaction is based on an agreement dated October 26, 1981.

The purpose of the proposed acquisition is to eliminate an excess rail facility and to permit NW's through trains to and from Canada to avoid congestion of its Buffalo Junction Yard. Conrail will convey a one-half interest in the bridge, access trackage thereto is to be retired from service. There are no shippers located on the access trackage to be retired.

This joint project involves the relocation of a line of railroad which does not disrupt service to shippers and is specifically exempted from the necessity of prior review and approval under 49 CFR 1180.2(d)(5).

As a condition to use of the exemption, any employees affected by acquisition of the line will be protected by the conditions set forth in *New York Dock Ry. –Control-Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Decided: April 2, 1984.

By the Commission, Heber P. Hardy, Office of Proceedings.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-9796 Filed 4-11-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-89)]

Seaboard System Railroad, Inc.—Abandonment—In Halifax and Warren Counties, NC; Findings

The Commission has issued a certificate authorizing Seaboard System Railroad, Inc. to abandon its 28.97-mile rail line extending from milepost SA-85.80 near Roanoke Rapids and milepost SA-114.77 near Norlina, in Halifax and Warren Counties, NC. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27(b).

James H. Bayne,

Acting Secretary.

[FR Doc. 84-9794 Filed 4-11-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30433]

Tuscola & Saginaw Bay Railway Company, Inc.—Exemption From 49 U.S.C. 10901

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10901, the construction and operation by Tuscola & Saginaw Bay Railway Company, Inc., of approximately 6.78 miles of rail line extending from Millington, MI to an industrial track site proposed by Kerley Industries south of Otter Lake, MI.

DATES: The exemption is effective May 14, 1984. Petitions to stay must be filed by April 23, 1984, and petitions for reconsideration must be filed by May 2, 1984.

ADDRESSES: Send petitions for reconsideration referring to Finance Docket No. 30443 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative: Mark H. Sidman, Suite 350, 1575 Eye St., N.W., Washigton, DC 20005

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InforSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: April 5, 1984.

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

James H. Bayne,

Acting Secretary.

[FR Doc. 84-9795 Filed 4-11-84; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 388 (Sub-36)]

Interstate Rail Rate Authority—Wisconsin; Decision

Decided: April 4, 1984.

A decision served February 24, 1984, extended the provisional certification of the Transportation Commission of Wisconsin (TCW) until April 27, 1984, by which time TCW was directed to refile its submission in the form of formal standards and procedures.

TCW now requests a further extension. It explains that its staff is drafting standards with the changes recommended in the decision. However, its personnel are new to their positions, have no connection with the previous pleadings and documents TCW has filed, and are not completely familiar with the Staggers Rail Act of 1980, and this Commission's regulations. TCW also states that it needs time to adopt the standards through the State rulemaking process, which involves hearings and legislative adoption.

In recognition of TCW's valid personnel problems, it will be granted an additional 60 days fo file its standards and procedures. It should be noted, however, that the proposed standards must be submitted by the extended date, regardless of any required State legislative action. Proposed standards can be reviewed even without a guarantee of their legislative approval (although we cannot unconditionally certify States prior to any necessary State legislative action).

It is ordered:

1. The Transportation Commission of Wisconsin is granted an extension for the filing of standards and procedures until June 26, 1984.

2. Comments on the submission will be due on July 26, 1984, and replies to the comments will be due on August 15, 1984.

Send an original and 15 copies of all comments referring to Ex Parte No. 388 (Sub-No. 36) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

3. This decision is effective on April 10, 1983.

By the Commission, Reese H. Taylor, Jr., Chairman.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-9797 Filed 4-11-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. First Multiple Listing Service, Inc.; Response to Public Comment on Proposed Consent Decree

Notice is hereby given that a public comment has been received with respect to the proposed consent decree in the captioned case. Public comments were invited by notice published at 48 FR 54,298 (9183). Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. section 16(b)–(h)), the response of the United States to the aforementioned comment, together with the comment itself, have been filed with the District Court and are set out in full text below.

Joseph H. Widmar,

Director of Operations Antitrust Division.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

United States of America v. *First Multiple Listing Service, Inc.*, Defendant.

Civil No. C80–1861A

Response of the United States to Public Comment

Only one comment was received by the Antitrust Division as a result of the invitation for comments, published at 48 FR 54,298 (1983), on the proposed final judgment designed to settle *United States* v. *First Multiple Listing Service, Inc.*, Civil Action No. C80–1861A (N.D. GA. 1980). That comment, dated January 27, 1984, was received from the law firm of Sumner & Hewes of Atlanta, Georgia. That comment is published in full text below. The comment, together with the Antitrust Division's response, have been filed with the District Court.

The thrust of the comment pertains to the following provisions of Section IV of the proposed judgment:

* * * * *

Defendant, whether acting unilaterally or in concert or agreement with any other person, is enjoined and restrained from:

(A) Refusing to make available or to furnish any and all services that Defendant now or hereafter makes available or furnishes to any of its members to any person who:

(1) Holds a real estate broker's license issued by the appropriate State of Georgia governmental licensing authority and is deemed by said authority to be acting as a principal broker, and whose license is deemed to be in active status by said authority;

(2) Is not the subject of any pending proceedings before the appropriate State of Georgia governmental licensing or disciplinary authority which may result in the suspension or revocation of the applicant's broker's license;

* * * * *

The comment suggests that Section IV(A)(2) of the proposed judgment would work a hardship on principal brokers against whom disciplinary poceedings are pending before the Georgia Real Estate Commission (hereinafter "GREC"). The comment suggests that it would be more appropriate to prohibit the defendant from denying services to such persons until, in essence, a final, adverse determination had been made by the GREC of a court, should judicial review of a GREC decision be sought.

When negotiating the proposed judgment, the Antitrust Division recognized that the defendant had a legitimate interest in taking appropriate steps to insure that it did not have to provide its services to principal brokers [1] who had engaged in conduct of a type which could subject them to license suspension or revocation by the GREC. The Antitrust Division considered it critical to assure that only those allegations of illegal conduct which had actually resulted in GREC proceedings could subject a principal broker to a denial of services. It was deemed appropriate to place the responsibility for determinating fitness questions on the GREC, where it belonged under Georgia law, rather than on the defendant. An alternative would have been to *require* the defendant to furnish services to principal brokers, despite the fact that proceedings were pending before the GREC which could result in license suspension or revocation. Such a rule would leave defendant powerless to exclude even those persons against whom the GREC had initiated proceedings, until all of the licensee's legal remedies had been exhausted. In reaching it decision to adopt the current formulation, the Antitrust Division recognized that the Fifth Circuit Court of Appeals, while not ruling directly on this issue, had indicated that such a rule, as presently incorporated in the proposed judgment, might be permissible. *United States* v. *Realty Multi-List, Inc.*, 659 F.2d 1351, 1381 n.63 (5th Cir. 1980).

The comment expresses concern about the point at which "proceedings", as used in Section IV(A)(2) of the proposed judgment, would be considered to be pending. The comment correctly points out that the GREC conducts regular audits of brokers' trust accounts. These audits are conducted, in most instances, as routine inquiries directed at assuring compliance with applicable requirements governing the safeguarding of client funds. Statistics referred to in the comment reflect that more than 1,300 such audits were conducted by the GREC in Fiscal Year 1983. The commentators fear the proposed judgment might be interpreted to grant the defendant the flexibility to refuse services to principal brokers whost trust accounts were being audited, as such routine audits could lead to license suspension or revocation. In drafting the proposed judgment, the Antitrust Division and the defendant did not contemplate that such audits would fall within the meaning of the word "proceedings" as used in Section IV(A)(2) of the proposed judgment. O.C.G.A. § 43–40–26 requires that a hearing be held before the GREC can suspend or revoke a license. Both the Antitrust Division and the defendant consider it necessary for a principal broker to have been served with a notice of hearing before the defendant could refuse to provide its services without violating Section IV(A)(2) of the proposed judgment.

The comment raises similar concerns about a broker who is under investigation by the GREC. As the commentators indicate, the GREC "* * * may, upon its own motion, and shall, upon the sworn written request of any person, investigate the actions of any * * * real estate broker * * *" (O.C.G.A. § 43–40–27(a)).[2] Again, both

[1] The use of the word "principal" to modify broker in Section IV(A)(2) of the proposed judgment was used to distinguish those persons holding broker's licenses from those holding associate broker's licneses under Georgia law (O.C.G.A. § 43–40–1(1)). Consequently, the term "principal broker" as used in the proposed judgment would include an individual acting as a qualifying broker for a corporation or partnership under O.C.G.A. § 43–40–10(a).

[2] We also note that the comment evidences a concern that disciplinary proceedings initiated against a single salesperson might subject a principal broker to license revocation or suspension. Upon the basis of information available to the Antitrust Division, it does not appear that the GREC has undertaken to routinely proceed against principal brokers for the activities of salespersons, absent extraordinary circumstances. We note that much of the concern of the comment should be

Continued

the Antitrust Division and the defendant contemplate that before the defendant can decline to provide its services to a principal broker under Section IV(A)(2) of the proposed judgment, the GREC's investigation must have progressed to a point where proceedings have been initiated by service of a notice of hearing on the affected person.

We remain confident that neither defendant nor its members will seek to abuse the current provisions of the proposed judgment by filing unsubstantiated complaints against principal brokers to attempt to avoid the judgment's main thrust, which is to assure such persons access to defendant's services on equitable terms. The GREC would remain the chief line of defense against such an abuse, as only it has the right to initiate proceedings which would trigger the provisions of Section IV(A)(2) of the proposed judgment. Nonetheless, such conduct on the part of defendant or others could result in further legal action by the Antitrust Division. In any event, the Court will retain jurisdiction, under Section XIII of the proposed judgment, to modify any of its provisions to deal with any unanticipated problems.

Respectfully submitted,

John R. Fitzpatrick,

Katherine A. Schlech,

Attorneys, Antitrust Division, United States Department of Justice, 1776 Peachtree St., NW., Suite 420, Atlanta, Georgia 30309. Tele: (404) 881–3820. FTS 257–3820.

Certificate of Service

This is to certify that I have this date served: "Response of the United States To Public Comment" by mailing a true and correct copy thereof to the defendant's attorney: Frank G. Smith III, Esquire, Alston & Bird, Suite 1200, C&S National Bank Building, 35 Broad Street, Atlanta, Georgia 30335, by depositing in the United States Mail a copy of same in a franked envelop requiring no postage for delivery.

This 4th day of April, 1984.

John R. Fitzpatrick,

Assistant Chief, Atlanta Office, Antitrust Division, United States Department of Justice, Suite 420, 1776 Peachtree St., N.W., Atlanta, Georgia 30309, Tele: (404) 881–3828, FTS 257–3828.

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eliminated by newly enacted amendments to O.C.G.A. § 43–40–18. Section 43–40–18 has been amended to provide, in pertinent part, as follows:

* * * * *

(b) A real estate broker or qualifying broker shall be held responsible for any licensee whose license is affiliated with him or his firm should such licensee violate any of the provisions of this chapter and its attendant rules and regulations. Whenever an affiliate licensee violates a provision of this chapter in contravention of the broker's or qualifying broker's written policies or instructions, the broker shall not be responsible for those acts of the affiliate licensee. Whenever the commission may find it necessary to sanction a broker or qualifying broker for responsibility for the actions of an affiliate licensee in violating the provisions of this chapter or its rules and regulations, the commission shall determine the severity of that sanction after considering whether the broker or qualifying broker:

(1) Had reasonable procedures in place for supervising the affiliate's actions;

(2) Knew of the violation and failed to attempt to prevent it;

(3) Participated in the violation; or

(4) Ratified the violation.

* * * * *

Sumner & Hewes,

Suite 208, The Grant Building, 44 Broad Street, Atlanta, Georgia 30303, (404) 588–9000.

January 27, 1984

Mr. Donald A. Kinkaid,

Chief, Atlanta Field Office, Antitrust Division, U.S. Department of Justice, 1776 Peachtree Street, N.W., Suite 420, Atlanta, Georgia.

Re: Proposed Consent Judgment in *U.S. v. First Multiple Listing Service, Inc.*

Dear Mr. Kinkaid: On December 1, 1983, notice was published of a proposed consent judgment in the case of *U.S. v. First Multiple Listing Service, Inc.*, Civil Action No. C80–1861A (proposed Final Judgment filed November 16, 1983, in the U.S. District Court for the Northern District of Georgia). In accordance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, any persons believing that the proposed consent judgment should be modified were invited to submit written comments to this office within sixty days.

Your commentators are a firm of Atlanta attorneys who have represented the plaintiffs in an antitrust action in which First Multiple Listing Service, Inc. ("FMLS") was a defendant, and who currently represent clients in matters before the Georgia Real Estate Commission ("GREC"). Certain aspects of the proposed consent judgment, relating to the effect upon membership status in FMLS of administrative licensing or disciplinary proceedings, are likely to result in many instances of unjustified termination of listing services to fully licensed members of the statewide community of real estate brokers and salespersons. Sumner & Hewes appreciates the opportunity to comment upon these aspects of the proposed judgment.

1. The following portion of section IV of the proposed consent judgment, beginning at page 4, is the subject of the instant commentary:

Defendant, whether acting unilaterally or in concert or agreement with any other person, is enjoined and restrained from:

(A) Refusing to make available or to furnish any and all services that Defendant now or hereafter makes available or furnishes to any of its members to any person who:

(1) Holds a real estate broker's license issued by the appropriate State of Georgia governmental licensing authority and is deemed by said authority to be acting as a principal broker, and whose license is deemed to be in active status by said authority;

(2) Is not the subject of any pending proceedings before the appropriate State of Georgia governmental licensing or disciplinary authority which may result in the suspension or revocation of the applicant's broker's license; * * *.

The bulk of this commentary will be devoted to showing that subparagraph (A)(20) of section IV (hereinafter "subparagraph (A)(2)") is not a valid criterion of membership in FMLS and should be deleted in its entirety. In addition, we urge that certain language in subparagraph (A)(1) of section IV (hereinafter "subparagraph (A)(1)") be deleted or modified to eliminate a serious potential for abuse in its application (see Part 10, *infra*).

2. Subparagraph (A)(2) refers in general terms to "any pending proceedings before the appropriate State of Georgia governmental licensing or disciplinary authority which may result in the suspension or revocation of the applicant's broker's license." The State of Georgia's administrative agency with sole, statewide authority to license real estate brokers and salesmen and to regulate their profession (including the power to suspend or revoke licenses) is the GREC. These powers are limited and must be exercised in accordance with Title 43, Chapter 40 of the Official Code of Georgia. See OCGA §§ 43–40–2(c) and 43–40–14. It follows that the "appropriate State of Georgia governmental licensing or disciplinary authority" referenced in subparagraph (A)(2) is the GREC.

3. In order to fully understand the implications of subparagraph (A)(2), it is appropriate to begin with a brief review of the licensing and disciplinary procedures of the GREC.

Any person desiring to be licensed as a real estate broker or salesperson in Georgia must submit an application to the GREC. OCGA § 43–40–7. The minimum requirements which such applicants must meet in order to be licensed are set out in OCGA §§ 43–40–6(a) (salespersons) and (b) (brokers) and 43–40–15. The GREC has the authority to suspend or revoke the license of any licensee upon grounds specified in OCGA §§ 43–40–15 and 43–40–25.

There are basically two ways in which proceedings may be initiated which can result in suspension or revocation of the license of a licensee: (1) a written complaint may be filed by a member of the general public, a fellow licensee or the GREC itself (see OCGA § 43–40–27), (2) disciplinary proceedings may arise out of routine examinations of brokers' trust accounts in accordance with OCGA § 43–40–20(c).

In the first category of cases, i.e., those initiated by complaint, the first step taken by the GREC is to refer the complaint to a GREC investigator, who investigates the complaint and makes a preliminary determination whether a violation of any rule of professional conduct has occurred. OCGA § 43–40–27(a); see generally, Rules and Regulations of the GREC, Chap. 520–4 (reprinted in the Georgia Real Estate Manual, 6th ed. (1982) (hereinafter "manual")) and

Manual, pp. 120 ff. The investigator makes a report to the Georgia Real Estate Commissioner, who may (1) require further investigation, (2) in cases involving imminent danger to the public, refer the case directly to the Attorney General (a rare procedure), (3) where no violation is apparent, close the case, or (4) refer the case to the full GREC. When a case is referred to the full GREC, the GREC may (1) order further investigation, (2) dismiss the case or (3) send the case to the Attorney General's Office for a hearing. When a case is referred to the Attorney General's Office and the Attorney General agrees that the evidence is legally sufficient to justify a hearing, he prepares a Notice of Hearing and sets a time for hearing. Many cases are settle prior to hearing by consent decrees in which both parties agree as to what violations have occurred and to the sanctions to be imposed. In the absence of such a settlement, the case proceeds according to the provisions of Georgia's Administrative Procedure Act ("APA"), OCGA Chap. 50–13. See generally OCGA §§ 50–13–13 and 50–13–17. Under the APA, the case may be heard by the full GREC or the GREC may appoint a hearing officer for that purpose. In the latter instance, the hearing officer makes an initial decision (which may include a recommendation of appropriate sanctions) which becomes final in the absence of review by the GREC within 30 days (such review may be requested by the licensee as a matter of right or made by the GREC on its own motion.) Once an agency decision becomes final, usually upon review by the full GREC, the licensee has an absolute right of review in the superior court, exercisable by filing a petition within 30 days after service of the final decision of the GREC. OCGA § 50–13–19(a) and (b); see also OCGA §§ 43–40–16(b) and 43–40–26(b). The GREC and the superior court each has authority to stay enforcement of the agency decision pending review thereof by the superior court. OCGA § 50–13–19(d).

As mentioned previously, there is a second category of disciplinary proceedings arising from the routine examination of brokers' trust accounts made pursuant to OCGA § 43–40–20(c). If, in the course of such an examination, the GREC discovers evidence of a violation of the professional rules of conduct, the GREC may initiate proceedings (following the procedure described in the previous paragraph) which can result in sanctions being imposed on the licensee.

When the GREC makes a final determination that a violation has occurred, the licensee involved may be subjected by the GREC to a variety of sanctions, ranging from a simple reprimand to permanent license revocation. See OCGA § 43–40–25(a).

4. The first observation to be drawn from the review of GREC procedures in Part 3 herein is that "pending proceedings * * * which may result in the suspension or revocation of the applicant's broker's license," as that phrase is used in subparagraph (A)(2), may be defined so broadly as to embrace GREC proceedings at their earliest stages. From the point of view of the licensee, it is fair to say that such proceedings are pending upon the filing of a complaint with the GREC, as that action may result in suspension or revocation of the licensee's license. Furthermore, as disciplinary proceedings may arise out of routine trust account examinations, the initiation of such an examination logically brings the licensee involved within the parameters of subparagraph (A)(2).

5. Next, it is apparent that the mere filing of a compliant does not indicate that a violation has occurred or that the sanctions of revocation or suspension will be forthcoming. "Nothing could be further from the truth." Manual, p. 120. The same assertion may be made, with even greater conviction, with respect to the initiation of routine trust account examinations. Indeed, the annual reports of GREC investigative activities for fiscal years (FY) 1981, 1982 and 1983 bear out these assertions with startling clarity and force. These annual statistics, which were printed in the GREC Newsletter, Volume VI, issue No. 2, October 1983 are attached here to as Exhibit A.

The statistics indicate that in FY 1983, 465 complaints were investigated by the GREC. In that year, the santions of revocation or suspension of licenses were imposed in only 49 cases, resulting in a "conviction ratio" of 10.54%.[1] For FY 1982, the ratio was 10.14%. For FY 1981, it was 6.22%. If the number of cases where suspension or revocation was imposed is compared to the total number of "pending cases" (complaints investigated plus trust account examinations), the ratio are 2.76%, 3.16% and 3.40%, respectively.

The plain import of these statistics is that in at least 9 out of 10 cases where GREC proceedings are pending against a licensee, the termination or suspension of listing services to that licensee pursuant to subparagraph (A)(2) would be wholly unjustified.

6. In considering the statistics discussed above and in computing the "conviction ratios," we have included in the numerator only those case in which the GREC imposed the sanctions of suspension or revocation.[2] Recognizing that the GREC has imposed lesser santions in other cases (see Exhibit "A"), we have nevertheless taken this approach because there is no justification for the suspension or termination of listing services to a member who continues to hold a valid broker's license.

The GREC has been endowed by statute with exclusive authority to determine the fitness of real estate licensees to practice their profession. Subparagraph (A)(2) would create the anomalous situation where the GREC would, in effect, say to the licensee who is the subject of pending proceedings, "You are entitled to practice your profession until and unless we make a final determination to the contrary," while, at the same time, FMLS could declare, "Your listing services are hereby terminated until such time as you finally are vindicated by the GREC."

The vitality and importance of listing services to the modern real estate licensee is implicitly affirmed by the efforts of the Antitrust Division in pursuing this litigation. There is no substitute service available to the broker whose FMLS services are terminated. *In addition, the termination of listing services to a broker affects not only the individual, but all associate brokers and salespersons working under that broker.* The harsh impact of such a situation is compounded further by the fact that every real estate broker (or, in the case of a corporation or partnership, qualifying broker)" * * * shall be held responsible for any licensee whose license is affiliated with him or his firm who violates any of the provisions of Georgia Code Chapter 43–40 and its attendant Rules and Regulations." GREC Rules and Regulations, *supra*, Rule 520–1–.21. To put the problem in very practical terms, a single complaint filed with the GREC against a salesperson in a major real estate agency, combined with a charge of failure to supervise on the part of the FMLS member broker, could result in immediate termination of FMLS services to the entire agency, with hundreds of licensees being adversely affected; the GREC would not even have had a chance to investigate the matter, much less hold a hearing or reach a final determination as to appropriated sanctions, if any.

Another factor militating against the termination of listing services to any licensee currently holding a valid license is that such a policy would represent an about-face from the policy applied by FMLS in the past. Attached hereto as Exhibit "B" is a chart prepared by your commentators showing twenty examples of GREC proceedings involving FMLS members which resulted in no action of any kind being taken by FMLS. Several of these cases directly involved brokers and resulted in the imposition of sanctions by the GREC. It becomes apparent that FMLS, by seeking to include subparagraph (A)(2) in the proposed consent judgment, is asking the District Court for advance approval (not unlike an advisory opinion) of a new policy which has no support in prior practice and which in itself is harsh and unjustifiable.

7. Subparagraph (A)(2) runs contrary to what is perhaps the most cherished principle in the history of American legal process: the presumption of innocence. See *U.S. v. Fleischman*, 339 U.S. 349, 363, 94 L. Ed. 906, 70 S. Ct. 739 (1950); *Bennett v. State*, 86 Ga. 401 (12 S.E. 806) (1890); see also cases collected at 29 Am. Jur. 2d, Evidence, § 225, n. 15. Administration disciplinary proceedings, such as those before the GREC, are akin to criminal proceedings. See *U.S. v. D'Auria*, 672 F.2d 1085, 1094–1095 (2d Cir. 1982) (evidence of prior disbarment admitted for limited purposes in criminal action). The GREC evidently recognizes this in its procedures, which are carefully designed to afford due process rights to licensees threatened with disciplinary action. While the presumption of innocence may not generally be invoked in conjunction with the loss of membership in a trade organization, it serves to highlight the fundamental unfairness of subparagraphs (A)(2).

[1] Some of these 49 cases may have arisen out of routine trust examinations rather than complaints; thus, the ratio may be *too high*.

[2] Note that, even where the GREC imposes these sanctions, the licensee is entitled to take an appeal to the superior court.

8. Subparagrph (A)(2) is anticompetitive, as it would result in the removal of players from the regional real estate market based upon the mere pendency of GREC proceedings.

In addition, there is nothing in the proposed consent judgment which *requires* that FMLS terminate membership to members violating subparagraph (A)(2). While this flexibility may appear to be a mitigating factor, it also allows subparagraph (A)(2) to be used selectively as a weapon against disfavored competitors. In this context, the proposed consent judgment contains no guidelines as to when subparagraph (a)(2) should be invoked and when not.

9. Based upon all of the foregoing, it is submitted that FMLS should not be allowed to terminate or suspend its services to any member/broker who currently holds a valid real estate broker's license issued by the GREC, so long as that member meets the other criteria set out in section IV, subparagraph (A)(3) *et seq.*[3] This would mean that FMLS would be authorized to terminate services based upon GREC proceedings against a member only in the following instances and at the following points in time:

(A) Where GREC proceedings are terminated by a consent decree incorporating the santions of license suspension or revocation, upon the execution of the consent decree;

(B) Where the GREC renders a final decision applying the sanctions of license suspension or revocation and not appeal therefrom is taken to the superior court, upon the earlier of (i) the surrender of the license or (ii) the expiration of the 30-day period for filing a petition under OCGA § 50–13–19(b);

(C) Where the GREC renders a final decision applying the sanctions of license suspension or revocation and an appeal is taken to the superior cort, but no stay of enforcement is granted by the GREC or the superior court as provided in OCGA § 50–13–19(d), upon the earlier of (i) the surrender of the license or (ii) the expiration of the 30-day period for filing a petition under OCGA § 50–13–19(b); or

(D) Where the GREC renders a final decision applying the sanctions of license suspension or revocation and an appeal is taken to the superior court, and, within the 30-day period for filing a petition under OCGA § 50–13–19(b), a stay of enforcement is granted by the GREC or the superior court as provided in OCGA § 50–13–19(d), upon the earlier of (i) a lifting of the stay of enforcement, or (ii) the rendering of a final judgment of the superior court affirming the suspension or revocation of the license.

It is not suggested that the criteria listed above must be incorporated specifically into the proposed consent judgment; rather, all of the above would follow from the deletion of subparagraph (A)(2) and a slight modification of subparagraph (A)(1).

[3] The criteria set forth in Paragraph (A) of section IV are incorporated into Paragraph (B) by subparagraph (B)(1). Thus, modifications of Paragraph (A) will be incorporated into Paragraph (B). Paragraph (B) sets forth criteria for the sale of shares of stock in FMLS.

10. Subparagaph (A)(1), with slight modification, should be the only discipline- or licensing-related criterion for membership in FMLS. The recommended modification would be the deletion of the final clause, ". . . and whose license is deemed to be in active status by said authority." Such modification is necessary to preclude an interpretation of the word "deemed" which would allow FMLS to terminate services to a member upon whom the GREC has imposed the sanctions of license suspension or revocation even in cases where enforcement of the sanction(s) has been stayed by the GREC or the superior court. The requirement that the license be in "active status" could be retained by further amending subparagraph (A)(1) so that, in its entirety, it would read as follows:

(1) currently holds a valid real estate broker's license issued by the appropriate State of Georgia licensing authority and is deemed by said authority to be acting as a principal broker.

Although the term "principal broker" apparently is not defined in the proposed consent judgment, the Official Code of Georgia or the GREC Rules and Regulations, your commentators take it to mean a broker (as defined in OCGA § 43–10–1(2)) or qualifying broker (see OCGA § 43–40–10) who is neither an associate broker (as defined in OCGA § 43–40–1(1)) nor a salesperson (as defined in OCGA § 43–40–1(9)). It might be useful to insert such a definition in section II of the proposed consent judgment.

In conclusion, as the Antitrust Division of the Department of Justice has recognized, the services of FMLS are vital to its members. The sudden loss of listing services can be a fatal blow to licensees who regularly rely on such services. A policy which allows FMLS to terminate its services to members based upon pending GREC proceedings before the GREC itself has had an opportunity fully to consider the matter is an extremely harsh and unfair policy.

The propsed consent judgment must be modified by deleting subparagraph (A)(2) and amending subparagraph (A)(1), so as to eliminate the unfairness inherent in the proposed membership criteria.

Respectfully submitted,

Sumner & Hewes, By: William E. Sumner, Nancy Becker Hewes.

INVESTIGATIVE ACTIVITIES

[Fiscal years 1981–fiscal year 1983]

	Fiscal year		
	1981	1982	1983
Source of complaints:			
Public	391	255	260
Licensees	87	48	46
Commission	132	197	83
Other	72	9	29
Total	682	509	418
Anonymous complaints: (Not investigated)	41	38	38
Types of complaints:			
Handling Trust Funds	18%	19%	26%
Contractual Disputes	29%	17%	23%
Legal Actions Involving Licensees	11%	17%	8%
Licensee Disputes	7%	5%	8%
Improper Applications	7%	19%	7%
Handling Contracts	4%	3%	4%
Misrepresentations	4%	3%	4%

INVESTIGATIVE ACTIVITIES—Continued

[Fiscal years 1981–fiscal year 1983]

	Fiscal year		
	1981	1982	1983
Unlicensed Operators	3%	3%	3%
Approved Schools	1%	2%	2%
Fair Housing—Solicitation	8%	2%	2%
Other Allegations Against Licensees	10%	10%	13%
Complaints investigated	675	513	465
Office and trust account examinations:			
Cases Opened	678	1,218	1,303
Cases Worked	560	1,130	1,310
Dispositions of investigative cases:			
Accepted by Attorney General for Hearings [1]	143	78	123
Letter of findings written to licensees [2]	477	737	1,053
Closed due to no violation	607	826	592
Sent to Solicitors' Office for Prosecution	3	1	7
Formal sanctions imposed: [3]			
Dismissed—No Violation	14	16	7
License Denied After Hearing	2	2	1
License Issued After Hearing	5	4	0
Guilty: No Sanction		2	
Required Education and/or Audit Reports	2	2	18
Reprimand	17	26	13
Reprimand + Education and/or Audit Reports	2	29	39
Suspension	14	21	8
Suspension + Education and/or Audit Reports	12	13	16
Revocation	16	18	25
Other	1	1	1
Total	85	134	128

[1] The Attorney General's Office reviewed twelve other cases. These cases were found to have legally insufficient basis to proceed to a hearing. The Commission ordered them either closed or a letter of findings sent to the Respondent.

[2] Letters of findings are written to licensees when only technical violations of the License Law which involve no substantive harm to the public are found in an investigation. Most of the letters of findings written evolve out of our office and trust account examinations.

[3] Six of these licensees had more than one complaint against them. Thus, a total of 141 complaints were resolved through hearings.

In addition to the written complaints cited above, the Commission's staff processes daily a number of informal complaints, grievances, and inquiries. The majority of these informal matters are usually resolved rapidly to the satisfaction of the public. Many cases should be resolved through civil action in the courts; and therefore, the complaining party is referred to an attorney for appropriate action. This same communication is given to the public where there is no licensee involved, which is the case with many complaints we receive, both written and oral, concerning individuals selling their own properties.

For several years the Commission has made extensive use of consent decrees to resolve contested cases before it. Where there is little dispute as to the facts in a case brought against a licensee and both parties agree on the sanction to be imposed, the consent decree can be used to save all parties the time and expense of a full, formal hearing. In Fiscal Years 1981, and 1982 approximately sixty percent of all cases were settled by the use of a consent decree. In Fiscal Year 1983 approximately seventy-five percent of all cases were so settled.

Exhibit "A"

EXHIBIT "B".—CHRONOLOGICAL SUMMARY 1977–82 FINAL ORDERS OF THE GEORGIA REAL ESTATE COMMISSION WITH RESPECT TO CURRENT MEMBERS OF FIRST MULTIPLE LISTING SERVICE, INC.

Current FMLS member	Charges—Under O.C.G.A. § 43-40-25 (Ga. code Ann. § 84-1421)	Disposition	Date
1. Century 21-Hagood Williams, Kathryn Wilson, agent	(21) Making a substantial misrepresentation (28) Falsification of real estate documents	Settlement and consent—reprimanded	Oct. 24, 1977.
2. Century 21-Hagood Williams, Bobby Hopper, Assoc. broker	(21) Substantial misrepresentation (28) Falsification of documents	Settlement and consent—reprimanded	Dec. 5, 1977.
3. Tom Howell & Associates, Inc., Tom Howell, principal broker.	(5) Failure to deposit funds in separate escrow account (21) Making a substantial misrepresentation (25) Unworthiness and incompetency	Settlement and consent—reprimanded	Dec. 9, 1977.
4. Tom Howell & Associates, Inc., M. A. Wyndelts, Assoc. broker.	(21) Making a substantial misrepresentation (25) Unworthiness and incompetence	Settlement and consent—reprimanded	Dec. 9, 1977.
5. Century 21-Hagood Williams, Michael D. Malley, agent	(21) Making a substantial misrepresentation (22) Acting for more than one party without disclosure to all	Hearing—reprimand	
6. Morse Realty, Jack Morse, Sr., principal broker	(5) Failure to deposit funds in separate escrow account	Admitted—settlement and consent—reprimanded.	Jan. 12, 1978.
7. Jim Royer Realty, Inc., Carl McLaughlin, assoc. broker	(5) Failure to deposit funds in a separate escrow account	Admitted—settlement and consent—reprimanded.	Mar. 3, 1978.
8. Century 21-Hagood Williams, Carl Patrick Mines, assoc. broker.	(5) Failure to deposit funds in a separate escrow account (9) Undisclosed dual capacity (21) Making a substantial misrepresentation (22) Acting for more than one party without disclosure (25) Unworthiness and incompetency	Hearing—license revoked	Mar. 28, 1978.
9. Coldwell Banker [Barton & Ludwig], Hiram Wilkinson and Jerry Skelton, assoc. brokers.	(1) Racial discrimination (25) Unworthiness and incompetence	Hearing—dismissed	May 22, 1978.
10. Harry Norman Realtors, Ann Smith, agent	(12) Offering property for sale or lease without knowledge of owner or on terms not approved by owner. (25) Unworthiness and incompetence	Admitted—settlement and consent—reprimanded.	Oct. 3, 1978.
11. Coldwell Banker [Barton & Ludwig], Helen Pryles, agent	(13) Including a party to break a contract for the purpose of substituting another. (19) Failure to deliver a contract within a reasonable time (25) Unworthiness and incompetence	Settlement and consent—dismissed	Dec. 13, 1978.
12. Coldwell Banker [Barton & Ludwig], Mack F. Chamness, agent.	(21) Making a substantial misrepresentation (25) Unworthiness and incompetence (28) Falsification of documents	Hearing—reprimand	May 16, 1979.
13. Ackerman & Co., Charles S. Ackerman, principal broker	(18) Failure to report change of address	Settlement and consent—reprimand	Sept. 27, 1979.
14. Coldwell Banker, [Barton & Ludwig], Beverly N. Gamble and Walter Rawlins, agents.	(13) Inducing a party to break a contract for the purpose of substituting another. (25) Unworthiness and incompetence	Hearing—reprimand	Jan. 2, 1980.
15. Jim Royer Realty, Inc., Elmore C. Thrash, assoc. broker	520-1-.33 Failure to enter into a written contract to purchase when offered as a condition to obtaining listing.	Hearing—reprimand	Sept. 15, 1980.
16. Jim Royer Realty, Inc. Justin E. Davis, assoc. broker	(5) Failure to deposit funds in a separate escrow account (23) Failure of associate broker to place funds in custody of principal broker.	Hearing—dismissed	Apr. 13, 1981.
17. Coldwell Banker, [Barton & Ludwig], Herbert H. Harris, agent.	(3) Failure to account for and remit money belonging to others. (27) Failure to produce documents at the request of the commission. —Failure to notify broker when purchasing property as a principal. —Failure to place funds received in custody of broker	Settlement and consent—reprimand	Sept. 30, 1981.
18. Century 21-Southeastern Realty, Ronald T. Minton, agent	(21) Making substantial misrepresentations (25) Unworthiness and incompetence (28) Falsification of documents —Numerous licensing infractions	Admitted—settlement and consent—license suspended course attendance required.	Nov. 18, 1981.
19. Jack W. Boone & Co., Robert L. Christian, agent	520-1-.11(5) Failure to return broker keys —Unfair practices generally	Hearing—license revoked	Dec. 4, 1981.
20. Jim Royer Realty, Worthington G. Hurd, agent	(13) Inducing another to break a contract for the purpose of substituting another. (25) Unworthiness and incompetence	Settlement and consent—reprimand	Apr. 16, 1982.
21. Cowart Reynolds Associates, Inc., John M. Arnold, agent	(3) Failure to account for or remit money belonging to others (4) Commingling property of principals with own (7) Attempting to represent a broker other than the one holding agent's license. (23) Failure to place funds in broker's custody	Settlement and consent—reprimand course attendance required (License suspended if not completed on schedule), Proof that funds returned to purchaser.	Dec. 6, 1982.

[FR Doc. 84-9885 Filed 4-11-84; 8:45 am]
BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Higher Education Study Group; Meeting

April 9, 1984.

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that meetings of a Study Group will be held in Washington, D.C., on Friday, April 27, 1984, June 8, 1984 and July 25, 1984 from 10:00 a.m. to 3:00 p.m. in Room M–09 in the Old Post Office Building, 1100 Pennsylvania Avenue, N.W., Washington, D.C. These meetings will be open to the public. The purpose of the meetings are to discuss the present state of and future prospects for learning in the humanities in higher education.

The Study Group is composed of educators, scholars, and other persons knowledgeable about the humanities and higher education.

Further information about these meetings can be obtained from Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities,

Washington, D.C. 20506, or call 202–786–0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 84–9671 Filed 4–11–84; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–331]

Iowa Electric Light & Power Co., Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No., DPR–49, issued to Iowa Electric Light and Power Company (the licensee), for operation of the Duane Arnold Energy Center (DAEC) located near Palo, Linn County, Iowa.

The proposed amendment would revise the provisions in the Technical Specifications to incorporate additional Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) operating limits beyond the planar average fuel exposure of 30,000 MWD/T, in accordance with the licensee's application for amendment dated March 5, 1984.

The licensee states that the exposure curves, currently in the DAEC Technical Specifications, do not specify the MAPLHGR limits for the fuel beyond the planar average exposure of 30,000 MWD/T. The licensee has determined that some of the fuel in the DAEC core has achieved planar average exposures slightly in excess of 30,000 MWD/T, and has set up interim administrative controls in MAPLHGR limits, based on the General Electric Company (GE) analysis for the fuel burnups extending beyond the 30,000 MWD/T. The licensee has requested that the Technical Specifications for DAEC be amended to incorporate the additional MAPLHGR limits calculated by GE.

Based on the GE analyses, the licensee has also determined that the changes to the MAPLHGR operating limits at higher fuel exposures when incorporated in the Technical Specifications will be consistent with the Updated Final Safety Analysis Report (UFSAR) safety limits.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has provided guidance concerning the application of standards for determining whether an amendment involves a significant hazards consideration by providing certain examples (48 FR 14870). One of the examples of actions not likely to involve a significant hazards consideration is example "(vi) relating to a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: for example, a change resulting from a refinement of a previously used calculation model or design method."

The licensee states that GE has reevaluated the design basis event for the older fuel bundles, which have exceeded the 30,000 MWD/T exposure, in accordance with the methods specified in 10 CFR 50, Appendix K. The analysis shows that the UFSAR safety limits will be maintained. In addition, the extended exposures anticipated for these fuel types are bounded by the generic analyses and therefore, create no new safety concerns with respect to the UFSAR. The anslysis shows that the MAPLHGR limits proposed in the request will maintain the margin of safety by restricting the operating domain for the fuel bundles at the higher fuel exposures. The operation of the fuel at burnups higher than 30,000 MWD/T may reduce the margin of fuel behavior safety. However, the resultant margin will still be within the limits specified in our Standard Review Plan Section 4.3, and is therefore similar to the above example (vi). The licensee, therefore, concludes and we agree that the proposed amendment does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The proposed change is viewed as a refinement of previously used operating envelope.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By May 14, 1984 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interests may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensinf Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference schedule in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be

litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respesct to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1771 H Street NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Domenic B. Vassallo: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Jack Newman, Esquire, Newman and Holtzinger, 1025 Connecticut Avenue, Washington, D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 5, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Cedar Rapids Public Library, 426 Third Avenue SE., Cedar Rapids, Iowa 52401.

Dated at Bethesda, Maryland, this 5th day of April, 1984.

For the Nuclear Regulatory Commission.

Domenic B. Vassallo,

Chief, Operating Reactors Branch #2, Division of Licensing.

[FR Doc 84-9643 Filed 4-11-84; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Procurement of Long Distance Telecommunications Services

April 2, 1984.

AGENCY: Office of Management and Budget.

ACTION: Notice concerning procurement of long distance telecommunications services.

SUMMARY: This notice is being issued to inform all affected parties of the intent of the General Services Administration and OMB to revise regulations and budgetary procedures that apply to the procurement of long distance telecommunications services by civilian Federal agencies, in light of changes in the regulatory, competitive, and technological environment for telecommunications.

FOR FURTHER INFORMATION CONTACT: Chuck Goldfarb, Special Studies Division, Economics and Government, Office of Management and Budget, Room 9201, New Executive Office Building, Washington, D.C. 20503; telephone (202) 395–7234.

SUPPLEMENTARY INFORMATION: In light of changes in the regulatory, competitive, and technological environment for telecommunications, the General Services Administration and the Office of Management and Budget have developed new procurement and budget mechanisms that will allow civilian agencies greater flexibility in obtaining long distance telephone services. These mechanisms will provide agencies with the information necessary to choose among competing vendors of long distance services based on actual market prices rather than accounting costs averaged across the entire government. They will also improve centralized budget review of Federal long distance telecommunications expenditures. The changes will be implemented with the participation of interested Federal agencies and in time for inclusion in the FY 1986 budget process. GSA will continue to operate the Federal Telecommunications Sysem. However, the current cost allocation mechanism used to charge Federal agencies for their long distance services will be modified.

The following specific actions are contemplated:

- GSA will develop and publish market determined rates for specific long distance services provided by FTS to large Federal agencies by June 15, 1984 and for all other Federal agencies by July 31, 1984.
- By June 15, 1984 GSA will prepare proposed amendments to all telecommunications procurement regulations and other relevant regulations to allow agencies to procure long distance services directly from competing vendors beginning in FY 1986. To assure continued oversight of significant telecommunications expenditures, the new regulations will require agencies to receive OMB approval of any major equipment purchase or change in service provider.
- Private vendors are encouraged to propose tariffs or in other ways prepare bids for the provision of specific long distance telephone services to

individual Federal agencies in time for agencies to make tentative decisions in their September 1984 budget submissions (for FY 1986) on telecommunications equipment needs and choice of long distance service providers.

• Any civilian agency that proposes to procure some or all of its long distance services from a provider other than GSA in FY 1986 must include in its budget submission an explicit accounting of the expected cost savings from such a move. Any related planned equipment expenditures must be included in the cost comparision. Expected cost savings for both FY 1986 and outyears must be included.

• GSA will continue its consulting function. Agencies will submit all major equipment and long distance service procurement proposals to GSA for review. GSA will provide a recommendation to OMB on such proposals within 30 days.

• An interagency task force, chaired by OMB and with a deputy from GSA, will be formed as soon as possible to help implement and monitor these changes in Federal telecommunications procurement regulations and procedures. The task force will (1) serve as a forum for the discussion of telecommunications developments and agencies' needs; (2) develop methodologies for agencies to use to forecast their telecommunications needs and to plan their telecommunications procurements; (3) assist OMB and GSA in the development of methodologies for estimating the total direct and indirect costs to the Federal government of agencies procuring their long distance telecommunications services from GSA or from alternative sources; (4) assist OMB in the development of simple procedures for the presentation and review of simple procedures for the presentation and review of agencies' telecommunications budget requests; and (5) review the aggregate impact of agencies' proposals to procure long distance services from non-GSA providers on total Federal expenditures and on the quality of telecommunications services.

• GSA wil develop by October 1, 1984, a 10-year strategic plan covering all aspects of Federal telecommunications. The plan will provide a useful framework that agencies, GSA, OMB, and the interagency task force can use in their proposals, recommendations, and budget decisions involving long distance telecommunications services.

Agencies that wish to participate in the task force should contact OMB. In order to keep the task force manageable, it will be limited in size to about ten members. Preference will be given to agencies with substantial telecommunications needs and expertise. However, an attempt will be made to include agencies with diverse needs. Agency representatives should be senior level staff with telecommunications expertise.

Constance Horner,

Associate Director for Economics and Government.

[FR Doc. 84-9819 Filed 4-11-84; 8:45 am]

BILLING CODE 3110-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Regarding the Withdrawal From Warehouse of Certain Stainless Steel Bar

AGENCY: Office of the United States Representative.

ACTION: Adjustment of the restraint level of stainless steel bar.

SUMMARY: This notice permits the withdrawal from warehouse for consumption of not more than one ton of certain stainless steel bar, presently subject to quota.

EFFECTIVE DATE: April 9, 1984.

FOR FURTHER INFORMATION CONTACT: Maria T. Springer, Office of the United States Trade Representative, (202) 395-4946.

SUPPLEMENTARY INFORMATION: Presidential Proclamation 5074 of July 19, 1983 (48 FR 33233), imposed temporary tariff increases and quantitative restrictions on certain stainless steel and alloy tool steel imported into the United States. Headnote 10(d), part 2A of the Appendix to the Tariff Schedules of the United States (TSUS) authorizes the U.S. Trade Representative to adjust the restraint level for any quota quantity during any restraint period.

Accordingly, I determine that an amount not to exceed one short ton of stainless steel bar, provided for in Tariff Schedules of the United States (TSUS) item 926.10, may be entered for consumption or withdrawn from Customs bonded warehouse, in excess of the restraint level provided for the period January 20, 1984—April 19, 1984, for the "Other" foreign country category. For purposes of this notice, stainless steel bar refers to the following:

Stainless steel bar, annealed and ground, not less than 5.27 millimeters and not more than 5.30 millimeters in diameter, 3 meters in length, containing, in addition to iron, each of the following elements by weight in the amount specified:

Carbon: not less than 0.82 percent, not more than 0.98 percent
Silicon: not more than 1.05 percent
Manganese: not more than 1.03 percent
Chromium: not less than 18.8 percent, not more than 19.2 percent
Molybdenum: not less than 0.85 percent, not more than 1.35 percent
Vanadium: not less than 0.04 percent, not more than 0.15 percent
Phosphorous: not more than 0.055 percent
Sulphur: not more than 0.035 percent

certified by the importer of record or the ultimate consignee at the time of entry for use in the manufacture of gasoline fuel injectors.

I further determine that an identical amount shall be deducted from the quota quantity allocated to the "Other" foreign country category for TSUS 926.10 for the restraint period April 20, 1984—July 19, 1984. This determination supersedes the provisions of the notice of October 20, 1983 (48 FR 48888), to the extent inconsistent herewith.

William E. Brock,

United States Trade Representative.

[FR Doc. 84-9782 Filed 4-11-84; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 23275; (70-6534)]

Central and South West Service, Inc., et. al.; Proposal to Dissolve Fuel Exploration and Development Company; To Establish Fuels Department Within Service Company; and To Establish Long-term Development Budgets

April 5, 1984.

In the matter of Central and South West Services, Inc., Central and South West Fuels, Inc., P.O. Box 66164, Dallas, Texas 75266-0164; Central Power and Light Co., P.O. Box 2121, Corpus Christi, Texas 78403; Public Service Company of Oklahoma, P.O Box 201, Tulsla, Oklahoma 74102; Southwestern Electric Power Co., P.O Box 21106, Shreveport, Louisiana 71156; West Texas Utilities; P.O. Box 841 Abilene, Texas 79604.

Central Power and Light Company ("CPL"), Public Service Company of Oklahoma ("PSO"), Southwestern Electric Power Company ("SWEPCO"), and West Texas Utilities ("WTU"), electric utility subsidiaries of Central and South West Corporation, a

registered holding company, together with Central and South West Services ("CSWS"), the service company subsidiary of CSW and with Central and South West Fuels, Inc. ("CSWF"), a fuel subsidiary of CPL, PSO, SWEPCO, and WTU have filed a post-effective amendment to the application-declaration in this proceeding with this Commission pursuant to Sections 9(a), 10, 12, and 13 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 80–95 thereunder.

By order dated August 2, 1978 (HCAR No. 20656) this Commission authorized the formation of CSWF to perform full exploration, acquisition and development activities for CP&L, PSO, SWEPCO and WTU. In 1980, the uranium exploration program was discontinued. Coal and lignite exploration activities have ceased, since CWS believes sufficient captive fuel has been obtained. Development activities have diminished to a lower level, leaving land maintenance and acquisition, administration of Walker/Grimes reserves as the major activity areas within CSWF. At the present time, neither CSWF nor any of the CSW system utility subsidiaries plan to mine any of the existing reserves. Instead, independent contract miners will be used. Finally, CSWF plans no new activities other than leaseholding and mine development.

Given the reduced scope of CSWF, it is proposed that CSWF be dissolved and its personnel and continuing activitieis be positioned as a department within CSW.

All employees of CSWF will become employees of the fuel department. For existing projects, the department will continue to develop the various fuel reserve, Fuels department activities will include mine engineering, geological analysis, acquisition and maintenance of leases and associated feasibilitiy studies. It will negotiate and administer fuel and transportation contracts; analyze fuel alternatives and market conditions; prepare rate case testimony; and match-up fuels with specific power plant designs.

Beneficial ownership of all assets and liabilities will be transferred at cost from CSWF to CSWS thus creating no gain or loss on the transfer. The $10,000 of stockholders equity of CSWF will be repaid to the stockholders in the same ratio as originally established. Any accumulated expenditures and services rendered balances at the date of transfer will also be transferred to CSWS. CSWS will hold property only as agent for the operating utility subsidiaries.

One of the CSWS allocation formulae authorized on December 20, 1982 (HCAR No. 22808) will be used for expenditures for non-project related studies which benefit various operating utility subsidiaries. It is proposed that an additional formula based on the number of leases held by participation in mining projects by each operating utility subsidiary be added to the list of allowable billing percentages for CSWS fuel department expenditures related to the lands lease maintenance. Such formula would approximate 15%, 15%, 65% and 5% for CPL, PSO, SWEPCO and WTU, respectively.

Authorization is also sought to allocate mining projects expenditures in one of two ways. First, if such expenditures were incurred for a project related to a proposed generating facility for which a preliminary or definitive ownership allocation exists among CSW system companies under the joint facilities plan or otherwise, such expenditures would be allocated in accordance with such ownership allocation. Second, with respect to projects for which no such ownership allocation has been made, authorization is sought to allocate such expenditures pursuant to an appropriate allocation method among those methods previously approved (HCAR No. 22808). With respect to this second category of projects, it is the current intention of CSWS to use the allocation formula which gives equal weighting to peak load, average number of ultimate customers and kilowatt sales to ultimate customers and allocates such expenditures among the participating companies in the ratio of each company's amounts to the sum of each item of all participating companies. In the event it is determined that a different allocation formula would be more appropriate, the use of such different formula would be implemented in conformity with Rule 01–03 of the Uniform Systems of Accounts for Mutual Service Companies and Subsidiary Service Companies.

As is contemplated by HCAR No. 22808, expenditures for materials, outside services, land acquisition and land maintenance in respect of mining projects will be made from the CSWS bank account(s) disignated for payment of such project expenditures. Project disursement will be made from individual project accounts or from one or more accounts which have been established for project payments. In any event, funding of the accounts will be accomplished based on the applicable allocation formula for each project. Each participating company will reimburse the CSWS account(s) for their pro rata share through the CSW Money Pool. Disbursements from the project account(s) will be excluded from the CSWS accounting system; the charges will be accumulated in a series of work order accounts and communicated monthly to the participating companies for direct entry to their accounting systems. Such disbursements will be recorded by the participating companies in the appropriate FERC accounts. Similar procedures will be utilized after the exploration and development stage when mining projects become operational and production-type payments such as royalties and contract mining payments, are required.

As projects are developed it is possible that the ownership allocation may be changed in certain circumstances, such as:

(1) Projects for facilities for which there has been no ownership allocation within the CSW system may be added to the joint facilities plan with specific ownership allocations.

(2) Ownership allocations of projects encompassed by the joint facilities plan may be altered as to particular operating companies within the CSW system.

(3) Portions of facilities (and corresponding shares of mining projects) may be transferred to unaffiliated third parties.

In each of these circumstances, prospective expenditures for a project would, from the date of any such event, be based upon the then appropriate ownership allocation. Disbursements for expenditures made prior to such event would be reallocated among the participating companies as follows:

(1) In the event of a disposition to an unaffiliated third party, the proceeds would be paid over to the participating companies in proportion to the percentage of such project being disposed of by each participant.

(2) In the event of an ownership reallocation among CSW system participants, to the extent possible, future expenditures would be borne entirely pro rata by those participants whose interests are increasing as a result of such reallocation until aggregate total expenditures by each participant in the project reflect the revised allocation. Thereafter, each participant would be responsible for additional expenditures in accordance with the revised allocation.

(3) To the extent the procedures outlined in (2) above would not allow ultimate equalization in proportion to the ownership reallocation, either because a particular participant drops out of the project entirely or because future total expenditures are too small to allow equalization, then lump sum

payments between participants would be made to achieve equalization.

In the event of any such change in allocation, the respective participating companies will make appropriate adjusting entries to the appropriate FERC accounts.

It is further proposed that total project future budget authorization be given for the existing fuel projects. These requests include all development activities until each project becomes commercially mined.

The CSWS fuel deparatment will be involved in the South Hallsville lignite project on behalf of and in conjunction with SWEPCO. SWEPCO owns approximately 94% of the tonnage and 96% of the acreage at the South Hallsville (Texas) project. Northeast Texas Electric Corporative, a non-affiliate, owns the remaining 6% and 4%, respectively. SWEPCO's portion of the expenditures related to the remaining lignite development activities will be $5,595,000 for 1984 and 1985 bringing the project to date total at commercial operation to $26,191,000. The South Hallsville lignite reserves will be mined to fuel SWEPCO's Pirkey #1 generating facility. Pirkey #1 is a 640 MW unit with SWEPCO's portion being 565 MW and at a cost of approximately $444,000,000, and planned for commerical operation in February 1985.

The CSWS fuel department will also help develop on behalf of SWEPCO a 50%–50% joint venture with Central Louisiana Electric Company, a non-affiliate. The Dolet Hills (Louisiana) lignite project will begin commercial operation in early 1986. SWEPCO's portion of the expenditures related to these activities for the period 1984 through 1986 will be $2,275,000 bringing the project costs at commercial operation to $13,096,000. The Dolet Hills lignite reserves will be mined to fuel the 50%–50% Dolet Hills #1 generating facility. Dolet Hills Unit #1 is due to go in service in February 1986. This will be a 640 MW unit with SWEPCO's 320 MW share costing approximately $244,000,000.

Most of the activity relative to CSW system joint venture lignite projects will occur at the Walker/Grimes project. Total dollars to be expended for all development activities from January 1, 1984 to commercial operation in 1993 will total $79,146,000 bringing the project to date expenditures at that time to $97,150,000 for the Walker/Grimes project. The Walker/Grimes lignite reserves will be used to fuel the Walker County Unit #1 CSW system joint facility. This generating unit which is scheduled for a 1993 in service date, will have a 640 MW capacity, and the plant will cost approximately $652,000,000.

Land and lignite lease maintenance will be the major activity in the foreseeable future for Karnack/Woodland/Smithland, a CSW system joint venture project. CSWS requires $3,785,000 to continue expenditures on the project through December 31, 1993. This will bring the project to date expenditures at that time to $10,525,000.

The Cass/Morris project, another CSW system joint venture project, will incur expenditures for lignite lease maintenance over the next ten years of $1,290,000, bringing the project to date expenditures at December 31, 1993 to $2,608,000.

CSWS requests authorization to continue land/lease maintenance payments on the Coastal States lignite project until disposal is consummated.

The New Castle/Crystal Falls coal project is a CSW system joint venture project. Expenditures for coal lease maintenance, preliminary fuel quality analysis and project evaluation for the next ten years will amount to $3,117,000 bringing the project to date expenditures to $7,229,000 at December 31, 1993.

Except for projected expenditures by CPL in 1984 and 1985, CSWS believes that the oil and gas activities are leveling out and that oil and gas exploration is winding down. Oil and gas activities will be limited to development rather than exploration. CSWS requests authorization to continue the development expenditures needed in all current oil and gas projects. After 1983, CLP's plans are to cease acquisition of oil and gas leases and concentrate drilling on existing holdings. Exploration wells will be drilled during 1984 on five leases that will expire later in the year. During 1985, one exploration well and two development wells will be drilled on existing leases and beginning in 1986, oil and gas activities will be directed toward development of existing leases, thus, phasing down the oil and gas activities at CPL. Forecasted expenditures for all oil and gas projects for the six year period beginning January 1, 1984 are $26,364,000.

The amended application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by April 27, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the amended application-declaration, as filed or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-9801 Filed 4-11-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13868; (812-5739)]

Equitable Variable Life Insurance Co. et al.; Application for an Order of Exemption

April 5, 1984.

Notice is hereby given that Equitable Variable Life Insurance Company ("EVLICO"), 1285 Avenue of the Americas, New York, New York 10019, Separate Accounts I and II of Equitable Variable Life Insurance Company (the "Accounts"), open-end management investment companies registered under the Investment Company Act of 1940 (the "Act"), and the Equitable Life Assurance Society of the United States (collectively, "Applicants") filed an application on December 30, 1983, and an amendment thereto on April 4, 1984, pursuant to Section 6(c) of the Act for an order of exemption from the provisions of Sections 2(a)(32), 2(a)(35), 18(i), 22(c), 22(d), 27(a)(1), 27(a)(2), 27(a)(3), 27(c)(1), 27(d), and 27(f) of the Act and Rules 6e–2(b)(1), 6e–2(b)(10), 6e–2(b)(12), 6e–2(b)(13), 6e–2(c), 22c–1, and 27f–1 thereunder in connection with the issuance and funding by EVLICO of a new scheduled premium variable life insurance policy ("New Policy"). All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and are referred to the Act and Rules thereunder for a statement of the relevant statutory provisions.

Applicants presently are offering certain scheduled premium variable life insurance policies which are subject to a front-end sales load in reliance on Rule 6e–2 under the Act. Applicants now propose to offer the New Policy, with a front-end sales load of 5% deducted from each purchase payment and, in

addition, with cash surrender values that are structured so as to constitute the imposition of a contingent deferred sales load ("CDSL"). The CDSL for surrenders in the first year is 22½% of the basic annual purchase payment. In years thereafter, the CDSL rate declines as follows: year 2—15%; year 3—12½%; year 4—11%; year 5—10%; year 6—9%; year 7—8% year—8—6%/; year 9—3%; year 10—and after—0%. Thus, for a surrender in the first year, Applicants propose to deduct a maximum aggregate (front-end plus CDSL) sales load of 27½% of purchase payments. Applicants state that the maximum aggregate sales load which may be imposed will not exceed 9% of purchase payments to be made under the New Policy during the period equal to the lesser of 20 years or the life expectancy of the insured based on either the 1958 Commissioner Standard Ordinary Mortality (CSO) Table, the use of which Rule 6e–2(b)(13)(i) specifies, or the 1980 CSO Table, which Applicants propose to use. Applicants also represent that regardless of the date the New Policy may be surrendered, the aggregate sales load deducted will always be less than the total dollar amount of front-end sales load that could have been deducted in reliance on Rule 6e–2.

In establishing that the requested relief meets the standards of Section 6(c) of the Act, Applicants assert, *inter alia*, the following general legal and policy grounds: (1) both the language and history of Rule 6e–2 indicate that the Commission anticipated variable life insurance policies with CDSLs; (2) the New Policy represents an evolutionary development in variable life policies which generally is beneficial to the public; (3) compared to policies relying solely on front-end sales loads, the New Policy will benefit the public because it will result in the potential for higher cash values and death benefits beyond the early durations, it will permit a higher percentage of premiums to go to work for policyholders, and it will reduce the degree to which persisting policyholders must be assessed for losses caused by early surrenders. In connection with the latter assertion, Applicants represent that the sales load structure is designed so that surrendering policyholders will not subsidize persisting policyholders. In addition, Applicants represent that they will inform registered representatives selling the New Policy of applicable suitability requirements with respect thereto and that they will, upon request, provide the Commission with statistical information, compiled in the normal course of business, regarding New Policy lapses during early policy years.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 26, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his or her interest, the reasons for his or her request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request shall be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–9802 Filed 4–11–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 13865; (812–5799)]

First Midwest Capital Corp.; Application

April 4, 1984.

Notice is hereby given that First Midwest Capital Corporation ("Applicant"), 1010 Plymouth Building, 12 South Sixth Street, Minneapolis, Minnesota 55402, a wholly-owned subsidiary of a publicly held registered investment company and a licensee under the Small Business Investment Act of 1958, filed an Application on March 13, 1984, pursuant to Section 17(d) of the Investment Company Act of 1940 ("Act") and Rule 17d–1 thereunder, requesting an order to permit certain follow-on investments to be made in affiliated portfolio companies together with similar investments by other affiliated persons of those companies. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the complete text of pertinent provisions of the Act.

Applicant states that it is engaged in the business of providing long-term equity funding to eligible small businesses to assist their growth and development, and that its policy is to seek capital gains from the growth of the companies in which it has invested. Applicant further states that the Anderson Cornelius Company ("Anderson Cornelius") is a Minnesota corporation that manufactures and sells a computerized integrated energy management, security and process control system. According to the application, Anderson Cornelius has had three rounds of venture capital financing and Applicant has invested in each of these rounds. Applicant states that as a result of these financings it has acquired greater than five percent of the voting securities of Anderson Cornelius and that certain other of the participating venture capital investors have done likewise, making them affiliated persons of an affiliated person (Anderson Cornelius) of the Applicant under Section 2(a)(3) of the Act.

According to the application, Anderson Cornelius proposes to conduct a fourth round of financing in 1984 to raise approximately $1,000,000 to $1,500,000. It is presently anticipated that the financing will be by means of the sale of preferred or common stock in a private offering and that the present venture capital investors will purchase one-third to one-half of the offering. Of this amount, Applicant states that it anticipates purchasing, subject to approval of this application, between $50,000 and $100,000 of the securities being offered, depending on the participation of the other venture capital stockholders. Applicant further states that until the offering price per share and the number of shares purchased are determined, the extent to which the offering will reduce its present 7.53 percent of voting shares cannot be precisely determined, but that the 1984 financing may reduce Applicant's voting power to less than five percent of Anderson Cornelius's voting shares. Applicant represents that it will participate in the new financing only on the basis that its investment is on the same terms and conditions, and at the same price per unit, as the investments of all other investors in the financing. Applicant states that it believes that since Anderson Cornelius appears to be progressing well, participation in the proposed new financing has potential for producing a substantial return on the additional investment.

Applicant states that its contemplated participation in the proposed financing of Anderson Cornelius could bring its total investment to between $350,000 and $400,000, which would exceed the old Small Business Administration ("SBA") investment limit on small business investment companies ("SBICs") like Applicant of 20 percent of their paid-in capital plus surplus.

Applicant states, however, that the SBA has amended its rule governing maximum investments by SBICs to permit use of net unrealized gains in computing a higher investment limit and that, under these new rules, Applicant's investment limit is over $750,000.

Applicant asserts that its proposed investment in Anderson Cornelius is exempt from Section 17(a) of the Act under Rule 17a–6, and would be exempt under Rule 17d–1(d)(5) from Section 17(d) of the Act and Rule 17d–1(a) except for the fact that Applicant proposes to commit more than 20 percent of its paid-in-capital and surplus to the investment. Applicant states that it recently filed with the Commission an application, similar to this application, to permit a follow-on investment in BetaCom Corporation in reliance on the new investment limitations for SBICs. Applicant anticipates it will also seek to make further follow-on investments in the future which are permissible under the new SBA rule, and which would be permissible under Rule 17d–1, except for the fact that Rule 17d–1(d)(5)(ii) incorporates the old SBA investment limit of 20 percent of paid-in capital and surplus. Applicant asserts that it is burdensome and expensive for it to submit separate applications under Rule 17d–1 for each new follow-on investment that it wishes to make in reliance on the new SBA rule concerning investment limits, and that there is no public policy served by such multiple applications to the Commission so long as Applicant adheres to the undertakings stated below. Accordingly, Applicant requests that the Commission issue an order granting permission (i) for Applicant to enter into the proposed transaction with Anderson Cornelius and (ii) for Applicant to enter into future follow-on investment transactions without making application to the Commission, subject to the following conditions:

(a) All follow-on investments made by Applicant which otherwise would be prohibited by Section 17(d) will comply with all the provisions of Rule 17d–1(d)(5), except the provision of Rule 17d–1(d)(5)(ii) applying an investment limit of 20 percent of paid-in capital and surplus;

(b) All follow-on investments by Applicant will comply with the SBA's investment limitations; and

(c) All follow-on investments by Applicant will be at the same unit price, and under the same material terms and conditions, as the investments of any other venture capital investors who participate in the offering in which Applicant makes the follow-on investment.

Applicant states that its proposed participation in the Anderson Cornelius follow-on financing, and its anticipated participation in follow-on investments in other portfolio companies, has potential for producing substantial profits. Applicant states that follow-on financings often have only somewhat reduced opportunities for gain but much reduced risks of loss compared to initial financings. One of the reasons that Applicant and other venture capital investors will assume the risks of early round financings is that participation in early rounds generally brings the formal or informal right to participate in private follow-on financings. Moreover, many venture capital investments end in failures or results that provide no good opportunity for attractive follow-on investments. Applicant states that these factors make it important for venture capital investors to use the benefit of being an early round investor to act on those opportunities for follow-on investments the seem attractive.

According to the application, when investment syndicates are being formed to invest in especially attractive venture capital opportunities, one of the factors that influence whether a particular investor is admitted to the syndicate is whether it is perceived as having the capacity and freedom to make appropriate follow-on investments. Applicant believes that it would harm its ability to compete for investment opportunities in the future if it were unable to participate in the proposed Anderson Cornelius financing because of regulatory restrictions.

Applicant asserts that the proposed transaction involving Anderson Cornelius, and other future transactions subject to the undertakings stated above, are consistent with the general purposes of the Act. According to the Applicant, the purpose of the Act is to prevent the operation of investment companies in the interest of affiliated persons rather than in the interest of the security holders, and Section 17 is intended to prevent abuses and unfair transactions by insiders of investment companies. Applicant contends that the provisions of Rule 17d-1 which remain applicable to Applicant, coupled with the undertakings given, will prevent any abuse or unfairness by insiders.

Applicant asserts that Rule 17d-1(d)(5)(ii) implicitly recognizes that a small business investment company such as Applicant which is subject to the Act is subject to dual regulation. Applicant further asserts that it is not accidental that when clause (ii) was adopted it coincided with the SBA's then existing rule as to investment limits. Applicant states that the SBA has seen fit to change its investment limit rule to reflect the fact that unrealized gains should be reflected in the size limit on an SBIC's investments. Given this change, Applicant argues, the Commission should avoid inconsistencies in the dual regulation of the Applicant and grant the requested relief.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 27, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons

Secretary.

[FR Doc. 84-9798 Filed 4-11-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20823; (SR-Amex-84]

American Stock Exchange, Inc.; Order Approving Proposed Rule Change

April 14, 1984.

The American Stock Exchange, Inc. ("Amex") 86 Trinity Place, New York, New York 10006, submitted on February 14, 1984, a proposed rule change under Section 19(b)(2) of the Securities Exchange Act of 1934 and Rule 19b–4 thereunder,[1] to amend the interpretation of Amex Rule 950(d) to permit options specialists to use fully the "spread priority rule" in connection with spread, straddle, and combination orders (collectively referred to as "spread transactions" or "spread orders"). The spread priority rule permits certain Exchange member firms to give limited priority to spread orders by executing one leg of a spread order at the established bid or offer (ahead of orders at the same price for individual series

[1] Notice and the terms of substance of the proposed rule change was published in Securities Exchange Act Release No. 20695 (February 23, 1984), 49 FR 7680 (March 1, 1984).

trades) if, simultaneously, the other leg is executed at a price better than the established bid or offer for such other series. The spread priority rule requires that one member executes both legs of the spread order with one other exchange member on the other side of the trade.

Currently, specialists are not authorized to use the spread priority rule if there is an order on the specialist's book for the price at which one leg of a spread transaction is to be executed.[2] If there is no limit order on the specialist's book for the price of either leg of a spread transaction, however, the specialist presently may execute such transaction. All other regular members of the Exchange may use the spread priority rule to effect spread orders without restriction.[3]

The proposed rule change would authorize specialists to use the spread priority rule even if the price of one leg of the spread is equal to the established bid or offer (in the trading crowd or on the specialist's book), as long as the conditions imposed by the spread priority rule are met. As with all other regular members of the Exchange, the specialists must execute both legs of the spread order with a single member on the other side of the trade and execute one leg of the spread order at a price better than the established bid or offer for that options series.

Amex asserts that the spread priority rule should be available to options specialists because a specialist's execution of spread orders, in a dealer capacity, is not inconsistent with its agency functions (*i.e.*, to make markets in stock options).[4] Amex contends that, since a spread order requires the simultaneous execution at a net price of trades in two different options series, a spread order is not comparable to an order for an individual options series. Amex also maintains that the execution of one leg of the spread is a precondition to the customer's willingness to have the other leg of the spread executed; that is, neither leg of the spread would be traded were execution of the entire order impeded. Therefore, when one leg of the spread is executed at the best bid or offer on the specialist's book, it should not be viewed as supplanting the individual options series order on the book at that price.

In addition, Amex indicates in its filing that the single member *contra*-party requirement should help assure that use of the spread priority rule by specialists will not interfere with the regular options market. Thus, it asserts that the granting of limited priority with respect to one leg of a spread order does not result in shutting out orders on the specialist book or in the trading crowd since such orders would not have been executed anyway.

Amex further states that it is particularly important for specialists to be able to use fully the spread priority rule since expanded use of the spread priority rule by specialists should not only facilitate the execution of spread, straddle, and combination orders but enhance spread market depth and liquidity. In addition, the restrictions inherent in the spread priority rule should prevent any adverse affect on the market for individual options series trades.

The Amex proposal does not create an additional exception to the general rule that orders place on the specialist's limit order book have priority over all other orders at the same price. As Amex notes, all Amex members other than options specialists currently are able to execute spread orders ahead of the book on one leg of the spread, under the conditions of the rule. The Amex rule merely has the effect of permitting an additional class of members—the options specialists—to execute such orders. Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and, in particular, Section 6(b)(5), which provides, in part, that the rules of the Exchange be designed to promote just and equitable principles of trade.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-9799 Filed 4-11-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 10822, (SR-Phlx-84-1)]

Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

April 4, 1984.

The Philadelphia Stock Exchange, Inc. ("Phlx") 1900 Market Street, Philadelphia, PA 19103, submitted on February 8, 1984, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, that would permit Phlx to trade options on the French franc ("FF"). Under the proposed rule change, the FF contract will be traded pursuant to Phlx rules which govern the trading of foreign currency options.

In the order approving Phlx's rules for listing and trading standardized options on foreign currencies,[1] the Commission stated that with respect to matters of contract design and delivery specifications, so long as the Commission has no regulatory concerns, it is not inclined to substitute its judgment for the business judgment of the self-regulatory organization. The Commission, however, does maintain a regulatory interest in certain areas concerning the trading of options on foreign currencies including the qualification of underlying foreign currencies for options trading, the establishment of position and exercise limits and margin requirements. In reviewing the proposed options contracts on the FF, the Commission was interested in the determining whether, because of exchange rate instability, options on the FF would raise regulatory concerns, particularly in the margin area, different than the five foreign currency options currently traded on Phlx.[2] A study comparing the spot price volatility of the French france to the Swiss franc conducted by the Bank of America on behalf of Phlx

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[2] Amex Rule 155 requires a specialist to give precedence to stock orders entrusted to him/her as agent before the specialist buys or sells the same stock at the same price, as principal. Amex Rule 950 made this rule applicable to options upon the commencement of options trading. When Amex introduced spread orders and the spread priority rule, Rule 155 was interpreted to limit specialist use of the spread priority rule. At that times, the Exchange was unfamiliar with the various attributes of spread orders. It therefore took a restrictive view of their execution by specialists.

[3] A regular member of the Exchange holding a spread order and an order for an individual series at a price equal to one leg of that spread may use the spread priority rule to execute the spread order ahead of the other order.

[4] Amex states in its rule filing that this new interpretation of Rule 950(d) would not eliminate the specialist's obligation to give precedence to book orders under Rule 155, but would recognize the fact that spread, straddle and combination orders are unique orders, the execution of which does not adversely affect orders on the specialist's book and thus is not in conflict with the specialist's agency responsibilities.

[1] *See* Securities Exchange Act Release No. 19133, October 14, 1982; 47 FR 46946, October 21, 1982, approving Phlx's proposed rules for the trading of foreign currency options with the exception of rules pertaining to margin. Margin rules on foreign currency options were approved in Securities Exchange Act Release No. 19313, December 8, 1982; 47 FR 56591, December 17, 1982.

[2] Phlx currently trades options contracts on the British pound, the German mark, the Swiss franc, the Canadian dollar and the Japanese yen.

indicates that, for the last three calendar years (1981–1983), the FF was slightly less volatile that the Swiss franc.[3] Based upon this information, the Commission has concluded that the margin requirements and other rules currently in effect for the foreign currency options now traded on Phlx are adequate for options on the FF.

Notice of the proposed rule change, together with the terms of substance of the proposed rule change, was given by the issuance of a Commission Release (Securities Exchange Act Release No. 20696, February 23, 1984) and by publication in the **Federal Register** (49 FR 7685, March 1, 1984). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-9800 Filed 4-11-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20832; SR-Amex-84-6]

American Stock Exchange, Inc.; Filing and Order Granting Accelerated Approval of Proposed Rule Change

April 6, 1984.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 28, 1984, the American Stock Exchange, Inc. ("Amex") 86 Trinity Place, New York, NY 10006, filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The rule change would permit open trading to continue until 4:00 p.m. on the Friday prior to expiration in expiring series of stock options. The open trading would be followed by a closing rotation. Under existing rules, open trading in expiring stock options stops at 3:00 p.m. on the Friday prior to expiration, at which time there is a closing rotation. Amex states that the purpose of the proposed rule change is to take account of market developments. Specifically, member firms have indicated that they no longer need the additional hour for back office processing. In addition, Amex states that the proposed rule change will be more consistent with the cut-off time established for expiring index options which continue to trade until 4:10 p.m.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Reference should be made to File No. SR-Amex-84-6.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available at the principal office of the above-mentioned self-regulatory organization.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national secutities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in that insofar as the proposal would alter the existing Amex rule, it is substantially the same as the Chicago Board Options Exchange, Incorporated ("CBOE") rule recently published for public comment, considered and approved by the Commission.[1] In light of this fact, and to reduce the potential for confusion, accelerated approval is appropriate.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-9894 Filed 4-11-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-20820; File No. SR-MSRB-84-7]

Self-Regulatory Organizations; Proposed Rule Changes by Municipal Securities Rulemaking Board Relating to Uniform Practice

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 16, 1984, the Municipal Securities Rulemaking Board filed with the Securities and Exchange Commission the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

(a) The Municipal Securities Rulemaking Board ("Board") is filing herewith certain amendments to rule G-12 on uniform practice. The text of the proposed rule changes is as follows:

Rule G-12. Uniform Practice [1]

(a) through (d) No change.

(e) Delivery of Securities. The following provisions shall, unless otherwise agreed by the parties, govern the delivery of securities:

(i) through (v) No change.

(vi) *Form of Securities.*

(A) Bearer and Registered Form. Delivery of securities which are issuable in both bearer and registered form shall be in bearer form unless otherwise agreed by the parties; *provided, however, that delivery of securities which are required to be in registered form in order for interest thereon to be exempt from Federal income taxation shall be in registered form.*

(B) Book-Entry Form. Notwithstanding the other provisions of

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[3] *See* letter dated March 5, 1984, from Robert B. Gilmore, Senior Vice President, Phlx, to Richard Chase, Assistant Director, Division of Market Regulation, SEC.

[1] *See* CBOE Rule 5.5. The Commission approved proposed changes to this rule in File No. SR-CBOE-84-4, Securities Exchange Act Release No. 20779, March 21, 1984.

[1] Italics indicate new language.

this section (e), with respect to a security which may be transferred only by bookkeeping entry, without the physical delivery of securities certificates, on books maintained for this purpose by a person who is not a registered clearing agent, a delivery of such security shall be made only by a book-entry transfer of the ownership of the security to the purchasing dealer or a person designated by the purchasing dealer.

(vii) through (xvi) No change. (f) through (l) No change.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Changes

A. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Changes

(a) The Board has become aware that certain municipal securities are currently being traded and sold in the secondary market which are available only in book-entry form through a system managed by a book-entry agent (generally a commercial bank) which is not registered as a clearing agency. Since inter-dealer deliveries of such securities are subject to the "good delivery" provisions of section (e) of Board rule G–12, the Board believes it appropriate to amend section (e) to include a provision setting forth such standards.

The proposed rule changes include in section (e) of the rule a standard for deliveries of such securities between dealers. The proposed rule changes require that a dealer making delivery of such securities must do so by arranging to have the securities transferred into the name of the purchasing dealer (or into such name as the purchasing dealer may direct) on the records maintained for this purpose by the book-entry agent for the securities. The delivering dealer therefore would be responsible, under this standard, for completing the book-entry transfer of the securities as a part of the transaction settlement process. The Board believes that such a standard is necessary to ensure the integrity of the clearance and settlement process and to establish appropriate safeguards against inadvertent or intentional misuse of this type of book-entry system.

The proposed rule changes also revise the current provisions of the rule relating to deliveries of securities in registered form to reflect the existing requirements under the Internal Revenue Code that most long-term municipal securities be issued solely in registered form.

(b) The proposed rule changes have been adopted pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended, which requires and empowers the Board to adopt rules designed to prevent fraudulent and manipulative acts and practices, * * * to foster cooperation and coordination with persons engaged in * * * clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, * * * and, in general, to protect investors and the public interest * * *

The proposed rule changes are also consistent with the purposes of section 17A of the Act.

The Board believes that the proposed rule changes will facilitate the clearance and settlement of these types of book-entry form securities by establishing a definitive procedure for the settlement of transactions in these securities and eliminating uncertainty concerning the proper method of delivery on such transactions. The proposed rule changes will also act to prevent fraudulent practices and promote the public interest by providing adequate safeguards to ensure against improper use of the book-entry transfer process for these securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board believes that the proposed rule changes will not have any impact on competition not necessary or appropriate in furtherance of the purposes of the Act. The Board does not believe that the proposed rule changes will have any impact on competition among municipal securities brokers and dealers, inasmuch as the proposed rule changes apply equally to all such persons and set forth technical provisions relating to the clearance of transactions among such persons. The Board believes that the proposed rule changes may have some impact on certain non-registered book-entry transfer agents. The Board is of the view, however, that such impact, to the extent it occurs, will be a result of the less efficient systems used by certain non-registered agents for the transmission of instructions for and acknowledgment of the completion of book-entry transfers. Any such impact, in the Board's view, will be significantly outweighed by the safeguards to the book-entry transfer process provided under the proposed rule changes.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants, or Others

On August 5, 1983 the Board released in exposure draft form an alternative version of the proposed rule changes relating to delivery of book-entry form securities not made through a registered securities depository which would have permitted deliveries of these securities to be accomplished by presentation by the selling dealer of the documentation necessary to accomplish the transfer, if such documentation were endorsed by the book-entry agent with a statement confirming that the selling party was reflected on the agent's records as the owner of the securities being sold. Five letters of comment were received on the exposure draft. Certain of the comment letters expressed modified support for the exposure draft proposal. Others letters opposed the proposal, stressing the inadequate safeguards provided under the proposal for the book-entry transfer process for these securities.

After consideration of the comments, the Board has concluded that the delivery standard reflected in the August 1983 draft amendment was inappropriately permissive, and improperly placed on the purchasing dealer the burden of requiring use of a more secure delivery procedure in circumstances where the purchasing dealer deemed this necessary. The Board has concluded that a delivery standard such as that set forth in the August 1983 draft amendment does not provide in all cases the necessry safeguards for the clearance process, and that purchasing dealers should not be obliged under the Board's rules to forego such safeguards. The Board notes that, under the general provisions of rule G–12(e), the parties to a particular interdealer transaction may agree that delivery by means of the necessary documentation will be acceptable. The Board is of the view, however, that the burden of reaching an agreement at the time of trade should be placed on persons seeking to use this more permisssive procedure, and that its rules should not compel the purchasing dealer to accept a delivery made by this procedure.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such

longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 4, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-9083 Filed 4-11-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20829; File No. SR-NSCC-84-2]

National Securities Clearing Corporation; Order Approving Proposed Rule Change

April 6, 1984.

On January 30, 1984, the National Securities Clearing Corporation ("NSCC") filed a proposed rule change with the Commission pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(2), and Rule 19b-4 thereunder. Notice of the proposed rule change was given in Securities Exchange Act Release No. 20661 (February 15, 1984), 49 FR 6816 (February 23, 1984). We received no comments.

The proposed rule change adds new Section 3 to NSCC Rule 9, relating to the delivery and receipt of securities through NSCC's Envelope Settlement System ("ESS").[1] The filing incorporates, with one modification, an existing NSCC procedure [2] for NSCC members who receive incomplete delivery of securities.[3]

Under the existing procedure, a member receiving an incomplete envelope delivery of securities can choose not to reclaim the envelope.[4] Instead, the receiving member may contact directly the delivering member to request the certificate numbers of the missing securities. The delivering member must respond to this request within two business days. If the delivering member fails to furnish the missing certificate numbers within this time frame, and if NSCC determines that the receiving member's request was prompt,[5] NSCC may choose to reverse all charges related to the delivery (*i.e.*, deduct the money credit from the deliverer's settlement account and credit the receiver's settlement account).[6] The proposal changes only the time in which the delivering member must supply certificate numbers when the request is on any day following delivery day. In that case, the delivering member must supply the certificate numbers by the end of the first business day after the request.

NSCC states in its filing that it has incorporated the revised policy into its Rules to facilitate members' reference to the policy. NSCC believes that the porposed rule change is consistent with Section 17A of the Act in that it facilitates the prompt and accurate clearance and settlement of securities.

For the following reasons, the Commission believes that the proposed rule change is consistent with the Act. First, incorporating the policy into NSCC's rules should help to ensure that both delivering and receiving members are aware of their responsibilities concerning incomplete deliveries. Second, the reduced time frame for responding to requests for certificate numbers should expedite members' notification to transfer agents regarding missing certificates. Quicker transfer agent notification, in turn, should facilitate both the earlier placement of stop transfer instructions on missing certificates and the replacement of those certificates.

The Commission therefore finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies, and, in particular, the requirements of Section 17A of the Act.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-9095 Filed 4-11-84; 8:45 am]

BILLING CODE 8010-01-M

[1] ESS enables NSCC members physically to deliver securities certificates in envelopes to each other via NSCC. Member physical securities delivery obligations are generated in NSCC's Balance Order Accounting System and "Special Trade" procedure. In addition, members use ESS to effect member-to-member stock loans.

[2] The existing procedures were set forth in a September 24, 1980 "Important Notice" issued to NSCC members.

[3] Incomplete delivery can occur when a member receives: (1) Partial delivery of the securities, (2) no securities, or (3) no envelope.

[4] Under the NSCC Rule 9 reclamation procedure, a receiving member can return an incomplete delivery to the delivering member through ESS until 10:00 a.m. on the day after delivery.

[5] NSCC stated that it will continue to determine on a case-by-case basis whether a particular request is "prompt." In making that determination, the Commission anticipates that NSCC will consider all relevant factors, including: (1) the length of time between the incomplete delivery and the request; (2) the requestor's transaction levels during that period in relation to its peers; (3) the magnitude of money involved; (4) any market conditions that place a premium on promptness, such as a pending tender offer; and (5) any other special circumstances where fairness would dictate an extension of the time frame.

[6] NSCC's policy has been and will continue to be routinely to reverse charges when a prompt request is made and is not honored.

[Release No. 20836; File Nos. SR-PCC-84-1 and SR-PSDTC-84-2]

Order Approving Proposed Rule Changes of the Pacific Clearing Corporation ("PCC") and the Pacific Securities Depository Trust Company ("PSDTC")

April 6, 1984.

I. Introduction

On February 2, 1984, PCC and PSDTC filed with the Commission under Section 19(b)(2) of the Securities Exchange Act of 1934 (the "Act"), proposed rule changes related to PCC and PSDTC processing of tenders and securities transactions during certain tender and exchange offers. These proposed rule changes would establish a pilot program to extend the availability to participants of PCC's Continuous Net Settlement ("CNS") and PSDTC's book-entry services. More specifically, the proposed rule changes would amend PCC and

PSDTC time frames and procedures for acceptance of liability notices [1] and instructions to tender securities during certain tender and exchange offers.

Notice of the proposed rule changes was published in the Federal Reister on February 29, 1984.[2] The Commission solicited but did not receive comments on the proposed rule changes.

II. Description

Under the proposed rule change, tender and exchange offers with a stated expiration date and an eight-day protect period following the expiration date would be eligible for extended processing time frames in the pilot program.[3] PSDTC and PCC will notify members and participants of voluntary offerings eligible for the pilot program through a Reorganization Announcement Notice. This notice will specify the terms and conditions of the offer and the time frames within which PSDTC participants must submit written instructions for tendering securities physically to the bidder's agent.

The applicable time frames for affected PSDTC services under the pilot program would be as follows: Participants that want to deliver securities to the tender agent through PSDTC after the expiration date of the offer (in order to satisfy delivery obligations under letters of transmittal that originally included a guarantee of later delivery instead of securities certificates) must submit appropriate written instructions to PSDTC by the morning of the fifth business day after the expiration date ("E+5"). Furthermore, participants that want to deliver securities to an account at another depository through a depository interface must submit appropriate written instructions to PSDTC by E+5.

The applicable time frames for affected PCC services under the pilot program would be as follows: PCC will accept liability notices from members for securities issues up to the morning of E+5; however, PCC will not accept liability notices for more than the total number of shares that member is due to receive after PCC nets trades on E+5. PCC will assign liability notices it receives to members who owe securities to PCC's CNS system. After E+5, PCC members satisfying assigned liability notices must do so by delivering securities, rather than netting deliveries they are due to receive in PCC's CNS system. Physical deliveries to PCC against a liability notice must be effected by E+7.[4]

III. Discussion

PSDTC and PCC believe that the proposed rule change is consistent with the Act and, in particular, Section 17A(b)(3)(F). That section requires clearing agency rules to be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of funds and securities.

According to PSDTC and PCC, the new procedures are designed to permit PCC members to net securities positions in the CNS System for a longer time period, thereby reducing the number of securities which must be physically delivered. In addition, PSDTC and PCC assert that the new procedures will also permit participants to retain securities in a bookentry environment for a longer time period, again reducing the number of securities which must be physically delivered.

Currently, PCC accepts liability notices from members due to receive securities from PCC's CNS system through the day prior to the expiration of the offer. On receipt of such a notice, PCC in turn must retransmit the notice to a member that owes securities to PCC's CNS system and must obtain securities from that member. Accordingly, PCC does not accept liability notices after the day before the expiration of the offer because of the significant liability associated with those notices when the offer does not provide for a protect period following offer, or when the protect period is not long enough to permit orderly processing of those notices. At the time PCC established its reorganization procedures, most tender and exchange offers did not provide for any protect period. Because most tender and exchange offers now provide for an eight day protect period, however, PCC believes that it can now accept liability notices from its members through the morning of E+5 without incurring significant financial exposure. The Commission concurs in this assessment.

Similarly, PSDTC currently permits participants that want PSDTC to tender or exchange securities on deposit at PSDTC to submit appropriate written instructions no later than one day prior to the expiration date of the offer.[5] PSDTC does not accept instructions to deliver securities physically to the bidder's agent after the expiration of the offer even if a participant's tender is accompanied by a letter than guarantees delivery during the protect period. In the past PSDTC has been unwilling to process these deliveries because of the potential financial liability. Again, however, because most tender and exchange offers now provide for an eight day protect period, PSDTC believes, and the Commission concurs, that PSDTC now can process those deliveries safely.

The Commission believes that the proposed PCC and PSDTC procedures respecting exchange and tender offers will help to simplify tender and exchange offer and trade processing. By allowing a longer period for CNS system processing and for book-entry services, the procedures enable members and participants to enjoy the benefits of efficiency and safety associated with those clearing agency services and to avoid the dangers of delay and increased fails-to-deliver associated with physical settlement and delivery. The cutoff time of E+5 maintains trade integrity. Thus, PCC members that owe securities to PCC for trades in reorganization securities prior to the expiration date will be identified as recipients of liability notices.

The Commission notes that implementation of the pilot program provides for uniform rules in the National Clearance and Settlement System regarding CNS liability notices. Implementation of the pilot program, however, does not qualify PSDTC as a "qualified securities depository" for purposes of Rule 17Ad–14 under the Act. Thus, agents acting on behalf of bidders during tender or exchange offers will not be required under that rule to establish an account at PSDTC for bookentry tenders and withdrawals.

IV. Conclusion

For the reasons stated above, the Commission finds that the proposed rule changes are consistent with the Act and the rules thereunder applicable to registered clearing agencies, and in particular, the requirements of Section 17A of the Act. The Commission finds that the proposed rule changes will

[1] A liability notice warns PCC that if securities are not delivered by the date specified in the notice, the member will hold the defaulting party liable for the terms of the offer as announced by the bidder. That liability often exceeds the current market price of the subject securities as traded on organized securities exchanges.

[2] See Securities Exchange Act Release No. 20678 (Feb. 22, 1984), 49 FR 7486.

[3] At their discretion, PCC and PSDTC may designate securities for the pilot program even though the terms of an offer for those securities do not meet these qualifications.

[4] This will allow sufficient time for the member who submitted the liability notice to make delivery to the agent on E+8.

[5] PSDTC handles the preparatory work and submits the physical shares to the tender or exchange agent. When proceeds (including cash-in-lieu of fractional shares) are received from the agent, PSDTC will issue checks to participants for the shares.

enhance safety and efficiency in the National System.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes be and they hereby are approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-9896 Filed 4-11-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-20821; File No. SR-NYSE-84-10]

Self-Regulatory Organizations, Proposed Rule Change by New York Stock Exchange, Inc., Relating to Options Allocation Plan

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 19, 1984, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will, with the adoption of conforming rules by the other options exchanges, enable the Exchange to participate in the "Allocation Plan" that the Securities and Exchange Commission approved as part of the rules of the American Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Pacific Stock Exchange, Inc. and the Philadelphia Stock Exchange, Inc., on May 30, 1980 (see Release No. 34-16863), as amended on June 1, 1981 (see Release No. 34-17833), on February 2, 1982 (see Release No. 34-18464) and on March 8, 1984 (see Release No. 34-20739). The plan provides procedures for the selection and replacement of stocks underlying individual stock options.

The proposed rule change makes no change to the Allocation Plan's procedures regarding initiating an allocation, submitting stock choices, challenging eligibility and the like. The only change of substance is to the selection algorithm.

Under the present plan, each of the four exchanges is randomly assigned letter "A", "B", "C" or "D". The exchanges then select option stocks in accordance with a four-by-four matrix of those letters. The Exchange proposes to substitute the following five-by-five matrix in order to accommodate the Exchange as a fifth participant:

Round and Selection Order

1—A B C D E
2—D C B E A
3—E D A B C
4—C E D A B
5—B A E C D

The proposed rule change also makes various conforming changes (e.g., changing references from "four" to "five"). In addition, it deletes material that governed past allocations only.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) *Purpose*—The purpose of the proposed rule change is to appropriately revise the Allocation Plan to enable the Exchange to participate in allocations of stocks to underlie its individual stock options. The proposed rule change is in furtherance of the Commission's request that the option exchanges create a plan that provides for the equitable allocation of new individual stock options among the options exchanges. (See Release No. 34-16701 (March 26, 1980).)

(2) *Statutory Basis*—The proposed rule change is consistent with section 6(b)(5) of the 1934 Act, which provides in pertinent part that the rules of the Exchange be designed to promote just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition not presently extant under the Allocation Plan. In its March 13, 1984 letter to the Commission transmitting the proposed rule change and commenting upon recent plan amendments proposed by the other option exchanges, the Exchange discusses how implementation of those amendments in the absence of the Exchange's participation would preclude the Exchange from trading individual stock options on the stocks of the Regional Holding Companies recently divested by AT&T. Thus, the Exchange's participation in the plan will prevent the other exchanges from using the plan for an anticompetitive purpose not intended by the Commission.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be

available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 4, 1984.

George A. Fitzsimmons,

Secretary.

Exhibit A

Options Allocation Plan

A. [Reserved.] [In view of the acquisition by CBOE of MSE's options program, MSE agreed not to participate in the selection of additional call classes. It was thereafter agreed that through the first fourteen (14) rounds of the selection process, CBOE would partially defer participation under the following formula:

1. During the first, second, sixth, seventh, eighth, twelfth, thirteenth, and fourteenth selection rounds, CBOE would not participate;

2. The PSE, PHLX and AMEX would participate in the foregoing selection rounds, choosing by lot the order of such participation;

3. The PSE, PHLX and AMEX would select additional underlying stocks in the above selection rounds in the order of 1–2–3, 3–2–1, 2–3–1, 1–3–2, 3–1–2, 2–1–3, 1–2–3, 3–2–1;

4. During the third, fourth, fifth, ninth, tenth, and eleventh selection rounds, CBOE would participate and the four exchanges, choosing by lot, would determine the order of such selection;

5. The PSE, PHLX, AMEX, and CBOE would select additional stocks in the selection rounds described in (4) above in the order of 1–2–3–4, 4–3–2–1, 2–3–4–1, 1–4–3–2, 3–4–1–2, 2–1–4–3;

6. After the fourteenth round, the CBOE would participate equally with the PSE, PHLX and AMEX continuing the sequence in A.5 above.]

B. [Reserved.] [Not more than 60 underlying stocks would be selected in the first allocation, which would be conducted during a single session within 15 days after the Commission approves the allocation plan.]

C. Should any options exchange pass on its turn during the selection process, it would lose that turn and not gain any priority for future selections.

D. Call and/or put options with respect to each underlying stock selected in the allocation process would have to be admitted to trading on the options exchange selecting that underlying stock within six months from the date of selection. An exchange may only select an underlying stock which, at the time selection is made, it has reasonable grounds to believe is qualified for options trading.

E. If an exchange does not commence trading in any options which it selected in the initial allocation or any subsequent allocation within a six month period from the date of such selection, the underlying stock would again be eligible for selection by any of the options exchanges in a future allocation procedure, as described in the following paragraphs.

F. [At any time after the initial allocation, further] *A*llocations shall be held at the request of one or more options exchanges, whereby the *five* [four] participating options exchanges would be able to select any unallocated eligible underlying stock under the procedures set forth as follows:

1. Such allocation shall not take place until a list of additional eligible underlying securities has been established pursuant to the procedures herein.

2. Each of the exchanges shall have 30 calendar days from the date of notification of a call for an allocation to provide the arbitrator with a list of desired underlying securities. Such list may not be changed once submitted to the arbitrator. Once the arbitrator has received lists from all the exchanges, he shall thereafter (i) serve copies of the selection lists on each of the exchanges and (ii) establish the sequence for making stock selections, using the procedure set forth in paragraph 2.A below, and deliver notice to each of the exchanges, so that all exchanges receive both the selection lists and selection sequence on the same date.

2.A. For each allocation, the arbitrator, using the following procedure, shall establish the sequence for making stock selections by randomly matching a letter A through *E* [D] with each of the *five* [four] exchanges and using the order established below for up to *five* [four] rounds. At the allocation, selection of eligible securities will then proceed in accordance with such order. If there are to be more than *five* [four] rounds in an allocation, the arbitrator shall repeat the procedure, randomly matching the *five* [four] letters to the *five* [four] exchanges a second time to establish the selection order for rounds *six* [five] through *ten* [eight], and so on, depending on the number of rounds called for by the allocation. The selection order is as follows:

Round and selection order

1—A B C D E
2—D C B E A
3—E D A B C
4—C E D A B
5—B A E C D
[1—A B C D
2—D C B A
3—C D A B
4—B A D C]

3. Within three business days of the request for an allocation each exchange shall inform the other exchanges and the arbitrator of the maximum number of additional underlying securities which it desires to select. The highest number stated by an exchange, multiplied by six, shall establish the maximum number of securities which an exchange may place on its selection list.

4. Up until the close of business on the fifth (5th) business day after receipt of the selection lists from the arbitrator, each exchange may challenge the eligibility of any security selected by another exchange. All challenges must be in writing to the selecting exchange and the arbitrator, and must specify the reason(s) for ineligibility, including appropriate supporting details. The exchange whose selection is challenged shall have until the close of business on the second business day after it receives notice of a challenge to submit data supporting its selection as qualified. The challenged exchange may withdraw its selection at any time and will only be assessed the actual costs for that particular challenge incurred by the arbitrator up to the time of withdrawal. However, no additional securities may be added to such exchange's list to replace any withdrawn security.

5. The allocation shall take place on the fifteenth business day following receipt of the security lists by the exchanges unless deferred pursuant to sub-paragraph 6 below and shall be conducted according to the procedures set forth herein.

6. The arbitrator shall resolve any challenge by the allocation date which may be deferred by the arbitrator for up to fifteen additional calendar days only if there are more than 8 challenges. Securities must be eligible as of the dates the lists are submitted to the arbitrator, and determination of eligibility shall be made based on the listing standards in effect at that time. It shall be no defense to any challenge that any provision of exchange rules permits waiver of a listing requirement where exceptional circumstances are present. If a security is deemed ineligible, that security must be stricken from the lists of all exchanges who have listed that security, and no other security may be substituted for the ineligible security which has been stricken. There shall be no appeal from the arbitrator's

determination. No exchange shall select any security which is not on the selection list it submits to the arbitrator.

7. The calling of an allocation acts to suspend the right of any exchange to call a further allocation until the first allocation has been completed.

8. The arbitrator shall by The Options Clearing Corporation. In performing its arbitration function, OCC may employ whatever law firms, accounting firms or other agents and may perform such review as it, in its, in its sole discretion, deems necessary to resolve any challenge within the time limits prescribed by this *plan* [agreement]. The arbitrator in its sole discretion shall have the right to request additional information as to eligibility or ineligibility from the selecting or challenging exchange and to the extent the arbitrator deems necessary to independently verify the information received. It is expressly understood and agreed that the arbitrator is the issuer of the options and may independently of any challenge take any action permitted it under the Participant Exchange Agreement between it and the exchanges. No firm which has regularly provided professional services to any current options exchange during the period from January 1, 1978 to the present may provide support services to OCC in its arbitration function. No firm which currently is providing or has regularly provided professional services to an issuer within four years prior to the date of an allocation, may provide support services to OCC in determining eligibility for options trading of the securities of that issuer. The total cost of such outside services, plus any OCC staff time allocated to the process, shall be divided by the total number of the challenges to arrive at a per challenge cost which shall be assessed against the loser in any challenge. If a challenge is sustained, the challenged party shall be assessed one unit of challenge costs. If a selection is upheld, the challenger shall be assessed one unit of challenge costs. Notwithstanding the foregoing, the arbitrator may, in its sole discretion, assess against the losing party or parties to any challenge any extraordinary expense of such challenge.

9. The exchanges jointly and severally agree to indemnify The Options Clearing Corporation and to hold it harmless from and against any and all loss, damage, or expense (including attorney's fees and costs of litigation) that it may sustain by reason of its serving as arbitrator hereunder in the performance of its duties as such.

G. [Until this plan has been approved by the Commission and the initial allocation has been carried out,] Any options exchange which delists an option because the underlying stock no longer qualifies for options trading shall be eligible to select another underlying stock in accordance with the *following procedures* [plan submitted to and approved by the Commission in its Release 14878, of June 22, 1978, as was done by the AMEX and PSE in April of 1980. After the initial allocation described above, such procedures for selecting substitute underlying stocks will be as follows]:

1. Involuntarily delisted options, delisted either because of failure to meet the maintenance standards and/or because of changes in the corporate structure of the issuer of the underlying security, may be replaced by an exchange outside of the normal allocation procedure if the exchange observes the following procedure. Subject to the provisions of subparagraph 5 below, the exchange must select a replacement option within ten business days of the replacement priority date, must promptly notify the other parties to this *plan* [agreement] of the selection and must admit the selection to trading within 90 calendar days from the date of selection. Failure of an exchange to observe this procedure shall result in that exchange's forfeiting its right to replacement outside the normal allocation procedure unless all parties to this *plan* [amendment] waive the forfeiture.

2. Unless all parties to this *plan* [amendment] agree otherwise, the replacement priority date for involuntarily delisted options shall be the last day of trading of the involuntarily delisted options; provided however, that, when the involuntary delisting occurs as the result of a change in the corporate structure of the issuer of the underlying security, the replacement priority date shall be the effective date of the corporate action which causes the involuntary delisting. Excepting the determination based on volume that is described below in connection with options currently listed on more than one exchange, should a replacement priority date be the same for two or more exchanges, the exchanges shall use a random method to determine the order in which they select replacement options.

3. An exchange on which options are currently listed shall have the first right to select for options listing one of the following: A surviving entity or a new entity, including any spin-off, resulting from an involuntary delisting. Any selection must qualify for options listing. In the case of options currently listed on more than one exchange, the exchange having greater public contract volume in the past calendar year with respect to those options (as per OCC statistics) shall have the first right described above. The exchange having the lesser public contract volume shall have the second such right.

4. [Reserved.] [This amendment is effective as of June 30, 1980 for the purpose of determining the replacement priority date for any exchange which involuntarily delisted an option class in the time period between June 30, 1980 and the date the Commission approves this amendment. Notwithstanding the time limits set forth in paragraph number one above, any exchange which involuntarily delisted an option within this time period for any reason shall be entitled to select, in the order of the replacement priority dates determined in accordance with this amendment, a replacement option for each delisted option provided the selection (a) is made within 20 business days following Commission approval of this amendment and (b) is admitted to trading within 90 calendar days from the date of selection. Under this exception, an exchange having an earlier replacement priority date shall not be able to select as a replacement an option on which another exchange has a first right of selection, unless that other exchange has expressed in writing its intent not to exercise that right.]

5. An exchange which seeks to replace an involuntarily delisted option shall notify the other exchanges within 24 hours of its selection. Telephonic or telegraphic notification shall be acceptable for this purpose. Up until the close of the third business day after receipt of this notification, each exchange may challenge the eligibility of the security selected. The challenge may be made in the same manner as notification of the selection and shall provide the reason(s) for ineligibility. Upon any challenge, both the challenger(s) and the challenged party shall submit to the arbitrator (referred to in paragraph F above) within three business days of the challenge written suport for their claims of ineligibility or eligibility. The arbitrator shall determine whether the security under the challenge is in fact eligible and there shall be no appeal from the arbitrator's determination. Securities will be deemed eligible only if they meet the applicable listing standards on the date of selection. It shall be no defense to any challenge that any provision of exchange rules permits waiver of a listing requirement where exceptional circumstances are present. If a security is deemed ineligible, the exchange seeking replacement shall have up until

the close of business on the fifth (5th) business day after receipt of the arbitrator's determination to select and notify the other exchanges of another proposed replacement selection. Such selection shall also be subject to the above notification and challenge procedure. The cost(s) of any challenge(s) incurred in determining the eligibility of a replacement selection shall be borne in the manner as provided in sub-paragraph F.8 of this *plan* [Agreement].

6. The following provision shall pertain in the event an exchange seeks to replace an involuntarily delisted option during a period when a lottery has been called for under the procedures of paragraph F above but has not yet taken place: If such exchange submits to the arbitrator a proposed replacement selection after the date on which the arbitrator has provided the exchanges with copies of the selection lists submitted by the exchanges pursuant to subparagraph F.2 above, then the replacement selection may only be made from one of the securities which appears on the selection list of such exchange as submitted to the arbitrator.

H. All exchanges will commence additional put options trading on Fridays, other than a Friday preceding an expiration date.

I. In the event an exchange determines to commence put option trading in a stock which underlies call option trading on more than one exchange, the initiating exchange shall notify such other affected exchanges not less than one week prior to the commencement of trading. Such an action should limit the possible disruption which the absence of notice might create for member firms and the investing public.

[FR Doc. 84-9803 Filed 4-11-84; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Brentwood Capital Corp.; Application for Approval of Conflict of Interest Transaction Between Associates

[License No. 09/09-0239]

Notice is hereby given that Brentwood Capital Corporation, 11661 San Vicente Boulevard, Los Angeles, California 90049, a Federal Licensee under the Small Business Investment Act of 1958, as amended, has filed an application with the Small Business Administration pursuant to § 107.903 of the Regulations governing small business investment companies (13 CFR 107.903 (1984)) for approval of five conflict of interest transactions.

1. Megatape Corporation, 1041 Hamilton Road, Duarte, California 91010

Brentwood Capital intends to invest up to $403,000 in shares of convertible preferred stock.

2. Multiplex Technology, Inc., 251 Imperial Highway, Fullerton, California 92635

Brentwood Capital intends to invest up to $125,000 in shares of convertible preferred stock.

3. Maxim Integrated Products, Inc., 510 North Pastoria Avenue, Sunnyvale, California 94086

Brentwood Capital intends to invest up to $200,000 in convertible preferred stock.

4. Omnilogic, Inc., 401 Wilshire Boulevard, Suite 1105, Santa Monica, California 90401

Brentwood Capital intends to invest up to $80,000 in convertible preferred stock.

5. Standard Software, 10200 Willow Creek, San Diego, California 92131

Brentwood Capital intends to invest up to $91,990 by exercising a warrant to purchase shares of convertible preferred stock.

Brentwood Capital and other Brentwood entities (Associates) have prior investments in these small concerns. The proposed financings by Brentwood Capital and its Associates are follow-on investments. They will be made in the ratio of the current equity ownership and on the same terms for all parties. SBA prior written approval is required pursuant to § 107.903 of SBA Regulations because Associates own 10 or more percent of the small concerns' equity securities and these are not initial joint financings with Associates.

Notice is hereby given that any person may, not later than thirty (30) days from the date of publication of this Notice, submit written comments to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A copy of this notice will be published in newspapers of general circulation in the Los Angeles, California and the other localities most directly affected by the transactions.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 3, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-9880 Filed 4-11-84; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 3036]

Idaho; Declaration of Physical Disaster Loan Area

Pursuant to the Secretary of Agriculture's designation, Farmers Home Administration (FmHA) has authorized the acceptance of emergency loan applications in the following area:

STATE OF IDAHO

FmHA		Incident and date	County
Number	Date		
S121	03/21/84	Losses to crops caused by severe hailstorms occurring on August 22 and 23, 1983.	Twin Falls.

As a result of this designation. I have determined the above county in the State of Idaho constitutes a disaster loan area for agricultural enterprises which are ineligible for disaster assistance from the FmHA because of alien status; corporations, partnerships and cooperatives not being primarily engaged in farming; farm owners who do not operate their farms; etc., and for Economic Injury Disaster loans for non-farm small business concerns.

The interest rates for eligible applicants under this designation are as follows:

	Percent
Agricultural enterprises with credit available elsewhere	11.0
Agricultural enterprises without credit available elsewhere	8.0
Nonfarm small businesses (economic injury)	8.0

Loan applications for Physical Disaster Loans from eligible agricultural enterprises may be filed for a period not to exceed thirty days from the date of the letter of referral from FmHA, provided that the application for EM assistance from FmHA or the formal written request for a letter of referral by FmHA was filed within the time limits set forth in the FmHA designation. Loan applications for Economic Injury for non-farm small businesses may be filed until the close of business on September 21, 1984. The number assigned to this disaster is 3036 for Physical damage to eligible agricultural enterprises and is 613301 for Economic Injury. Eligible enterprises may file applications for loans for physical damage or economic injury at: U.S. Small Business Administration, Area 4 Disaster Office, 77 Cadillac Drive, Suite 158, Sacramento, California 95825, (800) 468-

1710 and in California (800) 468–1713; or other locally announced locations.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: April 5, 1984.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84–9677 Filed 4–11–84; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area No. 3014; Amdt. No. 2]

Mississippi; Declaration of Physical Disaster Loan Area

The above numbered declaration (48 FR 55797 and Amendment No. 1—48 FR 57396) is amended pursuant to the Secretary of Agriculture's designation authorizing Farmers Home Administration (FmHA) to accept emergency loan applications in the following area:

STATE OF MISSISSIPPI

FmHA		Incident and date	County
Number	Date		
S101.....	03/13/84	Damages and losses to crops caused by drought and high temperatures beginning July 1, 1983, and continuing through September 15, 1983.	Rankin.

As a result of this designation, I have determined the above county in the State of Mississippi constitutes a disaster loan area for agricultural enterprises which are ineligible for disaster assistance from the FmHA because of alien status; corporations, partnerships and cooperatives not being primarily engaged in farming; farm owners who do not operate their farms; etc., and for Economic Injury Disaster loans for non-farm small business concerns.

The interest rates for eligible applicants under this designation are as follows:

	Percent
Agricultural enterprises with credit available elsewhere	10.5
Agricultural enterprises without credit available elsewhere	8.0
Nonfarm small businesses (economic injury)	8.0

Loan applications for Physical Disaster Loans from eligible agricultural enterprises may be filed for a period not to exceed thirty days from the date of the letter of referral from FmHA, provided that the application for EM assistance from FmHA or the formal written request for a letter of referral by FmHA was filed within the time limits set forth in the FmHA designation. Loan applications for Economic injury for non-farm small businesses may be filed until the close of business on September 13, 1984. The number assigned to this disaster is 3014 for Physical damage to eligible agricultural enterprises and is 610501 for Economic Injury. Eligible enterprises may file applications for loans for physical damage or economic injury at: U.S. Small Business Administration, Area 2 Disaster Office, 75 Spring Street SW., Suite 822, Atlanta, Georgia 30303, (800) 554–3455 and in Georgia (800) 241–5625; or other locally announced locations.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: April 5, 1984.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84–9676 Filed 4–11–84; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area No. 3035]

Oregon; Declaration of Physical Disaster Loan Area

Pursuant to the Secretary of Agriculture's designation, Farmers Home Administration (FmHA) has authorized the acceptance of emergency loan applications in the following area:

STATE OF OREGON

FmHA		Incident and date	County
Number	Date		
S121.....	03/14/84	Damages and losses to forage and turf grass seed crops caused by unseasonable rains and variations in temperatures beginning May 1, 1983, and continuing through December 1, 1983.	Marion.

As a result of this designation, I have determined the above county in the State of Oregon constitutes a disaster loan area for agricultural enterprises which are ineligible for disaster assistance from the FmHA because of alien status; corporations, partnerships and cooperatives not being primarily engaged in farming; farm owners who do not operate their farms; etc., and for Economic Injury Disaster loans for non-farm small business concerns.

The interest rates for eligible applicants under this designation are as follows:

	Percent
Agricultural enterprises with credit available elsewhere	10.5
Agricultural enterprises without credit available elsewhere	8.0
Nonfarm small businesses (economic injury)	8.0

Loan applications for Physical Disaster Loans from eligible agricultural enterprises may be filed for a period not to exceed thirty days from the date of the letter of referral from FmHA, provided that the application for EM assistance from FmHA or the formal written request for a letter of referral by FmHA was filed within the time limits set forth in the FmHA designation. Loan applications for Economic Injury for non-farm small businesses may be filed until the close of business on September 14, 1984. The number assigned to the disaster is 3035 for Physical damage to eligible agricultural enterprises and is 613201 for Economic Injury. Eligible enterprises may file applications for loans for physical damage or economic injury at: U.S. Small Business Administration, Area 4 Disaster Office, 77 Cadillac Drive, Suite 158, Sacramento, California 95825, (800) 468–1710 and in California (800) 468–1713. or other locally announced locations.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: April 5, 1984.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84–9678 Filed 4–11–84; 8:45 am]

BILLING CODE 8025–01–M

Region V Advisory Council Meeting; Public Meeting

The Small Business Administration, Region V Advisory Council, located in the geographical area of Indianapolis, Indiana, will hold a public meeting at 11:00 a.m., EST, Thursday, May 3, 1984, at St. Joseph Bank and Trust, South Bend, Indiana, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Robert D. General, District Director, U.S. Small Business Administration, Minton-Capehart Federal Building, Room 578, 575 North Pennsylvania Street,

Indianapolis, Indiana 46209; (317) 269–7275.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 9, 1984.

[FR Doc. 84-9879 Filed 4-11-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Notice No. 84-5]

Establishment of Commercial Space Transportation Advisory Committee

The President has designated the Department of Transportation to be lead agency for the commercialization of expendable launch vehicles (ELVs), encouraging and facilitating these activities by the U.S. private sector. Among other responsiblities, he authorized the Agency to:

- Act as a focal point within the Federal Government for private sector space launch contacts related to commercial ELV operations;
- Promote and encourage commercial ELV operations in the same manner that other private U.S. commercial enterprises are promoted by United States agencies;
- Serve as a single point of contact for collection and dissemination of documentation related to commercial ELV licensing activities;
- Make recommendations to affected agencies and, as appropriate, to the President, concerning administrative measures to streamline Federal Government procedures for licensing of commercial ELV activities; and
- Conduct appropriate planning regarding long-term effect of Federal activities related to ELV commercialization.

(Cf. Federal Register, Vol. 49, No. 40, February 28, 1984, pg. 7211, Executive Order 12465 of February 24, 1984)

For these purposes, notice is hereby given of the establishment of the Commercial Space Transportation Advisory Committee. The Committee will advise the Department of the furture of the commercial ELV industry, current policies and programs impacting the commercial ELV idustry, and DOT"s efforts to stimulate private sector investment in commercial, unmanned spaced boosters. The President's National Space Policy encourages private investment and involvement in civil space activities, and establishment of the Commercial Space Transportation Advisory Committee is necessary and in the public interest.

Its charter is as set forth below.

Additional information may be obtained from the Office of Commercial Space Transportation, U.S. Department of Transportation, Room 10401, 400 7th St., S.W., Washington, D.C. 20590.

Issued in Washington, D.C. on April 4, 1984.

Jennifer L. Dorn,

Director, Office of Commercial Space Transportation.

Charter of the Commercial Space Transportation Advisory Committee

I. *Purpose:* This Charter establishes the Commercial Space Transportation Advisory Committee (COMSTAC), and provides for its operation in accordance with the provisions of the Federal Advisory Committee Act (the FACA) Pub. L. 92–463; 86 Stat. 770), DOT Order 1120. 3A, as amended (including additional references cited therein), and the requirements prescribed in Title 49, Code of Federal Regulations, Part 95.

II. *Scope:* The COMSTAC, acting as an advisory committee, provides information, advice, and recommendations to the Secretary of Transportation on matters relating to all aspects of the commercialization of expendable launch vehicles. The COMSTAC does not exercise program management or regulatory development responsibilities, and makes no decisions directly affecting the programs on which it provides advice. The COMSTAC provides a forum for the development, consideration, and communication of information from a knowledgeable, independent perspective.

III. *Objectives and Duties:* Consistent with the scope of its activities described in Paragraph II, the COMSTAC is authorized to:

A. Undertake such information gathering activities as necessary to define issues for consideration by the Committee, develop positions on those issues, and communicate the Committee's position thereon to the Secretary of Transportation.

B. Evaluate economic, technological, and institutional developments relating to commercial space transportation and communicate to the Secretary recommendations on promising new ideas and approaches for Federal policies and programs.

C. Serve as a forum for the discussion of problems involving the relationship between industry activities and government requirements. Seek, where possible, to resolve such problems without resort to formal Departmental intervention.

IV. *Sponsor:* The Office of Commercial Space Transportation shall be the COMSTAC sponsor and shall furnish support services for the operation of the Committee. The Secretary shall designate a member of the Office staff to be Executive Director of the COMSTAC.

V. *Membership:* The COMSTAC shall be composed of up to 25 members, each of whom shall be appointed by the Secretary, after Departmental consultations with appropriate government agencies, industry and business organizations, the scientific community, and public interest groups.

VI. *Appointments:* Each member shall be appointed by the Secretary for a two-year term, with each member eligible to be reappointed. Terms shall be staggered with approximately one-half expiring each year. In the initial appointment of members, the Secretary shall specify which members shall serve one- and two-year terms. Any person appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of such term. The terms of all members expire upon termination of the COMSTAC Charter. A Chairperson and a Vice-Chairperson shall be appointed from among the membership by the Secretary.

Members may be represented at Committee meetings and activies by alternates representing the same interest as the member; alternates shall have the full rights and duties of membership. Appointment of an alternate shall be made by the member in writing, with approval of the Committee Sponsor, at any time prior to the meeting or activity for which the appointment is made. Unless otherwise specified by the member, the appointment is valid for only one meeting or activity, including any continuations of that meeting or activity.

VII. *Meetings:* The COMSTAC shall meet at least once each calendar year, and upon the call of the chairperson; subject to the approval of the Executive Director. In the formative years of this commercial sector, it is anticipated that meetings will be convened with a greater frequency. In accordance with the FACA, no such meeting shall be held in the absence of the Executive Director or a Department employee alternate designated by the Executive Director. An agenda for each meeting must be approved in advance by the Executive Director, or designated alternate, who may cancel or adjourn any meeting when he or she determines that to do so is in the public interest. The following procedures shall govern the conduct of all COMSTAC meetings:

A. All COMSTAC meetings shall be open to the general public, except as provided under FACA.

B. Notice of each COMSTAC meeting shall be published in the **Federal Register** at least 15 days prior to the date of the meeting. The notice shall include the agenda.

C. The Chairperson or , in the absence of the Chairperson, the Vice-Chairperson shall preside at each meeting.

D. Detailed minutes of each meeting shall be kept and certified by the Executive Director. The minutes shall contain:

1. A record of participants at the meeting;

2. A complete and accurate description of all matters discussed and conclusions reached; and

3. Copies of all reports received, issued or approved by the COMSTAC.

E. The minutes, as certified by the Executive Director, shall be available for public inspection and copying in the office of the sponsor. Public availability of minutes or other documents received or generated by the COMSTAC are subject to applicable limitations and exceptions prescribed in the Freedom of Information Act (5 U.S.C. 552(b)).

VIII. *Travel and Expenses:* Committee Members who are not officers or employees of the Federal Government are, while attending meetings or otherwise engaged in the business of the Committee, authorized travel and subsistence or per diem allowances (as appropriate) in accordance with Government regulations. All travel by individual members when engaged in official Committee business shall be approved in advance by the Chair and the Sponsor or the Sponsor's representative.

IX. *Estimated Cost and Support:* The estimated annual direct operating cost of the COMSTAC is $80,000, which includes travel and subsistance costs of members, printing, and miscellaneous related costs.

X. *Public Interest:* As a component of the President's National Space Policy which encourages U.S. private investment and involvement in civil space activities, the formation and operation of the COMSTAC is determined to be in the public interest.

XI. *Report to the Secretary:* Within 90 days following the last meeting of each calendar year, the Executive Director shall submit to the Secretary an annual report describing the COMSTAC's membership, activities, and accomplishments for the past calendar year. In addition, the Executive Director shall provide the Secretary with any interim reports upon request during the calendar year.

XII. *Effective Date:* This Charter is effective ——— 1984, and terminates two years after this date unless prior to that time the Charter is extended in accordance with the FACA and other applicable requirements.

Elizabeth Hanford Dole,

Secretary of Transportation.

[FR Doc. 84-9888 Filed 4-11-84; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 84-028]

The Recreational Boating Industry's Role in Consumer Education

AGENCY: Coast Guard, DOT.

ACTION: Request for public comment.

SUMMARY: The National Boating Safety Advisory Council, acting under the authority of the Coast Guard Office of Boating, Public, and Consumer Affairs, has established a Subcommittee to investigate ways to enhance the role of boating manufacturers and dealers in educating the retail buyer in the safe use of their products. This notice invites comments and suggestions on ways to accomplish this objective.

DATES: Comments must be received on or before June 11, 1984.

ADDRESS: Comments must be submitted to the Office of Boating, Public, and Consumer Affairs (G-BC), Room 4224, Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593. Between the hours of 7:30 a.m. and 5:00 p.m., Monday through Friday, comments may be delivered to and are available for inspection at this address.

FOR FURTHER INFORMATION CONTACT: Mr. Richard P. Bergen, Special Assistant for Consumer Affairs, Office of Boating, Public, and Consumer Affairs, (202) 472-2384. Normal office hours are between 7:30 a.m. and 4 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The National Boating Safety Advisory Council provides advice to the Coast Guard on significant boating safety matters. The Council has established a Subcommittee to investigate ways to enhance the role of boating manufacturers and dealers in consumer education. The Coast Guard expects that information received by the Subcommittee will provide the basis for a comprehensive catalog of boating safety information sources available to the public. In addition, the Coast Guard expects to provide voluntary consumer education guidelines from the information received. The guidelines could assist boating manufacturers and dealers in distributing effective safety information to consumers.

The Coast Guard requests comments and views from boat and boat equipment manufacturers, dealers, consumers boating safety educators, and boat show organizers on the following areas of interest:

- Examples or description of boating safety information or education currently provided by manufacturers or dealers, and the methods used to convey or distribute the information (e.g. owner manuals, dealer orientations, promotional literatue, etc.).
- Examples or descriptions of any programs that manufacturers use to help dealers educate retail consumers.
- Examples or descriptions of educational materials available from boating safety educators that manufacturers and dealers could either distribute with their products or make known to their customers.
- Suggestions on ways that boat show organizers, and participating manufacturers and dealers, could promote and provide product safety information and education at boat shows.

J. A. McDonough, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 84-9835 Filed 4-11-84; 8:45 am]

BILLING CODE 4910-14-M

Federal Highway Administration

Environmental Impact Statement; San Diego County, California

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 San Diego County, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael A. Cook, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95809, Telephone: (916) 440-2521.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to construct State Route 52 from Santo Road in the city of San Diego to State Route 67 in the city of Santee. The proposed project will involve the construction of a 10 mile

segment of new highway route on new location. Construction of this project would complete an 18 mile section of State Route 52 which would serve as a connector between three interstate and three non-interstate freeways. The entire Route 52 project is expected to be a multilane freeway with the ultimate design being six-lanes. Alternatives for this project consist of "no build" and five potential alignments. Two public meetings one in San Diego and one in Santee were held to solicit citizen input. Scoping meetings will also be arranged with responsible/cooperating agencies and possibly with special interest groups upon request. In addition, a public hearing will be held. Public notice will be given to the time and place of the hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on April 5, 1984.

Michael A. Cook,

District Engineer, Sacramento, California.

[FR Doc. 84-9825 Filed 4-11-84; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. EX84-1; Notice 1]

Elswick Special Vehicles, Ltd.; Petition for Temporary Exemption From Federal Motor Vehicle Safety Standards

Elswick Special Vehicles, Ltd. of Warwickshire, England, has petitioned for temporary exemption from several Federal motor vehicle safety standards. The basis of the petition is that compliance would cause substantial economic hardship.

Notice of receipt of the petition is published in accordance with National Highway Traffic Safety Administration regulations on this subject (49 CFR 555.7) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Petitioner is a wholly-owned subsidiary of Elswick-Hopper PLC, a company incorporated in Great Britain. It is a manufacturer of special vehicles for the disabled, and produced 26 of them in the year prior to filing its petition. The vehicle for which exemption is sought, the Envoy, is a passenger car intended to be operated by a driver in a wheelchair designed especially for the car. Auxiliary seats for two passengers are also provided. Elswick seeks an exemption of three years from the following requirements of the Federal motor vehicle safety standards:

1. Standard No. 108, *Lamps, Reflective Devices, and Asociate Equipment.* The headlamps do not meet Standard No. 108's requirements for either sealed beam headlamps or replaceable bulb headlamps. Though the car is fitted with rectangular headlamps, rectangular headlamps complying with Standard No. 108 cannot be fitted without alteration of the front sheet metal. The company will examine the feasibility of modifications while the exemption is in effect. The company has not tested its parking lamps, stop lamps, back-up lamps, or turn signal lamps to the requirements of Standard No. 108.

2. Standard No. 114, *Theft Protection.* No lock has been provided on the steering column because of difficulties of disabled drivers in seeing or operating a column lock. As the driver's seat is removed from the vehicle when it is unoccupied, the vehicle is not likely to be attractive to a thief.

3. Standard No. 202, *Head Restraints.* Fitting of a head restraint to a wheelchair would restrict the ability of its occupant to turn and open or close the entry door for the wheelchair, which is at the rear of the vehicle.

4. Standard No. 208, *Occupant Protection in Interior Impact.* At present the Envoy lacks Type 1 seat belt assemblies for the two auxiliary seats but will be fitted with them as soon as practicable. In addition, the lap restraint which is fitted around the wheelchair to secure the driver has not been tested to Standard No. 209 though its manufacturer has assured Elswick that it complies.

5. Standard No. 214, *Side Door Strength.* The cost of a compliance test "is very expensive and beyond our current means," but the company believes that the driver is protected from side impacts by being positioned in the center of the car. An intrusion greater than 18 inches from the left side (there is no right side door) would be required to reach the wheelchair. Costs to conform the door are high, and the addition of steel members to the fiberglass door would increase the weight of the vehicle with a consequent decrease in fuel economy and payload.

6. Standard No. 216, *Roof Crush Resistance.* The vehicle is of monocoque construction, incorporating a "roll-over tube" to protect the driver's head. Steel tubes run along the side cantrails to protect sides and corners, and vertical tubes are incorporated front and rear to assist the cantrails. The Envoy has been constructed to withstand roof crush but the test has not been conducted.

7. Standard No. 301, *Fuel System Integrity.* The vehicle complies with front impact requirements, but has not been tested to rear and lateral tests "which would require the destruction of 2 cars at considerable additional expense."

In its first two fiscal years, ending January 31, 1983, the company had cumulative net losses of Pounds Sterling 162,873.

Petitioner argues that an exemption would be in the public interest as the Envoy is the only invalid car available that affords mobility to a wheelchair bound person without the necessity of another person in attendance. Its availability would enhance the quality of life of many individuals. An exemption would also be consistent with traffic safety objectives, as the Envoy already has received approvals from Great Britain, the countries of the European Economic Community and others.

Interested persons are invited to submit comments on the petition of Elswick Special Vehicles, Ltd. described above. Comments should refer to the docket number and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The application and supporting materials, and all comments received, are available for examination in the docket both before and after the closing date. Comments received after the closing date will also be filed and will be considered to the extent possible. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: May 14, 1984.

(Sec. 3, Pub. L. 92-548, 86 Stat. 1159 (15 U.S.C. 1410); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on April 5, 1984.

Barry Felrice,

Acting Associate Administrator for Rulemaking.

[FR Doc. 84-9881 Filed 4-11-84; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. IP84-5; Notice 1]

General Motors Corp.; Receipt of Petition for Determination of Inconsequentiality

General Motors Corp. of Warren, Michigan ("GM" herein), has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for a noncompliance with 49 CFR 571.110, Motor Vehicle Safety Standard No. 110, *Tire Selection and Rims for Passenger Cars*, on the basis that it is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition for a determination of inconsequentiality is published in accordance with Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1410) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Approximately 4,406 1984 model Chevrolet Monte Carlo passenger cars equipped with bucket seats carry tire inflation placards (required by Standard No. 110) with an incorrect seating capacity and vehicle capacity weight. The placards indicate that the front seating capacity is three persons when the correct capacity is two, that the occupant capacity is six when actually it is five. The total vehicle capacity weight "corresponds to the incorrect front occupant listings." The converse situation obtains with respect to 3,876 1984 model Pontiac 6000 passenger cars. These vehicles have bench seats in the front with a capacity of three persons but their placards give occupant capacity as two.

GM argues that the noncompliances are inconsequential because both cars "are designed with load carrying capacity sufficient to accommodate either bench seats which can carry three front occupants or optional seating configurations accommodating two front occupants." The configuration of the front seats in each vehicle makes its capacity obvious to the observer, and the incorrect information will not result in overloading of either the Chevrolet or the Pontiac.

Interested persons are invited to submit written data, views, and arguments on the petition of General Motors Corp. described above. Comments should refer to the docket number and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The application and supporing materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: May 14, 1984.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on April 5, 1984.

Barry Felrice,

Acting Associate Administrator for Rulemaking.

[FR Doc. 84-9882 Filed 4-11-84; 8:45 am]

BILLING CODE 4910-59-M

National Highway Safety Advisory Committee; Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., app. I), notice is hereby given of a hearing to be held by the Commercial Vehicle Safety Issues Subcommitte of the National Highway Safety Advisory Committee. The hearing will address primarily issues related to commercial vehicle driver training and certification. Secondary issues of commercial vehicle inspection and commercial vehicle accident data reporting systems will also be addressed as time permits. The hearing will take place on May 17 and 18, 1984 from 8:30 a.m. to 5:00 p.m., in room 6200 of the DOT Headquarters Building, 400 Seventh Street, S.W., Washington, DC., 20590.

Individuals or organizations interested in providing information to the Subcommittee should contact Joseph Cameron, Committee Management, NHTSA, on telephone 202-426-2870.

All meetings are open to the interested public, but may be limited to the space available. Members of the public may present a written statement to the Committee at any time. This meeting is subject to the approval of the appropriate DOT officials. Additional information and full agenda may be obtained from the NHTSA Executive Secretariat, 400 Seventh Street, S.W., Room 5221, Washington, DC 20590, telephone 202-426-2870.

Issued in Washington, DC on March 30, 1984.

Robert E. Doherty,

Executive Secretary.

[FR Doc. 84-9889 Filed 4-11-84; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Public Information Collection Requirements Submitted to OMB for Review

Dated: April 9, 1984.

The Department of Treasury has 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) 535-6020. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and/or to the Treasury Department Clearance Officer, Room 7227, 1201 Constitution Avenue NW., Washington, D.C. 20220.

Alcohol, Tobacco and Firearms

OMB No. 1512-0292
Form No. ATF Rec 5120/2
Type of Review: Reinstatement
Title: Letterhead Applications and Notices Relating to Wine

OMB Reviewer: Norman Frumkin, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

U.S. Customs Service

OMB No. 1515-0093
Form No. Customs Form 300
Type of Review: Extension
Title: Bonded Warehouse Proprietor's Submission

OMB Reviewer: Judy McIntosh, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Gary Kowalczyk,

Departmental Reports Management Office.

[FR Doc. 84-9887 Filed 4-11-84; 8:45 am]

BILLING CODE 4810-25-M

Worldwide Unitary Taxation Working Group; Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463) the Department of the Treasury announces the rescheduling of the third meeting of the Worldwide Unitary Taxation Working Group. The Working Group is studying the complex issues raised by states' use of the worldwide unitary method of taxation.

The Working Group will meet at 10:00 a.m. on May 1, 1984, in the Cash Room of the Main Treasury Building. At the meeting, the Working Group will discuss a report from its staff-level Task Force presenting options for the Working Group's consideration as possible recommendations for resolving the unitary issue.

Inquiries concerning the Working Group should be addressed to its Staff Director, Dr. Charles E. McLure, Jr., Deputy Assistant Secretary, (Tax Analysis), Room 3108, Main Treasury Building, 15th Street and Pennsylvania Avenue NW., Washington, D.C. 20220.

Dated: April 6, 1984.

John E. Chapoton,

Assistant Secretary (Tax Policy).

[FR Doc. 84-9686 Filed 4-11-84; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

[Delegation Order No. 156 (Rev. 5); Chief Counsel Order No. 1031.3D]

Delegation of Authority; Disclosure of Return Information

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: This revised delegation order authorizes certain officials of the Internal Revenue Service to disclose or, in specific instances, authorize the disclosure of return information. The text of the delegation order appears below.

EFFECTIVE DATE: March 15, 1984.

FOR FURTHER INFORMATION CONTACT: Arnold B. Gordon, PM:S:DS, 1111 Constitution Avenue, NW., Room 1603, Washington, D.C. 20224, 202–566–4263 (Not a Toll-Free telephone number).

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury directive appearing in the Federal Register for Wednesay, November 8, 1978.

Arnold B. Gordon,

Acting Director, Disclosure and Security Division.

Order No. 156 (Rev. 5) Chief Counsel Order No. 1031.3D

Effective date: 3–15–84.

Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents

Pursuant to the authority vested in the Commissioner of Internal Revenue by Treasury Department Order No. 150–37 and in the Chief Counsel by General Counsel Order No. 4 and by Treasury Department Order No. 190 (as revised), authority to act in matters officially before their respective functions is hereby delegated.

The authority to disclose returns and or return information under certain provisions of the IR Code, such as IRC 6103 (h)(1) and (k)(6) is not delegated herein as the language of these provisions themselves permits officers and employees of the Internal Revenue Service and the Office of the Chief Counsel to disclose such information. The authority to disclose returns and return information under IRC 6103(k)(4) is also not delegated herein as Delegation Order 114 (as revised) governs these disclosures.

(1) The Deputy Commissioner; Associate Commissioners, Assistant Commissioners; Deputy Assistant Commissioners; Division Directors (or equivalent level position); Assisant Director, Disclosure and Security Division; Deputy Chief Counsel, Associates Chief Counsel; Deputy Associates Chief Counsel; Chief Counsel Division Directors; Regional Commissioners; Regional inspectors, Regional Counsels; Deputy Regional Counsels; District Counsels; District and Service Center Directors; Director, National Computer Center; and Director, Data Center are authorized.

(a) To disclose or, in specific instances, authorize the disclosure of returns or return information to such persons as the taxpayer may designate in a written request, subject to the conditions prescribed in IRC 6103(c) and the Treasury Regulations thereunder. The authority to withhold reture information upon a determination that such disclosure would seriously impair Federal tax administration is also delegated. The authority delegated in this paragraph to disclose returns or return information may be redelegated to Internal Revenue Service employees and employees of the Office of Chief Counsel to the extent necessary within the exercise of their official duties. The authority delegated in this paragraph to withhold return information may be redelegated not lower than Chiefs, Special Procedures function; Group Managers (or their equivalent); Chiefs, Appeals Offices; Chiefs, Criminal Investigation Branch; and Disclosure Officers.

(b) To disclose or, in specific instances, authorize the disclosure of returns, upon the written request of an individual taxpayer, partner, corporate officer, shareholder, administrator, executor, trustee, or other person having a material interest subject to the conditions prescribed in IRC 6103(e). The authority to disclose or, in specific instances, authorize the disclosure of return information to such persons, upon a determination that disclosure would not seriously impair Federal tax administration, as prescribed in IRC 6103(e)(7), is also delegated. The authority to withhold return information upon a determination that disclosure would seriously impair Federal tax administration is also delegated. The authority delegated in this paragraph to disclose or authorize the disclosure of returns or return information may be redelegated to Internal Revenue Service employees and employees of the Office of Chief Counsel to the extent necessary within the exercise of their official duties. In the event a disclosure of return information would seriously impair Federal tax administration, the decision to withhold such return information will be referred to officials not lower than Chiefs, Special Procedures function; Group Managers (or their equivalent); Chiefs, Appeals Offices; Chiefs, Criminal Investigation Branch; and Disclosure Officers.

(c) To disclose or, in specific instances, authorize the disclosure of returns or return information to officers and employees of the Department of Justice including United States attorneys, in a matter involving tax administration, subject to the conditions prescribed in IRC 6103(h)(2), the Treasury Regulations thereunder, and (h)(3)(A). The authority delegated in this paragraph may be redelegated not lower than Chiefs, Special Procedures function; and Group Managers (or their equivalent including Disclosure Officers). The authority delegated in this paragraph to Chief Counsel employees may be redelegated not lower than Chiefs, Appeals Officers; and to attorneys of the Office of Chief Counsel directly involved in such matters. (See paragraph (17) below.)

(d) To disclose or, in specific instances, authorize the disclosure of

returns or return information to officers and employees of the Department of Treasury, as specified in IRC 6103(l)(4)(B) or, upon written request, to employees and other persons specified in IRC 6103(l)(4)(H) for use in personnel or claimant representative matters, and to make relevancy and materiality determinations as provided in section 6103(1)(4)(A), subject to the conditions prescribed in IRC 6103(1)(4). The authority delegated in this paragraph may be redelegated only to Assistant Division Directors (or equivalent level position); Assistant Regional Commissioners; Regional Director of Appeals; Assisant Regional Inspectors; Regional Chief, Personnel Branch; Assistant Distric and Service Center Directors; Division Chiefs; National Office Branch Chiefs, Internal Security Division; Staff Assistants to Regional Counsels; and to attorneys of the Office of Chief Counsel and inspectors directly involved in such matters. (See paragraph 13(e).)

(e) To disclose or, in specific instances, authorize the disclosure of returns or return information to the extent necessary in connection with contractual procurement by the Service or Office of the Chief Counsel or equipment or other property or services, subject to the conditions prescribed in IRC–6103(n) and the Treasury Regulations thereunder. The authority delegated in this paragraph may be redelegated only to Assistant Division Directors (or equivalent level position); Assistant Regional Commissioners; Regional Director of Appeals; Assistant Regional Inspectors; Assistant District and Service Center Directors; Division Chiefs; Chief Counsel Assistant Division Directors; Associate Regional Counsel; and Disclosure Officers.

(f) To disclose, or in specific instances, authorize the disclosure of return information (other than taxpayer return information) which may constitute evidence of a violation of any Federal criminal law (not involving tax administration) or to disclose return information under circumstances involving a threat or other imminent danger of death or other physical injury, which is directed against the President or other government official, to the U.S. Secret Service, subject to the conditions prescribed in IRC 6103(i)(3). The authority delegated in this paragraph is also delegated to Assistant District and Service Center Directors. This does not limit the authority granted in paragraph 6(d) of this order.

(g) To determine whether a disclosure of standards used or to be used for selection of returns for examination, or data used or to be used for determining such standards will seriously impair assessment, collection or enforcement under the internal revenue laws pursuant to IRC 6103(b)(2). The authority delegated in this paragraph may be redelegated to Disclosure Officers.

(2) The Deputy Commissioner, Associate Commissioners; Assistant Commissioners; Deputy Assistant Commissioners; Division Directors (or equivalent level position); Assistant Director, Disclosure and Security Division; Regional Commissioners; Regional Inspectors; District and Service Center Directors; Director, National Computer Center, and Director, Data Center are authorized to determine whether a disclosure of returns or return information in a Federal or State judicial or administrative proceeding pertaining to tax administration would identify a confidential informant or seriously impair a civil or criminal tax investigation, subject to the conditions prescribed in IRC 6103(h)(4). The authority delegated in this paragraph may not be redelegated.

(3) The Deputy Commissioner; Associate Commissioner (Policy and Management); Assistant Commissioner (Support and Services); Deputy Assistant Commissioner (Support and Services); Regional Commissioners; Director Disclosure and Security Division; Assistant Director, Disclosure and Security Division; and District and Service Center Directors are authorized:

(a) To furnish an affirmative or negative response to a written inquiry from an attorney of the Department of Justice (including a United States Attorney) involved in a judicial proceeding pertaining to tax administration, or any person (or his/her legal representative) who is a party to such proceeding, as to whether a prospective juror has or has not been the subject of any audit or other tax investigation by the Internal Revenue Service, subject to the conditions prescribed in IRC 6103(h)(5). The authority delegated in this paragraph may be redelegated only to Assistant District and Service Center Directors; Division Chiefs, and Disclosure Officers.

(b) To disclose or, in specific instances, authorize the disclosure of:

(i) Accepted offers-in-compromise to members of the general public, subject to the conditions prescribed in IRC 6103(k)(1).

(ii) The amount of an outstanding obligation secured by a lien, notice of which has been filed pursuant to section 6323(f), to any person who furnishes satisfactory written evidence establishing a right in or intent to obtain a right in property subject to such lien, subject to the conditions prescribed in IRC 6103(k)(2). The authority to disclose or, in specific instances, authorize the disclosure of the amount of such outstanding obligation is also delegated to the Associate Commissioner (Operations); Assistant Commissioner (Collection); and Deputy Assistant Commissioner (Collection).

(iii) Taxpayer identity information with respect to any income tax return preparer and information as to whether any penalty has been assessed against such preparer to officers and employees of any agency charged under State or local law with the regulation of such preparers, upon written request and subject to the conditions prescribed in IRC 6103(k)(5);

(iv) Returns or return information with respect to taxes imposed by IRC chapters 2, 21, and 24 to the Social Security Administration, upon written request and subject to the conditions prescribed in IRC 6103(l)(1)(A);

(v) Returns or return information with respect to taxes imposed by IRC chapter 22 to the Railroad Retirement Board, upon written request and pursuant to IRC 6103(o)(1).

The authority delegated in subparagraphs (iv) and (v) is also delegated to the Associate Commissioner (Operations); the Associate Chief Counsel (Technical); and the Assistant Commissioner (Examination). The authority delegated in this paragraph may be redelegated only to Assistant District and Service Center Directors; Division Chiefs; and Disclosure Officers. In addition, the authority delegated in subparagraph (i) may also be redelegated only to Chiefs, Special Procedures function; Special Procedures function Advisor Reviewers; and Group Managers (or their equivalent). The authority delegated in subparagraph (ii) may also be redelegated only to Chiefs, Special Procedures function; Special Procedures function Advisor Reviewers; Group Managers (or their equivalent); and Revenue Officers. The authority delegated in subparagraph (iv) may be redelegated not lower than Branch Chief.

(4) The Deputy Commissioner, Regional Commissioner, District and Service Center Directors are authorized to disclose or, in specific instances, authorize the disclosure of returns or return information to designated State tax officials, upon written request by the head of a State tax agency, for the purpose of and to the extent necessary in the administration of State tax laws, pursuant to the provisions of IRC 6103(d)

and subject to the conditions prescribed in IRC 6103(h)(4) and (p)(8). The authority to withhold return information pursuant to IRC 6103(d) and (h)(4) upon a determination that such disclosure would identify a confidential informant or seriously impair any civil or criminal tax investigation is also delegated. The authority delegated in this paragraph does not extend to the entry into Federal/State Agreements on the Coordination of Tax Administration. The authority delegated in this paragraph may be redelegated to any supervisory level deemed appropriate, but such redelegation shall not extend to the authority to withhold return information.

(5) The Deputy Commissioner; Regional Commissioners; District and Service Center Directors; and Director, National Computer Center are authorized to disclose or, in specific instances, authorize the disclosure of returns or return information pursuant to Federal/State Agreements on the Coordination of Tax Administration entered into between the head of any State tax agency and the Commissioners of Internal Revenue, pursuant to the provisions of IRC 6103(d) and subject to the conditions prescribed in IRC 6103(h)(40) and (p)(8). The authority to withhold return information pursuant to IRC 6103(d) and (h)(4) upon a determination that such disclosure woud identify a confidential informant or seriously impair any civil or criminal tax investigation is also delegated. The authority delegated in this paragraph may be redelegated to any supervisory level deemed appropriate, but such redelegation shall not extend to the authority to withhold return information.

(6) The Deputy Commissioner, Associate Commissioner (Policy and Management); Assistant Commissioner (Support and Services); Deputy Assistant Commissioner (Support and Services); Director, Disclosure and Security Division; and Assistant Director, Disclosure and Security Division are authorized:

(a) To disclose or, in specific instances, authorize the disclosure of returns and return information to Congressional committees and other persons, upon written request and subject to the conditions prescribed in IRC 6103(f). The authority delegated in this paragraph is also delegated to the Assistant to the Commissioner (Legislative Liaison). The authority delegated in this paragraph may not be redelegated.

(b) To disclosure or, in specific instances, authorize the disclosure of returns or return information to officers and employees of a Federal agency pursuant to an ex parte order by a Federal District Court judge or magistrate when needed for use in the enforcement of a Federal criminal statute (not involving tax administration), or to locate a fugitive from justice subject to the conditions prescribed in IRC 6103(i)(1) or (i)(5) and the Treasury Regulations thereunder. The authority to withhold any return or return information, pursuant to IRC 6103(i)(6), upon a determination that such disclosure would identify a confidential informant or seriously impair any civil or criminal tax investigation is also delegated. The authority delegated in this paragraph is also delegated to Regional Commissioners; District and Service Center Directors; and Assistant District and Service Center Directors. This authority may not be redelegated.

(c) To disclose or, in specific instances, authorize the disclosure or return information (other than taxpayer return information) or officers and employees of a Federal agency upon written request by the head of such agency or the inspector General thereof, or in the case of the Department of Justice, the Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, any United States attorney, any special prosecutor appointed under section 593 of title 28, United States Code, or any attorney in charge of a criminal division organized crime strike force established pursuant to section 510 of title 28, United States Code, when needed for use in the enforcement of a Federal criminal statute (not involving tax administration), subject to the conditions prescribed in IRC 6103(i)(2). The authority to withhold return information (other than taxpayer return information), pursuant to IRC 6103(i)(6), upon a determination that such disclosure would identify a confidential informant or seriously impair any civil or criminal tax investigation is also delegated. The authority delegated in this paragraph is also delegated to Regional Commissioners; District and Service Center Directors; and Assistant District and Service Center Directors. This authority may not be redelegated.

(d) To disclose or, in specific instances, authorize the disclosure of:

(i) return information (other than taxpayer return information) which may constitute evidence of a violation of Federal criminal law (not involving tax administration) to the extent necessary to apprise the head of the appropriate Federal agency pursuant to IRC 6103(i)(3)(A);

(ii) return information to the extent necessary to apprise appropriate officers or employees of a Federal or State law enforcement agency of circumstances involving an imminent danger of death or physicial injury to any individual pursuant to IRC 6103(i))(3)(B)(i);

(iii) return information to the extent necessary to apprise appropriate officers or employees of a Federal law enforcement agency of circumstances involving the imminent flight of an individual from Federal prosecution pursuant to IRC 6103(i)(3)(B)(ii);

With respect to subparagraph (i), the authority to withhold any return information pursuant to IRC 6103(i)(6) upon a determination that such disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation is also delegated.

The authority delegated in this paragraph is also delegated to Regional Commissioners, District and Service Center Directors; and Assistant District and Service Center Directors. The authority delegated in this paragraph may be redelegated only to the Assistant Director, Disclosure and Security Division; and Branch Chiefs and Section Chiefs, Disclosure and Security Division, but such redelegation shall not extend to the authority to withhold return information (other than taxpayer return information). This authority is in addition to the authority previously delegated in paragraph (1)(f).

(e) To notify the Attorney General or his delegate or the head of a Federal agency that certain returns or return information obtained pursuant to IRC 6103(i)(1), (2) or (3)(A) shall not be admitted into evidence under IRC 6103(i)(4)(A)(i) or (B), upon a determination, in accordance with IRC 6103(i)(4)(C), that such admission would identify a confidential informant or seriously impair a civil or criminal tax investigation. The authority delegated in this paragraph is also delegated to Regional Commissioners, District and Service Center Directors; and Assistant District and Service Center Directors. This authority may not be redelegated.

(f) To disclose or, in specific instances, authorize the disclosure of returns or return information to officers and employees of the General Accounting Office, upon written request by the Comptroller General of the United States and subject to the conditions prescribed in IRC 6103(i)(7). The authority to withhold any return or

return information, pursuant to IRC 6103(i)(6), upon a determination that such disclosure would impair any civil or criminal tax investigation or reveal the identity of a confidential informant is also delegated. The authority delegated in this paragraph may not be redelegated.

(g) To disclose or, in specific instances, authorize the disclosure of:

(i) The mailing address of taxpayer to officers and employees of an agency when needed in connection with a Federal claim against such taxpayer, upon written request and subject to the conditions prescribed in IRC 6103(m)(2). The authority delegated in this paragraph is also delegated to Regional Commissioners; District and Service Center Directors; and Assistant District and Service Center Directors. Upon approval of a contractual agreement for such disclosures, the authority delegated in this paragraph is also delegated to the Assistant Commissioner (Returns and Information Processing); Deputy Assistant Commissioners (Returns and Information Processing); Director, Returns Processing and Accounting Division; and Director National Computer Center. The authority delegated in this paragraph may be redelegated only as set forth below. The authority delegated in this paragraph to the Director, Disclosure and Security Division and the Assistant Director, Disclosure and Security Division may be redelegated only to the Branch Chiefs and Section Chiefs, Disclosure and Security Division. The authority delegated to the Regional Commissioners; Director, National Computer Center; District and Service Center Directors; and Assistant District and Service Center Directors may be redelegated only to the Disclosure Officer, National Computer Center and Regional, District and Service Center Disclosure Officers. The authority delegated in this order does not include authority to enter into a contractual agreement, which is contained in Delegation Order No. 100, as revised.

(ii) Whether or not an applicant for a loan under an included Federal loan program has a tax delinquent account to the head of the Federal agency administering such program, upon written request and subject to the conditions prescribed in IRC 6103(l)(3). The authority delegated in this paragraph is also delegated to Regional Commissioners; District and Service Center Directors; and Assistant District and Service Center Directors. Upon approval of a contractual agreement for such disclosures, the authority delegated in this paragraph is also delegated to the Assistant Commissioner (Returns and Information Processing); Deputy Assistant Commissioner (Returns and Information Processing); Director, Returns Processing and Accounting Division; and Director, National Computer Center. The authority delegated in this paragraph may be redelegated only as set forth below. The authority delegated in this paragraph to the Director, Disclosure and Security Division and the Assistant Director, Disclosure and Security Division may be redelegated only to the Branch Chiefs and Section Chiefs, Disclosure and Security Division. The authority delegated to the Regional Commissioners; Director, National Computer Center; District and Service Center Directors; and Assistant District and Service Center Directors may be redelegated only to the Disclosure Officer, National Computer Center and Regional, District and Service Center Disclosure Officers. The authority delegated in this order does not include authority to enter into a contractual agreement, which is contained in Delegation Order No. 100, as revised.

(h) To disclose or, in specific instances, authorize the disclosure of the mailing address of taxpayers to officers and employees of the National Institute for Occupational Safety and Health, upon written request and subject to the conditions prescribed in IRC 6103(m)(3). Upon approval by the Director, Disclosure and Security Division or his/her delegate of a contractual agreement for such disclosures, the authority delegated in this paragraph is also delegated to the Assistant Commissioner (Computer Services); Deputy Assistant Commissioner (Computer Services); Director, Software Division; Director, National Computer Center; and Service Center Directors. The authority delegated in this paragraph to the Director, Disclosure and Security Division and the Assistant Director, Disclosure and Security Division, may be redelegated only to Branch Chiefs and Section Chiefs, Disclosure and Security Division. The authority delegated to the Assistant Commissioner (Computer Services); Deputy Assistant Commissioner (Computer Services); Director, Software Division; Director, National Computer Center; and Service Center Directors may not be redelegated. The authority delegated in this paragraph does not include authority to enter into a contractual agreement, which is contained in Delegated Order No. 100, as revised.

(i) To disclose, or in specific instances, authorize the disclosure of the mailing address of any taxpayer who has defaulted on a loan made from the student loan fund established under part B or E of title IV of the Higher Education Act of 1965 or a loan made to a student at an institute of higher education pursuant to section 3(a)(1) of the Migration and Refugee Assistance Act of 1962, to the Secretary of Education upon written request and subject to the conditions prescribed in IRC 6103(m)(4). Upon approval by the Director, Disclosure and Security Division or his/her delegate of a contractual agreement for such disclosures, the authority delegated in this paragraph is also delegated to the following officials: Assistant Commissioner (Computer Services); Deputy Assistant Commissioner (Computer Services); Director, Software Division; Director, National Computer Center; and Service Center Directors. The authority delegated in this paragraph to the Director, Disclosure and Security Division and the Assistant Director, Disclosure and Security Division, may be redelegated only to Branch Chiefs and Section Chiefs, Disclosure and Security Division. The authority delegated to the Assistant Commissioner (Computer Services); Deputy Assistant Commissioner (Computer Services); Director, Software Division; Director, National Computer Center; and Service Center Directors may not be redelegated. The authority delegated in this paragraph does not include authority to enter into a contractual agreement, which is contained in Delegation Order No. 100, as revised.

(7) The Deputy Commissioner; Associate Commissioner (Data Processing); and Assistant Commissioner (Returns and Information Processing) are authorized:

(a) To disclose or, in specific instances, authorize the disclosure of returns or return information for statistical use to officers and employees of the Department of Commerce, Bureau of Census, upon the written request of the Secretary of Commerce or to officers and employees of the Department of the Treasury, subject to the conditions prescribed in IRC 6103(i)(1)(A) and the Treasury Regulations thereunder and (i)(3). The authority delegated in this paragraph may be redelegated only to the Director, Statistics of Income Division.

(b) To disclose or, in specific instances, authorize the disclosure of return information for statistical use to officers and employees of the Department of Commerce, Bureau of Economic Analysis, upon the written

request of the Secretary of Commerce, or to officers and employees of the Federal Trade Commission, upon written request of the Chairman, subject to the conditions prescribed in IRC 6103(i)(1)(B) and (i)(2) and the Treasury Regulations thereunder. The authority deleated in this paragraph may be redelegated only to the Director, Statistics of Income Division.

(8) The Deputy Commissioner, Assistant to the Commissioner (Public Affairs); Director and Assistant Director, Public Affairs Division; Regional Commissioners; and District Directors are authorized to disclose or, in specific instances, authorize the disclosure of taxpayers' names and the city, state and zip code of their mailing addresses to the press and other media for purposes of notifying persons entitled to undelivered tax refunds, subject to the conditions prescribed in IRC 6103(m)(1). The authority delegated in this paragraph may be redelegated to Assistant District Directors and Public Affairs Officers.

(9) The Deputy Commissioner, Associate Commissioner (Policy and Management); and Assistant Commissioner (Support and Services) are authorized:

(a) Upon written request of the President, to disclose, or in specific instances, authorize the disclosure of return information (other than return information that is adverse to the taxpayer) of an individual who is under consideration for appointment to a position in the executive or judicial branch of the Federal Government to the authorized representative of the Executive Office of the President or to the Federal Bureau of Investigation on behalf of the President, subject to the conditions prescribed in IRC 103(g)(2) and (g)(4). Authority is also delegated to disclose or, in specific instances, authorize the disclosure of return information with respect to the categories of individuals discussed above to the heads of Federal agencies upon written request, or the Federal Bureau of Investigation on behalf of and upon the written request of such agency heads, subject to the conditions described in IRC 6103(g)(2) and (g)(4). Upon receipt of any request for return information under IRC 6103(g)(2), authority to notify the individuals with respect to whom the request has been made is also delegated. The authority delegated in this paragraph may be redelegated but not lower then:

(i) Deputy Assistant Commissioner (Support and Services), in the case of requests by or on behalf of the President where the return, information to be disclosed is not adverse to the taxpayer;

(ii) Assistant Director, Disclosure and Security Division, in the case of requests by or on behalf of the heads of Federal agencies where the return information to be disclosed is adverse to the taxpayer;

(iii) Branch Chiefs, Disclosure and Security Division, in the case of requests by or on behalf of the heads of Federal agencies where the return information to be disclosed is not adverse to the taxpayer; and

(iv) Section Chiefs, Disclosure and Security Division, concerning the notification of individuals with respect to whom a request has been made.

(b) To make the determination that an agency, body or commission or the General Accounting Office has failed to or does not meet the requirements of IRC 6103(p)(4). Subject to the administrative review applicable to State tax agencies described in IRC 6103(p)(7), authority to withhold returns and return information from any agency, body or commission or the General Accounting Office until a determination is made that the requirements of IRC 6103(p)(4) have been or will be met is also delegated. The authority delegated in this paragraph may not be redelegated.

(10) The Deputy Commissioner; Associate Commissioner (Operations); Assistant Commissioner (Employee Plans and Exempt Organizations); Deputy Assistant Commissioner (Employee Plans and Exempt Organizations); Director, Disclosure and Security Division; Assistant Director, Disclosure and Security Division; Regional Commissioners; District Directors of Key Districts for Employee Plans and Exempt Organizations matters; Service Center Directors; Director, National Computer Center; and Director, Data Center are authorized to disclose, or in specific instances, authorize the disclosure of:

(a) Statements, notifications, reports, or other return information described in IRC 6057(d) to officers and employees of the Social Security Administration for the administration of section 1131 of the Social Security Act, upon written request and subject to the conditions prescribed in IRC 6103(1)(1)(B). The authority delegated in this paragraph to the Assistant Commissioner and Deputy Assistant Commissioner (Employee Plans and Exempt Organizations) may be redelegated, but not lower than Branch Chiefs. Employee Plans Technical and Actuarial Division. The authority delegated in this paragraph to the Director and Assistant Director, Disclosure and Security Division may not be redelegated. The authority delegated in this paragraph to Regional Commissioners may be redelegated not lower than Assistant Regional Commissioner. The authority delegated in this paragraph to the District Directors of Key Districts may be redelegated, but not below Chiefs, Technical Review Staffs, Employee Plans and Exempt Organizations Division. The authority delegated in this paragraph to Service Center Directors may be redelegated, but not lower than Section Chiefs (or their equivalent). The authority delegated in this paragraph to the Director, National Computer Center and Director Data Center may be redelegated, but not lower than Branch Chiefs (or their equivalent).

(b) Returns or return information, including compensation information, to officers and employees of the Department of Labor and Pension Benefit Guaranty Corporation for the administration of Titles I and IV of the Employee Retirement Income Security Act of 1974, upon written request and subject to the conditions prescribed in IRC 6103(1)(2) and the Treasury Regulations thereunder. The returns or return information which may be disclosed under this paragraph include:

(i) Upon specific written request, the information specified in 26 CFR 301.6103(1)(2)–1(a), 2(a), 3(b)(1), and 3(b)(2);

(ii) Upon receipt by the Commissioner of Internal Revenue of an annual written request, the information specified in 26 CFR 301.6103(1)(2)–3(a).

(iii) Upon receipt by the Commissioner of Internal Revenue of a general written request, information specified in 26 CFR 301.6103(1)(2)–3(d).

The authority delegated in this paragraph to the Assistant Commissioner and Deputy Assistant Commissioner (Employee Plans, and Exempt Organizations) may be redelegated, but not lower than Branch Chiefs, Employee Plans Technical and Actuarial Division. The authority delegated in this paragraph to the Director and Assistant Director, Disclosure and Security Division may not be redelegated. The authority delegated in this paragraph to Regional Commissioners may be redelegated not lower than Assistant Regional Commissioner. The authority delegated in this paragraph to District Directors of the Key Districts may be redelegated, but not lower than Chiefs, Technical Review Staff, Employee Plans and Exempt Organizations Division; Group Managers, Employee Plans and Exempt Organizations Division; and Employee Plans Specialist. The authority delegated in this paragraph to Service Center Directors may be redelegated, but not

lower than Section Chiefs (or their equivalent). The authority delegated in this paragraph to the Director, National Computer Center and Director, Data Center may be redelegated, but not lower than Branch Chiefs (or their equivalent). The authority delegated in this paragraph is also delegated to the Director, Appeals Division, Regional Director of Appeals; Chief Appeals Office; and Associate Chief, Appeals Office and may not be redelegated.

(11) The Deputy Commissioner; Associate Commissioner (Operations); Assistant Commissioner (Employee Plans and Exempt Organizations) and Deputy Assistant Commissioner (Employee Plans and Exempt Organizations) are authorized to disclose or, in specific instances, authorize the disclosure of drafts of proposed exemptions or of proposed denials of exemption requests, denial letters, and copies of information submitted by taxpayers requesting exemptions to the proper officers of the Department of Labor for consultation and coordination as required by IRC 4975(c)(2). The authority delegated in this paragraph may be redelegated not lower than Branch Chiefs, Employee Plans Technical and Actuarial Division.

(12) Disclosure of information to appropriate Federal, State or local law enforcement officials may be made by Internal Revenue Service employees, and employees of the Office of Chief Counsel, concerning non-tax crimes which do not involve return information or the income or other financial information of an individual or entity, in accordance with the provisions of Chapter (35)00 of the Disclosure of Official Information Handbook, IRM 1272. In situations where there is a question as to whether the information to be disclosed is or is not return information, such as those described in IRM 1272, the Assistant Commissioner (Support and Services); Deputy Assistant Commissioner (Support and Services); Regional Commissioners; District and Service Center Directors; and Assistant District and Service Center Directors are authorized to approve or deny such requests for disclosure. The Assistant Commissioner (Support and Services) and the Deputy Assistant Commissioner (Support and Services) should act in all such matters only after coordination with the Disclosure Litigation Division, Office of Chief Counsel. Regional Commissioners; District and Service Center Directors; and Assistant District and Service Center Directors should act in all such matters only after coordination with the Office of Regional or District Counsel, as appropriate. The authority delegated in this paragraph may not be redelegated.

(13) The authority vested in the Commissioner of Internal Revenue by 26 CFR 301.9000–1 is delegated by this Order to the Deputy Commissioner. It is also delegated to the following officials to the extent described below. [No authorization is needed in cases referred to the Department of Justice which are discussed in paragraph (1)(c) where the testimony or disclosure is made on behalf of the government.]

(a) Regional Commissioners are authorized to determine whether officers and employees of the Internal Revenue Service assigned to their regions, including employees of the Office of the Regional Counsel, but not including employees of the Regional inspector, will be permitted to testify or produce Service records because of a request or demand for the disclosure of such records of information. The Regional Commissioners should act in all such matters only after coordination with the Office of Regional Counsel. However, the personal testimony of a Regional Commissioner shall require authorization in accordance with (b) below. The authority delegated in this paragraph may not be redelegated. (See (d) and (e) below.) The authority delegated in this paragraph shall not extend to the disclosure of Internal Revenue Service records and information in response to a subpoena or request or other order of the Tax Court. (See General Counsel Order No. 4, 44 FR 58017 (1979), which provides the authority for disclosure of Internal Revenue Service records and information in tax court proceedings.)

(b) The Assistant Commissioner (Support and Services) and the Deputy Assistant Commissioner (Support and Services) are authorized to determine whether Regional Commissioners, officers and employees of the Internal Revenue Service assigned to the National Office, including employees of the Office of Chief Counsel, and employees assigned to Regional Inspectors will be permitted to testify or produce Service records because of a request or demand for the disclosure of such records or information. The Assistant Commissioner (Support and Services) or the Deputy Assistant Commissioner (Support and Services) should act in all such matters only after coordination with the Disclosure Litigation Division, Office of Chief Counsel. The authority delegated in this paragraph may not be redelegated. (See (d) and (e) below.) The authority delegated in this paragraph shall not extend to the disclosure of Internal Revenue Service records and information in response to a subpoena or request or other order of the Tax Court. (See General Counsel Order No. 4, 44 FR 58017 (1979).)

(c) The District Directors and Service Center Directors are authorized to determine whether officers and employees of the Internal Revenue Service assigned to their district or service center (including regional appellate employees located in the district) will be permitted to testify or produce Service records because of a request or demand for disclosure of such records or information. For purposes of this paragraph, employees of the Office of the District Counsel come under the authority of the District Director. Employees of the Regional Inspector are covered under paragraph (b), above. The District and Service Center Directors should act in all such matters only after coordination with the Office of the District Counsel. However, the personal testimony of a District Director of Service Center Director shall require authorization in accordance with (a) above. The authority in this paragraph may not be redelegated. (See (d) and (e) below.) The authority delegated in this paragraph shall not extend to the disclosure of Internal Revenue Service records and information in response to a subpoena or request or other order of the Tax Court. (See General Counsel Order No. 4, 44 FR 58017 (1979).)

(d) The authority delegated in paragraphs (a), (b) and (c) shall not extend to testimony or the production of Service records because of a request or demand for the disclosure of such records or information:

(i) By a Congressional Committee;

(ii) Involving a disclosure to the President or certain other persons pursuant to IRC 6103(g);

(iii) Involving a disclosure to the Comptroller General pursuant to IRC 6103(i)(7); or

(iv) Involving a disclosure to correct a misstatement of fact pursuant to IRC 6103(k)(3).

(e) The Director, General Legal Services Division and Assistant Regional Counsel (GLS), with the concurrence of the Director, General Legal Services Division are authorized to determine whether officers and employees of the Internal Revenue Service, including employees of the Office of Chief Counsel, will be permitted to testify or produce internal revenue records or information because of a request or demand for the disclosure of such records or information, if the request or demand is

made in connection with personnel or claimant representative matters under the jurisdiction of the General Legal Services Division for which they have been delegated authority to disclose returns or return information as described in paragraph 1(d). The authority delegated above in this paragraph to the Director, General Legal Services Division may be redelegated only to the Assistant Director, General Legal Services Division and to Branch Chiefs and attorneys of the Office of Chief Counsel directly involved in such matters. This paragraph does not limit the authority granted in (a), (b), or (c) above.

(f) The authority delegated to Regional Commissioners and District and Service Center Directors in paragraphs (a) and (c) shall not extend to testimony or the production of Service records because of a request or demand for the disclosure of such records or information which may require a disclosure to a competent authority under a tax convention, whether or not such information were previously disclosed pursuant to such convention. The Associate Commissioner (Policy and Management), Assistant Commissioner (Support and Services) and the Deputy Assistant Commissioner (Support and Services) should act in all such matters only after authorization by the appropriate United States competent authority. (See Delegation Order 114, as revised).

(g) in addition to paragraphs (a), (b), (c) and (e) above, authority is further delegated to Regional Commissioners; Assistant Regional Commissioners (Resources Management); Regional Inspectors; Regional and District Counsel; District and Service Center Directors; and Director, Data Center, to release or, in specific instances, authorize the release of information from the leave and payroll records of employees under their jurisdiction, and to the Fiscal Management Officer to release or, in specific instances, authorize the release of information from the leave and payroll records of all employees of the National Office, when such information is requested or subpoenaed in connection with private litigation, upon determination that release of the information would not be detrimental to the Internal Revenue Service. This delegation does not include authority to release or authorize the release of information contained in official personnel folders, which is covered by IRM 0293. When any uncertainty exists as to the availability of furnishing leave and pay information in a particular case, the matter should be referred to the National Office, Attention: PM:PFR:F, with a complete report of the circumstances. The authority delegated in this paragraph may not be redelegated.

The provisions of this paragraph (13(a)–(g)) are limited to the authorization of testimony or the production of documents pursuant to a request or demand as referred to in paragraphs (d)(1)(i) and (ii) of 26 CFR 301.9000–1 and does not extend to or affect other disclosure authority previously delegated in paragraphs (6) and (9) of this order. Furthermore, in instances where it is anticipated that the testimony or production of Service records by a Chief Counsel attorney will involve matters which may fall within the attorney-client privilege, the determination of whether to waive the privilege, as well as the authority to authorize the testimony or production shall lie with the Assistant Commissioner (Support and Services) and Deputy Assistant Commissioner (Support and Services) who will act in these matters only after coordination with the disclosure Litigation Division. In instances involving Regional or District Counsel attorneys and the attorney-client privilege, authority shall lie with the Regional Commissioner who will act in these matters only after coordination with the Regional Counsel.

(14) The Deputy Commissioner, Associate Commissioner (Data Processing); Assistant Commissioner (Computer Services); Deputy Assistant Commissioner (Computer Services); Regional Commissioners; Director, Software Division; Director, National Computer Center; and Service Center Directors are authorized to disclose or, in specific instances, authorize the disclosure of individual master file information to the head of a Federal, State, or local child support enforcement agency or an authorized supervisory official under a contractual agreement entered into pursuant to Delegation Order 100, as revised, Revenue Procedure 78–10, and subject to the conditions prescribed in IRC 6103(1)(6)(A)(i). Such contractual agreement should be entered into only after coordination with the Director or Assistant Director, Disclosure and Security Division. The authority delegated in this paragraph may be redelegated to any supervisory level deemed appropriate.

(15) The Deputy Commissioner; Associate Commissioner (Policy and Management); Assistant Commissioner (Support and Services); Deputy Assistant Commissioner (Support and Services); Regional Commissioners; and Service Center Directors are authorized to disclose or, in specific instances, authorize the disclosure of return information to the head of a Federal, State or local child support enforcement agency or an authorized supervisory official under a contractual agreement entered into pursuant to Delegation Order 100, as revised, Revenue Procedure 78–10, and subject to the conditions prescribed in IRC 6103(1)(6)(A)(ii). Such contractual agreement should be entered into only after coordination with the Director, Disclosure and Security Division. The authority delegated in this paragraph may be redelegated to any supervisory level deemed appropriate.

(16) The Deputy Commissioner; Associate Commissioner (Policy and Management); Assistant Commissioner (Support and Services); Deputy Assistant Commissioner (Support and Services); Regional Commissioners; Service Center Directors; Director, National Computer Center; and Director, Data center are authorized to disclose or, in specific instances, authorize the disclosure of information returns filed pursuant to part III of subchapter A of IRC chapter 61 to designated personnel of the Social Security Administration for the purpose of carrying out an effective return processing program in accordance with section 232 of the Social Security Act and pursuant to IRC 6103(1)(5). The authority delegated in this paragraph may not redelegated.

(17) The Deputy Commissioner, Deputy Chief Counsel and Associate Chief Counsel (Litigation) are authorized to disclose or, in specific instances, authorize the disclosure of returns and return information to the designated officers and employees of the Department of Justice pursuant to a written request from the Attorney General, the Deputy Attorney General, or an Assistant Attorney General in a matter involving tax administration, subject to the conditions prescribed in IRC 6103(h)(3)(B). The authority delegated in this paragraph may not redelegated.

(18) The Deputy Commissioner; Associate Commissioner (Data Processing); Assistant Commissioner (Computer Services); Assistant Commissioner (Returns and Information Processing); Director, Disclosure and Security Division; Assistant Director, Disclosure and Security Division; Service Center Directors and Director, National Computer Center are authorized upon written request to disclose, or in specific instances, authorize the disclosure of return information pursuant to IRC 6103(h)(6)

with respect to the address and status of an individual as a nonresident alien, citizen or resident of the United States to the Social Security Administration or the Railroad Retirement Board for purposes of carrying out responsibilities for withholding tax from social security benefits under IRC 1441.

(19) At the request of the Commissioner of Internal Revenue and with the approval of the Joint Committee on Taxation, the following officials may disclose information with respect to a specific taxpayer pursuant to IRC 6103(k)(3): Deputy Commissioner; Regional Commissioners; District and Service Center Directors; Associate Commissioner (Operations); Associate Commissioner (Policy and Management); Assistant Commissioner (Support and Services); Assistant Commissioner (Examination); Assistant Commissioner (Collection); Assistant Commissioner (Criminal Investigation); Assistant Commissioner (Employee Plans and Exempt Organizations); Director, Disclosure and Security Division; any individual who is specifically designated by the Commissioner of Internal Revenue. The authority delegated in this paragraph may not redelegated.

(20) To the extent that authority previously exercised consistent with this Order may require ratification, it is hereby affirmed and ratified.

(21) Delegation Order No. 156 (Rev. 4) and Chief Counsel Order 1031.3C, effective November 27, 1983, are superseded.

Approved:

Joel Gerber,

Acting Chief Counsel.

Approved:

James I. Owens,

Deputy Commissioner.

[FR Doc. 84-9868 Filed 4-11-84; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

Radio Engineering Advisory Committee; Meeting

The Radio Engineering Advisory Committee of the United States Information Agency will meet in Greenville, North Carolina, on Thursday, May 3, 1984, to discuss current operations and future plans of the Voice of America (VOA). The meeting will be held at the Edward R. Murrow Transmitting Station of the VOA located in Greenville. The meeting will begin at 8:00 AM. Point of contact for the meeting is Terry Balazs, tel: 202-485-8048.

This meeting will include reports from senior members of the VOA Engineering staff on the process being made on the overall VOA modernization and enhancement effort, a discussion of the specific procurement approach for obtaining new high power transmitters and antenna systems, and a technical inspection of the current transmitting and receiving facilities in Greenville.

This meeting will be closed to the public because issues relating to future site negotiations for Voice of America relay stations will be discussed throughout the meeting. This meeting will be closed because disclosure of the matters to be discussed is likely to divulge information that is (A) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (B) in fact is properly classified pursuant to such Executive Order (5 U.S.C. 552b(c)(1)).

Dated: April 6, 1984.

Charles Z. Wick,

Director.

[FR Doc. 84-9788 Filed 4-11-84; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 72
Thursday, April 12, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

Contents

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, April 9, 1984, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of a notice of acquisition of control (name and location of bank and names of acquiring persons authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii))).

The Board further determined, by the same majority vote, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a recommendation regarding the Corporation's assistance agreement with an insured bank pursuant to section 13 of the Federal Deposit Insurance Act (name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsection (c)(4) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4))).

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter added to the agenda in a meeting open to public observation; and that the matter added to the agenda could be considered in a closed meeting by authority of subsection (c)(4) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4))).

Dated: April 9, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-9982 Filed 4-10-84; 3:48 pm]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:25 p.m. on Friday, April 6, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to (1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in First Security Bank, Erwin, Tennessee, which was closed by the Commissioner of Financial Institutions for the State of Tennessee on Friday, April 6, 1984; (2) accept the bid for the transaction submitted by Bank of Tennessee, Kingsport, Tennessee, an insured State nonmember bank; (3) approve the application of Bank of Tennessee, Kingsport, Tennessee, for consent to purchase certain assets of and to assume the liability to pay deposits made in First Security Bank, Erwin, Tennessee, and for consent to establish the two offices of First Security Bank as branches of Bank of Tennessee; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

The Board of Directors also: (1) Received bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Watauga Valley Bank, Elizabethton, Tennessee, which was closed by the Commissioner of Financial Institutions for the State of Tennessee on Friday, April 6, 1984; (2) accepted the bid for the transaction submitted by Carter County Bank of Elizabethton, Tennessee, Elizabethton, Tennessee, an insured State nonmember bank; (3) approved the application of Carter County Bank of Elizabethton, Tennessee, Elizabethton, Tennessee, for consent to purchase certain asets of and to assume the liability to pay deposits made in Watauga Valley Bank, Elizabethton, Tennessee, and for consent to establish the two offices of Watauga Valley Bank as branches of Carter County Bank of Elizabethton, Tennessee; and (4) provided such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

At the same meeting, the Board also considered a personnel matter.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: April 9, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-9983 Filed 4-10-84; 3:49 pm]

BILLING CODE 6714-01-M

3

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9:00 a.m.—April 18, 1984.

PLACE: Hearing Room One—1100 L Street, NW., Washington, D.C. 20573.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Agreement No. T-4146: Lease between The City of Los Angeles and Indies Marine Terminal Company of berthing facilities.
2. Agreement No. 6190-39: Modification of the United States Atlantic & Gulf/Venezuela Conference Agreement to provide for independent action in rate matters and for other purposes.
3. Agreements Nos. 10491 and 10492: Establishment of rate agreements in the U.S. South Atlantic/North European trades.
4. Agreement No. 9902-16: Restructuring of the Euro Pacific Joint Service.
5. Docket No. 83-54: Petition for Exemption From Tariff Filing Requirements Previously Granted by Commission Order and Cross-Petition for Revocation of Exemption—Consideration of the record.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary, (202) 523-5725.

Francis C. Hurney,

Secretary.

[FR Doc. 84-9773 Filed 4-10-84; 2:45 pm]

BILLING CODE 6730-01-M

4

NATIONAL TRANSPORTATION SAFETY BOARD

[NM-84-13]

TIME AND DATE: 9 a.m., Thursday, April 19, 1984.

PLACE: NTSB Board Room, 8th Floor, 800 Independence Ave., S.W. Washington, D.C. 20594.

STATUS: Closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. *Order Denying Reconsideration:* Commandant v. Sabowski Docket ME-98, appellant's motion for reconsideration.
2. *Opinion and Order:* Petition of Taylor, Docket SM-3040, disposition of the Administrator's appeal.
3. *Opinion and Order:* Administrator v. Guise, Docket SE-5804; disposition of respondent's appeal.
4. *Opinion and Order:* Administrator v. King, Docket SE-5773; disposition of respondent's appeal.
5. *Opinion and Order:* Administrator v. Wingo, Docket SE-5890; disposition of respondent's interlocutory appeal.
6. *Opinion and Order:* Administrator v. Vingen, Docket SE-5821; disposition of respondent's appeal.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming, (202) 382-6525.

Dated: April 10, 1984.

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

[FR Doc. 84-9925 Filed 4-10-84; 12:15 pm]

BILLING CODE 4910-58-M

5

PAROLE COMMISSION

PREVIOUSLY ANNOUNCED DATE AND TIME:

Tuesday, April 10, 1984—2:00 p.m. to 5:30 p.m.
Wednesday, April 11, 1984—9:00 a.m. to 5:30 p.m.
Thursday, April 12, 1984—9:00 a.m. to 5:30 p.m.

CHANGES IN MEETING: The Tuesday, April 10, 1984 meeting will be held 9:00 a.m. to 1:00 p.m. The time of this meeting is being changed to accommodate a last minute rescheduling of the Commission's testimony before the House Appropriations Subcommittee. The times of the meetings scheduled for Wednesday and Thursday are not changed.

PLACE: Room 420-F, One North Park Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of minutes of open meeting of January 17 and 18, 1984.
2. Reports from the Chairman, Vice Chairman, Commissioners, General Counsel, Director of Research, Chief of Case Operations, and the Administrative Section.
3. Presentation by Dennis Curtis, University of Southern California Law School.
4. Experimental Community Services Program.
5. Ten-Year Reconsideration Hearings.
6. Procedures under the Victim and Witness Protection Act.
7. Dispositional Revocation Hearings (28 CFR § 2.47).
8. Disclosure of Notices of Action.
9. Driving While Intoxicated—procedures concerning possible parole revocation and guidelines.

Consent Agenda

The following Consent Agenda Items shall be deemed adopted by consent and will not be discussed at the meeting unless a request to discuss a particular item has been received by April 6, 1984.

10. Rules and Procedures Memorandum 84/2.
11. Temporary Seizure of Passports.

CONTACT PERSON FOR MORE INFORMATION: Peter B. Hoffman, Director of Research, United States Parole Commission, (301) 492-5980.

Dated: April 9, 1984.

Joseph A. Barry,

General Counsel,
United States Parole Commission.

[FR Doc. 84-9910 Filed 4-10-84; 4:00 pm]

BILLING CODE 4410-01-M

6

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 April 16, 1984, at 450 Fifth Street, NW., Washington, D.C.

A closed meeting will be held on Tuesday, April 17, 1984, at 10:00 a.m. An open meeting will be held on Thursday, April 19, 1984, at 2:30 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 Treadway and Cox voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, April 17, 1984, at 10:00 a.m., will be:

Formal orders of investigation.
Settlement of administrative proceedings of an enforcement nature.
Institution of administrative proceeding of an enforcement nature.

The subject matter of the open meeting scheduled for Thursday, April 19, 1984, at 2:30 p.m., will be:

Consideration of whether to propose for public comment an amendment to Rule 22c-1 under the Investment Company Act of 1940 which would permit variable annuity separate accounts to price initial purchase payments in accordance with a two day/five procedure. For further information, please contact Karen L. Skidmore at (202) 272-3017.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Steve Molinari at (202) 272-2467.

George A. Fitzsimmons,

Secretary.

April 6, 1984.

[FR Doc. 84-9872 Filed 4-9-84; 4:30 pm]

BILLING CODE 8010-01-M

federal register

Thursday
April 12, 1984

Part II

Department of Agriculture

Food Safety and Inspection Service

9 CFR Parts 308, 318, 320, 327, and 381
Canning of Meat and Poultry Products; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 308, 318, 320, 327, and 381

[Docket No. 81-013P]

Canning of Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed Rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to revise the Federal meat inspection regulations and the Federal poultry products inspection regulations by adding a number of provisions covering thermally (heat) processed meat and poultry products packed in hermetically sealed containers. This proposed revision would form the basis for strengthened controls over the canning of meat and poultry products and would update the regulations in accordance with technological advances in the canning industry. Further, it would make the requirements for canned meat and poultry products more consistent with the Food and Drug Administration (FDA) requirements for most other kinds of canned foods. In addition, it is based upon many of the principles found in the proposed international code of practice for canned foods under development by the Codex Alimentarius Commission of the World Health Organization/Food and Agriculture Organization. Implementation of this regulation would:

- Reduce the risk of public health hazards associated with improperly processed canned product;
- Provide more uniform application of canning requirements by Program employees;
- Reduce the number of product retentions by FSIS without compromising consumer safety; and,
- Foster the application of recognized good manufacturing practices.

In publishing this proposal, FSIS is officially withdrawing a previous proposal titled, "Canning of Meat and Poultry Products," which was published in the **Federal Register** on September 1, 1976 (41 FR 40156).

DATE: Comments must be received on or before July 11, 1984.

ADDRESS: Comments should be submitted in duplicate to the Regulations Office, Attn: Annie Johnson, FSIS Hearing Clerk, Room 2637, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments on the poultry products inspection regulations should be directed to Mr. Bill Dennis, (202) 447-3840. (For additional information on submitting comments, see **"SUPPLEMENTARY INFORMATION".**)

FOR FURTHER INFORMATION CONTACT: Mr. Bill Dennis, Director, Processed Products Inspection Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3840.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

FSIS has determined that the proposed rule is not a major rule under Executive Order 12291. It would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

FSIS estimates that less than three (3) percent of the federally inspected meat and poultry plants have canning facilities. Approximately 170 establishments would be expected to be subject to the proposed rules. An FSIS survey showed that most of these canning operations currently have the facilities, equipment, personnel and recordkeeping systems needed to comply with the requirements of the proposal. These establishments have been subject to and complying with FSIS's guidelines concerning process control and recordkeeping for several years. The facilities and equipment provisions of this proposal reflect current "state of the art" conditions in the canning industry. In addition, the majority of federally inspected meat and poultry canning establishments also produce other canned products and have been operating for several years under regulations issued by FDA which are similar to the proposed regulations.

Consumer and industry benefits are directly linked to the extent to which the proposed regulations result in the avoidance of canned product-related illness or death. The probability of process failure should be reduced and consumers should benefit from a reduction of risk of illness.

There are no potential costs to government, either Federal, State, or local, associated with the proposal. The proposal will enhance the FSIS's ability to enforce its canned product safety requirements. In-plant Program employees would also benefit from having a comprehensive set of canning regulations to refer to in making decisions about specific plant operations or proposed changes in those operations. Program employees would not have to rely on informal inspection procedures currently contained in FSIS bulletins and manuals.

Effects on Small Entities

The Administrator, FSIS, has determined that this proposal would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601). The facilities and equipment provisions of this proposal reflect current "state of the art" conditions in the canning industry and are not expected to impose any significant regulatory burden on small plants, in part, because most of the Federally inspected canning establishments are not small entities. FSIS is soliciting comments from any small plants, which, due to unusual circumstances, find themselves in the position where they would have to make large capital outlays in order to comply with the proposed regulations. Any comments as to how these proposed regulations might be implemented without imposing undue economic hardship to such small plants are also requrested.

Background

(1) *History of Canning.* In 1809 a Frenchman, Nicolas Appert, was awarded a prize for having developed a new, successful means of preserving foods—a method that eventually became known as "canning." Before the introduction of canning, few foods could be successfully transported great distances or stored for long periods. The scarcity of preserved foods for the civilian population and especially for the French armed forces led the French government to promote the prize that Appert won.

In his work, Appert used wide-mouth glass bottles, which he carefully filled with food, corked, and heated in boiling water. Appert incorrectly believed that the principal factor in preventing food spoilage in sealed containers was the exclusion of air. The relationship between microorganisms and food spoilage was not discovered until Louis Pasteur's work in 1864. Pasteur's discovery of that relationship placed canning techniques on a scientific basis and laid the foundation for the evolution of the canning industry.

Meanwhile, others worked to improve Appert's boiling water process. In 1851 Chevalier-Appert applied the principles

of pressure cooking to canned food processing, which led to the invention of the autoclave "retort".[1] In the 1860's, Solomon noted that higher temperatures were achieved by the addition of calcium chloride to the water in which containers were processed. Shriver introduced the retort system into the United States around 1874. This system provided a more practical method for the sterilization of canned foods at higher temperatures.

After Pasteur, additional strides were made in the 1890's notably by Prescott and Underwood, who discovered the relationship between food spoilage and heat resistant bacteria. An understanding of this relationship proved important in reducing spoilage incidents in canned meat and vegetables.

Further research in the 1900's was conducted to identify the basic biological and toxicological characteristics of *Clostridium botulinum (C. botulinum)*, a bacterial species that produces a deadly toxin and that can grow in many foods packed in hermetically sealed containers. In the early 1920's Bigelow and Esty advanced the scientific understanding of canned product spoilage by establishing the relationship between the pH (a measure of the degree of acidity or alkalinity) of a food and the heat resistance of bacteria associated with spoilage. Simply stated, as the acidity of a food increases, most bacteria become less resistant to heat and are more easily killed. This work remains the basis of the modern classification of canned foods into high acid and low acid foods. At about the same time as the work on pH was done, Bigelow and Ball developed the first scientific method for the calculation of safe heat processes for canned food sterilization—a technique known as the graphic ("General") method. In 1923 Ball also developed a mathematical method for the determination of processes for heat sterilized canned products. Although refinements have been made over the past 60 years, these two methods remain the basic procedures used for the calculation of sterilization processes by thermal process engineers and canning technologists.

Modern Canning Technology

The development of reliable, high-speed filling equipment, automatic can closing machines, and improved retorting systems accompanied the increased understanding of the canning process. In the early 1930's a continuous rotary retorting and cooling system was introduced and represented one of the most significant advances over the batch-type retort systems developed many years earlier. Continuous systems handle containers in an unbroken flow from the closing machine to the end of the cooling operation, whereas in the traditional batch system, only one "batch" of product can be processed at one time. The rotation of the cans in these continuous rotary systems mixes the contents and hastens the penetration of heat in most products. Thus, continuous rotary retort systems increase productivity and improve the quality of canned product because of reduced heating times.

The introduction of the hydrostatic retort in the early 1960's represented another significant innovation in the canning industry. A hydrostatic retort consists of a large chamber filled with pure steam through which containers are conveyed. The sealed containers are preheated during passage through a column filled with hot water, sterilized in the steam chamber, and cooled in a column of cold water. Hydrostatic retorts allow the thermal processing and the cooling of very large volumes of product in a continuous manner.

The 1950's and 1960's also witnessed the commercial development of two new batch-type retort systems—the crateless retort and the batch-agitating retort. In a conventional batch-type retort, containers are put into crates, cars, baskets or trays, which are then placed into the retort. With the crateless system, the cans are dropped one at a time through the top of a retort into water, which cushions their fall. After heat processing, the cans are unloaded through the bottom of the retort. Crateless retorting systems improve productivity over the conventional batch-type retort.

The batch-gathering retort consists of a horizontal shell in which the total process cycle (heat processing and cooling) is conducted. The heating medium may be either steam or hot water under pressure, and depending upon the manufacturer, there are several ways for agitating the containers. Agitation hastens the penetration of heat into the product resulting in a reduction of the process time for many canned items. This increases productivity and improves product quality.

With the arrival of these complex retorting systems came technological advances in high-speed filling, sealing and conveying systems. The complexity of this canning equipment requires sophisticated controls and operating procedures to ensure the production of safe and stable ("commercially sterile") canned products.

Coupled with strides in the development of processing equipment and machinery has been the development of innumerable container types that are made of different materials and that are available in various sizes and shapes to package "canned" foods. Since the days of Appert, the tinplate can and the glass jar have been the basic containers for providing a hermetic (airtight) condition to preserve heat processed foods. Many improvements and refinements have been made on the early tinplate can, including the development of better and more uniform tinplate and the use of enamel coatings to maintain product quality and extend the shelf life of canned products. More recently, cans with no side seams or with welded side seams have been developed to eliminate the possible migration of lead from soldered side seams into the food.

Since the mid-1970's, container types that depart from the traditional tinplate can and glass containers have been developed. These include tin-free steel containers, aluminum tray-type containers and the flexible retortable pouch. The retortable pouch consists of aluminum foil sandwiched between two plastic films; the seals of the pouch are heat fused. The introduction of new containers for canned product demands that process engineers not only develop adequate thermal processes but also assure that adequate thermal processing systems are available for the production of safe and stable product.

(2) *Microbiology of Canned Products.* In canning, preservation of food is achieved through the application of heat to kill microorganisms and the use of hermetically sealed containers to prevent recontamination. Spoilage of canned product can result in severe economic losses to a processor and, at times, can pose a serious health hazard to consumers. Many types of microorganisms—including molds, yeasts and bacteria—can contaminate canned food, but bacteria are the most troublesome.

Bacteria are often classified on the basis of whether or not they can form spores. Round-shaped bacteria, or cocci, and many of the rod-shaped bacteria cannot form spores and are known as non-sporeformers. However, several species of rod-shaped bacteria can produce spores.

Spores are a dormant state in the normal growth cycle of those bacteria

[1] A closed vessel used to thermally (heat) process product packed in hermetically sealed containers. Typically pressurized steam or hot water is used to provide temperatures higher than 100°C (212°F), the boiling point of water.

that form them. Bacterial spores are characterized by their ability to remain viable under a wide range of unfavorable conditions. When conditions become favorable, spores will germinate into actively growing cells. Some bacterial spores are extremely resistant to heat, cold and chemical agent; in fact, some types of spores can remain viable after being boiled in water for more than 16 hours. The same organism in the actively growing vegetative state and non-sporeforming bacteria are much less resistant to unfavorable conditions. Sporeforming bacteria are commonly found in soils and waters and on plants and animals. Because sporeformers are found everywhere in the enviornment, they present problems in their control or elimination by the canned food industry.

Sporeforming bacteria have been extensively studied, and much has been learned about the conditions affecting their growth in canned foods. The major factors affecting bacterial growth in canned products include the acidity or alkalinity of a product, temperature, the amount of available air (oxygen) and the availability of water. For each of these factors, the range in which sporeforming bacteria thrive is relatively narrow. However, most canned meat and poultry products present conditions that are nearly ideal for the growth of sporeformers.

Product Acidity and Bacterial Growth

Few foods are alkaline. Most foods range from very slightly acid to acid. The relative acidity or alkalinity of a medium (e.g., a food) is conveniently expressed as a number ranging from 0 to 14. This numerical system, termed pH, is a simple and readily understood means of expressing the degree of alkalinity or acidity of a medium. Thus, a pH value of 7.0 is neutral (neither acid nor alkaline). As the acidity of a medium increases, the measured pH of the medium will decline to a minimum value of zero. Conversely, as the alkalinity of a medium increases, the measured pH of the medium will increase to a maximum value of 14.

Foods having a pH value above 4.6 are considered low acid foods. Foods with a pH of 4.6 or lower are called acid foods. Some naturally low acid foods are intentionally acidified to reduce the pH to 4.6 or below. Such foods are called acidified low acid foods. The pH of a food has a significant effect on the types of bacteria that will grow in the product. As a general statement it can be said that bacteria grow better in a low acid medium. Most canned meat and poultry items are low acid (pH above 4.6).

Temperature and Bacterial Growth

Bacteria are classified according to their optimum, or most favorable, temperature range for growth. Temperatures outside the optimum range either slow or completely inhibit growth or kill the organism. Bacteria called psychrophiles grow best at 58°F to 68°F (14°C to 20°C), but can also grow slowly at refrigeration temperatures. Control of these bacteria is important in the production, storage and distribution of canned meat and poultry products labeled "keep refrigerated". Mesophiles are bacteria that grow best at temperatures between 86°F and 98°F (30°C and 37°C). Many bacteria, including those that can present health hazards, grow within the mesophilic temperature range. A third grouping based on temperature requirements includes bacteria that grow at relatively high temperatures (122°F to 150°F (50°C to 66°C)). These bacteria are known as thermophiles and are sometimes the cause of severe spoilage problems in canned foods.

Oxygen/Water and Bacterial Growth

On the basis of their biochemical make-up, bacteria are classified as aerobic if they require free oxygen for growth, and anaerobic if they grow best in the absence of free oxygen. Some anaerobes, however, can grow in the presence of small amounts of free oxygen, while some aerobes can grow with only a very limited amount of free oxygen.

Another factor affecting the growth of bacteria in foods is the availability of water. The water available to a microorganism in a growth medium (including foods) is expressed as the water activity (a_w) of the medium. It is calculated by dividing the vapor pressure of the medium by the vapor pressure of pure water (when both are determined at the same temperature). Thus, the a_w of pure water is 1.0. Nearly all foods in the natural state have an a_w ranging from 0.96 to 0.99 and, if not preserved, readily spoil through microbial action. Although some bacteria can grow at an a_w as low as 0.85, most growth is significantly inhibited at levels below 0.95. The a_w of a food can be lowered by the addition of many substances including salts, sugars and starches. By lowering a_w levels, bacterial growth can be slowed or completely inhibited.

Clostridium Botulinum

Of greatest concern to the canning industry is the bacterial species, *Clostridium botulinum*. Under favorable growth conditions these bacteria can produce one of the deadliest toxins known to man. Botulinum toxin attacks the central nervous system and the illness it causes is known as botulism. With early diagnosis and by the administration of antitoxins, most botulism patients survive. Otherwise, paralysis occurs and when the diaphragm and chest muscles become affected, normal breathing is not possible and death usually results.

C. botulinum is a sporeforming, anaerobic bacterium that is found in soil and water practically everywhere in the world. It grows best at temperatures between 86°F (30°C) and 98°F (37°C), although, depending on type, growth can occur at temperatures from 40°F (4°C) to slightly above 100°F (38°C). The several types of *C. botulinum* (i.e., Types A, B, C, D, E, F, and G) are distinguished by the nature of the toxin produced. Types A and B are of most concern to canners and are the types most commonly associated with human illness. Types C, D, and G are usually not associated with botulism in humans. Type E is found in marine environments and contaminated fish products have been known to cause human illness. Type E also tolerates temperatures as low as 40°F (4°C), but its spores are not very heat resistant and are easily destroyed by heating at 212°F (100°C). Type F is rare, and only a few cases of human illness have been attributed to this type.

Although spores of *C. botulinum* are common in the environment, only the vegetative form of the organism, growing under anaerobic conditions in food, produces the lethal toxin. Both the vegetative form of the bacteria and the toxin produced can be inactivated relatively easily by heating foods for 10 minutes at boiling temperatures of 212°F (100°C). However, the spores produced by types A and B are extremely heat resistant and are able to survive 5 to 10 hours in boiling water. This resistance to heat makes the heat process for canned product critical. If canned foods are not processed properly, spores can survive and grow into the vegetative form.

Also, there is a significant effect of pH on the ability of botulinal spores to germinate, grow and produce toxin. Microbiologists have demonstrated that the spores cannot germinate and grow at a pH of 4.7 or lower. Because of this characteristic of the botulinum species, canned foods are classified as low acid foods (with a pH above 4.6), and as acid foods (with a pH of 4.6 or lower). The 4.6 value was selected to provide a margin of safety against imprecise pH measurements.

Germination of *C. botulinum* spores is also inhibited when the water activity

(a_w) of a food is less than 0.93. However, since other spoilage bacteria grow at an a_w below this value, 0.85 is generally recognized as the minimum water activity below which organisms that cause spoilage or present health hazards are of little concern in canned products.

Botulism Incidents Involving Canned Foods

Commercial canners had many problems with *C. botulinum* in the early days of the industry. Through improved processing procedures and increased understanding of the microbiology of spoilage, these problems were thought to be largely solved during the 1920's and 1930's. Thus, in the first 40 years of the 20th century there were almost 50 incidents of foodborne botulism in the United States attributed to commercially processed foods while in the next 30 years 13 incidents were recorded. In comparison, nearly 500 outbreaks from home canned products and 124 outbreaks of unknown origin were recorded from 1899 to 1969. Foods implicated included canned vegetables, fish and fish products, condiments, beef, poultry, pork, milk, and milk products.

Despite the fact that the essential requirements for processing canned foods had been established many years earlier, in 1971 commercially canned vichyssoise soup containing type A botulinum toxin was responsible for two cases of botulism, and resulted in one death. In 1973, peppers packed in glass jars by a small canner produced an outbreak that affected eight people but caused no deaths. Again in 1973, a Canadian botulism incident was traced to commercially packed marinated mushrooms from the United States. In this incident, one person became ill and recovered. In 1974, a can of beef stew produced at an establishment subject to the inpsection authority of United States Department of Agriculture (USDA) was found to contain type A toxin. The product apparently caused two cases of botulism, resulting in one death. In 1978, canned Alaskan salmon containing type E toxin resulted in the deaths of two persons in England. The implicated can had an obvious seam defect which could have allowed the entry of *C. botulinum* spores.

Canned Alaskan salmon was involved in another botulism outbreak which resulted in the death of a young man in Belgium. Like the 1978 incident, the can was found to be defective and it is theorized that the defect allowed spores of *C. botulinum* (type E) to enter the can.

Several other domestically canned products containing botulinum toxins have been found, but fortunately there were no reported illnesses or deaths. In 1970, swollen cans of mushrooms contaminated with type B toxin were identified. And in 1971, a canning establishment found swollen cans of its chicken vegetable soup containing both types A and B toxins. A third incident involved type C toxin in a flat (not swollen) but leaking can of tuna.

During 1973 and 1974, an alarming increase occurred in the incidence of toxic canned mushrooms. A container manufacturer detected the first cans in 1973 while it was investigating a spoilage problem of a canner. Ultimately, 19 cans in 7 lots of mushrooms were found to contain *C. botulinum* type B toxin. Shortly thereafter viable spores of type B were found to in another mushroom canner's product. As a result of these incidents, the FDA conducted an extensive investigation of all mushroom canners. The agency found about 30 cans of mushrooms to be toxic and an additional 11 containers to have viable spores of *C. botulinum* but without performed toxin. One can had both the toxin and viable spores of *Clostridium tetani*, but no. *C. botulinum*. Seven domestic and two foreign producers had produced the canned mushrooms containing *C. botulinum* and/or its toxin. More recently, in 1980 and 1981, products packed by two additional U.S. mushroom canners were found to contain type B botulinum toxin. Both incidents resulted in massive recalls of product.

During a 1981 investigation of a consumer complaint, health officials in the State of Indiana found viable *C. botulinum* in several cans of spoiled chicken broth packed by a USDA-inspected plant. Additional work by FSIS scientists confirmed the Indiana results and found the spoiled product to contain type A botulinum toxin. Examination of the suspect cans revealed flaws in the side seams which could have allowed *C. botulinum* spores to enter the cans.

Although the U.S. canning industry has had a remarkably good record during the last 45 years, producing over a trillion cans of food, incidents of botulinum contamination have resulted in illness and deaths, extensive product recalls and serious economic losses. In addition, such expisodes have reduced sales of certain canned goods and have affected public confidence in the canning industry.

Other Microorganisms of Potential Public Health Significance

Although the primary concern in canning is to prevent life-threatening hazards associated with *C. botulinum* spoilage, several other microorganisms can cause foodborne diseases if the canned product is improperly processed. The more common types of disease-causing microorganisms associated with improperly processed canned product are *Staphylococcus aureus, Clostridium perfringens* and *Bacillus cereus*. Diseases caused by these microorganisms produce symptoms such as nausea, abdominal pains and diarrhea, usually lasting 1 to 3 days. These diseases, however, are rarely life-threatening.

Bacteria Causing Non-pathogenic Spoilage

Several species of *Clostridia* can cause spoilage of canned product without presenting a public health hazard. For example, *Clostridium thermosaccharolyticum* is a thermophilic, anaerobic bacterium whose spores are highly heat resistant. Spoilage by this species can occur when canned product is improperly cooled after processing or is stored at temperatures high enough to be favorable for growth of the bacterium. *Clostridium butyricum* is a mesophilic anaerobe with heat resistant spores that has caused economic spoilage. Other species of *Clostridia* such as *C. sporogenes, C. putrefaciens* and *C. nigrificans* also have been responsible for spoilage of canned product.

In addition, other sporeforming bacteria known as *Bacillus* can cause spoilage. *B. Subtilis, B. mesentericus, B. polymyxa* and *B. macerans* are aerobic mesophiles that occasionally cause spoilage. *B. stearothermophilus* is an aerobic thermophile whose spores are extremely heat resistant.

The presence of viable nonsporeforming bacteria in canned product is the result of gross underprocessing or contamination of a product by container leakage after heat processing. Instances of grossly underprocessed canned product are rare; however, spoilage from leakage-type contamination is not unusual and at times produces serious economic losses.

(3) *Causes of Spoilage.* There are three major causes of canned food spoilage: heat process schedules that are not adequate to destroy or inactivate the microorganisms of concern in a particular product; process schedules that are not properly delivered; and product contamination after heat processing (i.e., leakage).

Development of Process Schedules

Development of an adequate process schedule for a canned product can be divided into several steps. First, the

thermal process required is determined by taking into account factors such as microbial flora, including *C. botulinum* and potential spoilage organisms; container size and type; product pH; the composition of formulation of the product; container fill; the types and amounts of preservatives; the product's water activity; and the likely temperature at which the product will be stored.

Next, the heating characteristics of a product must be determined. Most often this is done by conducting heat penetration tests. The rate of heat penetration into the product under the most adverse conditions that are likely to be met in production must be established. A sufficient number of tests must be conducted to obtain the slowest heating data. Process schedules are then determined from the time/temperature data by using one of several calculation procedures.

Frequently, small batches of product prepared in a laboratory or pilot plant are used in heat penetration testing. When data are obtained in this manner, it is often necessary to verify these data by performing heat penetration tests using product prepared under full-scale production conditions.

If a laboratory or pilot plant retort adequately simulates the production retort, heat penetration tests may be conducted in such a simulator to obtain valid data for establishing process schedules. Further, there are several commercial retort systems that have design features that make heat penetration testing infeasible. For these retort systems a laboratory or pilot plant retort is used or methods other than heat penetration tests are used.

For certain products, such as acidified low acid or "keep-refrigerated" foods, an adequate heat treatment may be based merely on the final internal temperature of the canned product. However, other factors may be critical to achieve preservation of these products. For example, when a maximum pH level is part of the process schedule for acidified products, the product pH must be carefully controlled during formulation and processing. Similarly, the amount of salt or curing agents used in many "keep-refrigerated" products is critical.

All thermal process schedules must specify either the minimum initial product termperature, the process time, and the process temperature; or the minimum internal product temperature. They should also specify any factors that are critical to the process. Such "critical factors" can include: maximum fill-in or drained weight; minimum container headspace; product consistency'; product style; product pH; container type and size; the percentage of solids; minimum net weight; and curing agents. Failure to incorporate known critical factors into a process schedule can and has resulted in under-processed canned product. Depending on the product and the degree of underprocessing, inadequate process schedules may cause economic spoilage or spoilage that presents a potential public health hazard.

Inadequate Delivery of Process Schedules

A second maor factor causing product spoilage is the inadequate delivery of a properly designed process schedule. For example a plant may have malfunctioning equipment such as inaccurate thermometers, temperature recording devices or timing devices. Other problems may include inadequate steam supply of faulty steam controllers; unsatisfactory retort piping or installation; or leaking air or water pipes.

Human error can also result in underprocessing. Examples of the types of problems that occur include improper venting (air removal) of a retort; selection of the wrong process schedule; process timing errors; failure to control critical factors such as fill weight and consistency; and allowing unprocessed product to bypass the thermal process operation.

Regardless of the reason, the inadequate delivery of a process schedule can result in underprocessing, and underprocessed product may represent a health hazard to consumers.

Contamination After Thermal Processing

A third important factor causing product spoilage is contamination after thermal processing (i.e., post-process) because of container leakage. Spoilage problems may result from using faulty or damaged containers or closures and contaminated cooling waters.

Improper closures are caused principally by the use of defective or damaged containers or lids, improper adjustment or poor maintenance of closing/sealing/capping machines and the entrapment of food between the lid and container during sealing. Also, canned food spoilage outbreaks have been caused, in part, by the use of container cooling waters that were found to be heavily contaminated with microorganisms.

Post-process contamination of canned product usually results in economic spoilage (i.e., non-pathogenic), but it can and has led to spoilage with health hazard implications.

(4) *Regulation of Canned Foods.* Several incidents involving botulism during 1971 had a profound impact on the regulation of the canning industry by Federal agencies. On June 30 of that year, an elderly man in Westchester County, New York, died of respiratory arrest. The following morning, his wife developed syptoms typical of botulism and was hospitalized. Botulism was diagnosed, and she was treated with botulinum antitoxin. Her condition remained stable, although she required extensive medical attention and treatment to survive.

Through investigation it was learned that both the husband and wife had eaten canned vichyssoise soup the preceding day. Because the soup had tasted spoiled, they had eaten only a small amount and had thrown the rest away. Laboratory tests on the soup left in the can and on blood serum from both patients revealed botulinum toxin type A.

The vichyssoise was produced by a small canner who distributed it nationally under 22 brand names. The company also packed about 90 other canned items and because of the botulism outbreak, all of the firm's products were recalled. This incident led to the bankruptcy of the producing firm and caused economic dislocation on many other firms distributing its products.

Closely following this incident, botulinum toxin was discovered by a company in its canned chicken vegetable soup during a routine check for nontoxic spoilage. About 230,000 cases of the soup were recalled. At the same time the cannery recalled approximately 1,100 cases of vegetarian vegetable soup because of abnormal cans, although no botulinum spores or toxin were found.

FDA Regulation

Before 1973, traditional inspection of non-meat/poultry canning establishments by FDA consisted of periodic visits by inspectors to processing plants. Inspectors monitored manufacturing procedures and based their findings on what was observed during the visit.

Because of the shortcomings inherent in this approach and as a result of the botulism incidents in 1971, the National Canners Association (NCA) (now the National Food Processors Association (NFPA)) asked the FDA to issue a statement of policy and interpretation based on the Emergency Permit Control section (Section 404) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 344). Section 404 requires that the FDA

issue regulations establishing a permit system whenever any class of food presents or may present a public health hazard. Such regulations require the manufacturer(s) to obtain a temporary permit before any food products may be shipped in interstate commerce. The permit sets forth all manufacturing conditions necessary to protect the public health.

After the NCA petition, the FDA published a proposal in the **Federal Register** stating its interpretation of Section 404. However, the FDA decided that, because of the nature of the proposal, it preferred to issue a legally enforceable regulation on canning rather than a policy statement. Subsequently, in January 1973, the FDA issued Part 128b, "*Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers*," of Title 21, Code of Federal Regulations (38 FR 2398). Part 128b was later recodified as Part 113 (21 CFR Part 113).

This regulation contains both requirements as well as recommended practices for the production of heat processed, shelf stable, low acid foods packed in hermetically sealed containers. The major provisions of the regulation cover equipment and operating procedures for common retort systems; container closure inspections; production and process controls; the establishment of process schedules; and recordkeeping requirements including container coding. The regulation was revised in March 1979, to incorporate minor changes and additions.

After issuing Part 128b, the FDA published a second regulation in the **Federal Register** in April 1974 (39 FR 3748). That regulation, designated 21 CFR Part 90 and since recodified as § 108.35 (21 CFR 108.35), concerned emergency permit control provisions for 21 CFR Part 128b. Section 108.35 requires that all commercial processors of low acid food heat processed in hermetically sealed containers must register with that agency. In addition, processors must file their process schedules with the FDA and, upon request, provide the FDA with information regarding the adequacy of such process schedules. The regulations also specify when an emergency permit is needed and describe the conditions and procedures for issuing, denying, or suspending a permit and for determining when a permit is no longer needed to operate normally.

In March 1979, the FDA published in the **Federal Register** (44 FR 16235), a good manufacturing practice regulation for the manufacture, processing and packing of acidified foods in hermetically sealed containers (21 CFR 114). The emergency permit control regulation for this class of foods (21 CFR 108.25) also was published in the **Federal Register** (44 FR 16207), and went into effect in March 1979. The provisions of 21 CFR 114 and 21 CFR 108.25 are comparable in scope to 21 CFR 113 and 21 CFR 108.35 for low acid canned product.

Codex Alimentarius Commission Draft Recommendations

During the mid-1970's when the FDA and the USDA were strengthening controls over canning, the Codex Alimentarius Commission began work in this area.

The Codex Alimentarius Commission is an international agency created in 1963 under the joint sponsorship of the Food and Agriculture Organization (FAO) and the World Health Organization (WHO) of the United Nations. Its function is to develop and administer a program of drafting international standards and codes of practice which, when adopted by participating countries, will be applied by those countries to their domestic products as well as to imports and exports. The objectives of such standards are to protect the health of consumers and to ensure fair practices in the food trade by providing wholesome food products with informative labeling. While standards and practices adopted by the Commission are advisory in nature, many countries have incorporated certain Codex standards and codes of practice into their national food regulations. The Commission established a committee of internationally recognized authorities in canning and in the heat sterilization of foods to prepare a recommended code of hygienic practice for low acid and acidified low acid canned foods. Presently, a draft of the code is at step 8 in the 10-step process leading to final adoption by member countries.

The draft code includes many of the good manufacturing practices found in the FDA regulations for low acid canned products. The proposed code covers:

- Basic considerations in establishing process schedules;
- Inspection of empty product containers and container closures;
- Retort room operations;
- Heat processing equipment including instrumentation and controls;
- Quality assurance principles including the maintenance and review of processing and production records, container coding and recall procedures; and
- Storage and transport of finished product.

The Codex document does not address perishable ("keep refrigerated") canned product.

USDA Regulation of Canning

Before 1971, USDA inspection of meat and poultry canning establishments in some ways resembled pre-1973 inspection of non-meat/poultry canned products by the FDA. That is, inspection was directed principally toward basic sanitary requirements such as the storage of raw materials and sanitation of processing lines. USDA inspection, however, was conducted daily and included finished product testing such as incubation tests and condition-of-container examinations. However, inspectors were not provided with specific instructions and procedures for evaluating and monitoring many of the critical elements in a canning operation. This led to nonuniformity in both the level and effectiveness of cannery inspections because such inspections became too dependent upon the judgments of individual inspectors.

The 1971 incident of botulinum toxin in chicken vegetable soup produced by an official USDA establishment led to concern within the USDA over the effectiveness of existing canning regulations and inspectional activities. That concern was heightened in December 1974, with the first reported death from botulism attributed to a canned product packed under USDA inspection. This tragic incident prompted an in-depth departmental review of the methods of control over the canning of meat and poultry products.

The review indicated that the controls established by the regulations were in many ways outmoded in terms of the technological changes taking place in the canning industry. For example, the regulations—which are still in existence—require, in general terms, the cleaning of empty containers; inspection of filled and sealed containers before and after thermal processing; coding of containers; use of heat sensitive indicators on crates with unretorted product; sample incubation; and assurance that all canned product is processed so that it can be kept without refrigeration under usual conditions of storage and transportation (9 CFR 318.11, 381.126, 381.143 and 381.149). Although these provisions address some of the critical areas in the canning operation, they lack the specificity necessary for adequate control. Further, the current canning regulations do not address many other critical control points such as controls and operating requirements for thermal processing

equipment; control of critical factors identified in the process schedules; processing record maintenance and review; and the handling of process deviations. Therefore, in 1975 USDA officials decided that the existing canning regulations needed thorough revision.

As an interim measure before the proposed rulemaking process, the Department issued instructions and guidelines to canning establishments and Program employees. These issuances required establishments to have process schedules developed by experts in thermal processing and to file the schedules with Program employees. Further, the USDA required that establishments equip all retorts with accurate mercury-in-glass thermometers and temperature recording devices and maintain adequate records of process times and temperatures. Program employees also received instructions in areas critical to the preparation of heat-processed canned meat and poultry products, including product formulation, container closure evaluation, initial product temperature, venting of retorts, retort room controls, and recordkeeping practices.

On September 17, 1976, the USDA published a proposed rule to update the canning regulations for meat and poultry products for public comment in the **Federal Register** (41 FR 40156).

The 1976 proposal retained many of the existing regulatory provisions, such as incubation requirements, that the Department considered vital to assure the safety and stability of canned product. Other critical control points that previously had been handled by issuing instructions and guidelines were also incorporated into the proposal. In addition, the proposal included certain generally recognized good manufacturing practices employed by the industry and contained in the FDA canning regulations.

During a 120-day public comment period that ended on January 15, 1977, 13 written comments were received. Although there were no objections to the need for the proposed rule, upon further evaluation it appeared that the proposal did not contain the degree of specificity necessary. Therefore, it was not issued as a final rule.

Publication of this proposal hereby officially withdraws the 1976 proposal.

National Food Processors Association Petition

On September 18, 1981, the Department received a petition from the National Food Processors Association. The Association urged, "early publication of a proposed regulation governing thermal processing of canned meat and poultry products, and prompt issuance of a final regulation taking into account the comments received." The petitioner claims that promulgation of regulations in this area would strengthen consumer protection, reduce the cost of the Department's inspection of meat and poultry processing, and provide fairer, more specific and less burdensome processing rules for the regulated industry. The petitioner also contends that a regulation governing canned meat and poultry processing is necessary to achieve harmony with the FDA low acid canned food processing requirements.

In consideration of the petition, and the Department's desire to provide maximum consumer protection by the most efficient means possible, the Department is proposing to revise the Federal meat and poultry inspection regulations as set forth herein.

(5) *The Proposed Rule.* The Department has reviewed the existing regulations and has considered the following options regarding the most effective and efficient means to fulfill its statutory obligations.

Option 1. Take no new regulatory action but continue with the existing regulations and MPI Bulletins. This option was rejected because the Department believes that the current regulations are now outmoded and will become more out-of-date in the future. This is because of ever-increasing technological changes and attendant complexities in canning. For example, the current canning regulations do not adequately deal with the controls and procedures necessary for the operation of sophisticated thermal process equipment (e.g., continuous rotary retorts). Additionally, the regulations do not have the flexibility to effectively handle innovations in, for example, processing equipment and containers.

Option 2. Publish the September 1976 proposal as a final rule. This option was rejected because, although the 1976 proposal would strengthen the canning regulations, it does not contain the degree of specificity deemed necessary by the Department for determining compliance with the regulations.

Option 3. Develop comprehensive canning regulations which retain certain control procedures found in the current regulations, but which are updated and significantly expanded to reflect the current state of industry technology. This option was selected because it would accommodate advanced technology and would strengthen controls over canning operations to the degree deemed necessary to provide increased assurance of the safety and stability of canned product. Also, the development or regulations which are modeled after the proposed Codex Alimentarius Code of Hygienic Practice for canned foods, and which closely parallel existing FDA regulations, would serve to promote standardization and uniformity in national and international regulations. Further, the requirements and recommendations to be included in this proposal are generally recognized by the industry as essential to good canning operations and have been widely adopted.

The proposed regulations address the following topics:

a. *Definitions.* Sections 318.300 (meat) and 381.300 (poultry) of the proposed regulations set forth key terminology used in canning.

The current regulations do not define important terms common to the canning industry. Further, the instruments (e.g., Meat and Poultry Inspection Manual and MPI Bulletins) used to interpret and implement applicable canning regulations do not address canning terminology. The Department considers that adequately defining certain terms will aid Program employees in providing effective and uniform interpretation and implementation of the proposed requirements. Also, to the extent possible, defining key terms will make these proposed regulations more consistent with those of the FDA and with the recommendations of the Codex Alimentarius Commission.

b. *Containers and Closures.* To ensure that only clean, sound containers are used and that all containers are adequately sealed to provide a hermetic condition, the proposed regulations include certain basic requirements.

Sections 318.301 and 381.301 of the proposal would require that containers, closures and flexible pouch material be examined by the establishment before use and be in suitable condition for the intended purpose.

In addition, all empty containers, closures and flexible pouch materials would have to be stored, handled and conveyed in a manner that prevents soiling and damage. The sections describe closure examination procedures—including both visual and physical tests for rigid cans, glass containers and semirigid and flexible containers. The frequency of such examinations is also specified.

To protect containers from damage, the proposal provides minimum requirements for handling containers after they are closed and before they are thermally processed. Further, the proposal would specify a maximum time allowed between closing and the

beginning of thermal processing to prevent incipient spoilage of the product. However, a procedure for requesting a longer period of time is provided.

Currently, regulations require containers to be cleaned thoroughly immediately before filling and that nothing less than perfect closures are acceptable for hermetically sealed containers. Further, it is now required that a careful examination of containers be made by competent establishment employees immediately after closing and that filled and sealed containers be processed promptly after closing. However, the regulations speak neither to container examination procedures nor to the frequency of such examinations required to determine compliance.

The proposal delineates industry-accepted good manufacturing practices for containers which are designed to provide assurance that such containers are clean, sound, and hermetically sealed.

c. *Thermal Processing.* Proposed Sections 318.302 and 381.302 provide that thermal process schedules for canned product be established by a person or organization having expert knowledge of thermal processing requirements for foods in hermetically sealed containers and having access to adequate equipment and facilities for making the necessary determinations to establish such schedules.

Under the proposed rule, the person or organization chosen to establish thermal process schedules, hereafter referred to as the designated authority, would be selected by the official establishment. A designated authority could be one or more establishment employees or a person or group of persons from or associated with any other entity, including independent laboratories, industry and trade associations, equipment and container manufacturers, colleges and universities; provided that any such person(s) or entity has the requisite expertise and has access to the equipment and facilities required to perform the necessary tests. No prior approval of the designated authority by the Department would be required.

The proposal also describes generally accepted procedures for establishing process schedules, including basic factors that should be considered initially and heat penetration tests that should be conducted.

The proposed regulations would also require that complete records on the development of the process schedule be made available to the Secretary or his duly authorized representative, upon request. Before processing any canned product, processors would have to give inspectors process schedules, details of the critical factors that were identified, as well as information about the steps the processors will take to measure and control critical factors. This procedure allows the Department to review the process schedules and processing procedures, when necessary, without requiring industry to present a formal filing. Also, any revisions in processing procedures would have to be submitted to the inspector before the new procedures are used. The information that would be submitted to the inspector will aid in monitoring the processing operations.

Existing regulations require that canned product be processed at such temperature and for such period of time as will assure keeping without refrigeration under usual conditions of storage and transportation. This requirement has been reiterated and expanded through Department policy-making procedures to require that process schedules be established by qualified persons having expert knowledge of thermal processing requirements and having adequate facilities for making such determinations. Further, MPI Bulletins provide for such processing procedures to be filed with the Inspector-in-Charge, and that changes in such procedures not be made without submitting the revisions to the Inspector-in-Charge. Thus, the proposed regulatory requirements are clarifications of existing requirements and policy.

d. *Critical Factors and the Application of the Process Schedule.* Frequently process schedules for canned product that are developed by a designated authority list factors that have been identified by the authority as critical to process schedule adequacy. For example, most process schedules for product processed in rotary retorts will include a minimum container headspace requirement to ensure that adequate product mixing occurs as the containers are rotated during thermal processing.

Failure to control critical factors specified in a process schedule can result in underprocessed product that may present a health hazard. Sections 318.303 and 381.303 give examples of critical factors that should be considered and would require that critical factors identified in the process schedule be measured, controlled and recorded to ensure that the factors remain within the limit(s) used to establish the process schedule.

While the current regulations do not address the need to identify, measure, and control critical factors, the position of the Department on critical factors has been demonstrated in several procedural guidelines and instructions to Program employees.

e. *Operations in the Thermal Processing Area.* Proposed §§ 318.304 and 381.304 were included to ensure proper thermal processing. To aid in the correct implementation of the process schedule, the proposed sections would require either that process schedules and venting procedures (where applicable) be posted in a conspicuous place near the thermal processing equipment or that the information be readily available to the retort or processing system operator. A system for product traffic control would also be established. Crates or baskets containing unprocessed products would be conspicuously marked with a heat sensitive indicator or similar device that shows whether or not the containers have been heat processed. The proposed sections would also require that the initial temperature of the coldest container to be processed be determined and recorded and that the amount of time the product is heat processed be measured accurately.

These essential control requirements are traditional practices in the canning industry. All are either contained in the current USDA canning regulations or are established policies.

f. *Equipment and Procedures for Heat Processing Systems.* Equipment, equipment operation and equipment controls used in the manufacture, processing, and packing of canned meat and poultry products must be adequate to achieve a safe, stable and wholesome product. Proposed §§ 318.305 and 381.305 would describe equipment specifications and operating requirements for thermal processing systems (i.e., batch still retorts; batch agitating retorts; continuous rotary retorts; hydrostatic retorts; atmospheric cookers; and steam-air retorts) commonly used by the meat and poultry canning industry. The proposed rule would describe requirements for instruments and controls such as mercury-in-glass thermometers, temperature/time recording devices and automatic steam controllers. It would also provide for the approval and use of other devices that indicate temperature or record temperature and time and the use of alternative thermal processing systems. Further, the proposal would require that all processing equipment be maintained in satisfactory operating condition and that records of equipment maintenance be kept on file at the establishment.

To reduce spoilage by post-process contamination of canned product, proposed §§ 318.305 and 381.305 would

contain requirements for the chlorination of cooling canals and recirculated container cooling waters. However, the sections also would allow the use of other approved chemicals that are as effective as chlorine in killing bacteria. Systems designed to reclaim and recycle cooling water would be approved by the Administrator prior to use.

The proposal outlines basic requirements for the construction and operation of post-process container handling systems to minimize container damage and the buildup of microorganism on surfaces that are in contact with the containers.

Except for rules covering the chlorination of container cooling waters (§ 308.3(d)(iii)), the existing regulations do not contain the specificity proposed in §§ 318.305 and 381.305. However, the Department has emphasized, through bulletins and other issuances, the need for heat processing system control (e.g., mercury-in-glass thermometers and temperature recording devices) and operating procedures (e.g., venting procedures).

Moreover, the proposed requirements for thermal (heat) processing systems and post-process container handling systems are consistent with those identified by the canning industry as essential to ensure the production of safe and stable canned product. Proposed requirements in this section would be compatible with those of the FDA and the recommendations of the Codex Alimentarius Commission while still providing flexibility for the use of new or different retorting equipment, operating procedures and controls.

g. *Processing and production Records and Record Review and Maintenance.* Proposed §§ 318.306 and 381.306 and §§ 318.307 and 381.307 would provide that certain information and data related to thermal processing operations and container integrity examinations must be recorded and made available to Program employees. These recordkeeping practices, which nearly all canners follow to some extent, would provide documentation that critical operations have been accomplished as intended. In the case of processing failures, such records can be invaluable in defining the scope of the problem. The sections proposed that plant management review the records to ensure that all product received the minimum intended process schedule and that the containers were hermetically sealed. The proposal would also require the processing and production records be retained for 3 years. Record retention is considered essential because the records could be vital should problems arise after a product is distributed. The proposal provides for the use of automated process monitoring and recordkeeping systems subject to the approval of the Administrator.

These proposed requirements represent a significant expansion of the present canning regulations. The Department views the maintenance and review of records as two of the most vital control elements in the production of safe and stable canned product.

h. *Deviations in Processing.* Proposed §§ 318.308 and 381.308 would provide measures for establishments to take if process schedules have not been followed or if critical factors are out of control. Provisions are made for both shelf stable and pasteurized "keep refrigerated" products. The proposal woud allow for the holding of suspect product and a scientific evaluation of the process deviation to determine product safety and stability. If an evaluation is performed, the Department would approve any action regarding product disposition. Alternatively, product associated with a process deviation could be made safe and stable by immediately reprocessing or reworking under the supervision of an inspector. Also, it is proposed that each establishment maintain a process deviation file that contains full and complete records on the handling of each deviation.

However, the provisions of proposed §§ 318.308 and 381.308 would not be applicable to an establishment which has a program for handling process deviations approved in accordance with the provisions for quality control in §§ 318.4 and 381.145, respectively.

Most canners recognize the dangers associated with underprocessed canned product and have traditionally handled process deviations and the related product in a responsible manner. Whether through a scientific evaluation of a deviation or through reprocessing or reworking of the product, such procedures, when properly accomplished, will assure that only sound, wholesome product enters the marketplace. The Department feels, however, that such procedures must be rigorously implemented, and considers the proposed requirements necessary.

i. *Finished Product Inspection.* Proposed §§ 318.309 and 381.309 would require incubation testing and a condition-of-container examination of finished lots to increase the assurance of lot soundness. The sections on the incubation of shelf-stable canned products propose requirements for the incubator, incubation conditions, products requiring incubation, sampling rates and procedures, incubation times and recordkeeping requirements. The sections also outline procedures for handling abnormal containers (i.e., swells) and the associated lot or lots.

However, the provisions of proposed §§ 318.309 and 381.309 would not be applicable to an establishment which has a finished product inspection program approved in accordance with the provisions for quality control in §§ 318.4 and 381.145, respectively.

Presently, the canning regulations require that after cooling, containers of heat processed product exhibit the characteristics of normal, sound containers. Further, the regulations prescribe that samples of finished product be incubated under specified conditions of time and temperature. The Meat and Poultry Inspection Manual provides additional information on incubation tests and condition-of-container examinations.

It is proposed that the current requirements for finished product inspection be retained and further expanded to include the information contained in the MPI Manual. However, two significant changes have been proposed. Section 318.11(i)(4) states that incubation samples shall be held at 95°F (±2°) and the incubation time is either 10, 20, or 30 days depending upon the product and the size of the container. This proposal retains the 95°F incubation temperature, but would increase the acceptable incubator temperature range to ± 5°F. Also, the incubation time would be 10 days regardless of product or container size. FSIS microbiologists have determined that the proposed range of acceptable incubator temperature (90–100°F) will not adversely affect incubation testing while allowing for minor temperature fluctuations during incubation. A 10-day incubation time is considered sufficient in view of the other regulatory controls being proposed.

j. *Personnel and Training.* The production of heat processed product packed in hermetically sealed containers includes many process control points. Two of the most critical are container integrity control and control of the thermal processing operation. A failure in these operations usually results in product adulteration and in some cases presents a health hazard situation. While the existing regulations do not address this concern, the Department believes that strict supervision of these operations by a knowledgeable person is essential. Therefore, a mechanism which would serve to alleviate these concerns has been incorporated into the proposal.

Sections 318.310 and 381.310 would require that all operators of thermal processing systems and all container closure technicians employed by the establishment be under the operating supervision of a person who has satisfactorily completed a prescribed course in thermal processing given by a school approved by the Administrator. Courses of instruction that the FDA has approved under 21 CFR 113.10 and 22 CFR 114.10 would meet the training requirements of this proposal.

k. *Recall Procedure.* At times there is an urgent need to recall products that has entered the distribution system. While there are many circumstances that lead to product recalls, the health hazards associated with improperly processed canned product makes it imperative that such recalls be effectively and expeditiously completed. The Department reasons that the development and implementation of comprehensive procedures by a canning establishment to effectuate the recall of its product(s) is the best means to accomplish these objectives.

Therefore, proposed §§ 318.311 and 381.311 would require that each establishment maintain a current procedure for recalling product. Further, it is proposed that such written procedures be maintained at the establishment (or at the establishment's headquarters) and that the Department be given prior notification of the dintention to recall product.

l. *Imported Products.* Section 327.6 of the current regulations requires that canned meat or meat products offered for importation into the United States be sampled and examined to determine that such canned products are sound, healthful, wholesome and otherwise not adulterated at the time they are offered for importation. If the examination discloses that the product or containers do not meet prescribed acceptance standards, the entire consignment is refused entry. However, a consignment which is rejected solely on the basis of container defects may be reoffered for inspection if the consignment is otherwise acceptable, the number of container defects found in the original examination did not exceed limits established for determining the subsequent eligibility of a previously rejected lot, and the defective containers are sorted out and reexported or destroyed.

Implicit in this regulation is a requirement that consignments of canned products refused entry for container defects but otherwise eligible to be reoffered for inspection, will not be permitted to be reoffered until a determination has been made that the container defects are not indicative of some other defect related to the stability or safety of the product itself. Current Department procedures implement this implied requirement. The Department believes, however, that to avoid and eliminate the potential for confusion, an express statement of this procedure in the regulations may be necessary. Therefore, the Department is proposing to add a provision to § 327.6 stating that, in addition to the current conditions which must be satisfied before a consignment previously rejected for container defects may be reoffered for inspection, a determination would have to be made by the Administrator or his or her representative that the defectie containers are not indicative of an unsafe or unsuitable product. Similar provisions are proposed for incorporation in § 381.199 of the poultry products inspection regulations.

Other non-substantive changes in diction are also being proposed to clarify the intent of these sections.

Freedom of Information

The proposal would require that certain information, procedures and records be made available to program employees, which includes any duly authorized representative of the Secretary, upon request, or be maintained on file with an inspector. The Department would expect industry to be concerned that such materials would be subject to disclosure, in whole or in part, pursuant to request under the Freedom of Information Act (FOIA), 5 U.S.C. 552. he primary purpose of the FOIA is to facilitate release of information contained in Government records. However, recognizing that release of certain information could cause potential harm to businesses and individuals, the FOIA exempts particular commercial and financial information from mandatory release by Government agencies. See 5 U.S.C. 552(b)(4).

The material that would be made available to the Department upon request or kept on file with an inspector includes, but is not limited to: receipts for products; specific methods, tests and procedures that the company establishes to examine and control raw materials; critical tests, observations and evaluations made during processing; finished product critical tests; finished product specifications; sanitation specifications; sampling plans, including size, frequencies, targets, tolerances and limits; employee training programs; equipment calibration progams; thermal process schedule development data; thermal process deviation evaluations; process control charts, logs, graphs and data; recall procedures and records; product distribution records; and laboratory techniques, procedures and results.

The material that would be required to be made available to the Department might not be the same for each company because of differences in the nature and cost of items such as raw materials, methods of preparation, variations unique to the equipment, finished product specifications and overall manufacturing costs. If such information were released under an FOIA request, the nature and degree of a processor's vulnerbility to competition could be determined by others.

Most material made available or required to be submitted to the Department under the proposed regulations would include trade secrets or commercial or financial information that is privileged or confidential. Such information should be exempt from mandatory disclosure under the FOIA; however, each request would be considered separately.

List of Subjects

9 CFR Parts 308, 320 and 327

Meat inspection.

9 CFR Part 318

Canning, Containers, Meat inspection.

9 CFR Part 381

Canning, Containers, Poultry inspection.

Accordingly, the Federal meat and poultry products inspection regulations would be amended as set forth below:

1. The Authority Citations for Parts 308, 318, and 320 are revised as follows and the authority citation for Part 327 reads as follows:

Authority: 34 Stat. 2160, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254; unless otherwise noted.

PART 308—[AMENDED]

2. Section 308.3(d) (2) and (3), (9 CFR 308.3(d) (2) and (3)) would be revised to read as follows:

§ 308.3 Establishments: Sanitary condition; requirements.

* * * * *

(d) * * *

(2) The circuit supervisor may permit the reuse of water in vapor lines leading from deodorizers used in the preparation of lard and similar edible product, provided the reuse is for the identical original purpose and the following precautions are taken to protect the water that is reused:

(i) All pipelines, reservoirs, tanks, cooling towers, and like equipment employed in handling the reused water are so constructed and installed as to facilitate their cleaning and inspection.

(ii) Complete drainage and disposal of the reused water, effective cleaning of the equipment, and renewal with fresh potable water is accomplished at such intervals as may be necessary to assure an acceptable supply of water for the purpose intended.

(3) Approval for the reuse of water other than as specified in paragraph (d)(2) of this section or in § 318.305(h) shall be obtained from the Administrator in specific cases.

PART 318—[AMENDED]

3. Part 318 (9 CFR Part 318) would be amended by adding a new Subpart A—General, and be designating §§ 318.1 through 318.18 (9 CFR 318.1–318.18) as part of the new Subpart A—General. The table of contents would be revised accordingly.

§ 318.11 [Reserved]

4. Section 318.11 of the new Subpart A would be removed and the section number reserved. The table of contents would be revised accordingly.

5. Subparts B through F of Part 318 (9 CFR 318) would be reserved.

6. A new Subpart G—Canning and Canned Products, and new Sections 318.300 through 318.311 (9 CFR 318.300–318.311) would be added to Part 318 to read as follows. The Table of Contents would be revised accordingly.

Subpart G—Canning and Canned Products

Subpart G—Canning and Canned Products

§ 318.300 Definitions

For the purposes of this subpart, the following definitions apply:

(a) *Acidified low acid product.* A canned product which has been formulated or treated so that every component of the finished product has a pH of 4.6 or lower within 24 hours after the completion of the thermal process.

(b) *Bleeders.* Small orifices on a retort through which steam and other gases are emitted from the retort throughout the entire thermal process.

(c) *Canned product.* A product with a water activity above 0.85 which receives a thermal process either before or after being packed in a hermetically sealed container.

(d) *Code lot.* All production of a particular product in a specific size container identified by a specific container code mark.

(3) *Come-up time.* The time, including venting time, which elapses between the introduction of the heating medium into a closed retort and the time when the temperature throughout the retort reaches the required sterilization temperature.

(f) *Critical factor.* Any characteristic, condition or aspect of a product, container or procedure which affects the process schedule.

(g) *Designated authority.* A person or organization having expert knowledge of thermal processing requirements for foods in hermetically sealed containers, having access to facilities for making such determinations, and designated by the establishment to perform certain functions as indicated in this subpart.

(h) *Headspace.* That portion of a container not occupied by the product.

(1) *Gross headspace.* The vertical distance between the level of the product (generally the liquid surface) in an upright rigid container and the top edge of the container (the top of the double seam of a can or the top edge of an unsealed glass jar).

(2) *Net headspace.* The vertical distance between the level of the product (generally the liquid surface) in an upright rigid container and the inside surface of the lid.

(i) *Hermetically sealed containers.* Air-tight containers which are designed and intended to protect the contents against the entry of microorganisms during and after thermal processing.

(1) *Rigid container.* A container, the shape or contour of which, when filled and sealed, is neither affected by the enclosed product nor deformed by external mechanical pressure of up to 10 pounds per square inch guage (0.7 kg/cm^2) (i.e., normal firm finger pressure).

(2) *Semirigid container.* A container, the shape or contour of which, when filled and sealed, is not affected by the enclosed product under normal atmospheric temperature and pressure, but can be deformed by external mechanical pressure of less than 10 pounds per square inch gauge (0.7 kg/cm^2) (i.e., normal firm finger pressure).

(3) *Flexible container.* A container, the shape or contour of which, when filled and sealed, is affected by the enclosed product.

(j) *Holding time.* Synonymous with sterilization time.

(k) *Incubation tests.* Tests in which the thermally processed product is kept at a specific temperature for a specified period of time in order to determine if outgrowth of microorganisms occurs.

(l) *Initial temperature.* The temperature of the contents of the coldest container to be processed which is determined after thorough stirring or shaking of the filled and sealed container at the initiation of the thermal process cycle.

(m) *Low acid product.* A canned product in which any component has a pH value above 4.6 after 24 hours from the completion of the thermal process.

(n) *Maximum pH.* The pH of the finished product within 24 hours after the completion of the thermal process. If a product is acidified by the addition of acid, an acid food ingredient, or any other means, the pH of the component which has the highest pH value after 24 hours shall be considered the maximum pH.

(o) *Pasteurized product labeled "keep-refrigerated."* A canned product which remains safe, through the application of a mild heat treatment (i.e., product temperature generally does not exceed 185°F (85°C)) in combination with other ingredients, and subsequent storage and distribution under refrigerated conditions.

(p) *Process schedule.* The thermal process, including specified critical factors, for a given product and container size to achieve at least the intended condition of either shelf stability or a pasteurized "keep-refrigerated" product.

(q) *Program employee.* Any inspector or other individual employed by the Department or any cooperating agency who is authorized by the Secretary to do any work or perform any duty in connection with the Program.

(r) *Refrigerated conditions.* Temperature conditions which are maintained at or less than 50°F (10°C).

(s) *Retort.* A pressure vessel designed for thermal processing of product packed in hermetically sealed containers.

(t) *Seals.* Those parts of a semirigid container and lid, or flexible container which are fused together in order to hermetically close the container.

(u) *Shelf stability.* The condition achieved by application of heat, sufficient, alone or in combination with other ingredients and/or treatments, to render the product free of microorganisms capable of growing in

the product at non-refrigerated conditions (over 50°F or 10°C) at which the product is intended to be held during distribution and storage. Shelf stability and shelf stable are synonymous with commercial sterility and commercially sterile, respectively.

(v) *Sterilization temperature.* The minimum temperature to be maintained throughout the thermal process as specified in the process schedule.

(2) *Sterilization time.* The time between the moment sterilization temperature is achieved and the moment the heating medium is turned off. If sterilization temperature is achieved prior to the completion of the venting cycle, sterilization time means the time between the completion of the venting cycle and the moment the steam is turned off.

(x) *Thermal process.* The heat treatment to achieve the intended condition (i.e., shelf stable or pasteurized "keep-refrigerated") and is quantified in terms of:

(1) Time and temperature; or

(2) Minimum product temperature.

(y) *Venting.* The removal of the air from a retort before the start of sterilization timing.

(z) *Water activity* (a_w). The ratio of the water vapor pressure of the product to the vapor pressure of pure water at the same temperature.

§ 318.301 Containers and closures.

(a) *Examination and cleaning of empty containers.* (1) Empty containers, closures and flexible pouch roll stock shall be examined by an employee(s) of the official establishment to ensure that such are clean and free from structural defects.

(2) All empty containers, closures and flexible pouch roll stock shall be stored, handled and conveyed in such a manner that will prevent soiling and damage that could affect the hermetic condition of the sealed container.

(3) Just before filling, rigid containers shall be cleaned in an inverted position with potable water or steam, or filtered air using devices designed to direct and deliver the cleaning medium so that the interior surface of each container is cleaned. Glass containers may also be cleaned by suction (vacuum). Closures, semirigid containers, preformed flexible pouches and flexible pouch roll stock contained in original wrappings do not need to be cleaned before use.

(b) *Closure examinations for rigid containers* (cans). (1) Visual examinations. An establishment closure technician shall visually examine the double seams formed by each closing machine head. One container from each seaming head shall be examined and the observations recorded. When typical seaming defects (e.g., cutovers, sharpness, knocked down flanges, false seams, droops) are observed, corrective actions such as repairing or adjusting the closing machine, shall be taken and such actions recorded by the closure technician or his or her designee. Container side seams shall be checked for defects or product leakage. When side seam defects are identified, corrective actions such as removal of defective containers, shall be taken and the actions recorded by the closure technician or his or her designee. Visual examinations shall be conducted by the closure technician at least every 30 minutes of continuous closing operation. Additional visual examinations shall be made by the closure technician at the beginning of production, immediately following a jam in the seaming machine, after closing machine adjustment and after start-up following prolonged shutdown of the closing machine.

(2) Teardown examinations of double seams shall be performed by an establishment closure technician at a frequency not to exceed 4-hour intervals or within a coding period, whichever is less. Examination results shall be recorded by the closure technician or his or her designee as each examination is completed. The establishment shall obtain and keep on file specifications for double seam dimensions for containers being used, and such specifications shall be available to the Program employee. At least one container from each closing head shall be examined on the coded (packer's) end during each regular examination period; where indicated, corrective actions such as repairing or adjusting the closing machine, shall be taken and recorded by the closure technician or his or her designee. At least one of the cans selected from each closing machine during each regular examination period shall also be examined on the uncoded or can maker's end (except for two-piece cans); corrective action shall be taken and recorded to prevent continued use of empty cans with defective double seams. The following procedures shall be used in teardown examinations of double seams:

(i) One of the following two methods shall be employed for dimensional measurements of the double seam.

(*a*) Micrometer measurement: Measure and record the following dimensions (Figure 1) at three points approximately 120 degrees apart around the seam excluding the side seam juncture:

(*1*) Double seam length—W;

(*2*) Double seam thickness—S;

(*3*) Body hook length—BH;

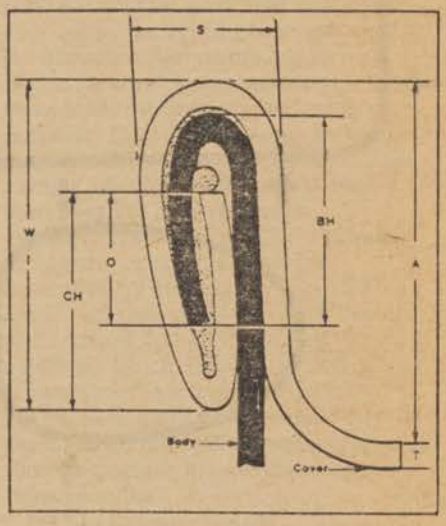
(*4*) Cover hook length—CH; and

(*5*) End plate or cover thickness—T.

Optional measurements include countersink depth (A) and overlap (O). The calculated overlap can be obtained as follows: $O=(CH+BH+T)-W$.

Figure 1

Schematic diagram of the double seam



(*b*) Seamscope or seam projector: Required measurements of the seam include body hook and overlap; optional measurements include cover hook and double seam length. Seam thickness shall be obtained by micrometer; measuring countersink depth is optional. At least two locations, excluding the side seam juncture, shall be used to obtain measurements by the seamscope or seam projector method.

(ii) Seam tightness. Regardless of the dimensional measurement method used to measure seam dimensions, the seam(s) examined shall be stripped to assess the degree of wrinkling and to observe for a pressure ridge.

(iii) Side seam juncture rating. Regardless of the dimensional measurement method used to measure seam dimensions, the cover hook shall be stripped to rate the junction for cans having side seams.

(iv) Examination of rectangular and square containers shall be conducted as described in § 318.301(b)(2)(i), (ii) and (iii) except that measurements shall be made at each of the eight points shown in Figure 2.

(v) Examination of "D" shaped and irregular shaped containers shall be conducted as described in § 318.301(b)(2)(i), (ii) and (iii) except that measurements shall be made at each of the points shown in Figures 3 and 4.

Figure 2

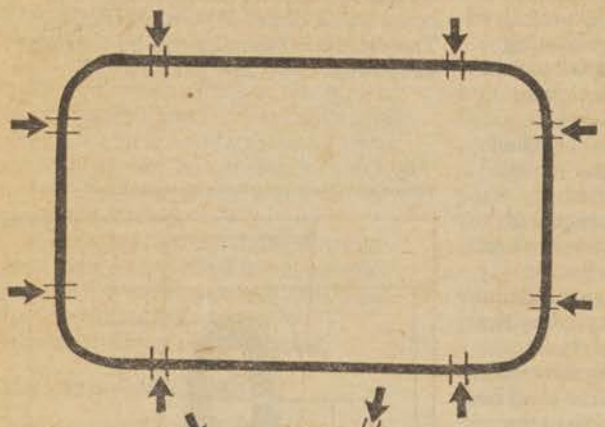


Figure 3

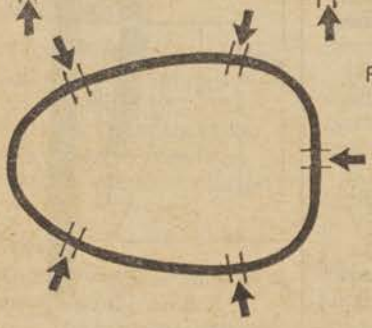
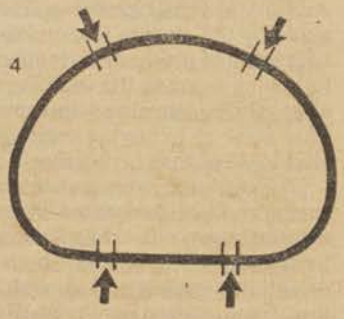


Figure 4



(c) *Closure examinations for glass containers*—(1) *Visual examinations.* An establishment closure technician shall visually determine the adequacy of the closures formed by each closing machine. Such examinations shall be conducted and the observations recorded by the closure technician at least every 30 minutes of continuous closing operations. Additional visual examinations shall be made by the closure technician and the observations recorded at the beginning of production, immediately following a jam in the closing machine, after closing machine adjustment or after start-up following prolonged shutdown of the closing machine.

(2) Closure examinations and tests such as compound impression tests, lug tension tests and removal torque tests, shall be conducted by the establishment to ensure consistently reliable hermetic sealing. Such examinations shall be conducted at a frequency not to exceed 4-hour intervals or within a coding period, whichever is less. Records of such tests and corrective actions taken as a result of these tests shall be maintained by the establishment. The establishment shall obtain and keep on file container closure specifications and such specifications shall be made available to Program employees.

(d) *Closure examinations for semirigid and flexible containers*—(1) *Heat seals.—(i)* Visual examinations. An establishment closure technician shall visually examine the heat seals formed by each sealing machine. Such examinations shall be made before and after the thermal processing operation to ensure that the containers are hermetically sealed. The results of such examinations shall be recorded, and when required, corrective actions such as repairing or adjusting the closing machine, shall be taken and recorded.

(ii) Physical tests. Tests such as seal strength, burst and bond strength tests, shall be conducted after thermal processing by the establishment to provide assurance that the hermetic condition of a container will be maintained through subsequent product storage, handling and distribution. Physical tests shall be performed by an establishment closure technician at a frequency not to exceed 2-hour intervals or within a coding period, whichever is less. The results of such tests shall be recorded, and when required, corrective actions, such as repairing or adjusting the sealing equipment, shall be taken and recorded.

(iii) Specifications used for visual examinations and physicial tests shall be obtained and kept on file by the establishment and shall be made available to Program employees.

(2) Double seams on semirigid containers shall be examined as provided in § 318.301(b).

(e) *Container coding.* Each container shall be marked with a permanent legible identifying code mark. The code mark shall identify the product, the year and the day the product was packed.

(f) *Handling of containers after closure.* (1) At all times containers and closures shall be protected from damage which may cause defects and subsequent contamination of the product. The accumulation of stationary containers on moving conveyors shall be kept to a minimum to avoid damage to the containers.

(2) The maximum time lapse between closing and initiation of thermal processing shall be 2 hours. However, the Administrator may specify a shorter period of time when considered necessary to ensure product safety and stability. A longer period of time between closing and the initiation of thermal processing shall only be permitted after written approval is obtained from the Administrator.

§ 318.302 Thermal processing.

(a) *General considerations.* Process schedules for canned product shall be determined by designated authorities as defined in § 318.300(g) of this subpart.

(b) *Establishing process schedules.* The establishment through its designated authority shall develop a process schedule for each of its canned meat products. The process schedule shall be developed in the following manner.

(1) First, the required heat treatment to achieve shelf stability is established on the basis of factors such as:

(i) Microbial flora;

(ii) Container size and type;

(iii) pH of the product;

(iv) Fill of container;

(v) Product composition or formulation;

(vi) Levels and types of preservatives;

(vii) Water activity; and

(viii) Likely storage temperature of the product.

(2) The second step is to determine the process schedule, taking into account the thermal processing facilities available, by carrying out heat penetration tests. Heat penetration into the product shall be determined under at least the most adverse conditions that are likely to be met in production. For this purpose the temperature at the slowest heating point in the container's content shall be monitored during a heat penetration test. It is essential to carry out heat penetration tests to determine the variations which need to be taken

into account in the process schedule. If heat penetration data cannot be obtained, alternative methods such as bacteriological spore reduction tests or inoculated pack tests shall be used. Any change in product formulation, ingredients and/or treatments shall be evaluated as to the effect on the adequacy of the process by a designated authority. In necessary, additional heat penetration tests shall be conducted. Complete records concerning all aspects of the determination of the process schedule, including any associated incubation tests, shall be made available by the establishment to program employees upon request.

(c) *Submittal of process information.* Prior to the processing of any canned product, the establishment shall provide the inspector at the establishment a list of the process schedules (including alternative schedules), the retort venting procedures for pressure processing in steam or steam-air, and the associated critical factors for each product and container size. Where the process schedules have been recommended by a designated authority who is not otherwise employed by the official establishment, the establishment shall also provide the inspector with a copy of a letter or other written communication from such designated authority recommending the process schedule and associated critical factors. Where critical factors are identified in the process schedule, the establishment shall provide the inspector with a copy of the procedures for measuring, controlling and recording these factors along with the frequency of such measurements to ensure that the critical factors remain within the limits used to establish the process schedule. Once submitted, the process schedules and associated critical factors, as well as the procedures for measuring, controlling, recording, and the frequency of measuring critical factors, shall not be charged without the prior written submission of the revised procedures (including supporting documentation) to the inspector at the establishment.

§ 318.303 Critical factors and the application of the process schedule.

Critical factors specified in the process schedule shall be measured controlled and recorded by the establishment to ensure that these factors remain within the limits used to establish the process schedule. Examples of factors that are often critical to process schedule adequacy include:

(a) *General.*

(1) Maximum fill-in weight or drained weight;

(2) Arrangement of pieces in the container;

(3) Container orientation position in the retort;

(4) Production formulation;

(5) Particle size;

(6) Maximum thickness for flexible, and to some extent semirigid containers during thermal processing;

(7) Maximum pH;

(8) Percent salt;

(9) Ingoing (or formulated) nitrite level (ppm);

(10) Maximum water activity; and

(11) Product consistency or viscosity.

(b) *Continuous rotary and batch agitating retorts.*

(1) Minimum headspace; and

(2) Retort reel speed.

(c) *Hydrostatic retorts.*

(1) Chain or conveyor speed.

(d) *Steam-air retorts.*

(1) Steam-air ratio;

(2) Air flow rate; and

(3) Forced recirculation flow rate.

§ 318.304 Operations in the thermal processing area.

(a) *Posting of processes.* Process schedules including specified minimum initial temperatures and venting procedures (where applicable) used for products and container sizes being packed shall be posted in a conspicuous place near the thermal processing equipment or shall be readily available to the retort or processing system operator.

(b) *Process indicators and retort traffic control.* A system for product traffic control shall be established to prevent product from bypassing the thermal processing operation. Each basket, crate or similar vehicle containing unprocessed product, or at least one of the containers on the top of each vehicle, shall be plainly and conspicuously marked with a heat sensitive indicator which will visually indicate whether such unit has been thermally processed. Used heat sensitive indicators attached to container vehicles shall be removed before such vehicles are refilled with unprocessed produce. Container loading systems for still crateless retorts shall be designed to prevent unprocessed product from bypassing the thermal processing operation.

(c) *Initial temperature.* The initial temperature of the contents of the coldest container to be processed shall be determined with an accurate thermometer and recorded by the establishment to ensure that the temperature of the product is no lower than the minimum initial temperature specified in the process schedule. Thermal processing systems (e.g., retort, water bath) which subject the filled, sealed containers to water at any time before sterilization timing begins, shall be operated to ensure that such water will never lower the temperature of the product below the minimum initial temperature specified in the process schedule.

(d) *Process timing.* Timing devices used to measure process schedule time shall ensure that such time, and where applicable, the venting time specified in the process schedule are achieved. Pocket or wrist watches are not considered satisfactory for timing purposes. Digital clocks may be used if the operating process schedule and the venting schedule each have at least a 1-minute safety factor over the established schedules. Where process timing and retort functions are controlled by means of programmable cards and similar devices such devices shall ensure that all timed functions are achieved. Clock times on recording temperature charts shall correspond within 15 minutes to the time of day recorded on the written processing records to allow for correlation with these records.

(e) *Measurement of pH.* Potentiometric methods using electronic instruments (pH meters) shall be used for making pH determinations. The use of other methods shall be contingent upon approval by the Administrator.

§ 318.305 Equipment and procedures for heat processing systems.

(a) Instruments and controls common to different thermal processing systems.

(1) *Indicating temperature device.* Each retort shall be equipped with at least one indicating temperature device which accurately measures the actual temperature within the retort. All such devices shall be installed where they can be easily and accurately read. The indicating temperature device, not the temperature/time recording device, shall be used as the reference instrument for indicating the process temperature.

(i) *Mercury-in-glass thermometers.* A mercury-in-glass thermometer shall have divisions that are easily readable to 1° F (or 0.5° C) and whose scale contains not more thant 17° F/inch (or 4.0° C/cm) of graduated scale. Each mercury-in-glass thermometer shall be tested by the establishment for accuracy against a known accurate standard upon installation and at least once a year to ensure its accuracy. Records that specify date, standard used, test method, and the person performing the test shall be maintained by the establishment. A mercury-in-glass thermometer that has a divided mercury

column or cannot be adjusted to the standard shall be repaired and tested for accuracy before further use or replaced.

(ii) *Other devices.* In lieu of mercury-in-glass thermometers, the Administrator, upon written request, will consider other indicating temperature devices, such as resistance temperature detectors. Upon installation and at least once a year thereafter, the establishment shall test each such device for accuracy against a known accurate standard. Records that specify date, standard used, test method, and the person performing the test shall be maintained by the establishment. Any such device which cannot be adjusted to the standard shall be repaired and tested for accuracy before further use or replaced.

(2) *Temperature/time recording devices.* Each thermal processing system shall be equipped with at least one temperature/time recording device to provide a permanent record of temperatures with the thermal processing system. This recording device may be combined with the steam controller and may be a recording-controlling instrument. The recording accuracy shall be equal to or better than ±1° F (or ±0.5° C) at the sterilizing temperature. The recorder temperature shall never be higher than and not more than 1° F (or 0.5° C) lower than the indicating temperature device at the sterilizing temperature. A means of preventing unauthorized changes in the adjustment shall be provided. A lock, or a notice from management posted at or near the recording device which provides a warning that only authorized persons are permitted to make adjustments, is a satisfactory means for preventing unauthorized changes. Air-operated temperature controllers shall have adequate filter systems to ensure a supply of clean, dry air. The recorder timing mechanism shall be accurate.

(i) *Chart-type devices.* Devices using charts shall never be used without the correct chart. Each chart shall have a working scale of not more than 55° F/inch (or 21° C/cm) within a range of 20° F (or 11° C) of the sterilizing temperature. Multipoint plotting chart-type devices shall print temperature readings at intervals not to exceed 30 seconds except that longer intervals will be considered by the Administrator upon written request.

(ii) *Other devices.* In lieu of chart-type devices, the Administrator will consider other recording devices upon written request. For each process cycle such systems shall provide a printed record of temperatures at intervals not to exceed 30 seconds except that longer intervals will be considered by the Administrator upon written request.

(3) *Steam controllers.* Each retort shall be equipped with an automatic steam controller to maintain the retort temperature. This may be a recording-controlling instrument when combined with a temperature/time recording device.

(4) *Air valves.* All air lines connected to retorts designed for pressure processing in steam shall be equipped with a sealing valve to prevent air from leaking into the retort during the process cycle.

(5) *Water valves.* All retort water lines that are intended to be closed during a process cycle shall be equipped with a sealing valve to prevent the leakage of water into the retort during the process cycle.

(b) *Pressure processing in steam*—(1) *Batch still retorts.* (i) The basic requirements and recommendations for indicating temperature devices and temperature/time recording devices are described under § 318.305(a) (1) and (2). Additionally, bulb sheaths or probes of indicating temperature devices and probes of temperature/time recording devices shall be installed either within the retort shell or in external wells attached to the retort. External wells shall be connected to the retort through at least a ¾ inch (1.9 cm) diameter opening and equipped with a 1/16 inch (1.6 mm) or larger bleeder opening so located as to provide a constant flow of steam past the length of the bulb or probe. The bleeder for external wells shall emit steam continuously during the entire thermal processing period.

(ii) Steam controllers are required as described under § 318.305(a)(3).

(iii) *Steam inlet.* The steam inlet to each retort shall be larger enough to provide steam for proper operation of the retort, and shall enter at a point to facilitate air removal during venting.

(iv) *Crate supports.* A bottom crate support shall be employed in vertical still retorts. Baffle plates shall not be used in the bottom of retorts.

(v) *Steam spreaders.* Perforated steam spreaders, if used, shall be maintained to ensure they are not blocked or otherwise inoperative. Horizontal still retorts shall be equipped with perforated steam spreaders that extend the full length of the retort.

(iv) *Bleeders and condensate removal.* Bleeders, except those for external wells of temperature devices, shall have ⅛ inch (or 3 mm) or larger openings and shall be wide open during the entire process, including the come-up time. For horizontal still retorts, bleeders shall be located within approximately 1 foot (or 30 cm) of the outermost locations of containers at each end along the top of the retort. Additional bleeders shall be located not more than 8 feet (2.4 m) apart along the top. Bleeders may be installed at positions other than those specified above, as long as the establishment provides evidence in the form of heat distribution data or other documentation that the bleeders accomplish removal of air and circulate the steam within the retort. Vertical retorts shall have at least one bleeder opening located in that portion of the retort opposite the steam inlet. In retorts having top steam inlet and bottom venting, a bleeder shall be installed in the bottom of the retort to remove condensate. All bleeders shall be arranged so that the retort operator can observe that they are functioning properly.

(vii) *Stacking equipment.*

(*a*) Equipment for holding or stacking containers in retorts. Creates, trays, gondolas, carts and other vehicles for holding or stacking product containers in the retort shall be so constructed to ensure stream circulation during the venting, come-up and sterilization times. The bottom of each vehicle shall have perforations at least 1 inch (2.5 cm) in diameter on 2 inch (or 5 cm) centers or the equivalent.

(*b*) *Divider plates.* When divider plates are used between layers of containers, the establishment shall have on file evidence that the venting procedures allow the air to be removed from the retort before timing of the thermal process is started. Such evidence shall be in the form of heat distribution data or documentation from a designated authority. Divider plates shall have perforations at least 1 inch (2.5 cm) in diameter on 2 inch (or 5 cm) centers or the equivalent. No more than one divider plate shall be used to separate any two layers of product containers. Except for systems where a divider plate is used as the actual bottom of a retort container vehicle, divider plates shall never be placed on the bottom of a retort vehicle.

(viii) Bleeder and vent mufflers. If mufflers are used on bleeders or vent systems, the establishment shall have on file evidence that the mufflers do not impede the removal of air from the retort. Such evidence shall consist of either heat distribution test data or documentation from the muffler manufacturer or from a designated authority.

(ix) Vents.

(*a*) Vents shall be located in that portion of the retort opposite the steam inlet and shall be designed, installed and operated in such a way that air is

removed from the retort before timing of the thermal process is started. Vents shall be controlled by a gate, plug cock or other type valve which shall be fully opened to permit rapid removal of air from retorts during the venting period.

(*b*) Vents shall not be connected to a closed drain system without an atmospheric break in the line. Where a retort manifold connects several pipes from a single retort, the manifold shall be controlled by a gate, plug cock or other type valve. The manifold shall be of a size such that the cross-sectional area of the manifold is larger than the total cross-sectional area of all connecting vents. The discharge shall not be connected to a closed drain without an atmospheric break in the line. A manifold header connecting vents or manifolds from serveral still retorts shall lead to the atmosphere. The manifold header shall not be controlled by a valve and shall be of a size such that the cross-sectional area is at least equal to the total cross-sectional area of all connecting retort manifold pipes from the maximum number of retorts to be vented simultaneously

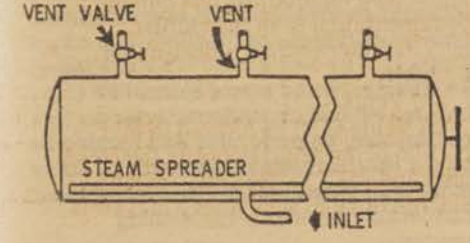
(*c*) Some typical installations and operating procedures are described below; however, other retort installations, vent piping arrangements or operating procedures may be used provided that there is evidence that the air is removed from the retort before the process is started. Such evidence shall be in the form of heat distribution data or other documentation from the equipment manufacturer or designated authority, which shall be maintained on file by the establishment.

(*d*) For crateless retort installations, the establishment shall have on file heat distribution data or other documentation from the equipment manufacturer or from a designated authority which demonstrates that the venting procedure used accomplishes adequate venting and condensate removal.

(*e*) Typical installations and operating procedures that comply with the requirements of this section are as follows.

(*1*) Venting horizontal retorts.

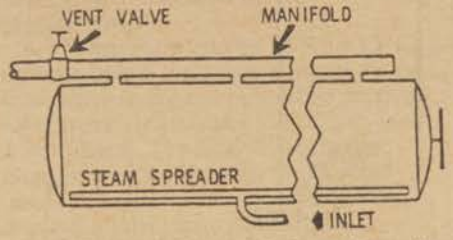
(*i*) Venting through multiple 1 inch (2.5 cm) vents discharging directly to the atmosphere.



Specifications: One, 1-inch (2.5 cm) vent for every 5 feet (1.5 m) of retort length, equipped with a gate, plug cock or other type valve and discharging to atmosphere. The end vents shall not be more than 2½ feet (or 75 cm) from ends of retort.

Venting method: Vent valves shall be wide open for at least 5 minutes and to at least 225°F (or 107°C), or at least 7 minutes and to at least 220°F (or 104.5°C).

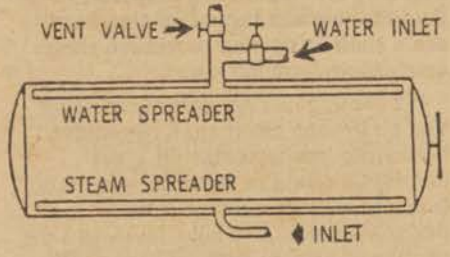
(*ii*) Venting through multiple 1 inch (2.5 cm) vents discharging through a manifold to the atmosphere.

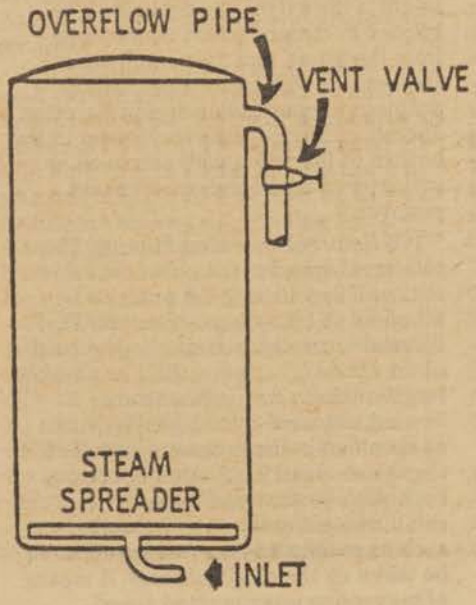


Specifications: One, 1-inch (2.5 cm) vent for every 5 feet (1.5 m) of retort length; vents not over 2½ feet (or 75 cm) from ends of retort; size of manifold for retorts less than 15 feet (4.6 m) in length, 2½ inches (6.4 cm) and for retorts 15 feet (4.6 m) and over in length, 3 inches (7.6 cm).

Venting method: The manifold vent gate, plug cock or other type valve shall be wide open for at least 6 minutes and to at least 225°F (or 107°C) or for at least 8 minutes and to at least 220°F (or 104.5°C).

(*iii*) Venting through water spreaders.



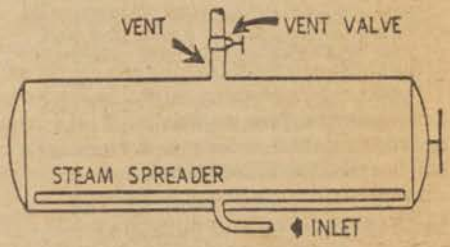


Specifications: Size of vent and vent valve For retorts less than 15 feet (4.6 m) in length, 2 inches (or 5 cm); for retorts 15 feet (4.6 m) and over in length, 2½ inches (6.4 cm).

Size of water spreader: For retorts less than 15 feet (4.6 m) in length, 1½ inches (3.8 cm); for retorts 15 feet (4.6 m) and over in length, 2 inches (or 5 cm). The number of holes shall be such that their total cross-sectional area is equal to the cross-sectional area of the vent pipe inlet.

Venting method: The water spreader vent gate, plug cock or other type valve shall be wide open for at least 5 minutes and to at least 225°F (or 107°C), or for at least 7 minutes and to at least 220°F (or 104.5°C).

(*iv*) Venting through a single 2½ inch (6.4 cm) top vent for retorts not exceeding 15 feet (4.6 m) in length.

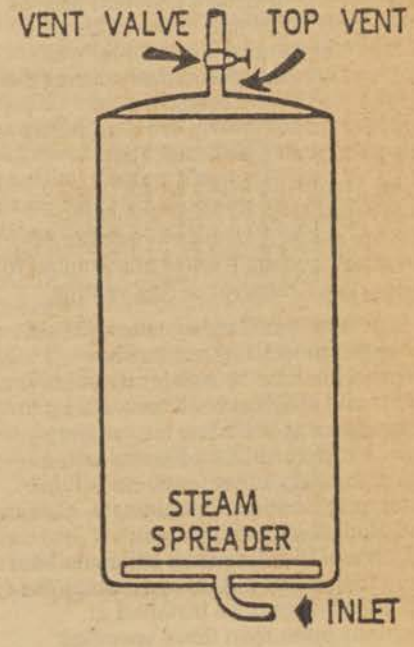


Specifications: A 2½ inch (6.4 cm) vent equipped with a 2½ inch (6.4 cm) gate, plug cock or other type valve and located within 2 feet (61 cm) of the center of the retort.

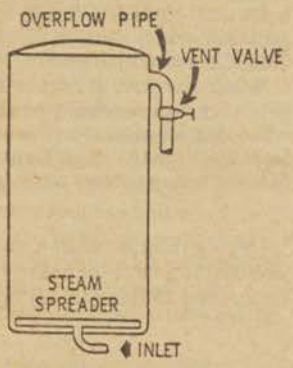
Venting method: The vent valve shall be wide open for at least 4 minutes and to at least 220°F (or 104.5°C).

(*2*) Venting vertical retorts.

(*i*) Venting through a 1½ inch (3.8 cm) overflow.



Specifications: A 1½ inch (3.8 cm) overflow pipe equipped with a 1½ inch (3.8 cm) gate, plug cock valve or other type valve and with not more than 6 feet (1.8 m) of 1½ inch (3.8 cm) pipe beyond the valve before a break to the atmosphere or to a manifold header.



Specifications: A 1 inch (2.5 cm) vent in lid or top side, equipped with a gate, plug cock or other type valve and discharging directly in the atmosphere or to a manifold header.

Venting method: The vent valve shall be wide open for at least 5 minutes and to at least 230°F (110°C), or for at least 7 minutes and to at least 220°F (or 104.5°C).

(2) *Batch agitating retorts.* (i) The basic requirements for indicating temperature devices and temperature/time recording devices are described under § 318.305(a) (1) and (2). Additionally, bulb sheaths or probes of indicating temperature devices and probes of temperature/time recording devices shall be installed either within the retort shell or in external wells attached to the retort. External wells shall be connected to the retort through at least a ¾ inch (1.9 cm) diameter opening and equipped with a 1/16 inch (1.6 mm) or larger bleeder opening so located as to provide a constant flow of steam past the length of the bulbs or probes. The bleeder for external wells shall emit steam continuously during the entire thermal processing period.

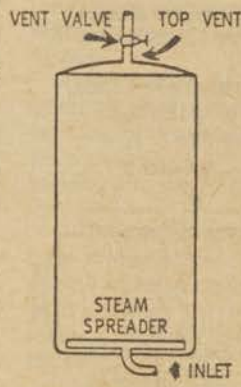
(ii) Steam controllers are required as described under § 318.305(a)(3).

(iii) *Steam inlet.* The steam inlet to each retort shall be large enough to provide steam for proper operation of the retort, and shall enter at a point(s) to facilitate air removal during venting.

(iv) *Bleeders.* Bleeders, except those for external wells of temperature devices, shall be ⅛ inch (or 3 mm) or larger and shall be wide open during the entire process including the come-up time. Bleeders shall be located within approximately 1 foot (or 30 cm) of the outermost location of containers, at each end along the top of the retort. Additional bleeders shall be located not more than 8 feet (2.4 m) apart along the top. Bleeders may be installed at positions other than those specified

Venting method: The vent valve shall be wide open for at least 4 minutes and to at least 218°F (or 103.5°C), or for at least 5 minutes and to at least 215°F (or 101.5°C).

(*ii*) Venting through a single 1 inch (2.5 cm) side or top vent.



above, as long as the establishment has on file evidence in the form of heat distribution data or other documentation from the manufacturer or designated authority, that the bleeders accomplish removal of air and circulate the steam within the retort. In retorts having top steam inlet and bottom venting, a bleeder shall be installed in the bottom of the retort to remove condensate. All bleeders shall be arranged in a way that enables the retort operator to observe that they are functioning properly. At the time steam is turned on, the retort drain shall be opened to remove steam condensate from the retort.

(v) *Venting and condensate removal.* The air in each retort shall be removed before processing is started. Heat distribution data or other documentation from the manufacturer or from a designated authority who developed the venting procedure shall be kept on file by the establishment. At the time the steam is turned on, the drain shall be opened to remove steam condensate from the retort, and the establishment shall ensure that there is continuous drainage of condensate during the retort operation. The consensate bleeder in the bottom of the retort shell serves as an indicator of continuous condensate removal.

(vi) *Retort or reel speed timing.* The rotational speed of the retort or reel is critical if specified in the process schedule. A recording tachometer shall be used to provide a continuous record of the speed. The speed shall be checked before process timing begins and, if needed, adjusted by the establishment as specified in the process schedule. If a change of speed inadvertently occurs, such shall be recorded by the establishment and corrective action such as readjusting the reel speed, shall be taken by the establishment. A means of preventing unauthorized speed changes on retorts shall be provided. A lock, or a notice from management posted at or near the speed adjustment device that provides a warning that only authorized persons are permitted to make adjustments, is a satisfactory means of preventing unauthorized changes. The accuracy of the recording tachometer shall be determined at least once per shift by the establishment by checking the retort or reel speed using an accurate stopwatch.

(vii) *Bleeder and vent mufflers.* If mufflers are used on bleeders or vent systems, there shall be evidence on file at the establishment that the mufflers do not impede the removal of air from the retort. Such evidence shall consist of either heat distribution test data or documentation from the manufacturer of the mufflers or a designated authority.

(3) *Continuous rotary retorts.* (i) The basic requirements for indicating temperature devices and temperature/time recording devices are described under § 318.305(a) (1) and (2). Additionally, bulb sheaths or probes of indicating temperature devices and probes of temperature/time recording devices shall be installed either within the retort shell or in external wells attached to the retort. External wells shall be connected to the retort through at least a ¾ inch (1.9 cm) diameter opening and equipped with a 1/16 inch (1.6 mm) or larger bleeder opening so located as to provide a constant flow of steam past the length of the bulbs or probes. The bleeder for external wells shall emit steam continuously during the entire thermal processing period.

(ii) Steam controllers are required as described under § 318.305(a)(3).

(iii) *Steam inlet.* The steam inlet to each retort shall be large enough to provide steam for proper operation of the retort, and shall enter at a point(s) to facilitate air removal during venting.

(iv) *Bleeders.* Bleeders, except those for external wells of temperature devices, shall be ⅛ inch (3.2 mm) or larger and shall be wide open during the entire process, including the come-up time. Bleeders shall be located within approximately 1 foot (or 30 cm) of the outermost location of containers at each end along the top of the retort. Additional bleeders shall be located not more than 8 feet (2.4 m) apart along the top of the retort. All bleeders shall be arranged so that the retort operator can observe that they are functioning properly. The condensate bleeder shall be checked by the establishment to ensure removal of condensate. Such checks shall be performed and recorded by the establishment at intervals of not more than 15 minutes to ensure that the condensate bleeder is functioning properly.

(v) *Venting and condensate removal.* Vents shall be located in that portion of the retort opposite the steam inlet. Air shall be removed before processing is started. Heat distribution data or other documentation from the manufacturer or a designated authority demonstrating that the air is removed from the retort prior to processing, shall be kept on file at the establishment. At the time the steam is turned on, the drain shall be opened to remove steam condensate from the retort, and provision shall be made for continuous drainage of condensate during the retort operation. The condensate bleeder in the bottom of the shell serves as an indicator of continuous condensate removal.

(vi) *Retort speed timing.* The rotational speed of the retort shall be specified in the process schedule. The speed shall be adjusted as specified and recorded by the establishment when the retort is started, and checked and recorded, at intervals not to exceed 4 hours, to ensure that the correct retort speed is maintained. If a change in speed inadvertently occurs, such shall be recorded by the establishment together with the corrective action (e.g., readjusting the reel speed) taken. A recording tachometer may be used to provide a continuous record of the speed. When using a recording tachometer, the speed shall be manually checked against an accurate stopwatch at least once per shift. A means of preventing unauthorized speed changes on retorts shall be provided. A lock, or a notice from management posted at or near the speed adjustment device that provides a warning that only authorized persons are permitted to make adjustments, is a satisfactory means of preventing unauthorized changes.

(vii) *Emergency stops.*

(*a*) When retort jams or breakdowns occur during the processing operations that require cooling of the retort for repairs, all containers shall be given an emergency still process (developed per § 318.302(b)) before the retort is cooled. Alternatively, the retort shall be cooled promptly and all containers either reprocessed, repacked and reprocessed, or discarded under the supervision of an inspector. Regardless of the procedure used, containers in the retort intake valve or in transfer valves between retort shells at the time of a jam or breakdown shall be removed and either reprocessed, repacked and reprocessed, or discarded under the supervision of an inspector.

(*b*) The time the retort reel stopped and the time the retort is used for an emergency still retort process shall be noted by the establishment on the temperature/time recording device and entered on the other production records required in § 318.306. If prompt cooling of the retort is accomplished, the subsequent handling of the containers in the retort shall be fully documented on the production records by the establishment.

(iii) *Temperature drops.* When the retort temperature drops below the temperature specified in the process schedule, the reel shall be stopped. Before the reel is restarted, the following actions shall be taken by the establishment:

(*a*) Temperature drops 10°F (or 5.5°C) or more below the process schedule. All containers in the retort shall be given an emergency still process (developed per § 318.302(b)). The time the reel was stopped and the time the retort was used for a still retort process shall be marked on the temperature/time recording device by the establishment and entered on the other production records required in § 318.306. Alternatively, container entry to the retort shall be prevented and the reel restarted to empty the retort. The discharged containers shall be either reprocessed, repacked and reprocessed, or discarded under the supervision of an inspector. When such occurs the handling methods shall be entered on the production records by the establishment.

(*b*) Temperature drops of less than 10°F (or 5.5°C) below the process schedule. All containers in the retort shall be give an emergency still process (developed per § 318.302(b)) before the reel is restarted. Alternatively, container entry to the retort shall be prevented and an emergency agitating process (developed per § 318.302(b)) shall be used before container entry to the retort is restarted. In either event, the establishment shall make appropriate entries on the processing and production records.

(*ix*) *Bleeder and vent mufflers.* If mufflers are used on bleeders or vent systems, the establishment shall have evidence on file at the establishment that the mufflers do not impede the removal of air from the retort. Such evidence shall consist of either heat distribution test data or other documentation from the manufacturer of the mufflers or a designated authority.

(4) *Hydrostatic retorts.* (i) The basic requirements for indicating temperature devices and temperature/time recording devices are described under § 318.305(a)(1) and (2). Additionally, indicating temperature devices shall be located in the steam dome near the steam-water interface. Where the process schedule specifies maintenance of particular water temperatures in the hydrostatic water legs, at least one indicating temperature device shall be located in each hydrostatic water leg so that it can accruately measure water temperature and be easily read. The temperature/time recorder probe shall be installed either within the steam dome or in a well attached to the dome. Each probe shall have a 1/16 inch (1.6 mm) or larger bleeder opening which emits steam continuously during the processing period. Additional temperature/time recorder probes shall be installed in the hydrostatic water legs if the process schedule specifies maintenance of particular temperatures in these water legs.

(ii) Steam controllers are required as described under § 318.305(a)(3).

(iii) *Steam inlet.* The steam inlets shall be large enough to provide steam for proper operation of the retort.

(iv) *Bleeders.* Bleeder openings ¼ inch (or 6 mm) or larger shall be located in the steam chamber(s) opposite the point of steam entry. Bleeders shall be wide open and shall emit steam continuously during the entire process, including the cone-up time. All bleeders shall be arranged in such a way that the operator can observe that they function properly.

(v) *Venting.* Before the start of processing operations, the retort steam chamber(s) shall be vented to ensure removal of air.

(vi) *Conveyor speed.* The speed of the container conveyor shall be specified in the process schedule. Conveyor speed shall be adjusted as specified and recorded by the establishment when the retort is started. The speed shall be checked and recorded, at intervals not to exceed 4 hours, to ensure that the correct conveyor speed is maintained. If a change in speed inadvertently occurs, such shall be recorded together with the corrective actions, such as readjusting the conveyor speed, taken by the establishment. A recording device may be used to provide a continuous record of the conveyor speed. When using a recording device, the speed shall be manually checked against an accurate stopwatch at least once per shift by the establishment. A means of preventing unauthorized speed changes of the conveyor shall be provided. A lock, or a notice from management posted at or near the speed adjustment device that provides a warning that only authorized persons are permitted to make adjustments, is a satisfactory means of preventing unauthorized changes.

(vii) *Bleeder and vent mufflers.* If mufflers are used on bleeders or vent systems, the establishment shall have evidence on file at the establishment that the mufflers do not impede the

removal of air from the retort. Such evidence shall consist of either heat distribution test data or other documentation from the manufacturer of the mufflers or a designated authority.

(c) *Pressure processing in water*—(1) *Batch still retorts.* (i) The basic requirements for indicating temperature devices and temperature/time recording devices are described under § 318.305(a) (1) and (2). Additionally, bulbs or probes of indicating temperature devices shall be located in such a position that they are beneath the surface of the water throughout the process. On horizontal retorts the indicating temperature device bulb or probe shall be inserted directly into the retort shell. In both vertical and horizontal retorts, the indicating temperature device bulb or probe shall extend directly into the water a minimum of 2 inches (or 5 cm) without a separable well or sleeve. In vertical retorts equipped with a temperature/time recorder-controller, the controller probe shall be located at the bottom of the retort below the lowest crate rest in such a position that the steam does not strike it directly. In horizontal retorts so equipped, the temperature/time recorder-controller probe shall be located between the water surface and the horizontol plane passing through the center of the retort so that there is no opportunity for direct steam impingement on the controller probe. Air operated temperature-controllers shall have filter systems to ensure a supply of clean, dry air.

(ii) *Pressure recording device.* Each retort shall be equipped with a pressure reacording device and may be combined with a pressure controller.

(iii) *Pressure relief valve.* Each retort shall be equipped with a pressure relief valve to prevent undesired increases in retort pressure. The valve shall be screened to prevent blockage by floating containers or debris.

(iv) Steam controller are required as described under § 318.305(a)(3).

(v) *Steam distribution.* Steam shall be distributed in a manner to provide uniform heat distribution through the retort.

(vi) *Crate supports.* A bottom crate support shall be used in vertical retorts. Baffle plates shall not be used in the bottom of the retort.

(vii) *Stacking equipment.* All devices used for holding product containers (e.g., crates, trays, divider plates) shall be so constructed that the water can freely circulate around the containers during the come-up and sterilization times. Equipment shall be designed to ensure that the thickness of filled flexible containers does not exceed that specified in the process schedule and that the containers do not become displaced and overlap or rest on one another during the thermal process.

(viii) *Drain valve.* A nonclogging, water-tight drain valve shall be used. Screens shall be installed over all drain openings.

(ix) *Water level.* There shall be a means of determining the water level in the retort during operation (e.g., by using a gauge, electronic sensor, sight glass indicator or petcock(s)). Water shall completely cover the top layer of containers during the entire come-up, sterilizing and cooling periods. The retort operator shall check and record the water level at intervals to ensure its proper level.

(x) *Air supply and controls.* In both horizontal and vertical still retorts for pressure processing in water, a means shall be provided for introducing compressed air at the pressure and rate required to maintain container integrity. Compressed air entry shall be controlled by an automatic pressure control unit. A nonreturn valve shall be provided in the air supply line to prevent water from entering the system. Air or water circulation shall be maintained continuously during the come-up, sterilizing, and cooling periods. Air is usually introduced with steam to prevent vibration ("steam hammer"). If air is used to promote circulation, it shall be introduced into the steam line at a point between the retort and the steam control valve at the bottom of the retort. The adequacy of the air or water circulation for maintaining uniform heat distribution within the retort shall be documented by heat distribution test data and such data shall be maintained of file by the establishment.

(xi) *Water recirculation.* When a water recirculation system is used for heat distribution, the water shall be drawn from the bottom of the retort through a suction manifold and discharged through a spreader which extends the length/circumference of the top of the retort. The holes in the water spreader shall be uniformly distributed. The suction outlets shall be protected with nonclogging screens to deep debris from entering the recirculation system. The pump shall be equipped with a pilot light or other signaling device to warn the operator when it is not running, and with a bleeder a remove air when starting operations. Alternative methods for recirculation of water in the retort may to be used, provided there is documentation in the form of heat distribution test data maintained on file by the establishment.

(xii) *Cooling water entry.* In retorts for processing product packed in glass jars, the incoming cooling water shall not directly impinge on the jars, in order to minimize glass breakage by thermal shock.

(xiii) *Retort headspace.* The overriding air or steam pressure in the headspace of the retort shall be controlled throughout the process.

(2) *Batch agitating retorts.* (1) The basic requirements and recommendations for indicating temperature devices and temperature/time recording devices are described under § 318.305(a) (1) and (2). Additionally, the indicating temperature device bulb or probe shall extend directly into the water without a separable well or sleeve. The temperature/time recorder-controller probe shall be located between the water surface and the horizontal plane passing through the center or the retort so that there is no opportunity for steam impingement on the control bulb or probe.

(ii) *Pressure recording device.* Each retort shall be equipped with a pressure recording device and may be combined with a pressure controller.

(iii) *Pressure relief valve.* Each retort shall be equipped with a pressure relief control valve to prevent undesired increases in retort pressure. The valve shall be screened to prevent blockage by floating containers or debris.

(iv) Steam controllers are required as described under § 318.305(a) (3).

(v) *Steam distribution.* Steam shall be distributed to provide uniform heat distribution throughout the retort.

(vi) *Stacking equipment.* All devices used holding product containers (e.g., crates, trays, divider plates) shall be so constructed that the water can freely circulate around the containers during the come-up and sterilization times.

(vii) *Drain valve.* A nonclogging, water-tight drain valve shall be used. Screens shall be installed over all drain openings.

(viii) *Water level.* There shall be a means of determining the water level in the retort during operation (e.g., by using a gauge, electronic sensor, sight glass indicator or petcock(s)). Water shall completely cover all containers during the entire come-up, sterilizing and cooling periods. The retort operator shall check and record the water level at intervals to ensure its proper level.

(ix) *Air supply and controls.* Retorts shall be provided with a means for introducing compressed air at the pressure and rate required to maintain container integrity. Compressed air entry shall be controlled by an automatic pressure control unit. A nonreturn valve shall be provided in the air supply line to prevent water from

entering the system. Air or water circulation shall be maintained continuously during the come-up, sterilizing, and cooling periods. Air is usually introduced with steam to prevent vibration ("steam hammer"). If air is used to promote circulation it shall be introduced into the steam line at a point between the retort and the steam control valve at the bottom of the retort. The adequacy of the air or water circulation for maintaining uniform heat distribution within the retort shall be documented by heat distribution test data and such data shall be maintained on file by the establishment.

(x) *Retort or reel speed timing.* The rotational speed of the retort or reel is critical if specified in the process schedule. A recording tachometer shall be used to provide a continuous record of the speed. The speed shall be checked before process timing begins and, if needed, adjusted, as specified in the process schedule. If a change of speed inadvertently occurs, such shall be recorded together with the corrective action (e.g., readjusting the reel speed) taken by the establishment. A means of preventing unauthorized speed changes on retorts shall be provided. A lock, or a notice from management posted at or near the speed adjustment device that provides a warning that only authorized persons are permitted to make adjustments, is a satisfactory means of preventing unauthorized changes. The accuracy of the recording tachometer shall be determined at least once per shift by checking the retort or reel speed using an accurate stopwatch.

(xi) *Water recirculation.* When a water recirculation system is used for heat distribution, it shall be installed in such a manner that water will be drawn from the bottom of the retort through a suction manifold and discharged through a spreader which extends the length of the top of the retort. The holes in the water spreader shall be uniformly distributed. The suction outlets shall be protected with nonclogging screens to keep debris from entering the recirculation system. The pump shall be equipped with a pilot light or other signaling device to warn the operator when it is not running, and with a bleeder to remove air when starting operations. Alternative methods for recirculation of water in the retort may be used provided there is documentation in the form of heat distribution test data maintained on file by the establishment.

(xii) *Cooling water entry.* In retorts for processing product packed in glass jars, the incoming cooling water shall not directly impinge on the jars, in order to minimize glass breakage by thermal shock.

(xiii) *Retort headspace.* The overriding air or steam pressure in the headspace of the retort shall be controlled throughout the process.

(d) *Pressure processing with steam-air mixtures in batch retorts.* (1) The basic requirements for indicating temperature devices and temperature/time recording devices are described under § 318.305(a)(1) and (2). Additionally, bulb sheaths or probes for indicating temperature devices and temperature/time recording devices or controller probes shall be inserted directly into the retort shell in such a position that steam does not strike them directly.

(2) Steam controllers are required as described under § 318.305(a)(3).

(3) Each retort shall be equipped with a pressure relief or control valve to prevent undesired increases in retort pressure.

(4) Recording pressure controller. A recording pressure controller shall be used to control the air inlet and the steam-air mixture outlet.

(5) Circulation of steam-air mixture. A means shall be provided for the circulation of the steam-air mixture to prevent formation of low temperature pockets. The efficiency of the circulation system shall be documented by heat distribution tests and the heat distribution test data shall be maintained on file by the establishment. The circulation system shall be checked by the establishment to ensure its proper functioning and shall be equipped with a pilot light or other device to warn the operator when it is not functioning. Because of the variety of existing designs, reference shall be made to the equipment manufacturer for details of installation, operation and control. The Administrator shall be contacted in writing prior to the use of such a system.

(e) *Atmospheric cookers*—(1) *Temperature/time recording device.* Each atmospheric cooker (e.g., hot water bath, etc.) shall be equipped with at least one temperature/time recording device in accordance with the basic requirements described under § 318.305(a)(2).

(2) *Stacking equipment.* Crates, trays, gondolas, dividers, and other vehicles for holding product containers shall be so constructed that the heating medium can be adequately circulated around the containers during the process.

(3) *Temperature distribution.* Each atmospheric cooker shall be equipped and operated to ensure uniform temperature distribution throughout the processing system during the thermal process.

(f) *Other systems.* All other systems not specifically delineated in this section and used for the thermal processing of canned product in hermetically sealed containers shall be evaluated on a case-by-case basis by the Administrator, and shall conform to the applicable requirements of this section.

(g) *Equipment maintenance.* (1) Processing equipment shall be maintained in satisfactory operating condition. Upon installation, all instrumentation and controls shall be checked by the establishment for proper functioning and/or accuracy, and thereafter, at least once a year and at any time their functioning/accuracy is suspect.

(2) Each thermal processing system shall be examined at least once a year and before the resumption of operations following an extended shutdown. Such an examination shall include operating each thermal processing systems without containers to ensure proper functioning of the system including all auxiliary equipment and instrumentation.

(3) Air and water valves that are intended to be closed during thermal processing shall be checked by the establishment for leaks. Defective valves shall be repaired or replaced as needed.

(4) Vent and bleeder mufflers shall be checked and maintained or replaced by the establishment to prevent any reduction in vent or bleeder efficiency.

(5) When water spreaders are used for venting, a maintenance schedule shall be developed and implemented to check the holes for clogging and to ream the holes to their original size when necessary.

(6) Records shall be kept of all maintenance conducted on the processing equipment including the date, type of maintenance performed, and the person conducting the maintenance.

(h) *Container cooling and cooling water.* (1) Initial use water for cooling thermally processed canned product shall be potable.

(2) Cooling canal water shall be chlorinated, or otherwise treated with a chemical the Administrator has determined as having the equivalent bactericidal affect of chlorination. There shall be a measurable residual of the sanitizer in the water at the discharge point of the canal. Cooling canals, shall be kept clean and sanitary and shall be replenished with potable water to prevent the buildup of organic matter and other materials.

(3) Systems designed to reclaim and recycle cooling waters shall be approved by the Administrator prior to use; except, an establishment using such a system prior to the promuglation of this rule shall obtain approval from the Administrator within two years of the final rule. Future modifications to an approved system shall be approved by the Administrator before use.

(i) Post-process handling of containers. Where processed containers are handled on belt conveyors, the conveyors shall be so constructed as to minimize contact by the belt with the hermetic seal area. All worn and frayed belting, can retarders, cushions and the like shall be replaced with nonporous materials. To minimize container abrasions, particularly in the seal area, containers shall not remain stationary on moving conveyors for prolonged periods. All post-process container handling equipment shall be kept clean and sanitized to prevent excessive build-up of microorganisms on surfaces in contact with the containers.

§ 318.306 Processing and production records.

Processing and production information shall be entered on a form/record by the thermal processing system operator or other designated person. The information shall include at least the following: Product name and style; container code; container size and type; and, the process schedule including the minimum initial temperature. Critical factors specified in a process schedule and measured per § 318.303 shall be recorded. In addition, the following data shall be maintained by the establishment:

(a) *Processing in steam*—(1) *Batch still retorts.* For each batch, record the retort number or other designation, the approximate number of containers, product initial temperature, time steam on, actual venting time and temperature, time sterilization temperature reached, time steam off, actual processing time and temperature. The indicating temperature device and the temperature recorder readings shall be observed and recorded at the same time at least once during process timing.

(2) *Batch agitating retorts.* Record the information required for batch still retorts. In addition, record the functioning of the condensate bleeder(s) and retort or reel speed.

(3) *Continuous rotary retorts.* Record the retort system number, the approximate total number of containers retorted, product initial temperatures, time steam on, actual venting time and temperature, time sterilization temperature reached, functioning of the condensate bleeder(s), and retort or reel speed. Readings of the indicating temperature device(s) and temperature recorder(s) shall be observed and recorded at the time the first container enters the retort and at least every 30 minutes of continuous retort operation.

(4) *Hydrostatic retorts.* Record the retort system number, product initial temperature, container conveyor speed and, if specified in the process schedule, measurements of temperatures in the hydrostatic water legs. Readings of the temperature indicating device, which is located in the steam dome at just above the steam-water interface, shall be observed and recorded at the time the first containers enter the steam dome and at least every 30 minutes of continuous retort operation. In addition, for agitating hydrostatic retorts, record the rotative chain speed and any other critical factors specified in the process schedule.

(b) *Processing in water*—(1) *Batch still retorts.* For each batch, record the retort number or other designation, the approximate number of containers, product initial temperature, time steam on, time sterilization temperature reached, water level, water recirculation rate (if critical), overriding pressure maintained, time steam off, and actual processing time and temperature. The indicating temperature device and the temperature recorder readings shall be observed and recorded at the same time at least once during process timing.

(2) *Batch agitating retorts.* Record the information required for still retorts. In addition, record the retort or reel speed.

(c) *Processing in steam/air mixtures.* For each batch, record the retort number or other designation, the approximate number of containers, product initial temperature, time steam on, venting time and temperature, time sterilization temperature reached, maintenance of circulation of the steam/air mixture, air flow rate, forced recirculation flow rate (if critical), pressure, time steam off, and actual processing time and temperature. The indicating temperature device and the temperature recorder readings shall be recorded at the same time at least once during process timing. In addition, record all critical factors of the process schedule such as cooker temperature.

(d) *Atmospheric cookers*—(1) *Batch-type systems.* For each batch, record the cooker number if more than one cooker, and the approximate number of containers. In addition, record all critical factors of the process schedule such as cooker temperature, initial temperature, the time the thermal process cycle begins and ends, hold time and the final internal product temperature.

(2) *Continuous-type systems.* Record the cooker number if more than one cooker, the time the first containers enter and the last containers exit a cooker, and the approximate total number of containers processed. In addition, record all critical factors of the process schedule such as the initial temperature, cooker speed, and final internal product temperature.

(e) *Other systems.* Processing and production records required for systems not specifically described herein, shall be established by the Administrator.

§ 318.307 Record review and maintenance.

(a) *Process records.* Charts from temperature/time recording devices shall be identified by date, container code, processing system number, and other data as necessary to enable correlation with the written records required in § 318.306. Each entry on a record shall be made by the retort or processing system operator, or other designated person, at the time the specific event occurs, and the recording individual shall sign or initial each record form. No later than 1 working day after the actual process, a representative of plant management shall review all processing and production records to ensure completeness and to determine if all product received the process schedule. All records, including the temperature/time recorder charts, shall be signed or initialed and dated by the person conducting the review. All processing and production records shall be made available to Program employees for review.

(b) *Automated process monitoring and record keeping.* When requested by an establishment, the Administrator will consider the use of automated process monitoring and record keeping systems. Any such system, alone or in combination with written records, shall be designed and operated in a manner which will ensure compliance with the applicable requirements of § 318.306.

(c) *Container closure records.* Written records of all container closure examinations shall specify the container code, the date and time of container closure examinations, the measurements obtained, and all corrective actions taken. Records shall be signed or initialed by the container closure technician and shall be reviewed by a representative of plant management to ensure that the records are complete and that the closing operations have been properly controlled. Additionally, all container closure examination

records shall be made available to Program employees for review.

(d) *Distribution of product.* Records shall be maintained by the establishment identifying initial distribution of the finished product to facilitate, if necessary, the segregation of specific production lots that may have been contaminated or are otherwise unsound for their intended use.

(e) *Retention of records.* Copies of all processing and production records required in § 318.306 shall be maintained for no less than 1 year at the establishment, and for an additional 2 years at the establishment or other location from which the records can be made available to Program employees within 3 working days.

§ 318.308 Deviations in processing.

Whenever a delivered process is less than the process schedule or when any critical factor does not comply with the requirements for that factor as specified in the process schedule, it shall be considered a deviation in processing. The establishment shall handle such deviations in the manner specified in this section. The provisions of this section are not applicable to an establishment which has a program for handling process deviations approved in accordance with the provisions for quality control in § 318.4 of this subchapter.

(a) *Shelf stable canned product*—(1) *Deviations identified in-process.* (i) If a deviation is noted at any time before the completion of the intended process schedule, the establishment shall:

(*a*) Immediately reprocess the product using the full process schedule; or,

(*b*) Use an appropriate alternate process schedule provided such a process schedule has been established in accordance with § 318.302 (b) and (c) and is on file with the inspector or,

(*c*) Hold the product involved and have the deviation evaluated by a designated authority to assess the safety and stability of the product. Upon completion of the evaluation, the establishment shall provide the inspector for submission to the Processed Products Inspection Division (PPID), Meat and Poultry Inspection Technical Services, FSIS, USDA, Washington, DC 20250, the following.

(*1*) A complete description of the deviation along with all necessary supporting documentation;

(*2*) A copy of the evaluation report; and

(*3*) A description of any product disposition actions, either taken or proposed.

(ii) No such product shall be shipped from the establishment until PPID has reviewed all of the information submitted and approved the product disposition actions.

(iii) If an alternate process schedule is immediately calculated and applied, the product involved shall be set aside for further evaluation in accordance with § 318.308(a)(1)(i)(*c*).

(iv) Where deviations occur in continuous rotary retorts, the product shall be handled in accordance with § 318.305(b)(3) (vii) and (viii) or , where applicable, § 318.308(a)(1)(i)(*c*).

(2) *Deviations identified through record review.* Whenever a process deviation is noted during review of the processing and production records required by § 318.307 (a) and (b), the establishment shall hold the product involved and the deviation shall be handled in accordance with § 318.308(a)(1)(i)(*c*).

(3) No product associated with a process deviation shall be shipped until the product is safe and stable as determined by the inspector and all other applicable Program requirements have been met.

(b) *Pasteurized "keep-refrigerated" product.* (1) Whenever a process schedule is quantified in terms of time and temperature and a process deviation is noted, either during the delivery of the process schedule or during subsequent record review, the product involved shall be handled per § 318.308(a) (1) or (2).

(2) Whenever a process schedule is quantified in terms of a minimum product temperature and a process deviation is noted during the delivery of the process schedule, the process shall be extended until such time that the minimum product temperature is achieved. Whenever a process deviation is noted post-processing, the affected product shall be reprocessed to render it safe and stable, or reworked under the supervision of the inspector.

(c) *Process deviation file.* The establishment shall maintain full records regarding the handling of each deviation. Such records shall be retained in a separate file and shall include, as a minimum, copies of the appropriate processing and production records, a full description of the corrective actions taken, evaluation procedures and results regarding product safety and stability (if an evaluation was made), and the disposition of the product. The file shall be made available to a Program employee upon request to provide assurance that all deviations have been handled in accordance with this subpart.

§ 318.309 Finished product inspection.

The provisions of this section are not applicable to an establishment which has a program approved in accordance with the provisions for quality control in § 318.4 of this subchapter.

(a) *Incubation of shelf stable canned product*— (1) *Incubator.* The establishment shall provide incubation facilities which include an accurate temperature/time recording device, an indicating temperature device, a means for the circulation of the air inside the incubator to prevent uneven temperature variations, and a means to prevent unauthorized entry into the facility. The inspector is responsible for the security of the incubator, and determines appropriate policies for entry.

(2) *Incubation temperature.* The incubation temperature shall be maintained at 95 ± 5°F (35 ± 2.8°C). If the incubation temperature falls below 90°F (or 32°C) or exceeds 100°F (or 38°C) but does not reach 103°F (or 39.5°C), the incubation temperature shall be adjusted within the required range and the incubation time extended for the time the sample containers were held at the deviant temperature. If the incubation temperature at any time reaches or exceeds 103°F (or 39.5°C), the incubation test(s) shall be terminated, the temperature lowered to within the required range, and new sample containers incubated for the required number of days.

(3) *Product requiring incubation.* Shelf stable product requiring incubation includes:

(i) Low acid products as defined under § 318.300(m); and

(ii) Acidified low acid products as defined under § 318.300(a).

(4) *Incubation samples.* (i) For batch-type retorts (still or agitating), the establishment shall select at least one container for each 1,000 containers (or portion thereof) from each batch for incubation.

(ii) For continuous rotary retorts, hydrostatic retorts, or other continuous-type thermal processing systems, the establishment shall select at least one container per 1,000 for incubation.

(iii) Only sound, normal appearing containers shall be selected for incubation.

(5) *Incubation time.* Canned product requiring incubation shall be incubated for not less than 10 days under the conditions specified in § 318.309(a)(2).

(6) *Incubation checks and record maintenance.* Designated establishment employees shall visually check all containers under incubation each working day and the Program employee

shall be notified when abnormal (e.g., hard swells, soft swells, flippers, springers, leakers) containers are detected. For each incubation test, the establishment shall record at least the product name, container size, container code, number of containers incubated, in and out dates, and incubation results. The establishment shall maintain such records, along with copies of the temperature/time recording charts, on file at the establishment for no less than 1 year from the date of production, and for an additional 2 years at the establishment or other location from which the records can be made available to a Program employee within 3 working days.

(7) *Abnormal containers.* The finding of abnormal containers among incubation samples shall be cause to officially retain at least the code lot involved.

(8) *Shipping.* No product shall be shipped from the establishment before the end of the required 10-day incubation period except as provided in this paragraph. An establishment wishing to ship product before incubation ends shall submit a written proposal to the area supervisor. Such a proposal shall include provisions that will assure that shipped product will not reach the retail level of distribution before sample incubation is completed and that product can be returned promptly to the establishment should such action be deemed necessary by the incubation test results.

(b) *Container condition*—(1) *Normal containers.* Only sound, normal appearing containers shall be shipped by an establishment.

(2) *Abnormal containers.* When abnormal containers are detected by any means other than incubation, the establishment shall inform the inspector. The affected code lot(s) shall not be shipped from the establishment until the Department has determined that the product is safe and stable. Such a determination will take into account the cause and level of abnormals in the affected production as well as any product disposition actions either taken or proposed by the establishment.

§ 318.310 Personnel and training.

All operators of thermal processing systems specified in § 318.305 and container closure technicians shall be under the operating supervision of a person who has attended a school approved by the Administrator and has satisfactorily completed the prescribed courses of instruction. Courses of instruction conducted through "Better Process Control Schools" under 21 CFR 113.10 and 21 CFR 114.10 of the Food and Drug Administration regulations titled, respectively, *"Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers"* and *"Acidified Foods"* are approved by the Administrator for the purpose of training required under this section.

§ 318.311 Recall procedure.

Establishments engaged in the thermal processing of canned product shall prepare and provide the inspector a current procedure for the recall of any canned product. The procedure shall have a provision for the prior notification of the inspector and the Administrator of the intention to recall.

PART 320—[AMENDED]

7. Section 320.1 (9 CFR 320.1) would be amended by adding a new paragraph (b)(5) to read as follows:

§ 320.1 Records required to be kept.

* * * * *

(b) * * *

(5) Records as required by § 318.306 of this subchapter.

8. Section 320.3 (9 CFR 320.3) would be amended by designating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 320.3 Record retention period.

* * * * *

(b) Records required in § 318.306 shall be retained as required in § 318.307(e). Records required by § 318.302 (b) and (c) shall be retained as required by those sections.

PART 327—[AMENDED]

9. Sections 327.6(j), (l) and (m) (9 CFR 327.6(j), (l) and (m)) would be revised to read as follows:

§ 327.6 Products for importation; program inspection, time and place, application for approval of facilities as official import inspection establishment; refusal or withdrawal of approval; official numbers.

* * * * *

(j) Foreign canned products shall be safe, stable, and otherwise not adulterated or misbranded at the time the products are offered for importation into the United States. Provided other requirements of this part are met, the determination of the acceptability of the product and the condition of the containers shall be based on the results of an examination of a statistical sample drawn from the consignment in accordance with instructions to inspectors. If the examination of the sample discloses that the product or the containers do not meet the acceptance level prescribed in the instructions, the consignment shall be refused entry. However, consignment rejected for container defects may be reoffered for inspection provided: (1) The defective containers are not indicative of an unsafe or unstable product as determined by the Administrator; (2) the number and kinds of container defects found in the original sample do not exceed the limits specified for determining acceptability of rejected lots for sorting; and (3) the defective containers in the consignment have been sorted out and shipped out of the U.S. or destroyed under the supervision of an inspector.

* * * * *

(l) Representative samples of canned product designated by the Administrator in instructions to inspectors shall be incubated under supervision of such inspectors by holding the samples for no less than 10 days at 95 ± 5°F (35 ± 2.8°C). If the incubation temperature falls below 90°F (or 32°C) or exceeds 100°F (or 38°C) but does not reach 103°F (or 39.5°C), the incubation temperature shall be adjusted to within the acceptable range and the incubation time extended for the time the sample containers were held at the deviant temperature. If the incubation temperature at any time reaches or exceeds 103°F (or 39.5°C), the incubation tests shall be terminated, the temperature adjusted to within the acceptable range, and new sample containers incubated for the required number of days. The importers or his/her agent shall provide the necessary incubation facilities which shall include a temperature/time recording device and mercury-in-glass thermometer, a means for the circulation of the air inside the incubator to prevent uneven temperature variations, and a means for locking the incubator.

(m) Sampling plans and acceptance levels as set forth in instructions to inspectors may be obtained, upon request, from Meat and Poultry Inspection Technical Services, Food Safety and Inspection Services, U.S. Department of Agriculture, Washington, DC 20250.

PART 381—[AMENDED]

12. The authority citation for Part 381 is revised to read as follows:

Authority: Sec. 14 of the Poultry Products Inspection Act, as amended by the Wholesome Poultry Products Act (21 U.S.C. 451 *et seq.*); the Talmadge-Aiken Act of September 28, 1962, (7 U.S.C. 450); and subsection 21(b) of the Federal Water Pollution Control Act, as amended by Pub. L. 91-224 and by other laws (33 U.S.C. 1254), unless otherwise noted.

§ 381.149 [Reserved]

13. Section 381.149 (9 CFR 381.149) would be removed and the section number reserved for future use. The Table of Contents would be revised accordingly.

14. Section 381.175 (9 CFR 381.175) would be amended by adding a new paragraph (b)(2) to read as follows:

§ 381.175 Records required to be kept.

* * * * *

(b) * * *

(2) Records as required by § 381.306 of this chapter.

15. Section 381.177 (9 CFR 381.177) would be amended by designating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 381.177 Record retention period.

* * * * *

(b) Records required in § 381.306 shall be retained as required in § 381.307(e) except that records required by § 381.302 (b) and (c) shall be retained as required by those sections.

16. Section 381.199 (9 CFR 381.199) would be amended by adding a new paragraph (d) to read as follows:

§ 381.199 Inspection of imported poultry products.

* * * * *

(d) In addition to the provisions specified in paragraphs (a), (b), and (c) of this section, the following requirements apply to imported canned product.

(1) Foreign canned products shall be safe, stable, and otherwise not adulterated or misbranded at the time the products are offered for importation into the United States. Provided other requirements of this part are met, the determination of the acceptability of the product and the condition of the containers shall be based on the results of an examination of a statistical sample drawn from the consignment in accordance with instructions to inspectors. If the examination of the sample discloses that the product or the containers do not meet the acceptance level prescribed in the instructions, the consignment shall be refused entry. However, a consignment rejected for container defects may be reoffered for inspection provided: (i) The defective containers are not indicative of an unsafe or unstable product as determined by the Administration; (ii) the number and kinds of container defects found in the original sample do not exceed the limits specified for determining acceptability of rejected lots for sorting; and (iii) the defective containers in the consignment have been sorted out and shipped out of the U.S. or destroyed under the supervision of an inspector.

(2) Representative samples of canned product designated by the Administrator in instructions to inspectors shall be incubated under supervision of such inspectors by holding the samples for no less than 10 days at 95±5°F (35±2.8°C). If the incubation temperature falls below 90°F (or 32°C) or exceeds 100°F (or 38°C) but does not reach 103°F (or 39.5°C), the incubation temperature shall be adjusted to within the acceptable range and the incubation time extended for the time the sample containers were held at the deviant temperature. If the incubation temperature at any time reaches or exceeds 103°F (or 39.5°C), the incubation tests shall be terminated, the temperature adjusted to within the acceptable range, and new sample containers incubated for the required number of days. The importer of his/her agent shall provide the necessary incubation facilities which shall include an accurate temperature/time recording device and mercury-in-glass thermometer, a means for the circulation of the air inside the incubator to prevent uneven temperature variations, and a means for locking the incubator.

(3) Sampling plans and acceptance levels as set forth in instructions to Program employees may be obtained, upon request, from Meat and Poultry Inspection Technical Services, Food Safety and Inspection Services, U.S. Department of Agriculture, Washington, DC 20250.

17. A new Subpart X-Canning and Canned Products, and new §§ 381.300 through 381.11 (9 CFR 381.300–381.311) would be added to Part 381 to read as follows. The Table of Contents would be revised accordingly.

Subpart X—Canning and Canned Products

Secs.

Subpart X—Canning and Canned Products

§ 381.300 Definitions.

For the purposes of this subpart, the following definitions apply:

(a) *Acidified low acid product.* A canned product which has been formulated or treated so that every component of the finished product has a pH of 4.6 or lower within 24 hours after the completion of the thermal process.

(b) *Bleeders.* Small orifices on a retort through which steam and other gases are emitted from the retort throughout the entire thermal process.

(c) *Canned product.* A product with a water activity above 0.85 which receives a thermal process either before or after being packed in a hermetically sealed container.

(d) *Code lot.* All production of a particular product in a specific size container identified by a specific container code mark.

(e) *Come-up time.* The time, including venting time, which elapses between the introduction of the heating medium into a closed retort and the time when the temperature throughout the retort reaches the required sterilization temperature.

(f) *Critical factor.* Any characteristic, condition or aspect of a product, container or procedure which affects the process schedule.

(g) *Designated authority.* A person or organization having expert knowledge or thermal processing requirements for foods in hermetically sealed containers, having access to facilities for making such determinations, and designated by the establishment to perform certain functions as indicated in this subpart .

(h) *Headspace.* That portion of a container not occupied by the product.

(1) *Gross headspace.* The vertical distance between the level of the product (generally the liquid surface) in an upright rigid container and the top edge of the container (the top of the double seam of a can or the top edge of an unsealed glass jar).

(2) *Net headspace.* The vertical distance between the level of the product (generally the liquid surface) in an upright rigid container and the inside surface of the lid.

(i) *Hermetically sealed containers.* Air-tight containers which are designed and intended to protect the contents against the entry of microorganisms during and after thermal processing.

(1) *Rigid container.* A container, the shape of contour of which , when filled and sealed, is neither affected by the enclosed product nor deformed by external mechanical pressure of up to 10

pounds per square inch gauge (0.7 kg/cm²) (i.e., normal firm finger pressure).

(2) *Semirigid container.* A container, the shape or contour of which, when filled and sealed, is not affected by the enclosed product under normal atmospheric temperature and pressure, but can be deformed by external mechanical pressure of less than 10 pounds per square gauge (0.7 kg/cm²) (i.e., normal firm finger pressure).

(3) *Flexible container.* A container, the shape or contour of which, when filled and sealed, is affected by the enclosed product.

(j) *Holding time.* Synonymous with sterilization time.

(k) *Incubation tests.* Tests in which the thermally processed product is kept at a specific temperature for a specified period of time in order to determine if outgrowth of microorganisms occurs.

(l) *Initial temperature.* The temperature of the contents of the coldest container to be processed which is determined after thorough stirring or shaking of the filled and sealed container at the initiation of the thermal process cycle.

(m) *Low acid product.* A canned product in which any component has a pH value above 4.6 after 24 hours from the completion of the thermal process.

(n) *Maximum pH.* The pH of the finished product within 24 hours after the completion of the thermal process. If a product is acidified by the addition of acid, an acid food ingredient, or any other means, the pH of the component which has the highest pH value after 24 hours shall be considered the maximum pH.

(o) *Pasteurized product labeled "keep-refrigerated."* A canned product which remains safe, through the application of a mild heat treatment (i.e., product temperature generally does not exceed 185°F (85°C)) in combination with other ingredients, and subsequent storage and distribution under refrigerated conditions.

(p) *Process schedule.* The thermal process, including specified critical factors, for a given product and container size to achieve at least the intended condition of either shelf stability or a pasteurized "keep-refrigerated" product.

(q) *Program employee.* Any inspector or other individual employed by the Department or any cooperating agency who is authorized by the Secretary to do any work or perform any duty in connection with the program.

(r) *Refrigerated conditions.* Temperature conditions which are maintained at or less than 50°F (10°C).

(s) *Retort.* A pressure vessel designed for thermal processing of product packed in hermetically sealed containers.

(t) *Seals.* Those parts of a semirigid container and lid, or flexible container which are fused together in order to hermetically close the container.

(u) *Shelf stability.* The condition achieved by application of heat, sufficient, alone or in combination with other ingredients and/or treatments, to render the product free of microorganisms capable of growing in the product at non-refrigerated conditions (over 50°F or 10°C) at which the product is intended to be held during distribution and storage. Shelf stability and shelf stable are synonymous with commercial sterility and commercially sterile, respectively.

(v) *Sterilization temperature.* The minimum temperature to be maintained throughout the thermal process as specified in the process schedule.

(w) *Sterilization time.* The time between the moment sterilization temperature is achieved and the moment the heating medium is turned off. If sterilization temperature is achieved prior to the completion of the venting cycle, sterilization time means the time between the completion of the venting cycle and the moment the steam is turned off.

(x) *Thermal process.* The heat treatment to achieve the intended condition (i.e., shelf stable or pasteurized "keep-refrigerated") and is quantified in terms of:

(1) Time and temperature; or,

(2) Minimum product temperature.

(y) *Venting.* The removal of the air from a retort before the start of sterilization timing.

(z) *Water activity (a_w).* The ratio of the water vapor pressure of the product to the vapor pressure of pure water at the same temperature.

§ 381.301 Containers and closures.

(a) *Examination and cleaning of empty containers.* (1) Empty containers, closures and flexible pouch roll stock shall be examined by an employee(s) of the official establishment to ensure that such are clean and free from structural defects.

(2) All empty containers, closures and flexible pouch roll stock shall be stored, handled and conveyed in such a manner that will prevent soiling and damage that could affect the hermetic condition of the sealed container.

(3) Just before filling, rigid containers shall be cleaned in an inverted position with potable water or steam, or filtered air using devices designed to direct and deliver the cleaning medium so that the interior surface of each container is cleaned. Glass containers may also be cleaned by suction (vacuum). Closures, semirigid containers, preformed flexible pouches and flexible pouch roll stock contained in original wrappings do not need to be cleaned before use.

(b) *Closure examinations for rigid containers (cans)—(1) Visual examinations.* An establishment closure technician shall visually examine the double seams formed by each closing machine head. One container from each seaming head shall be examined and the observations recorded. When typical seaming defects (e.g., cutovers, sharpness, knocked down flanges, false seams, droops) are observed, corrective actions such as repairing or adjusting the closing machine, shall be taken and such actions recorded by the closure technician or his or her designee. Container side seams shall be checked for defects or product leakage. When side seam defects are identified, corrective actions such as removal of defective containers, shall be taken and the actions recorded by the closure technician or his or her designee. Visual examinations shall be conducted by the closure technician at least every 30 minutes of continuous closing operation. Additional visual examinations shall be made by the closure technician at the beginning of production, immediately following a jam in the seaming machine, after closing machine adjustment and after start-up following prolonged shutdown of the closing machine.

(2) Teardown examinations of double seams shall be performed by an establishment closure technician at a frequency not to exceed 4-hour interals or within a coding period, whichever is less. Examination results shall be recorded by the closure technician or his or her designee as each examination is completed. The establishment shall obtain and keep on file specifications for double seam dimensions for containers being used, and such specifications shall be available to the Program employee. At least one container from each closing head shall be examined on the coded (packer's) end during each regular examination period; where indicated, corrective actions such as repairing or adjusting the closing machine, shall be taken and recorded by the closure technican or his or her designee. At least one of the cans selected from each closing machine during each regular examination period shall also be examined on the uncoded or can maker's end (except for two-piece cans); corrective action shall be taken and recorded to prevent continued use of empty cans with defective double seams. The following procedures shall

be used in teardown examinations of double seams:

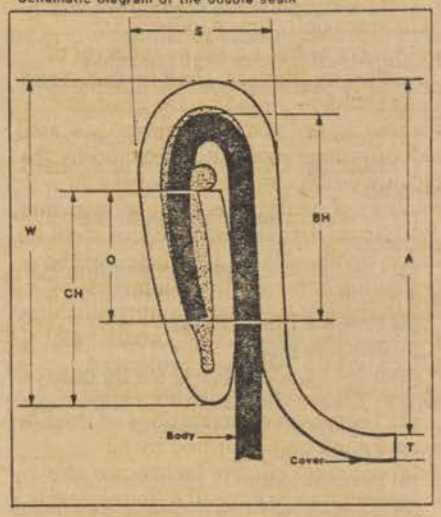
(i) One of the following two methods shall be employed for dimensional measurements of the double seam:

(*a*) Micrometer measurement: Measure and record the following dimensions (Figure 1) at three points approximately 120 degrees apart around the seam excluding the side seam juncture:

(*1*) Double seam length—W
(*2*) Double seam thickness—S
(*3*) Body hook length—BH
(*4*) Cover hook length—CH
(*5*) End plate or cover thickness—T

Optional measurements include countersink depth (A) and overlap (O). The calculated overlap can be obtained as follows: O=(CH+BH+T)—W.

Figure 1
Schematic diagram of the double seam



(*b*) Seamscope or seam projector: Required measurements of the seam include body hook and overlap; optional measurements include cover hook and double seam length. Seam thickness shall be obtained by micrometer; measuring countersink depth is optional. At least two locations, excluding the side seam juncture, shall be used to obtain measurements by the seamscope or seam projector method.

(ii) Seam tightness. Regardless of the dimensional measurement method used to measure seam dimensions, the seam(s) examined shall be stripped to assess the degree of wrinkling and to observe for a pressure ridge.

(iii) Side seam juncture rating. Regardless of the dimensional measurement method used to measure dimensions, the cover hook shall be stripped to rate the junction for cans having side seams.

(iv) Examination of rectangular and square containers shall be conducted as described in § 381.301(b)(2) (i), (ii) and (iii) except that measurements shall be made at each of the eight points shown in Figure 2.

(v) Examination of "D" shaped and irregular shaped containers shall be conducted as described in § 381.301(b)(2) (i), (ii) and (iii) except that measurements shall be made at each of the points shown in Figures 3 and 4.

Figure 2

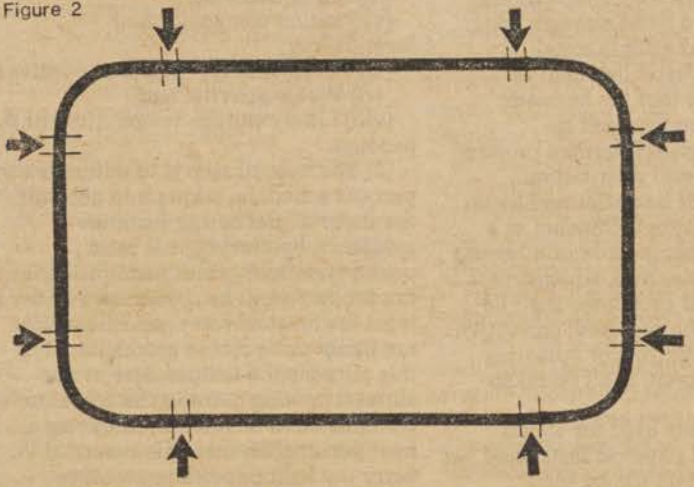


Figure 3

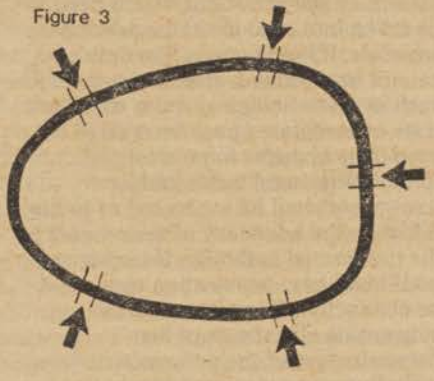
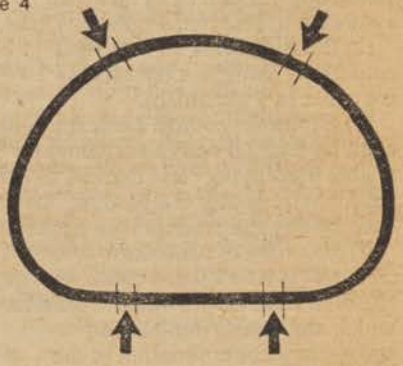


Figure 4



(c) *Closure examinations for glass containers*—(1) *Visual examinations.* An establishment closure technician shall visually determine the adequacy of the closures formed by each closing machine. Such examinations shall be conducted and the observations recorded by the closure technician at least every 30 minutes of continuous closing operations. Additional visual examinations shall be made by the closure technician and the observations reorded at the beginning of production, immediately following a jam in the closing machine, after closing machine adjustment or after start-up following prolonged shutdown of the closing machine.

(2) Closure examinations and tests such as, compound impression tests, lug tension tests and removal torque tests, shall be conducted by the establishment to ensure consistently reliable hermetic sealing. Such examinations shall be conducted at a frequency not to exceed 4-hour intervals or within a coding period, whichever is less. Records of such tests and corrective actions taken as a result of these tests shall be maintained by the establishment. The establishment shall obtain and keep on file container closure specifications and such specifications shall be made available to the Program employees.

(d) *Closure examinations for semirigid and flexible containers*—(1) *Heat seals.*—(i) *Visual examinations.* An establishment closure technician shall visually examine the heat seals formed by each sealing machine. Such

examinations shall be made before and after the thermal processing operation to ensure that the containers are hermetically sealed. The results of such examinations shall be recorded, and when required, corrective actions such as repairing or adjusting the closing machine, shall be taken and recorded.

(ii) *Physical tests.* Tests such as seal strength, burst and bond strength tests shall be conducted after thermal processing by the establishment to provide assurance that the hermetic condition of a container will be maintained through subsequent product storage, handling and distribution. Physical tests shall be performed by an establishment closure technician at a frequency not to exceed 2-hour intervals or within a coding period, whichever is less. The results of such tests shall be recorded, and when required, corrective actions such as repairing or adjusting the sealing equipment, shall be taken and recorded.

(iii) Specifications used for visual examinations and physical tests shall be obtained and kept on file by the establishment and shall be made available to Program employees.

(2) Double seams on semirigid containers shall be examined as provided in § 381.301(b).

(e) *Container coding.* Each container shall be marked with a permanent legible identifying code mark. The code mark shall identify the product, the year and the day the product was packed.

(f) *Handling of containers after closure.* (1) At all times containers and closures shall be protected from damage which may cause defects and subsequent contamination of the product. The accumulation of stationary containers on moving conveyors shall be kept to a minimum to avoid damage to the containers.

(2) The maximum time lapse between closing and initiation of thermal processing shall be 2 hours. However, the Administrator may specify a shorter period of time when considered necessary to ensure product safety and stability. A longer period of time between closing and the initiation of thermal processing shall only be permitted after written approval is obtained from the Administrator.

§ 381.302 Thermal Processing.

(a) *General considerations.* Process schedules for canned product shall be determined by designated authorities as defined in § 381.300(g) of this subpart.

(b) *Establishing process schedules.* The establishment through its designated authority shall develop a process schedule for each of its canned poultry products. The process schedule shall be developed in the following manner.

(1) First, the required heat treatment to achieve shelf stability is established on the basis of factors such as:

(i) Microbial flora;

(ii) Container size and type;

(iii) pH of the product;

(iv) Fill of container;

(v) Product composition or formulation;

(vi) Levels and types of preservatives;

(vii) Water activity; and

(viii) Likely storage temperature of the product.

(2) The second step is to determine the process schedule, taking into account the thermal processing facilities available, by carrying out heat penetration tests. Heat penetration into the product shall be determined under at least the most adverse conditions that are likely to be met in production. For this purpose the temperature at the slowest heating point in the container's contents shall be monitored during a heat penetration test. It is essential to carry out heat penetration tests to determine the variations which need to be taken into account in the process schedule. If heat penetration data cannot be obtained, alternative methods such as bacteriological spore reduction tests or inoculated pack tests shall be used. Any changes in product formulation, ingredients and/or treatments shall be evaluated as to the effect on the adequacy of the process by the designated authority. If necessary, additional heat penetration tests shall be conducted. Complete records concerning all aspects of the determination of the process schedule, including any associated incubation tests, shall be made available by the establishment to program employees upon request.

(c) *Submittal of process information.* Prior to the processing of any canned product, the establishment shall provide the inspector at the establishment a list of the process schedules (including alternate schedules), the retort venting procedures for pressure processing in steam or steam-air, and the associated critical factors for each product and container size. Where the process schedules have been recommended by a designated authority who is not otherwise employed by the official establishment, the establishment shall also provide the inspector a copy of a letter or other written communication from such designated authority recommending the process schedule and associated critical factors. Where critical factors are identified in the process schedule, the establishment shall provide the inspector a copy of the procedures for measuring, controlling and recording these factors along with the frequency of such measurements to ensure that the critical factors remain within the limits used to establish the process schedule. Once submitted, the process schedules and associated critical factors, as well as the procedures for measuring, controlling, recording, and the frequency of measuring critical factors, shall not be changed without the prior written submission of the revised procedures (including supporting documentation) to the inspector at the establishment.

§ 381.303 Critical factors and the application of the process schedule.

Critical factors specified in the process schedule shall be measured, controlled and recorded by the establishment to ensure that these factors remain within the limits used to establish the process schedule. Examples of factors that are often critical to process schedule adequacy include:

(a) *General.*

(1) Maximum fill-in weight or drained weight;

(2) Arrangement of pieces in the container;

(3) Container orientation position in the retort;

(4) Product formulation;

(5) Particle size;

(6) Maximum thickness for flexible, and to some extent semirigid containers during thermal processing;

(7) Maximum pH;

(8) Precent salt;

(9) Ingoing (or formulated) nitrite level (ppm);

(10) Maximum water activity; and

(11) Product consistency or viscosity.

(b) *Continuous rotary and batch agitating retorts.*

(1) Minimum headspace; and

(2) Retort real speed.

(c) *Hydrostatic retorts.*

(1) Chain or conveyor speed.

(d) *Steam-air retorts.*

(1) Steam-air ratio;

(2) Air flow rate; and

(3) Forced recirculation flow rate.

§ 381.304 Operations in the thermal processing area.

(a) *Posting of processes.* Process schedules including specified minimum initial temperatures and venting procedures (where applicable) used for products and container sizes being packed shall be posted in a conspicuous place near the thermal processing equipment or shall be readily available to the retort or processing system operator.

(b) *Process indicators and retort traffic control.* A system for product traffic control shall be established to prevent product from bypassing the thermal processing operation. Each basket, crate or similar vehicle containing unprocessed product, or at least one of the containers on the top of each vehicle, shall be plainly and conspicuously marked with a heat sensitive indicator, which will visually indicate whether such unit has been thermally processed. Used heat sensitive indicators attached to container vehicles shall be removed before such vehicles are refilled with unprocessed product. Container loading systems for still crateless retorts shall be designed to prevent unprocessed product from bypassing the thermal processing operation.

(c) *Initial temperature.* The initial temperature of the contents of the coldest container to be processed shall be determined with an accurate thermometer and recorded by the establishment to ensure that the temperature of the product is no lower than the minimum initial temperature specified in the process schedule. Thermal processing systems (e.g., retort, water bath) which subject the filled, sealed containers to water at any time before sterilization timing begins, shall be operated to ensure that such water will never lower the temperature of the product below the minimum initial temperature specified in the process schedule.

(d) *Process timing.* Timing devices used to measure process schedule time shall ensure that such time, and where applicable, the venting time specified in the process schedule are achieved. Pocket or wrist watches are not considered satisfactory for timing purposes. Digital clocks may be used if the operating process schedule and the venting schedule each have at least a 1-minute safety factor over the established schedules. Where process timing and retort functions are controlled by means of programmable cards and similar devices, such devices shall ensure that all timed functions are achieved. Clock times on recording temperature charts shall correspond within 15 minutes to the time of day recorded on the written processing records to allow for correlation with these records.

(e) *Measurement of pH.* Potentiometric methods using electronic instuments (pH meters) shall be used for making pH determinations. The use of other methods shall be contingent upon approval by the Administrator.

§ 381.305 Equipment and procedures for heat processing systems.

(a) *Instruments and controls common to different thermal processing systems*—(1) *Indicating temperature device.* Each retort shall be equipped with at least one indicating temperature device which accurately measures the actual temperature within the retort. All such devices shall be installed where they can be easily and accurately read. The indicating temperature device, not the temperature/time recording device, shall be used as the reference instrument for indicating the process temperature.

(i) *Mercury-in-glass thermometers.* A mercury-in-glass thermometer shall have divisions that are easily readable to 1°F (or 0.5°C) and whose scale contains not more than 17°F/inch (or 4.0°C/cm) of graduated scale. Each mercury-in-glass thermometer shall be tested by the establishment for accuracy against a known accurate standard upon installation and at least once a year to ensure its accuracy. Records that specify date, standard used, test method, and the person performing the test shall be maintained by the establishment. A mercury-in-glass thermometer that has a divided mercury column or cannot be adjusted to the standard shall be repaired and tested for accuracy before further use or replaced.

(ii) *Other devices.* In lieu of mercury-in-glass thermometers, the Administrator, upon written request, will consider other indicating temperature devices, such as resistance temperature detectors. Upon installation and at least once a year thereafter, the establishment shall test each such device for accurancy against a known accurate standard. Records that specify date, standard used, test method, and the person performing the test shall be maintained by the establishment. Any such device which cannot be adjusted to the standard shall be repaired and tested for accuracy before further use or replaced.

(2) *Temperature/time recording devices.* Each thermal processing system shall be equipped with at least one temperature/time recording device to provide a permanent record of temperatures within the thermal processing system. This recording device may be combined with the steam controller and may be a recording-controlling instrument. The recording accuracy shall be equal to or better than ± 1°F (or ± 0.5°C) at the sterilizing temperature. The recorder temperature shall never be higher than and not more than 1°F (or 0.5°C) lower than the indicating temperature device at the sterilizing temperature. A means of preventing unauthorized changes in the adjustment shall be provided. A lock, or a notice from management posted at or near the recording device which provides a warning that only authorized persons are permitted to make adjustments, is a satisfactory means for preventing unauthorized changes. Air-operated temperature controllers shall have adequate filter systems to ensure a supply of clean, dry air. The recorder timing mechanism shall be accurate.

(i) *Chart-type devices.* Devices using charts shall never be used without the correct chart. Each chart shall have a working scale of not more than 55°F/inch (or 21°C/cm) within a range of 20°F (or 11°C) of the sterilizing temperature. Multipoint plotting chart-type devices shall print temperature readings at intervals not to exceed 30 seconds except that longer intervals with be considered by the Administrator upon written request.

(ii) *Other devices.* In lieu of chart-type devices, the Administrator will consider other recording devices upon written request. For each process cycle such systems shall provide a printed record of temperatures at intervals not to exceed 30 seconds except that longer intervals will be considered by the Administrator upon written request.

(3) *Steam controllers.* Each retort shall be equipped with an automatic steam controller to maintain the retort temperature. This may be a recording-controlling instrument when combined with a temperature/time recording device.

(4) *Air valves.* All air lines connected to retorts designed for pressure processing in steam shall be equipped with a sealing value to prevent air from leaking into the retort during the process cycle.

(5) *Water valves.* All retort water lines that are intended to be closed during a process cycle shall be equipped with a sealing valve to prevent the leakage of water into the retort during the process cycle.

(b) *Pressure processing in steam—(1) Batch still retorts.* (i) The basic requirements and recommendations for indicating temperature devices and temperature/time recording devices are described under § 381.305(a) (1) and (2). Additionally, bulb sheaths or probes of indicating temperature devices and probes of temperature/time recording devices shall be installed either within the retort shell or in external wells attached to the retort. External wells shall be connected to the retort through at least a ¾ inch (1.9 cm) diameter

opening and equipped with a 1/16 inch (1.6 mm) or larger bleeder opening so located as to provide a constant flow of steam past the length of the bulb or probe. The bleeder for external wells shall emit steam continuously during the entire thermal processing period.

(ii) Steam controllers are required as described under § 381.305(a)(3).

(iii) *Steam inlet.* The steam inlet to each retort shall be large enough to provide steam for proper operation of the retort, and shall enter at a point to facilitate air removal during venting.

(iv) *Crate supports.* A bottom crate support shall be employed in vertical still retorts. Baffle plates shall not be used in the bottom of retorts.

(v) *Steam spreaders.* Perforated steam spreaders, if used, shall be maintained to ensure they are not blocked or otherwise inoperative. Horizontal still retorts shall be equipped with perforated steam spreaders that extend the full length of the retort.

(vi) *Bleeders and condensate removal.* Bleeders, except those for external wells of temperature devices, shall have 1/8 inch (or 3 mm) or larger openings and shall be wide open during the entire process, including the come-up time. For horizontal still retorts, bleeders shall be located within approximately 1 foot (or 30 cm) of the outermost locations of containers at each end along the top of the retort. Additional bleeders shall be located not more than 8 feet (2.4 m) apart along the top. Bleeders may be installed at positions other than those specified above, as long the establishment provides evidence in the form of heat distribution data or other documentation that the bleeders accomplish removal of air and circulate the steam within the retort. Vertical retorts shall have at least one bleeder opening located in that portion of the retort opposite the steam inlet. In retorts having top steam inlet and bottom venting, a bleeder shall be installed in the botton of the retort to remove condensate. All bleeders shall be arranged so that the retort operator can observe that they are functioning properly.

(vii) *Stacking equipment.*

(*a*) Equipment for holding or stacking containers in retorts. Crates, trays, gondolas, carts and other vehicles for holding or stacking product containers in the retort shall be so constructed to ensure steam circulation during the venting, come-up and sterilization times. The bottom of each vehicle shall have perforations at least 1 inch (2.5 cm) in diameter on 2 inch (or 5 cm) centers or the equivalent.

(*b*) *Divider plates.* When divider plates are used between layers of containers, the establishment shall have on file evidence that the venting procedures allow the air to be removed from the retort before timing of the thermal process is started. Such evidence shall be in the form of heat distribution data or documentation from a designated authority. Divider plates shall have perforations at least 1 inch (2.5 cm) in diameter on 2 inch (or 5 cm) centers or the quivalent. No more than one divider plate shall be used to separate any two layers of product containers. Except for systems where a divider plate is used as the actual bottom of a retort container vehicle, divider plates shall never be placed on the bottom of a retort vehicle.

(viii) *Bleeder and vent mufflers.* If mufflers are used on bleeders or vent systems, the establishment shall have on file evidence that the mufflers do not impede the removal of air from the retort. Such evidence shall consist of either heat distribution test data or documentation from the muffler manufacturer or from a designated authority.

(ix) *Vents.*

(*a*) Vents shall be located in that portion of the retort opposite the steam inlet and shall be designed, installed and operated in such a way that air is removed from the retort before timing of the thermal process is started. Vents shall be controlled by a gate, plug cock or other type valve which shall be fully opened to permit rapid removal of air from retorts during the venting period.

(*b*) Vents shall not be connected to closed drain system without an atmospheric break in the line. Where a retort manifold connects several pipes from a single still retort, the manifold shall be controlled by a gate, plug cock or other type valve. The manifold shall be of a size such that the cross-sectional area of the manifold is larger than the total cross-sectional area of all connecting vents. The discharge shall not be connected to a closed drain without an atmospheric break in the line. A manifold header connecting vents or manifolds from several still retorts shall lead to the atmosphere. The manifold header shall not be controlled by a valve and shall be of size such that the cross-sectional area is at least equal to the total cross-sectional area of all connecting retort manifold pipes from the maximum number of retorts to be vented simultaneously.

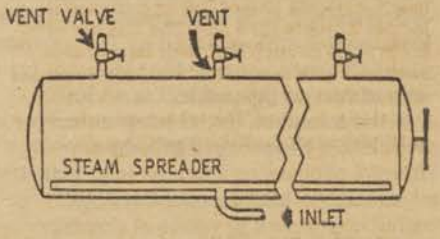
(*c*) Some typical installations and operating procedures are described below; however, other retort installations, vent piping arrangements or operating procedures may be used provided that there is evidence that the air is removed from the retort before the process is started. Such evidence shall be in the form of heat distribution data or other documentation from the equipment manufacturer or designated authority which shall be maintained on file by the establishment.

(*d*) For crateless retort installations, the estabishment shall have on file heat distribution data or other documentation from the equipment manufacturer or from a designated authority which demonstrates that the venting procedure used accomplishes adequate venting and condensate removal.

(*e*) Typical installations and operating procedures that comply with the requirements of this section are as follows.

(*1*) *Venting horizontal retorts.*

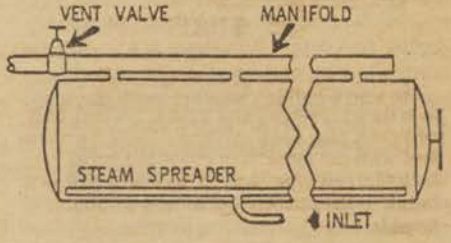
(*i*) Venting through multiple 1 inch (2.5 cm) vents discharging directly to the atmosphere.



Specifications: One, 1-inch (2.5 cm) vent for every 5 feet (1.5 m) of retort length, equipped with a gate, plug cock or other type valve and discharging to atmosphere. The end vents shall not be more than 2½ feet (or 75 cm) from ends of retort.

Venting method: Vent valves shall be wide open for at least 5 minutes and to at least 225°F (or 107°C), or at least 7 minutes and to at least 220°F (or 104.5°C).

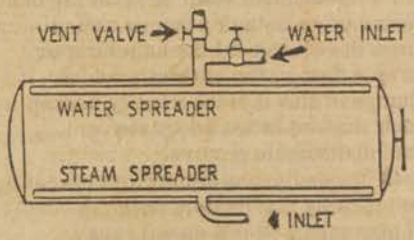
(ii) Venting through multiple 1 inch (2.5 cm) vents discharging through a manifold to the atmosphere.



Specifications: One, 1-inch (2.5 cm) vent for every 5 feet (1.5 m) of retort length, vents not over 2½ feet (or 75 cm) from the ends of retort; size of manifold for resorts less than 15 feet (4.6 m) in length, 2½ inches (6.4 cm) and for retorts 15 feet (4.6 m) and over in length, 3 inches (7.6 cm).

Venting method: The manifold vent gate, plug cock or other type valve shall be wide open for at least 6 minutes and to at least 225°F (or 107°C) or for at least 8 minutes and to at least 220°F (or 104.5°C).

(iii) Venting through water spreaders.

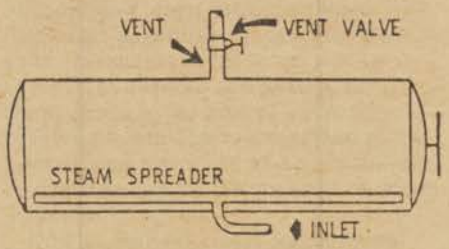


Specifications: Size of vent and vent valve. For retorts less than 15 feet (4.6 m) in length, 2 inches (or 5 cm); for retorts 15 feet (4.6 m) and over in length, 2½ inches (6.4 cm).

Size of water spreader: For retorts less than 15 feet (4.6 m) in length, 1½ inches (3.8 cm); for retorts 15 feet (4.6 m) and over in length, 2 inches (or 5 cm). The number of holes shall be such that their total cross-sectional area is equal to the cross-sectional area of the vent pipe inlet.

Venting method: The water spreader vent gate, plug cock or other type valve shall be wide open for at least 5 minutes and to at least 225°F or 107°C), or for at least 7 minutes and to at least 220°F (or 104.5°C).

(iv) Venting through a single 2½ inch (6.4 cm) top vent for retorts not exceeding 15 feet (4.6 m) in length.

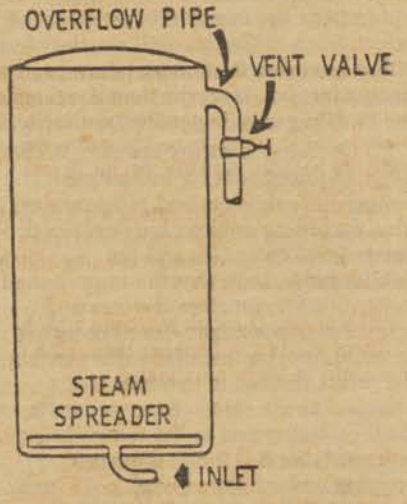


Specifications: A 2½ inch (6.4 cm) vent equipped with a 2½ inch (6.4 cm) gate, plug cock or other type valve and located within 2 feet (61 cm) of the center of the retort.

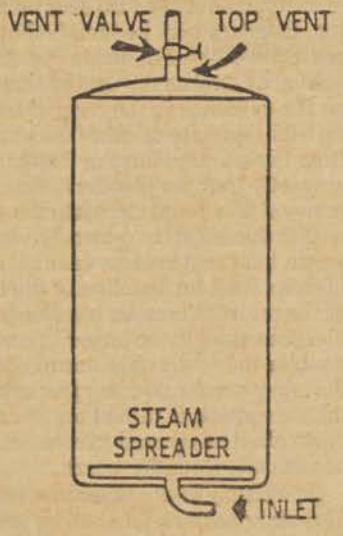
Venting method: The vent valve shall be wide open for at least 4 minutes and to at least 220°F (or 104.5°C).

(2) Venting vertical retorts.

(i) Venting through a 1½ inch (3.8 cm) overflow.

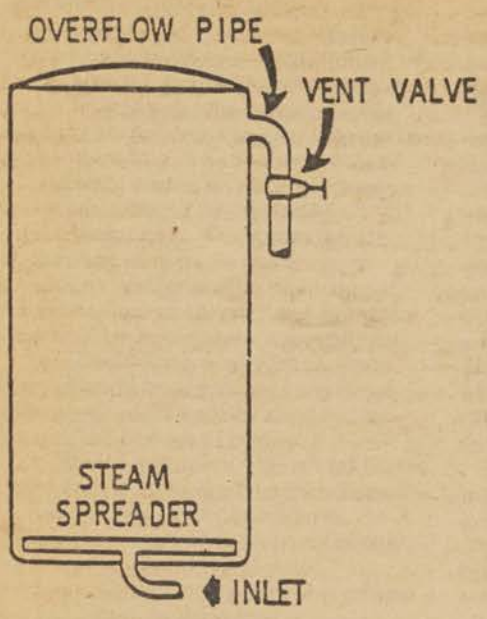


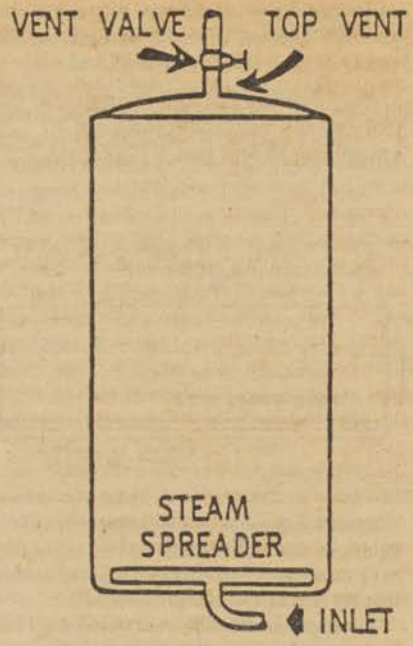
Specifications: A 1½ inch (3.8 cm) overflow pipe equipped with a 1½ inch (3.8 cm) gate, plug cock valve or other type valve and with not more than 6 feet (1.8 m) of 1½ inch (3.8 cm) pipe beyond the valve before a break to the atmosphere or to a manifold header.



Venting method: The vent valve shall be wide open for at least 4 minutes and to at least 218°F (or 103.5°C), or for at least 5 minutes and to at least 215°F (or 101.5°C).

(ii) Venting through a single 1 inch (2.5 cm) side or top vent.





Specifications: A 1 inch (2.5 cm) vent in lid or top side, equipped with a gate, plug cock or other type valve and discharging directly into the atmosphere or to a manifold header.

Venting method: The vent valve shall be wide open for at least 5 minutes and to at least 230°F (110°C), or for at least 7 minutes and to at least 220°F (or 104.5°C).

(2) *Batch agitating retorts.* (i) The basic requirements for indicating temperature devices and temperature/time recording devices are described under § 381.305(a) (1) and (2). Additionally, bulb sheaths or probes of indicating temperature devices and probes of temperature/time recording devices shall be installed either within the retort shell or in external wells attached to the retort. External wells shall be connected to the retort through at least a ¾ inch (1.9 cm) diameter opening and equipped with a 1/16 inch (1.6 mm) or larger bleeder opening so located as to provide a constant flow of steam past the length of the bulbs or probes. The bleeder for external wells shall emit steam continuously during the entire thermal processing period.

(ii) Steam controllers are required as described under § 381.305(a)(3).

(iii) Steam inlet. The steam inlet to each retort shall be large enough to provide steam for proper operation of the retort, and shall enter at a point(s) to facilitate air removal during venting.

(iv) Bleeder. Bleeders, except those for external wells of temperature devices, shall be ⅛ inch (or 3 mm) or larger and shall be wide open during the entire process including the come-up time. Bleeders shall be located within approximately 1 foot (or 30 cm) of the outermost location of containers, at each end along the top of the retort. Additional bleeders shall be located not more than 8 feet (2.4 m) apart along the top. Bleeders may be installed at positions other than those specified above, as long as the establishment has on file evidence in the form of heat distribution data or other documentation from the manufacturer or designated authority that the bleeders accomplish removal of air and circulate the steam within the retort. In retorts having top steam inlet and bottom venting, a bleeder shall be installed in the bottom of the retort to remove condensate. All bleeders shall be arranged in a way that enables the retort operator to observe that they are functioning properly. At the time steam is turned on, the retort drain shall be opened to remove steam condensate from the retort.

(v) *Venting and condensate removal.* The air in each retort shall be removed before processing is started. Heat distribution data or other documentation from the manufacturer or from a designated authority who developed the venting procedure shall be kept on file by the establishment. At the time the steam is turned on, the drain shall be opened to remove steam condensate from the retort, and the establishment shall ensure that there is continuous drainage of condensate during the retort operation. The condensate bleeder in the bottom of the retort shell serves as an indicator of continuous condensate removal.

(vi) *Retort or reel speed timing.* The rotational speed of the retort or reel is critical if specified in the process schedule. A recording tachometer shall be used to provide a continuous record of the speed. The speed shall be checked before process timing begins and, if needed, adjusted by the establishment as specified in the process schedule. If a change of speed inadvertently occurs, such shall be recorded by the establishment and corrective action, such as readjusting the reel speed, shall be taken by the establishment. A means of preventing unauthorized speed changes on retorts shall be provided. A lock, or a notice from management posted at or near the speed adjustment device that provides a warning that only authorized persons are permitted to make adjustments, is a satisfactory means of preventing unauthorized changes. The accuracy of the recording tachometer shall be determined at least once per shift by the establishment by checking the retort or reel speed using an accurate stopwatch.

(vii) *Bleeder and vent mufflers.* If mufflers are used on bleeders or vent systems, there shall be evidence on file at the establishment that the mufflers do not impede the removal of air from the retort. Such evidence shall consist of either heat distribution test data or documentation from the manufacturer of the mufflers or a designated authority.

(3) *Continuous rotary retorts.* (i) The basic requirements for indicating temperature devices and temperature/time recording devices are described under § 381.305(a) (1) and (2). Additionally, bulb sheaths or probes of indicating temperature devices and probes of temperature/time recording devices shall be installed either within the retort shell or in external wells attached to the retort. External wells shall be connected to the retort through at least ¾ inch (1.9 cm) diameter opening and equipped with a 1/16 inch (1.6 mm) or larger bleeder opening so located as to provide a constant flow of steam past the length of the bulbs or probes. The bleeder for external wells shall emit steam continuously during the entire thermal processing period.

(ii) Steam controllers are required as described under § 381.305(a)(3).

(iii) *Steam inlet.* The steam inlet to each retort shall be large enough to provide steam for proper operation of the retort, and shall enter at a point(s) to facilitate air removal during venting.

(iv) *Bleeders.* Bleeders, except those for external wells of temperature devices, shall be ⅛ inch (3.2 mm) or larger and shall be wide open during the entire process, including the come-up time. Bleeders shall be located within approximately 1 foot (or 30 cm) of the outermost location of containers at each end along the top of the retort. Additional bleeders shall be located not more than 8 feet (2.4 m) apart along the top of the retort. All bleeders shall be arranged so that the retort operator can observe that they are functioning properly. The condensate bleeder shall be checked by the establishment to ensure removal of condensate. Such checks shall be performed and recorded by the establishment at intervals of not more than 15 minutes to ensure that the condensate bleeder is functioning properly.

(v) *Venting and condensate removal.* Vents shall be located in that portion of the retort opposite the steam inlet. Air shall be removed before processing is started. Heat distribution data or other documentation from the manufacturer or a designated authority demonstrating that the air is removed from the retort prior to processing, shall be kept on file at the establishment. At the time the steam is turned on, the drain shall be opened to remove steam condensate from the retort, and provision shall be made for continuous drainage of condensate during the retort operation. The condensate bleeder in the bottom of the shell serves as an indicator of continuous condensate removal.

(vi) *Retort speed timing.* The rotational speed of the retort shall be specified in the process schedule. The speed shall be adjusted as specified and recorded by the establishment when the retort is started, and checked and recorded, at intervals not to exceed 4 hours, to ensure that the currect retort speed is maintained. If a change in speed inadvertently occurs, such shall be recorded by the establishment together with the corrective action (e.g., readjusting the reel speed) taken. A recording tachometer may be used to provide a continuous record of the speed. When using a recording tachometer, the speed shall be manually checked against an accurate stopwatch at least once per shift. A means of preventing unauthorized speed changes on retorts shall be provided. A lock, or a notice from management posted at or near the speed adjustment device that provides a warning that only authorized persons are permitted to make adjustments, is a satisfactory means of preventing unauthorized changes.

(vii) *Emergency stops.*

(*a*) When retort jams or breakdowns occur during the processing operations that require cooling of the retort for repairs, all containers shall be given an emergency still process (developed per § 381.302(b)) before the retort is cooled. Alternatively, the retort shall be cooled promptly and all containers either reprocessed, repacked and reprocessed, or discarded under the supervision of an inspector. Regardless of the procedure used, containers in the retort intake valve or in transfer valves between retort shells at the time of a jam or breakdown shall be removed and either reprocessed, repacked and reprocessed, or discarded under the supervision of an inspector.

(*b*) The time the retort reel stopped and the time the retort is used for an emergency still retort process shall be noted by the establishment on the temperature/time recording device and entered on the other production records required in § 381.306. If prompt cooling of the retort is accomplished, the subsequent handling of the containers in the retort shall be fully documented on the production records by the establishment.

(viii) *Temperature drops.* When the retort temperature drops below the temperature specified in the process schedule, the reel shall be stopped. Before the reel is restarted, the following actions shall be taken by the establishment.

(*a*) Temperature drops of 10°F (or 5.5°C) or more below the process schedule. All containers in the retort shall be given an emergency still process (developed per § 381.302(b)). The time the reel was stopped and the time the retort was used for a still retort process shall be marked on the temperature/time recording device by the establishment and entered on the other production records required in § 381.306. Alternatively, container entry to the retort shall be prevented and the reel restarted to emptly the retort. The discharged containers shall be either reprocessed, repacked and reprocessed, or discarded under the supervision of an inspector. When such occurs the handling methods shall be entered on the production records by the establishment.

(*b*) Temperature drops of less than 10°F (or 5.5°C) below the process schedule. All containers in the retort shall be given an emergency still process (developed per § 381.302(b)) before the reel is restarted. Alternatively, container entry to the retort shall be prevented and an emergency agitating process (developed per § 381.302(b)) shall be used before container entry to the retort is restarted. In either event, the establishment shall make appropriate entries on the processing and production records.

(ix) Bleeder and vent mufflers. If mufflers are used on bleeders or vent systems, the establishment shall have evidence on file at the establishment that the mufflers do not impede the removal of air from the retort. Such evidence shall consist of either heat distribution test data or other documentation from the manufacturer of the mufflers or a designated authority.

(4) *Hydrostatic retorts.* (i) The basic requirements for indicating temperature devices and temperature/time recording devices are described under § 381.305(a) (1) and (2). Additionally, indicating temperature devices shall be located in the steam dome near the steam-water interface. Where the process schedule specifies maintenance of particular water temperatures in the hydrostatic water legs, at least one indicating temperature device shall be located in each hydrostatic water leg so that it can accurately measure water temperature and be easily read. The temperature/time recorder probe shall be installed either within the steam dome or in a well attached to the dome. Each probe well shall have a 1/16 inch (1.6 mm) or larger bleeder opening which emits steam continuously during the processing period. Additional temperature/time recorder probes shall be installed in the hydrostatic water legs if the process schedule specifies maintenance of particular temperatures in these water legs.

(ii) Steam controllers are required as described under 381.305(a) (3).

(iii) *Steam inlet.* The steam inlets shall be large enough to provide steam for proper operation of the retort.

(iv) *Bleeders.* Bleeder openings ¼ inch (or 6 mm) or larger shall be located in the steam chamber(s) opposite the point of steam entry. Bleeders shall be wide open and shall emit steam continuously during the entire process, including the come-up time. All bleeders shall be arranged in such a way that the operator can observe that they function properly.

(v) *Venting.* Before the start of processing operations, the retort steam chamber(s) shall be vented to ensure removal of air.

(vi) *Conveyor speed.* The speed of the container conveyor shall be specified in the process schedule. Conveyor speed shall be adjusted as specified and recorded by the establishment when the retort is started. The speed shall be and checked and recorded, at intervals not to exceed 4 hours, to ensure that the correct conveyor speed is maintained. If

a change in speed inadvertently occurs, such shall be recorded together with the corrective actions, such as readjusting the conveyor speed, taken by the establishment. A recording device may be used to provide a continuous record of the conveyor speed. When using a recording device, the speed shall be manually checked against an accurate stopwatch at least once per shift by the establishment. A means of preventing unauthorized speed changes of the conveyor shall be provided. A lock, or a notice from management posted at or near the speed adjustment device that provides a warning that only authorized persons are permitted to make adjustments, is a satisfactory means of preventing unauthorized changes.

(vii) *Bleeder and vent mufflers.* If mufflers are used on bleeders or vent systems, the estabishment shall have evidence on file that the mufflers do not impede the removal of air from the retort. Such evidence shall consist of either heat distribution test data or other documentation from the manufacturer of the mufflers or a designated authority.

(c) *Pressure processing in water*—(1) *Batch still retorts.* (i) The basic requirements for indicating temperature devices and temperature/time recording devices are described under § 381.305(a) (1) and (2). Additionally, bulbs or probes of indicating temperature devices shall be located in such a position that they are beneath the surface of the water throughout the process. On horizontal retorts the indicating temperature device bulb or probe shall be inserted directly into the retort shell. In both vertical and horizontal retorts, the indicating temperature device bulb or probe shall extend directly into the water a minimum of 2 inches (or 5 cm) without a separable well or sleeve. In vertical retorts equipped with a temperature/time recorder-controller, the controller probe shall be located at the bottom of the retort below the lowest crate rest in such a position that the steam does not strike it directly. In horizontal retorts so equipped, the temperature/time recorder-controller probe shall be located between the water surface and the horizontal plane passing through the center of the retort so that there is no opportunity for direct steam impingement on the controller probe. Air operated temperature-controllers shall have filter systems to ensure a supply of clean, dry air.

(ii) *Pressure recording device.* Each retort shall be equipped with a pressure recording device and may be combined with a pressure controller.

(iii) *Pressure relief valve.* Each retort shall be equipped with a pressure relief valve to prevent undesired increases in retort pressure. The valve shall be screened to prevent blockage by floating containers or debris.

(iv) Steam controllers are required as described under § 381.305(a)(3).

(v) *Steam distribution.* Steam shall be distributed in a manner to provide uniform heat distribution through the retort.

(vi) *Crate supports.* A bottom crate support shall be used in vertical retorts. Baffle plates shall not be used in the bottom of the retort.

(vii) *Stacking equipment.* All devices used for holding product containers (e.g., crates, trays, divider plates) shall be so constructed that the water can freely circulate around the containers during the come-up and sterilization times. Equipment shall be designed to ensure that the thickness of filled flexible containers does not exceed that specified in the process schedule and that the containers do not become displaced and overlap or rest on one another during the thermal process.

(viii) *Drain valve.* A nonclogging, water-tight drain valve shall be used. Screens shall be installed over all drain openings.

(ix) *Water level.* There shall be a means of determining the water level in the retort during operation (e.g., by using a gauge, electronic sensor, sight glass indicator or petcock(s)). Water shall completely cover the top layer of containers during the entire come-up, sterilizing and cooling periods. The retort operator shall check and record the water level at intervals to ensure its proper level.

(x) *Air supply and controls.* In both horizontal and vertical still retorts for pressure processing in water, a means shall be provided for introducing compressed air at the pressure and rate required to maintain container integrity. Compressed air entry shall be controlled by an automatic pressure control unit. A nonreturn valve shall be provided in the air supply line to prevent water from entering the system. Air or water circulation shall be maintained continuously during the come-up, sterilizing, and cooling periods. Air is usually introduced with steam to prevent vibration ("steam hammer"). If air is used to promote circulation, it shall be introduced into the steam line at a point between the retort and the steam control valve at the bottom of the retort. The adequacy of the air or water circulation for maintaining uniform heat distribution within the retort shall be documented by heat distribution test data and such data shall be maintained on file by the establishment.

(xi) *Water recirculation.* When a water recirculation system is used for heat distribution, the water shall be drawn from the bottom of the retort through a suction manifold and discharged through a spreader which extends the length/circumference of the top of the retort. The holes in the water spreader shall be uniformly distributed. The suction outlets shall be protected with nonclogging screens to keep debris from entering the recirculation system. The pump shall be equipped with a pilot light or other signaling device to warn the operator when it is not running, and with a bleeder to remove air when starting operations. Alternative methods for recirculation of water in the retort may be used, provided there is documentation in the form of heat distribution test data maintained on file by the establishment.

(xii) *Cooling water entry.* In retorts for processing product packed in glass jars, the incoming cooling water shall not directly impinge on the jars, in order to minimize glass breakage by thermal shock.

(xiii) *Retort headspace.* The overriding air or steam pressure in the headspace of the retort shall be controlled throughout the process.

(2) *Batch agitating retorts.* (i) The basic requirements and recommendations for indicating temperature devices and temperature/time recording devices are described under § 381.305(a) (1) and (2). Additionally, the indicating temperature device bulb or probe shall extend directly into the water without a separable well or sleeve. The temperature/time recorder-controller probe shall be located between the water surface and the horizontal plane passing through the center of the retort so that there is no opportunity for steam impingement on the control bulb or probe.

(ii) *Pressure recording device.* Each retort shall be equipped with a pressure recording device and may be combined with a pressure controller.

(iii) *Pressure relief valve.* Each retort shall be equipped with a pressure relief control valve to prevent undesired increases in retort pressure. The valve shall be screened to prevent blockage by floating containers or debris.

(iv) Steam controllers are required as described under § 381.305(a)(3).

(v) *Steam distribution.* Steam shall be distributed to provide uniform heat distribution throughout the retort.

(vi) *Stacking equipment.* All devices used for holding product containers (e.g., crates, trays, divider plates) shall be so constructed that the water can freely circulate around the containers during the come-up and sterilization times.

(vii) *Drain valve.* A nonclogging, water-tight drain valve shall be used. Screens shall be installed over all drain openings.

(viii) *Water level.* There shall be a means of determining the water level in the retort during operation (e.g., by using a gauge, electronic sensor, sight glass indicator or petcock(s)). Water shall completely cover all containers during the entire come-up, sterilizing and cooling periods. The retort operator shall check and record the water level at intervals to ensure its proper level.

(ix) *Air supply and controls.* Retorts shall be provided with a means for introducing compressed air at the pressure and rate required to maintain container integrity. Compressed air entry shall be controlled by an automatic pressure control unit. A nonreturn valve shall be provided in the air supply line to prevent water from entering the system. Air or water circulation shall be maintained continuously during the come-up, sterilizing, and cooling periods. Air is usually introduced with steam to prevent vibration ("steam hammer"). If air is used to promote circulation it shall be introduced into the steam line at a point between the retort and the steam control valve at the bottom of the retort. The adequacy of the air or water circulation for maintaining uniform heat distribution within the retort shall be documented by heat distribution test data and such data shall be maintained on file by the establishment.

(x) *Retort or reel speed timing.* The rotational speed of the retort or reel is critical if specified in the process schedule. A recording tachometer shall be used to provide a continuous record of the speed. The speed shall be checked before process timing begins and, if needed, adjusted by the establishment as specified in the process schedule. If a change of speed inadvertently occurs, such shall be recorded together with the corrective action (e.g., readjusting the reel speed) taken by the establishment. A means of preventing unauthorized speed changes on retorts shall be provided. A lock, or a notice from management posted at or near the speed adjustment device that provides a warning that only authorized persons are permitted to make adjustments, is a satisfactory means of preventing unauthorized changes. The accuracy of the recording tachometer shall be determined at least once per shift by checking the retort or reel speed using an accurate stopwatch.

(xi) *Water recirculation.* When a water recirculation system is used for heat distribution, it shall be installed in such a manner that water will be drawn from the bottom of the retort through a suction manifold and discharged through a spreader which extends the length of the top of the retort. The holes in the water spreader shall be uniformly distributed. The suction outlets shall be protected with nonclogging screens to keep debris from entering the recirculation system. The pump shall be equipped with a pilot light or other signaling device to warn the operator when it is not running, and with a bleeder to remove air when starting operations. Alternative methods for recirculation of water in the retort may be used provided there is documentation in the form of heat distribution test data maintained on file by the establishment.

(xii) *Cooling water entry.* In retorts for processing product packed in glass jars, the incoming cooling water shall not directly impinge on the jars, in order to minimize glass breakage by thermal shock.

(xiii) *Retort headspace.* The overriding air or steam pressure in the headspace of the retort shall be controlled throughout the process.

(d) *Pressure processing with steam-air mixtures in batch retorts.* (1) The basic requirements for indicating temperature devices and temperature/time recording devices are described under § 381.305(a)(1) and (2). Additionally, bulb sheaths or probes for indicating temperature devices and temperature/time recording devices or controller probes shall be inserted directly into the retort shell in such a position that steam does not strike them directly.

(2) Steam controllers are required as discribed under § 381.305(a)(3).

(3) Each retort shall be equipped with a pressure relief or control valve to prevent undesired increases in retort pressure.

(4) *Recording pressure controller.* A recording pressure controller shall be used to control the air inlet and the steam-air mixture outlet.

(5) *Circulation of steam-air mixture.* A means shall be provided for the circulation of the steam-air mixture to prevent formation of low temperature pockets. The efficiency of the circulation system shall be documented by heat distribution tests and the heat distribution test data shall be maintained on file by the establishment. The circulation system shall be checked by the establishment to ensure its proper functioning and shall be equipped with a pilot light or other signaling device to warn the operator when it is not functioning. Because of the variety of existing designs, reference shall be made to the equipment manufacturer for details of installation, operation and control. The Administrator shall be contacted in writing prior to the use of such a system.

(e) *Atmospheric cookers*—(1) *Temperature/time recording device.* Each atmospheric cooker (e.g., hot water bath, etc.) shall be equipped with at least one temperature/time recording device in accordance with the basic requirements described under § 381.305(a)(2).

(2) *Stacking equipment.* Crates, trays, gondolas, dividers, and other vehicles for holding product containers shall be so constructed that the heating medimum can be adequately circulated around the containers during the process.

(3) *Temperature distribution.* Each atmospheric cooker shall be equipped and operated to ensure uniform temperature distribution throughout the processing system during the thermal process.

(f) *Other systems.* All other systems not specifically delineated in this section and used for the thermal processing of canned product in hermetically sealed containers shall be evaluated on a case-by-case basis by the Administrator, and shall conform to the applicable requirements of this section.

(g) *Equipment maintenance.* (1) Processing equipment shall be maintained in satisfactory operating condition. Upon installation, all instrumentation and controls shall be checked by the establishment for proper functioning and/or accuracy, and thereafter, at least once a year and at any time their functioning/accuracy is suspect.

(2) Each thermal processing system shall be examined at least once a year and before the resumption of operations following an extended shutdown. Such an examination shall include operating each thermal processing system without containers to ensure proper functioning of the system including all auxiliary equipment and instrumentation.

(3) Air and water valves that are intended to be closed during thermal processing shall be checked for leaks by the establishment. Defective valves shall be repaired or replaced as needed.

(4) Vent and bleeder mufflers shall be checked and maintained or replaced by the establishment to prevent any reduction in vent or bleeder efficiency.

(5) When water spreaders are used for venting, a maintenance schedule shall be developed and implemented to check the holes for clogging and to ream the holes to their original size when necessary.

(6) Records shall be kept of all maintenance conducted on the

processing equipment including the date, type of maintenance performed, and the person conducting the maintenance.

(h) *Container cooling and cooling water.* (1) Initial use water for cooling thermally processed canned product shall be potable.

(2) Cooling canal water shall be chlorinated, or otherwise treated with a chemical the Administrator has determined as having the equivalent bactericidal effect of chlorination. There shall be a measurable residual of the sanitizer in the water at the discharge point of the canal. Cooling canals shall be kept clean and sanitary and shall be replenished with potable water to prevent the buidup of organic matter and other materials.

(3) Systems designed to reclaim and recycle cooling waters shall be approved by the Administrator prior to use; except, an establishment using such a system prior to the promulgation of this rule shall obtain approval from the Administrator within two years of the final rule. Future modifications to an approved system shall be approved by the Administrator before use.

(i) *Post-process handling of containers.* Where processed containers are handled on belt conveyors, the conveyors shall be so constructed as to minimize contact by the belt with the hermetic seal area. All worn and frayed belting, can retarders, cushion and the like shall be replaced with nonporous materials. To minimize container abrasions, particularly in the seal area, containers shall not remain stationary on moving conveyors for prolonged periods. All post-process container handling equipment shall be kept clean and sanitized to prevent excessive build-up of microorganisms on surfaces in contact with the containers.

§ 381.306 Processing and production records.

Processing and production information shall be entered on a form/record by the thermal processing system operator or other designated person. The information shall include at least the following: product name and style; container code; container size and type; and, the process schedule including the minimum initial temperature. Critical factors specified in a process schedule and measured per § 381.303 shall be recorded. In addition, the following data shall be maintained by the establishment:

(a) *Processing in steam*—(1) *Batch still retorts.* For each batch, record the retort number or other designation, the approximate number of containers, product initial temperature, time steam on, actual venting time and temperature, time sterilization temperature reached, time steam off, actual processing time and temperature. The indicating temperature device and the temperature recorder readings shall be observed and recorded at the same time at least once during process timing.

(2) *Batch agitating retorts.* Record the information required for batch still retorts. In addition, record the functioning of the condensate bleeder(s) and retort or reel speed.

(3) *Continuous rotary retorts.* Record the retort system number, the approximate total number of containers retorted, product initial temperatures, time steam on, actual venting time and temperature, time sterilization temperature reached, functioning of the condensate bleeder(s), and retort or reel speed. Readings of the indicating temperature device(s) and temperature recorder(s) shall be observed and recorded at the time the first container enters the retort and at least every 30 minutes of continuous retort operation.

(4) *Hydrostatic retorts.* Record the retort system number, product initial temperature, container conveyor speed and, if specified in the process schedule, measurements of temperatures in the hydrostatic water legs. Readings of the temperature indicating device, which is located in the steam dome at just above the steam-water interface, shall be observed and recorded at the time the first containers enter the steam dome and at least every 30 minutes of continuous retort operation. In addition, for agitating hydrostatic retorts, record the rotative chain speed and any other critical factors specified in the process schedule.

(b) *Processing in water*—(1) *Batch still retorts.* For each batch, record the retort number or other designation, the approximate number of containers, product initial temperature, time steam on, time sterilization temperature reached, water level, water recirculation rate (if critical), overriding pressure maintained, time steam off, and actual processing time and temperature. The indicating temperature device and the temperature recorder readings shall be observed and recorded at the same time at least once during process timing.

(2) *Batch agitating retorts.* Record the information required for still retorts. In addition, record the retort or reel speed.

(c) *Processing in steam/air mixtures.* For each batch, record the retort number or other designation, the approximate number of containers, product initial temperature, time steam on, venting time and temperature, time sterilization temperature reached, maintenance of circulation of the steam/air mixture, air flow rate, forced recirculation flow rate (if critical), pressure, time steam off, and actual processing time and temperature. The indicating temperature device and the temperature recorder readings shall be recorded at the same time at least once during process timing. In addition, record all critical factors of the process schedule such as cooker temperature.

(d) *Atmospheric cookers*—(1) *Batch-type systems.* For each batch, record the cooker number if more than one cooker, and the approximate number of containers. In addition, record all critical factors of the process schedule such as cooker temperature, initial temperature, the time the thermal process cycle begins and ends, hold time and the final internal product temperature.

(2) *Continuous-type systems.* Record the cooker number if more than one cooker, the time the first containers enter and the last containers exit a cooker, and the approximate total number of containers processed. In addition, record all critical factors of the process schedule such as the initial temperature, cooker speed and final internal product temperature.

(e) *Other systems.* Processing and production records required for systems not specifically described herein, shall be established by the Administrator.

§ 381.307 Record review and maintenance.

(a) *Process records.* Charts from temperature/time recording devices shall be identified by date, container code, processing system number, and other data as necessary to enable correlation with the written records required in § 381.306. Each entry on a record shall be made by the retort or processing system operator, or other designated person, at the time the specific event occurs, and the recording individual shall sign or initial each record form. No later than 1 working day after the actual process, a representative of plant management shall review all processing and production records to ensure completeness and to determine if all product received the process schedule. All records, including the temperature/time recorder charts, shall be signed or initialed and dated by the person conducting the review. All processing and production records shall be made available to Program employees for review.

(b) *Automated process monitoring and record keeping.* When requested by an establishment, the Administrator will consider the use of automated process monitoring and record keeping systems. Any such system, alone or in

combination with written records, shall be designed and operated in a manner which will ensure compliance with the applicable requirements of § 381.306.

(c) *Container closure records.* Written records of all container closure examinations shall specify the container code, the date and time of container closure examinations, the measurements obtained, and all corrective actions taken. Records shall be signed or initialed by the container closure technician and shall be reviewed by a representative of plant management to ensure that the records are complete and that the closing operations have been properly controlled. Additionally, all container closure examination records shall be made available to Program employees for review.

(d) *Distribution of product.* Records shall be maintained by the establishment identifying initial distribution of the finished product to facilitate, if necessary, the segregation of specific production lots that may have been contaminated or are otherwise unsound for their intended use.

(e) *Retention of records.* Copies of all processing and production records required in § 381.306 shall be maintained for no less than 1 year at the establishment, and for an additional 2 years at the establishment or other location from which the records can be made available to Program employees within 3 working days.

§ 381.308 Deviations in processing.

Whenever a delivered process is less than the process schedule or when any critical factor does not comply with the requirements for that factor as specified in the process schedule, it shall be considered a deviation in processing. The establishment shall handle such deviations in the manner specified in this section. The provisions of this section are not applicable to an establishment which has a program for handling processing deviations approved in accordance with the provisions for quality control in § 381.145 of this subchapter.

(a) *Shelf stable canned product.* (1) Deviations identified in-process.

(1) If a deviation is noted at any time before the completion of the intended process schedule, the establishment shall:

(*a*) Immediately reprocess the product using the full process schedule; or,

(*b*) Use an appropriate alternate process schedule provided such a process schedule has been established in accordance with § 381.302 (b) and (c) and is on file with the inspector or,

(*c*) Hold the product involved and have the deviation evaluated by a designated authority to assess the safety and stability of the product. Upon completion of the evaluation, the establishment shall provide the Program employee, for submission to the Processed Products Inspection Division (PPID); Meat and Poultry Inspection Technical Services, FSIS, USDA, Washington, DC 20250, with the following:

(*1*) A complete description of the deviation along with all necessary supporting documentation;

(*2*) A copy of the evaluation report; and

(*3*) A description of any product disposition actions, either taken or proposed.

(ii) No such product shall be shipped from the establishment until PPID has reviewed all of the information submitted and approved the product disposition actions.

(iii) If an alternate process schedule is immediately calculated and applied, the product involved shall be set aside for further evaluation in accordance with § 381.308(a)(1)(i)(*c*).

(iv) Where deviations occur in continuous rotary retorts, the product shall be handled in accordance with § 381.305(b)(3) (vii) and (viii) or, where applicable, § 381.308(a)(1)(i)(*c*).

(2) Deviations identified through record review. Whenever a process deviation is noted during review of the processing and production records required by § 381.307 (a) and (b), the establishment shall hold the product involved and the deviation shall be handled in accordance with § 381.308(a)(1)(i)(*c*).

(3) No product associated with a process deviation shall be shipped until the product is safe and stable as determined by the Program employee and all other applicable Program requirements have been met.

(b) *Pasteurized "keep-refrigerated" product.* (1) Whenever a process schedule is quantified in terms of time and temperature and a process deviation is noted either, during the delivery of the process schedule or during subsequent record review, the product involved shall be handled per § 318.308(a) (1) or (2).

(2) Whenever a process schedule is quantified in terms of a minimum product temperature and a process deviation is noted during the delivery of the process schedule, the process shall be extended until such time that the minimum product temperature is achieved. Whenever a process deviation is noted post-processing, the affected product shall be reprocessed to render it safe and stable, or reworked under the supervision of the inspector.

(c) *Process deviation file.* The establishment shall maintain full records regarding the handling of each deviation. Such records shall be retained in a separate file and shall include, as a minimum, copies of the appropriate processing and production records, a full description of the corrective actions taken, evaluation procedures and results regarding product safety and stability (if an evaluation was made), and the disposition of the product. The file shall be made available to a Program employee upon request to provide assurance that all deviations have been handled in accordance with this subpart.

§ 381.309 Finished product inspection.

The provisions of this section are not applicable to an establishment which has a program approved in accordance with the provisions for quality control in § 381.145 of this subchapter.

(a) *Incubation of shelf stable canned product.*—(1) *Incubator.* The establishment shall provide incubation facilities which include an accurate temperature/time recording device, an indicating temperature device, a means for the circulation of the air inside the incubator to prevent uneven temperature variations, and a means to prevent unauthorized entry into the facility. The inspector is responsible for the security of the incubator, and detemines appropriate policies for entry.

(2) *Incubation temperature.* The incubation temperature shall be maintained at 95 ± 5°F (35 ± 2.8°C). If the incubation temperature falls below 90°F (or 32°C) or exceeds 100°F (or 38°C) but does not reach 103°F (or 39.5°C), the incubation temperature shall be adjusted within the required range and the incubation time extended for the time the sample containers were held at the deviant temperature. If the incubation temperature at any time reaches or exceeds 103°F (or 39.5°C), the incubation test(s) shall be terminated, the temperature lowered to within the required range, and new sample containers incubated for the required number of days.

(3) *Product requiring incubation.* Shelf stable product requiring incubation includes:

(i) Low acid products as defined under § 381.300(m); and

(ii) Acidified low acid products as defined under § 381.300(a).

(4) *Incubation samples.*

(i) For batch-type retorts (still or agitating), the establishment shall select at least one container for each 1,000

containers (or portion thereof) from each batch for incubation.

(ii) For continuous rotary retorts, hydrostatic retorts, or other continuous-type thermal processing systems, the establishment shall select at least one container per 1,000 for incubation.

(iii) Only sound, normal appearing containers shall be selected for incubation.

(5) *Incubation time.* Canned product requiring incubation shall be incubated for not less than 10 days under the conditions specified in § 381.309(a)(2).

(6) *Incubation checks and record maintenance.* Designated establishment employees shall visually check all containers under incubation each working day and the inspector shall be notified when abnormal (e.g., hard swells, soft swells, flippers, springers, leakers) containers are detected. For each incubation test, the establishment shall record at least the product name, container size, container code, number of containers incubated, in and out dates, and incubation results. The establishment shall maintain such records, along with copies of the temperature/time recording charts, on file at the establishment for not less than 1 year from the date of production, and for an additional 2 years at the establishment or other location from which records can be made available to a Program employee within 3 working days.

(7) *Abnormal containers.* The findings of abnormal containers among incubation samples shall be cause to officially retain at least the code lot involved.

(8) *Shipping.* No product shall be shipped from the establishment before the end of the required 10-day incubation period except as provided in this paragraph. An establishment wishing to ship product before incubation ends shall submit a written proposal to the area supervisor. Such a proposal shall include provisions that will assure that shipped product will not reach the retail level of distribution before sample incubation is completed and that product can be returned promptly to the establishment should such action be deemed necessary by the incubation test results.

(b) *Container condition*—(1) *Normal containers.* Only sound, normal appearing containers shall be shipped by an establishment.

(2) *Abnormal containers.* When abnormal containers are detected by any means other than incubation, the establishment shall inform the inspector. The affected code lot(s) shall not be shipped from the establishment until the Department has determined that the product is safe and stable. Such a determination will take into account the cause and level of abnormals in the affected production as well as any product disposition actions either taken or proposed by the establishment.

§381.310 Personnel and training.

All operators of thermal processing systems specified in §381.305 and container closure technicians shall be under the operating supervision of a person who has attended a school approved by the Administrator and has satisfactorily completed the prescribed courses of instruction. Courses of instruction conducted through "Better Process Control Schools" under 21 CFR 113.10 and 21 CFR 114.10 of the Food and Drug Administration regulations titled, respectively, *"Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers"* and *"Acidified Foods"* are approved by the Administrator for the purpose of training required under this subsection.

§381.311 Recall Procedure.

Establishments engaged in the thermal processing of canned product shall prepare and provide the inspector a current procedure for the recall of any canned product. The procedure shall have a provision for the prior notification of the Program employee and the Administrator of the intention to recall.

Done at Washington, DC, on February 7, 1984.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

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Thursday
April 12, 1984

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Oklahoma Permanent Regulatory Program; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Substituted Federal Enforcement of Portions of Oklahoma's Permanent Regulatory Program and Director's Findings on the Status of Oklahoma's Permanent Regulatory Program

AGENCY: Surface Mining Reclamation and Enforcement Office (OSM), Interior.

ACTION: Final rule.

SUMMARY: On January 19, 1981, the State of Oklahoma received conditional approval of its permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). On March 10, 1983, the Director, OSM, notified Oklahoma's Governor that OSM had reason to believe that serious problems exist that are adversely affecting the implementation of Oklahoma's approved regulatory program. After a public hearing and opportunity for public comment, the Director finds that Oklahoma is not adequately implementing certain aspects of its approved program. Therefore, in accordance with the provisions of 30 CFR 733.12(f), the Director, OSM, is instituting direct federal enforcement for those portions of Oklahoma's program that the State has not adequately enforced.

Because the Director believes that it is preferable that States hold the primary responsibility for regulation of surface coal mining operations, he will provide the State with assistance and guidance as necessary to resolve identified deficiencies and to regain full authority for inspection and enforcement activities. This notice also sets forth the Director's findings regarding this action and the status of those portions of Oklahoma's program that the State will continue to administer.

EFFECTIVE DATE: April 30, 1984.

ADDRESSES: Copies of the Director's decision and the Administrative Record documents referenced in this notice are available for public inspection and copying during regular business hours at:

Office of Surface Mining, Room 5315, 1100 "L" Street, NW., Washington, D.C. 20240, Telephone: (202) 343-4728

Office of Surface Mining, Tulsa Field Office, 333 West 4th Street, Room 3432, Tulsa, OK 74103, Telephone: (918) 581-7927

Oklahoma Department of Mines, Suite 107, 4040 N. Lincoln, Oklahoma City, OK 73105, Telephone: (405) 521-3859

FOR FURTHER INFORMATION CONTACT:

Carl C. Close, Special Assistant to the Assistant Director, Program Operations and Inspection, Office of Surface Mining, 1951 Constitution Avenue, NW., Washington, D.C. 20240, Telephone (202) 343-4225;

Robert L. Markey, Director, Tulsa Field Office, Office of Surface Mining, Room 3432, 333 West 4th Street, Tulsa, OK 74103, Telephone: (918) 581-7927.

SUPPLEMENTARY INFORMATION: On January 19, 1981, the Secretary of the Interior conditionally approved Oklahoma's program to administer and enforce the permanent regulatory program under SMCRA. This approval was granted with the understanding that implementation of the permanent program would commence with the lifting of a State court injunction issued on January 9, 1981. The injunction barred the State from enforcing the permanent program and ordered the State to continue enforcement of initial regulatory program rules (46 FR 4910).

On February 12, 1981, the Oklahoma Legislature rescinded the State's permanent program regulations. On July 20, 1981, the Oklahoma County District Court lifted the injunction which barred the Oklahoma Department of Mines (ODOM) from implementing its program and dismissed the case on the grounds that, as a result of the action of the State legislature, the basis for the suit was moot.

On September 10, 1981, the Director, OSM, notified ODOM that he had reason to believe that the State may not be able to implement, administer, maintain, or enforce its approved program due to the lack of regulatory provisions. (See 46 FR 49846-49847 for a more detailed account of the historical events involving the Director's concern.) An informal conference with ODOM officials was held October 14, 1981. (See OK-323 for transcript.) Based on the information received at the informal conference, the Director still had reason to believe that Oklahoma may have been unable to implement, administer, maintain, or enforce its program.

On November 19, 1981, a public hearing was held in Muskogee, Oklahoma on the status of Oklahoma's program. (See OK-333 for transcript.)

On December 14, 1981, Oklahoma approved a set of emergency regulations under an emergency rulemaking provision of the State's Administrative Procedures Act. On January 22, 1982, ODOM submitted permanent regulations to OSM as an amendment to its approved program (OK-356). A public hearing on the adequacy of the proposed amendment was held March 16, 1982, in Muskogee, Oklahoma. (See OK-402 for transcript.)

On April 2, 1982, the Director, OSM found that the regulations contained in the program amendment provided Oklahoma with adequate guidance and authority to regulate the State's surface coal mining and exploration activities. The Director also found that, with the approval of the program amendment (permanent regulations), Oklahoma would be capable of implementing, administering, maintaining, and enforcing its approved program. Based on the above findings, the Director terminated the 30 CFR Part 733 proceedings initiated September 10, 1981 (47 FR 14152-14157).

On March 10, 1983, the Director, OSM sent a second notification to the Governor of Oklahoma stating that he had reason to believe that the State, through the ODOM, may not be adequately implementing its approved program to regulate surface coal mining and reclamation operations (OK-458). The Director cited problems in Oklahoma's program implementation in several areas including the designation of lands unsuitable for mining, permitting, inspection and enforcement, administrative procedures and records, and Oklahoma's ability to meet the Secretary's conditions on his approval of the program. A more detailed account of the Director's concerns can be found in the May 25, 1983 **Federal Register** (48 FR 23414).

On April 14, 1983, ODOM responded to the Director's March 10, 1983, letter by providing written information regarding OSM's concerns (OK-461).

On April 17, 1983, ODOM requested an informal conference with OSM under the provisions of 30 CFR 733.12(c) (OK-465). The Director agreed to Oklahoma's request, notified the public (48 FR 23414), and held an informal conference with ODOM officials on June 15, 1983, in Oklahoma City. (See OK-483 for conference transcript.)

At the informal conference, OSM requested that ODOM provide additional information on many of OSM's concerns. ODOM submitted additional written information on July 14, 1983 (OK-521), August 25, 1983 (OK-508), and November 8, 1983 (OK-522).

In July 1983, OSM's Annual Report of Oklahoma's Permanent Program was completed and submitted to Congress. The report is an evaluation of functions and responsibilities of the Oklahoma Department of Mines. (OK-506).

Meetings were held between OSM and ODOM on October 5 and 12, and November 8 and 28, 1983, to discuss OSM's concerns and the State's progress in resolving issues (OK–517, OK–520, OK–522, OK–531).

On November 17, 1983, the Director announced in the **Federal Register** that he still had reason to believe that Oklahoma may not be adequately implementing, its approved program and scheduled a public hearing and public comment period (48 FR 52298–52300).

In addition to announcement of the public hearing in the **Federal Register**, announcements were made in a newspaper of general circulation in the State of Oklahoma and in several newspapers serving population centers in the State's coal regions. Also, copies of the **Federal Register** notice were made available to the State's congressional delegation, citizens having expressed an interest in the State's enforcement of its regulatory program and whose names were available at OSM's Tulsa Field Office, all coal operators in the State, environmental groups, and the Oklahoma Mining and Reclamation Association (OK–537, OK–538, and OK–558).

The Director's decision to hold a public hearing and solicit public comments was based on unresolved concerns in the following areas: Permitting, State actions on petitions to designate lands as unsuitable for surface coal mining, inspection and enforcement, administrative procedures and records, and the Secretary's conditions of State program approval. A more detailed account of the Director's concerns regarding the status of Oklahoma's program can be found in the text of the announcement of the public hearing (48 FR 52298).

On December 21, 1983, OSM conducted a public hearing in Muskogee, Oklahoma on the status of Oklahoma's program. In addition to presenting testimony at the hearing, ODOM submitted to OSM additional information concerning issues raised previously by OSM (OK–550). Also, during the course of the hearing, OSM requested that ODOM provide additional information on many of OSM's concerns. A response date for submission of the requested additional information was set for January 10, 1984, and subsequently extended to January 11, 1984. The public comment period, initially open through December 30, 1983, was extended through March 12, 1984 (49 FR 7560). A copy of the transcript of the public hearing has been placed in the Administrative Record (OK–551).

On January 11, 1984, ODOM submitted additional information as requested (OK–554).

During the period between December 21, 1983, and March 12, 1984, a substantial number of comments were received from the public. All public written comments have been made a part of the Administrative Record, either by inclusion in the transcript of the public hearing, or as independent comments received by OSM on or before the close of the comment period. Also, all documents on file in the OSM Tulsa Field Office relating to the Oklahoma permanent regulatory program since July 20, 1981, obtained in the ordinary course of OSM business from the public, OSM Tulsa Field Office employees, and the ODOM or other government agencies, excepting internal memoranda (including telephone call notes, internal meeting notes, decision-making documents, and advice of counsel) have been incorporated into the Administrative Record (OK–568).

All Oklahoma Administrative Record documents from OK–414 (April 28, 1982) through OK–619 (March 12, 1984) are being considered in this rulemaking.

Director's Findings on the Status of Oklahoma's Permanent Regulatory Program

On the basis of the record described above, the Director makes the following findings pursuant to section 504 of SMCRA and 30 CFR 733.12:

Permitting

1. *Written Findings and Technical Review:* OSM noted a lack of written findings and inadequate technical review on permits in its March 10, 1983 letter to Oklahoma's Governor. ODOM, in response to a request to identify its procedures for making written findings on permits, submitted a copy of § 786.19 of its regulations (the criteria for written findings) and identified the name of the ODOM staff member responsible for each finding (OK–521).

As a result of a preliminary review of three permits conducted by OSM on September 6, 1983, ODOM appeared to have made some progress in improving its compliance with approved permanent program requirements. However, OSM found that in many instances the technical documentation in the applications does not fully support the written findings. In addition, OSM found that technical inadequacies continued to exist in areas of revegetation, hydrology, fish and wildlife, and soils (OK–605).

The oversight review of ODOM's permitting process conducted by OSM during the weeks of December 4, 1983, and January 29, 1984, indicated continued inadequate technical reviews and analyses of permit applications (OK–601). The permits reviewed by OSM were found to be incomplete, with similar technical deficiencies identified during the previous OSM oversight review of January and March 1983 (OK–506). OSM found the following permitting problems remain in Oklahoma:

- Approved permits on file at the ODOM are usually not complete and do not contain all information required by the approved State program.
- Some regulatory requirements of a technical nature are either inadequately addressed, or are based on unrepresentative data. ODOM's written findings, when based on this inadequate information, are not accurate.
- None of the permits reviewed during this oversight evaluation tied together the operational and reclamation plans in a coherent manner that provides for the assessment of potential impacts that would provide for the prevention or mitigation of adverse environmental effects from surface mining operations.
- Some mines in Oklahoma do not have sufficient bond and in the event of bond forfeiture, the ODOM would not have sufficient funds available to complete all necessary restoration, and abatement work required by the approved State program.
- ODOM received 48 initial regulatory program reapplications and has processed only two under the permanent program, none since the completion of OSM's 1983 oversight review. Mining continues to occur under some initial regulatory program permits and performance standards, which do not provide as much protection to the environment as permanent program standards.
- ODOM regularly approves major changes in the operation plans without appropriate public notification. Many of these changes occur after mining is complete and appear to be done to justify performing only minimal reclamation work.

2. *Initial Permit and Permanent Program Permit Updates:* The dates of July 20, 1981, and March 20, 1982, are of particular significance in understanding permitting in Oklahoma. July 20, 1981, is the date that an Oklahoma County District Court injunction, which had ordered continuation of enforcement of initial regulatory program rules and enjoined enforcement of the permanent regulatory program, was lifted. All permits issued by ODOM prior to July 20, 1981, are considered by OSM and

ODOM to be initial regulatory program permits. All permits issued after July 20, 1981, are considered permanent program permits.

In its oversight evaluation of permitting in Oklahoma, OSM found forty-four permits issued after July 20, 1981, and before March 20, 1982 that did not meet the requirements for bonding, public notification, written findings, and reporting of violations as required by Oklahoma's Coal Reclamation Act and the approved State permanent regulatory program (OCRA) (OK–521). These permits are hereafter referred to in this document as transition permits. To date, approximately seventeen of the transition permit operations are still active.

Approximately two years have passed since initial regulatory program permit operators submitted their applications for permanent program permits, and one and one-half years since transition permit operators submitted their update documents. According to ODOM, permit applications from operators mining under initial regulatory program permits and who continue to mine today, and permit update documents from operators issued transition permits, have been reviewed and deficiency letters forwarded to the appropriate companies (OK–551). As of January 10, 1984, only two initial regulatory program permits and no transition permits have been brought into compliance through issuance of an approved and fully updated permanent program permit (OK–554)

There are also four existing active operations that are continuing to mine under initial regulatory program permits (OK–458, OK–483, OK–529, OK–551). At the December 21, 1983, public hearing OSM specifically requested the status of four active initial regulatory program permits issued prior to January 19, 1981. ODOM indicated that those permits were being reviewed for adequacy (OK–551). In responding to OSM's request for further clarification, ODOM failed to provide any information regarding the status of the four initial regulatory program permits (OK–554).

3. *Permit Issuance to Applicants Having Unabated Violations:* ODOM has improperly issued permits to applicants having unabated violations. On May 24, 1983, ODOM advised OSM that it was reviewing a permit application submitted by Carbonex Coal Company. The following day OSM advised ODOM that records showed thirteen unabated violations against Carbonex Coal Company during the period February 23 to May 20, 1983. On May 31, 1983, ODOM approved and issued the Carbonex permit. (Permit No. 83/84–4058). On June 24, 1983, OSM requested a clarification of ODOM's actions including the status of Carbonex' violations (OK–490). ODOM did not respond to OSM's June 24, 1983 request.

On October 12, 1983, OSM again requested clarification of ODOM's action (OK–517). On November 4, 1983, ODOM informed OSM that it had been unable to locate any compliance schedules for Carbonex Coal Company. ODOM did provide a status report of the thirteen violations in question. The status report showed all thirteen of the violations had been either vacated or abated, and the abatement or vacation dates of eleven of the thirteen violations were subsequent to the date of permit issuance (OK–522).

In another instance, on July 6, 1983, ODOM issued a permit (Permit No. 83/85–4100) to Turner Brothers, Inc. In correspondence dated June 15, 1983, OSM advised ODOM that Turner Brothers, Inc. had twenty-nine notices of violations (NOVs) or cessation orders (COs), of which ten lacked a record of ODOM follow-up actions. The approved permit application contained reference to a compliance agreement between ODOM and Turner Brothers, Inc. On July 15, 1983, OSM requested a copy of the compliance agreement. ODOM did not respond to the request. On October 12, 1983, OSM requested clarification of the State's action in approving the permit (OK–517). On November 4, 1983, ODOM advised OSM it had not been able to locate any compliance agreements in connection with the issued permit (OK–522).

On December 21, 1983, ODOM advised OSM that on November 28, 1983, it had issued a memorandum reminding all coal operators of the provisions of Oklahoma's permanent program rule Section 786.17(c). That rule stipulates that before issuance of a permit, applicant must provide proof that all violations have been corrected, must be in the process of being corrected, or must be under administrative or judicial appeal (OK–550).

Summary of Permitting Findings: The Director finds that the technical adequacy of the permits ODOM has issued and the completeness of the information in the application has been generally inadequate. ODOM has failed to adequately update the transition permits. The Director also finds ODOM has issued permits to operators with unabated violations contrary to its State statute and regulations. However, the State has recently shown an intent to correct these errors in the future. For instance, on January 19, 1984, ODOM denied a permit to a mining company on the basis of the company having a large number of unabated violations. The Director finds that the State has made some progress in improving its permit review process, most notably in the area of administrative procedures. However, the Director finds that the quality of ODOM's review of application completeness and technical adequacy, written findings, and timeliness of reviewing permanent program permits requires improvement. Therefore, the Director finds that ODOM has failed to effectively implement and maintain the permitting part of its program but has demonstrated some improvement in its capability and intent to implement, administer, maintain, and enforce the permitting requirements of the approved program.

Bonding

1. *Bond Amounts:* In its March 10, 1983, letter to the State, OSM raised the issue of apparent inconsistencies between the bond amounts being required for permit issuance and the costs projected by the Oklahoma Conservation Commission (OCC) in awarding third-party contracts for abandoned mine reclamation projects. At that time, ODOM was bonding permits at an acreage rate of approximately $1000 per acre. At the same time, two abandoned mine site reclamation projects had been approved by the OCC at a projected cost of approximately $4000 per acre (OK–458).

OSM asked that ODOM provide information regarding its method for determining bond amounts. In ODOM's April 14, 1983 response, the State provided OSM with a list of information to be required from operators for use in computing the final bond amount, but failed to provide a method to complete adequate calculations in determining bond amounts (OK–461).

The bonding computations presented were mathematical calculations, but did not include an explanation of mining considerations, sources of unit costs, or other supporting documentation that would allow a determination that the bond amounts were in accord with the approved program requirements. On July 15, 1983, ODOM advised OSM that as a result of technical assistance provided by OSM it had revised its bonding techniques and was computing bond amounts by applying the cost of equipment usage and performance data to information in the permit application rather than applying a fixed acreage rate (OK–483, OK–550). Bond amounts have generally been increased from $1000 per acre to an average of approximately

$2,090 per acre based on ten permits issued or revised by ODOM during the period April 7, 1983, through December 16, 1983 (OK–554).

Results of an oversight review of ODOM's permitting process conducted by OSM during the weeks of December 4, 1983, and January 29, 1984, show that four permits recently approved by ODOM were under-bonded and reclamation of these mines in the event of forfeiture would cost more than existing bond amounts available. Typical bonding related problems that were found to cause bond estimation errors include: not costing maximum disturbance in preparing the reclamation estimate; estimating backfilling costs at one-third to one-half of current third-party contractor costs; and not documenting depth to coal, pit widths, and pit lengths needed to make appropriate calculations of the costs to backfill the mine site. Two of the bonds were set at less than one-half of the amount OSM estimated would be necessary for third-party reclamation (OK–601).

ODOM has identified fifteen transition permits that need recalculation of bond amounts and has made a commitment to complete the re-evaluation of those bonds (OK–550 and OK–554). ODOM stated its intent to accomplish the reevaluation of 30 permanent program permits by August 1985 (OK–550).

2. *Bond Release:* On September 23, 1983, ODOM released the bond on a coal processing tipple site. The release was made despite the fact that over eighty acres were unreclaimed. An OSM oversight inspection following the release of the bond revealed that there were several violations of performance standards (OK–568, oversight inspection report dated 11–21–83). In testimony at the public hearing and later in a written explanation, ODOM acknowledged that the release had been made without benefit of inspection or public hearing due to internal disagreement within ODOM regarding the bond release procedures to be followed (OK–551, and OK–554).

ODOM recently allowed sixty percent release of a bond on the Farrell-Cooper Keota mine where the released area included a large final pit impoundment that does not meet initial regulatory program performance standards (OK–534). The improperly released area contains exposed highwalls and steep embankments rendering nearly all of the shoreline inaccessible to stock for watering. The steepness of the embankment also prevented successful revegetation, and created a potential safety hazard (OK–568, OSM Inspection Report on permit 78/79–008 dated 9–29–83). In testimony at the public hearing, ODOM stated that the release of the bond was in error, and that although ODOM has not asked the mining company to re-establish bond for the area, that it is ODOM's intention to require the bond after securing reclamation cost estimates from the operator (OK–551).

Results of the OSM's oversight review of ODOM's permitting and bonding process conducted during the weeks of December 4, 1983, and January 29, 1984, indicate ODOM did not fully meet its regulatory obligations under Oklahoma rule Part 807 when processing 87 bond releases (19 permanent program permits and 68 initial program permits) during the period of May 1, 1983, through January 31, 1984 (OK–601). In that review OSM found that ODOM bond release approvals do not indicate what standards have been met and do not contain the information collected and used by the inspector to evaluate the success or failure of the reclamation work. ODOM regulations allow the release of an amount not to exceed twenty-five percent of the total bond amount at the completion of phase II reclamation; and require that the amount of bond remaining be sufficient to reestablish vegetation and to reconstruct drainage structures in the event of phase II reclamation failure. OSM has found no evidence in ODOM's bond release files to indicate that a determination of the bond amount required to complete all remaining reclamation work is made prior to granting partial bond release (OK–601). In most cases, the applicants provide proof of required public notice for bond release, but are not sending out required notification letters to the landowners or governmental bodies. In most cases, ODOM inspected the areas within a reasonable timeframe, but there is no evidence that the surface owner or lessee was asked to participate as required by Oklahoma regulation 807.11(d). ODOM is notifying the applicant of its decision to release bond, but does not make the required notifications to the landowners or counties before bond release.

OSM notes that ODOM notified all coal operators on December 1, 1983, of ODOM's policy to follow the requirements of Oklahoma rule 807.11 in processing initial regulatory program permit bond release applications submitted after December 9, 1983 (OK–550).

Summary Finding: The Director finds that ODOM has not established a bonding program which will ensure that bonds are consistently provided in amounts necessary to ensure proper reclamation of land affected by coal mining and has not met all of its regulatory obligations for processing bond release applications. ODOM has not generally implemented an adequate bonding program and has not demonstrated an intent and capability to implement generally an adequate bonding program, but ODOM has shown some improvement in setting bond amounts.

State Actions on Petitions To Designate Lands as Unsuitable for Surface Coal Mining

In late 1982, ODOM received two petitions to declare certain lands in Pittsburg and Latimer counties, Oklahoma unsuitable for mining. The petitions addressed areas that were under consideration for issuance of two permits by ODOM. After denying both petitions, ODOM issued one of the permits to P&K Company, Ltd. (P&K) and mining was commenced.

In his letter of March 10, 1983, the Director notified ODOM that OSM had received a complaint from a citizen's group, Citizens Concerned for the Environment (CCE), that ODOM had failed to follow its own rules in rejecting an unsuitability petition filed by that group. OSM found that ODOM had violated its approved State program rules and had used other unapproved rules as the basis for denial of the petitions (OK–506). OSM requested that ODOM suspend the P&K permit and provide a schedule for reconsideration of both petitions (OK–483).

ODOM did not suspend or revoke the P&K permit but did initiate some steps to reconsider the issuance of the permit. However, when a temporary restraining order was issued by a State court halting the mining operation, ODOM discontinued its review of the permit (OK–550). Although the permit is still in effect, the mining activities remain enjoined by a State court in a suit brought by the CCE.

On March 10, 1983, OSM requested ODOM to provide a schedule for reconsideration of CCE's petitions (OK–458). On April 14, 1983, ODOM took the position that it had acted properly in disposing of CCE's petitions, but stated it would accept and review resubmitted petitions (OK–461). On June 15, 1983, OSM again asked for a schedule for reconsideration of the petitions, and suggested that ODOM review CCE's original petitions rather than requiring CCE to resubmit. ODOM agreed to provide a schedule and stated that an agreement for resubmission was being

worked out between ODOM and CCE (OK–483).

In the "Annual Report of Oklahoma's Permanent Program," dated July 1983, OSM delineated specific problems in ODOM's disposition and denial of the petitions, including ODOM's violation of its approved program rules and use of other, unapproved rules; ODOM's lack of an administrative record of documents relative to the petitions; and, the failure of ODOM to consider petition information in the decision to grant a mining permit on petitioned land (OK–506). On July 14, 1983, based on a written request from CCE, ODOM informed OSM that it had reactivated the filing of the two petitions and would be making a completeness determination within thirty days. ODOM restated its previous position that it had previously acted properly in rejecting both petitions (OK–521).

Although ODOM has never provided OSM with a schedule for reconsideration of CCE's petitions, on September 21, 1983, it determined the petitions to be complete and stated its intent to proceed with the substantive analysis (OK–511).

On July 14, 1983, the CCE filed a third petition with ODOM to designate certain lands in Latimer County as unsuitable for mining (OK–521). The petition was subsequently declared to be complete (OK–550). A mining company petitioned ODOM to bifurcate the petition on the basis of a pending permit application. ODOM agreed to the mining company's request and two of twelve sections of land were severed from the original petition (OK–550). A hearing on the severed portion of the petition was held on December 20, 1983. On January 24, 1984, ODOM issued an order declaring the severed portions of the petition as suitable for mining (OK–610).

Results of OSM's review of ODOM's processing of lands unsuitable petitions conducted during the weeks of December 4, 1983, and January 29, 1983, indicate ODOM has recently improved its compliance with most of the administrative and procedural requirements of Oklahoma Rules Part 764.

Summary Finding: The Director finds that ODOM's actions regarding issuance of a permit on lands subject to a timely filed petition were improper. ODOM has not effectively implemented, maintained or enforced its approved program and has not generally shown an intent to do so. The Director finds further that ODOM's failure to follow its approved program regulations has delayed the decision-making process. This delay has likely created additional burden to P&K Co., Ltd. and the petitioner. ODOM's belated decision to accept both petitions and to follow its approved procedures in arriving at a decision are an improvement over its earlier actions. Since a State court injunction obtained by CCE against mining on the permit site is in effect, OSM will take no action, pending resolution of the unsuitability petitions and the improperly issued permit. OSM will closely monitor ODOM's procedures in this matter.

Inspection and Enforcement

1. *Inspection Frequency:* During calendar year 1982, the ODOM conducted less than 50% of its required number of complete inspections and less than 75% of its required number of partial inspections (OK–506). During calendar year 1983, the ODOM conducted 49% of its required number of complete inspections and 67% of its required number of partial inspections, a decline over the previous year (OK–568, file data). On July 25, 1983, in an attempt to correct the inspection frequency problem, ODOM established an inspection field office in Muskogee, Oklahoma (OK–489). Since establishing the field office, ODOM has not demonstrated progress in increasing its inspection frequency. ODOM's inspection frequency worsened during the last half of calendar year 1983, after the opening of its field office. During the last half of calendar year 1983, the ODOM conducted 40% of the required number of complete inspections, and 69% of the required number of partial inspections, a decline of 18% in complete inspections, and an increase of 2% in partial inspections, over the first half of calendar year 1983 (OK–568, file data).

On August 16, 1982, OSM amended 30 CFR 840.11, to change the required frequency of inspections to one complete and two partial inspections per quarter for active mines and one complete inspection per quarter on inactive mines (47 FR 35633). On May 13, 1983, the ODOM submitted to OSM an amendment to its conditionally approved permanent regulatory program that would amend Oklahoma's regulations to change the required number of partial inspections on certain inactive sites (OK–466). OSM will complete processing of the amendment submitted by ODOM. The Director recognizes that while a reduced level of inspection on certain inactive sites would have allowed for increased inspection activity at other sites, the impact of this change would not have significantly improved the other aspects of the program.

2. *Enforcement During Field Inspections:* On March 10, 1983, OSM notified ODOM that State inspectors were failing to cite an inordinate number of serious violations (OK–458). Later, and as a result of conducting 103 oversight and follow-up inspections during the period April 1, 1983, through December 31, 1983, OSM found the problem persists (OK–568). The following information illustrates the problem. Approximately 5% of ODOM's inspections are made in the presence of OSM inspectors. These are termed joint oversight inspections and are made on a random sample basis. For the nine-month period April 1, 1983 through December 31, 1983, 37% of ODOM's enforcement actions occurred during that 5% segment of joint ODOM–OSM inspections. During the above nine-month period, and on the same sites, ODOM issued 48 NOVs (containing 78 violations) and 26 COs (containing 55 violations) when accompanied by OSM inspectors, but only 16 NOVs (containing 24 violations) and 6 COs (containing 7 violations) when working independent of OSM.

ODOM's failure to note violations on its own is evident from the fact that OSM oversight inspections during the nine-month period referred to above necessitated OSM's issuance to ODOM of 47 Ten-Day Notices covering 96 violations. Many of these violations were long-standing violations and should have been detected and cited by ODOM.

OSM oversight inspections show a very high occurrence of non-compliance with certain performance standards. Those performance standards most frequently violated pertain to runoff control, backfilling and grading, and topsoil storage and replacement. Examples of violations undetected by ODOM include highwall and spoil areas not properly regraded and topsoiled, ponds not constructed or improperly constructed, unreclaimed coal pads, and deep erosion of revegetated areas. ODOM inspectors have also issued warnings, contrary to Oklahoma regulations, rather than cite violations (OK–568; file documents). OSM inspections have revealed numerous instances where violations cited by ODOM were unabated since previous oversight OSM inspections due to lack of follow-up or improper termination by ODOM (OK–568). Many violations noted by OSM on oversight inspections are the result of ODOM's reluctance to require operators to comply with the terms of approved mining and reclamation plans.

OSM provided an inspector training course to ODOM inspection staff on October 4–6, 1983, and has provided continued on-the-job training to ODOM

inspectors on joint oversight inspections. However, ODOM frequently fails to utilize available procedures for accomplishing timely abatement of violations. Documentation for supporting successful administrative and judicial procedures or actions is often inadequate. In addition, nearly all COs issued by ODOM for failure to abate violations do not require the cessation of mining activities on the affected portion of a permit (OK–568).

3. *Ten-Day Notices:* OSM previously found that the ODOM was not responding to many Ten-Day Notices issued by OSM (OK–483). Many of the ODOM responses to OSM Ten-Day Notices are either inadequate, inappropriate, or fail to address all violations in cases where multiple violations are listed on a single Ten-Day Notice. This problem appears most often in Ten-Day Notices for serious violations where abatement will be costly and more objectionable to operators. During the period of March 10, 1983, through February 20, 1984, OSM has been required to initiate Federal enforcement actions by issuing 23 NOVs (covering 44 violations) and 5 COs (covering 6 violations) to operators as a result of ODOM's failure to adequately respond to Ten-Day Notices (OK–568, file records).

4. *Follow-up Enforcement Actions:* Based on results of OSM oversight inspections conducted since March 1983 and TFO records of ODOM enforcement actions, and ODOM responses to OSM inquiries (OK–483, OK–521, and OK–523), OSM found that ODOM failed to take appropriate follow-up action on NOVs and COs it had issued (OK 458, and OK–506).

On June 15, 1983, OSM provided ODOM with a list of 178 NOVs and COs for which follow-up actions were unknown to OSM (OK–483). Following this inquiry, ODOM terminated 61 and vacated eight NOVs that had been issued up to 19 months prior to these follow-up actions (OK–568). On August 31 and September 1, 1983, OSM conducted a field sampling of two companies' operations to assess whether violations terminated by ODOM had been abated. Results of this investigation revealed that violations were still in existence on six areas subject to terminated NOVs or COs (OK–551).

Results of OSM oversight activities conducted since March 1983, reveal numerous instances where NOVs and COs were terminated or vacated although the violations remain unabated. ODOM has terminated some NOVs and issued other NOVs for the same violation, thus circumventing the requirement to issue a failure-to-abate (FTA) CO. ODOM has not actively pursued enforcement actions to seek abatement of violations covered under most FTA COs. Available records show at least 29 FTA COs have been issued by ODOM during the period of January 1, 1982, through March 1983, and 55 FTA COs during the period of April 1983, through December 1983. To date, ODOM has not sought injunctive relief to secure abatement of violations covered under FTA COs (OK–554). However, ODOM has revoked three permits utilizing the Order to Show Cause procedure against two permittees; one is bankrupt and the other is no longer in the coal mining business. On January 12, 1984, ODOM issued two Orders to Show Cause to Turner Brothers, Inc. for numerous violations on two permits. However, the Order to Show Cause came only after the delivery of six Ten-Day Notices from OSM alleging 138 violations on six of the company's mining operations.

5. *Enforcement Actions Regarding Sedimentation Ponds:* OSM oversight inspections have revealed widespread occurrences of failure to provide adequate sediment control during the mining and reclamation phases of surface mining in Oklahoma. The ODOM, until very recently, has not required operators to construct sedimentation structures in accordance with designs specified in approved initial regulatory program permits, and has not consistently required certification of such ponds as required by 45 Okla. Stat. Ann. Section 751.2.b. and 30 U.S.C., Section 1265(b)(10)(B)(ii) (OK–517). On December 1, 1983, ODOM notified operators that ODOM would immediately require that all initial regulatory program sedimentation ponds be constructed as designed in the permit application and certified. Operators were advised that upon notification by ODOM that an initial regulatory program pond had not been certified, the operator would have thirty days from notification to submit the necessary certification or permit revision (OK–550). Operators were further notified that failure to submit the necessary information within the thirty-day time frame would result in the issuance of an NOV for failure to certify. Such a warning notice is a violation of Oklahoma regulation 843.12 that requires ODOM to immediately issue an NOV if a violation of the Oklahoma Coal Reclamation Act, Oklahoma regulations, or approved permit is found.

6. *Civil Penalties:* OSM previously found that the ODOM had a substantial backlog of violations which had not been assessed penalties (OK–506). ODOM has made improvement in the timely assessment of civil penalties for violations, but few assessments have been collected. During the period of January 19, 1983, to December 16, 1983, the ODOM proposed assessments for 301 NOVs or COs (OK–550) totaling $4,931,560, of which only $10,800 on 7 NOVs or COs has been collected. ODOM began assessing penalties on approval of its permanent program regulations on April 2, 1982. The status of penalties assessed and collected by ODOM during the period of April 2, 1982 and January 18, 1983 has not been provided to OSM.

On request from operators, ODOM has vacated proposed penalties during administrative hearings if the proposed assessments were not served within thirty days after the NOV or CO was issued (OK–554). This policy is counter to established legal precedent. See *Shara Coal Co., Inc.* v. *United States*, No. CV82–4335 (S.D. Ill., Jan. 5, 1984; *United States* v. *Log Mountain Mining Co.*, Civil No. 3–81–30 (M.D. TN., July 21, 1982; *appeal pending*, 6th Cir.); *In re: Permanent Surface Mining Regulation Litigation*, 653 F. 2d 514, 522 (O.C. Cir. 1981), *cert. denied*, 454 U.S. 822 (1981). Additionally, ODOM has granted civil penalty hearings without requiring operators to place an amount equal to the proposed penalty into escrow in violation of Oklahoma regulation 845.19(a) (OK–517). ODOM subsequently rescinded this policy and advised operators that requests for hearings received after October 31, 1983, would be required to comply with the provisions of Oklahoma regulation 845.19(a) (OK–550). However, in rescinding the policy, ODOM did not require operators who had requested a hearing prior to October 31, 1983, to place the proposed penalty in escrow (OK–554). At least 24 hearings have been held or will be held without placing penalty funds in escrow (OK–554). However, in December 1983, ODOM did deny an operator a hearing on nine violations because the operator failed to place penalty funds in escrow (OK–568). On February 13, 1984, on the other hand, the ODOM hearing examiner ruled, in violation of approved program rules, that ODOM cannot propose a civil penalty under 45 OK Stat. Section 769(c) after an operator requests a hearing under Section 769(b), thereby ignoring 45 OK Stat. 786 and program rule 845.19.

7. *Defense of Enforcement Actions:* During the period of April 1, 1983, through December 31, 1983, ODOM vacated 91 NOVs and COs (OK–609).

According to information submitted by ODOM on December 21, 1983 (OK–

550) and February 17 and 22, 1984, (OK-607) ODOM has held 20 Administrative Hearings between March 16, 1983, and February 1, 1984, on 93 violations or penalty assessments. The Hearings resulted in 26 penalties being affirmed, 17 penalties were dismissed, 30 violations were affirmed, and 20 violations were dismissed or vacated (OK-568).

ODOM did not adequately prepare cases for some hearings on enforcement issues. For instance, in the Farrell-Cooper Mining Company case, heard on March 16, 1983, Administrative Hearing AR-83-02, a case regarding illegal diversions of a perennial stream, the record shows that counsel for ODOM had not interviewed landowners, did not call them as witnesses, did not properly question company witnesses, allowed uncontested hearsay by an operator's witness who was not present when diversions were constructed and had no first-hand knowledge of the situation, and did not support ODOM's case with competent witnesses (OK-551). As a result, ODOM lost the case. OSM subsequently took an enforcement action on its own that resulted in an agreement by the company to abate the problems caused by the diversions (OK-533 and OK-606). In other cases, ODOM failed to subpoena a former inspector who was the key witness in the cases. The cases were dismissed by the Hearing Examiner for failure by ODOM to prove the cases (OK-550 and OK-606).

The results of the thirteen hearings of record conducted by the State since October 1, 1983, indicate some improvement in preparing and defending its cases. (OK-568) ODOM has replaced the former counsel and hired Hearing Examiners who appear to be conducting proceedings in a professional and impartial manner. From October 1, 1983, through early February 1984, ODOM decided twelve cases in which twenty violations were upheld, twelve were dismissed, twenty-two civil penalty assessments were upheld, and nine were vacated (OK-550; 607). The vacated penalties, however, were usually vacated by the hearing examiner on the improper basis of the precedent regarding penalties proposed more than 30 days after issuance of the NOV or CO, or on an improper interpretation of the relationship between 45 Okla. Stat. Section 769 and Section 786, positions OSM disapproves. See item 6, *Civil Penalties, supra.*

Findings

The Director finds that since obtaining State program approval, the ODOM has failed to meet the required frequency for complete and partial inspections.

The Director finds that ODOM has failed to cite an inordinate number of observed violations and has not issued adequate failure-to-abate cessation orders as required by 45 Okla. Stat. Ann. Section 777 and §§ 843.11(b) and 843.12(a) of the Oklahoma regulations. ODOM has improved its rate and timing in response to OSM-issued ten-day notices, but has not fully demonstrated an intent to assure compliance with the law through appropriate actions to abate all serious violations brought to its attention by ten-day notices.

The Director finds that the State has not consistently assured compliance with the law through appropriate and timely follow-up actions to ensure that observed violations are abated, has not assured compliance with sediment control performance standards, and has not fully defended its inspection and enforcement actions through the appeals process. Additionally, ODOM has granted civil penalty hearings without requiring operators to place the amount of the proposed penalty in escrow and has not consistently ensured timely assessment and collection of civil penalties.

The State has shown progress in the timely assessment of penalties and in supporting inspection and enforcement actions through the appeals process. Further, ODOM has revised its policy regarding prepayment of penalties and is requiring operators to prepay assessments prior to hearings on new violations. Although ODOM has made improvements in implementing the inspection and enforcement aspects of its program, serious deficiencies continue to exist. Thus, the Director concludes that ODOM is not adequately meeting the inspection and enforcement requirements of the approved State program. ODOM has not effectively implemented, maintained or enforced the inspection and enforcement aspects of its approved program and has not demonstrated a capability or intention to administer the program.

Disposition of Comments

During the public hearing and public comment period, the Director received a substantial number of comments from the public and government agencies. All of these comments were reviewed and considered by the Director in making the decision announced today. This notice is a summary and response to the significant issues raised by the commenters. In arriving at his decision, the Director considered the following comments in conjunction with all of the testimony heard and documents received on or before the close of the final public comment period.

1. One commenter alleged that ODOM was granting administrative appeals hearings to operators without requiring the amount of the proposed penalty to be paid into escrow prior to granting the hearings. Section 769(C) of OCRA states ". . . if the person wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the Department for placement in an escrow account." Section 845.19(a) of the Oklahoma regulations contains similar language. OSM has found that ODOM has granted hearings without requiring operators to place an amount equal to the proposed penalty into escrow in violation of Oklahoma regulation 845.19(a) (OK-517). ODOM has rescinded this policy and has advised operators that requests for hearings received after October 31, 1983, must be made in accordance with the provisions of Oklahoma's approved program (OK-550). However, in rescinding the policy, ODOM did not require operators requesting a hearing prior to October 31, 1983, to place the proposed penalty in escrow (OK-554). At least 24 hearings have been held or are being held without placing penalty funds in escrow (OK-554). However, in December 1983, ODOM did deny an operator a hearing on nine violations because the operator failed to place penalty funds in escrow. The Director agrees with the commenter and finds that prior to October 31, 1983, ODOM did grant hearings on violations and/or proposed assessments without requiring the operator to place an amount equal to the proposed penalty in escrow as required by Section 769(C) of OCRA and Section 845.19(a) of the Oklahoma regulations.

2. One commenter stated that ODOM is more interested in labor disputes than in enforcing reclamation, environmental, and safety laws (OK-540). Examples were given of alleged safety violations brought to ODOM's attention and ODOM's failure to respond. The commenter further stated that ODOM had made public statements that testimony presented at a public hearing would have no bearing on the State's action. The Director acknowledges the comment and notes that while he is concerned with mine safety at all mines, both OSM and the State regulatory authority have limited authority to enforce safety regulations except in the areas of blasting, impoundments, surface mining effects on underground mines, public roads and facilities, and dwellings. However, OSM can issue a CO for any imminent danger to the

health and safety of the public. The Director recommends that complaints on safety not properly addressed by ODOM be brought to the attention of the Mine Safety and Health Administration. With respect to the alleged impropriety, the Director has reviewed the transcript of the public hearing in question and could find no statement made by ODOM that testimony presented at the hearing would have no bearing on the State's action.

3. Two commenters allege ODOM has been unduly influenced by political considerations in not properly regulating the coal mining activities of a major producer (OK–559, OK–551, and OK–552). The Director finds there are insufficient facts to attribute ODOM's inadequate permitting and enforcement decisions to political influence. However, whatever the reasons for ODOM's inadequacies, the Director will insist they be corrected.

4. A landowner testified that her property was mined in 1980 and has yet to be reclaimed after three and one-half years (OK–551). OSM finds that on February 3, 1983, ODOM initiated forfeiture action on $164,000 in surety bonds covering the initial regulatory program permits located on and near the landowner's property, but has not taken timely action to actually recover the funds needed for contracting the backfilling, topsoiling and revegetation work. ODOM has stated that the State is actively pursuing the forfeiture of the bond (OK–551); however, since the acreage was bonded at $1,000 per acre, the amount that ODOM is seeking to recover will be inadequate to reclaim the land to initial program standards. The Director has found that ODOM bond levels have been inadequate and is taking steps today to deal with this problem.

5. OSM received numerous comments recommending some form of change in the administration of Oklahoma's surface coal mining program. The comments ranged from no Federal intervention to full Federal administration of the program. Commenters submitting recommendations included the general public, landowners, coal companies operating in Oklahoma, and national and State environmental groups. In light of the recommendations offered by the various commenters and the options available, the Director considered the following possibilities in making his decision: no action, partial substitution of Federal enforcement for State enforcement without withdrawing primacy, partial substitution of Federal enforcement with a partial withdrawal of primacy, and full substitution of Federal enforcement for State enforcement with full withdrawal of primacy. Because of the numerous recommendations, the wide variety of the commenters and the substance of the reasons given for recommending change, the Director considers this an indication that the Oklahoma regulatory program has major problems that must be addressed. All comments relating specific facts have been considered in reaching the Director's findings and decisions stated herein.

6. A commenter, who is a landowner, stated that ODOM was not responsive to his many complaints regarding an operator's failure to salvage all topsoil and the construction of an unauthorized final pit impoundment (OK–551). Another commenter, who was the operator, disagreed with the landowner's allegations (OK–564). OSM finds that ODOM did not inform the complainant of the results of its investigations of the topsoil complaints as required under Oklahoma rule 842.12. With regard to the final pit impoundment complaint, OSM finds that ODOM took appropriate action on a Ten-Day Notice issued by OSM by issuing a NOV on December 19, 1983, which required the operator to submit certain performance standards information. ODOM's evaluation of this information will serve as a basis for deciding whether the final pit shall remain as part of the permanent impoundment.

7. Two commenters stated that ODOM has continually ignored fish, wildlife, and other related environmental values and that valuable timber and water resources have been destroyed or altered without any replacement or mitigation of any kind (OK–541, OK–570). To help address the commenters' allegations, the Director has reviewed the comments of a sister agency that has duties regarding the environmental aspects of permit reviews. The U.S. Fish and Wildlife Service (FWS), between October 14, 1982, and March 10, 1983, reviewed a total of 14 permanent program permit applications. FWS considered only one of these applications to be complete and cited all but one of them with failure to meet Oklahoma rules 816.97, 786.19(o) or 770.12(c) (OK–530; OK–568, file documents). In its December 23, 1982, letter to OSM (OK–530), FWS complained that it had identified various deficiencies in eight permit applications reviewed to that date, but that ODOM had neither acknowledged the recommendations nor acted upon them. The FWS reviewed another 16 permanent program permit applications during the period of March 11, 1983, to January 24, 1984, (OK–568, file documents), and found seven of sixteen to be inadequate. Of the seven inadequate applications, two have since been approved by ODOM (OK–568, file documents). FWS alleged continued problems regarding rules 816.97 and 786.19(o), and by letter dated February 13, 1984 (OK–590), recommended that OSM take over the permitting function of the State program because it believes ODOM does not have adequate expertise in the areas of biology and ecology. In the alternative, FWS recommended that OSM impose mechanisms to ensure proper consideration of fish and wildlife in the ODOM permit review process (OK–590).

OSM has also analyzed the quality of ODOM's permit review regarding fish and wildlife. In its July 1983 annual oversight report (OK–506), based on an analysis of a random sample of permits, OSM concluded that ODOM had approved mine plans that did not adequately address fish and wildlife requirements of the approved program and that ODOM had not made the required findings regarding endangered species under rule 786.19(o). On September 6, 1983, OSM concluded a review of three recently issued permits (OK–605). The results of that review included a finding that the applications did not contain sufficient information to demonstrate compliance with applicable performance standards and did not adequately support a finding of no impact on threatened and endangered species. In an oversight report dated February 27, 1984 (OK–601), based on review of two more recently approved permit applications, OSM found a continuing lack of information to support findings regarding endangered species or information to support conclusions that planned postmining features would comply with the fish and wildlife requirements, and that ODOM did not analyze the applicant's responses to comments by FWS. In one older case, where an operator made two diversions of a perennial stream and caused significant habitat damage, ODOM did not require the diversions to be permitted at all and no protection to fish and wildlife values was afforded (OK–533; OK–568, file documents).

The Director agrees with the commenters that ODOM has a duty under rule 780.18 and 780.23 to evaluate whether a permit application adequately addresses how the applicant will comply with the standards of rule 816.97. This responsibility is emphasized in the findings required by rule 786.19

(a), (m) and (o) prior to permitting decisions. ODOM also has a duty to coordinate its permitting process with the applicable requirements of the Endangered Species Act and other environmental laws under rule 770.12. Under Chapter VII–10 of the approved program text, ODOM made commitments to consult with the FWS and other agencies regarding review of fish and wildlife matters in permit applications. The Director agrees with the commenters that ODOM has only partially performed its duties regarding fish and wildlife issues in the permitting process. Although ODOM receives comments from FWS on all applications, the record indicates that, until recently, these comments were largely ignored, and that applicants have not been required to address in any detail how the standards of rule 816.97 will be met, how postmining land use plans will affect fish and wildlife values, whether endangered species are likely to be affected and, if so, how they will be protected. ODOM's findings regarding fish and wildlife under rules 786.19 (a), (m) and (o) have not been adequately supported by information in the applications. However, the Director has decided not to assume responsibility for all permitting duties contrary to the suggestion of FWS. Rather, as reflected in the Decision section below, OSM will increase the level of oversight of the permitting process to insure that ODOM will require adequate information on fish and wildlife in permit applications and that the information available from all sources will be appropriately analyzed in the findings that support decisions to approve or deny permits.

8. A commenter cited numerous blasting related problems with a coal operation near his home (OK–547). OSM records show that the commenter filed a citizen complaint with OSM, and the complaint was referred to ODOM through a Ten-Day Notice. ODOM placed a seismograph at the site to monitor blasting and subsequently issued Nov 83–03–4 (TV–1) to the operator for a blasting violation. The Director finds ODOM's action appropriate.

9. A commenter stated that ODOM was not enforcing contemporaneous reclamation requirements in a consistent manner with all operators. The commenter suggested closure of all mines not current in meeting contemporaneous reclamation requirements (OK–561). The Director acknowledges that ODOM enforcement relating to some reclamation activities is not adequate. However, appropriate enforcement actions would not necessarily require mine closure or a cessation order in all instances.

10. One commenter alleged improprieties in the manner in which OSM notified the public and conducted the December 21, 1983 public hearing in favor of persons opposed to ODOM. ODOM also raised the first of these concerns in its "Offer of Proof" submitted to OSM (OK–555). In an effort to assure adequate notification of the public regarding the public hearing, OSM, in addition to the required **Federal Register** announcement, advised the public about the meeting through newspaper advertisements, the mailing of copies of the **Federal Register** notice to private citizens who had filed citizens' complaints, all Oklahoma coal operators, Oklahoma environmental groups, and all members of Oklahoma's Congressional delegation. The Director believes efforts to notify the public were fairly calculated to inform interested citizens and thus disagrees with these comments. Both ODOM and the commenter also alleged or implied OSM suppression of its Western Technical Center (WTC) review of Oklahoma's permitting activities (OK 577, OK 555). Although the WTC review was initiated in December 1983, the report was not made final and released until February 27, 1984. The full report has been entered into the Administrative Record (OK 601) and was a basis for several findings in the Director's decision.

The commenter, in other correspondence (OK–598, 615, 580), restated his earlier allegations and also alleged that: (a) OSM failed to notify ODOM regarding the extensions of the public comment period, (b) OSM has instigated newspaper stories and enforcement actions negative to and intended to embarrass ODOM, (c) the OSM Tulsa Field Office has been improperly managed, and that it is biased against ODOM, (d) enforcement of the law has been more stringent in Oklahoma than in other States, (e) OSM encouraged a complaint by one operator against a competitor so OSM would have negative evidence against ODOM, (f) OSM recruited participants for the public hearing biased against ODOM and that OSM acted improperly in a manner in which the public hearing was held and conducted, (g) OSM improperly assisted a coal operator in launching an attack on a competing coal operator, (h) OSM improperly issued a TDN to ODOM on the basis of a telephone call, (i) cost and time associated with OSM's processing of coal permits if OSM were to assume that aspect of the program, would be prohibitive and not time effective, (j) OSM has failed to approve program amendments requested by ODOM that would have put the ODOM program in total conformance with the Federal program.

The Director responds as follows: (a) OSM announced the reopening of the public comment period in the **Federal Register** on March 1, 1984 (49 FR 7560), and OSM personnel contacted officials of ODOM on March 8, 1984, to assure that ODOM was aware that the comment period had been extended (OK–608). ODOM personnel indicated they were aware that the comment period had been extended. The reopening was primarily for the purpose of addressing the comments concerning the WTC report, and it allowed ODOM and any other person to submit additional information; (b)–(f) These comments were not supported by any facts included with the comments or elsewhere in the record and appear to be the result of conjecture. The Director strongly disagrees with the various allegations of bias, mismanagement and other improprieties and notes that the decision made today is the culmination of study and analysis by a large number of OSM personnel in Tulsa, Denver, Washington, and other offices, with the advice and counsel of Solicitor's Office personnel in Washington, D.C. and Tulsa, Oklahoma. The Director has been aware of these allegations for several months and made special efforts to double-check the facts regarding ODOM's performance through personnel in addition to those assigned to the Tulsa OSM Field Office. The facts of record from all sources were considered and have resulted in the findings and decisions made today; (g) The allegation that OSM improperly encouraged an operator's attack on a competitor is not supported in the record and is untrue. OSM had a duty to respond to allegations, once made, of serious and multiple violations at the competitor's mines as an alleged result of preferential enforcement by ODOM. The Federal oversight inspections confirmed the existence of a large number of violations at the competitor's mines as alleged. The Director, therefore, finds no merit to the comments. (h) The Director disagrees with the allegation that a ten-day notice (TDN) was improperly issued on the basis of a telephone call. Where a citizen's telephone complaint includes allegations which, if true, would constitute a violation, it is appropriate to send a TDN to the State to prompt an investigation, which is the purpose of a TDN. In the case mentioned by the commenter, ODOM was already aware of the matter and had decided enforcement action was necessary. The

matter is now in litigation in State court; (i) Although the Director disagrees with the commenter's conjecture about the costs and results that would occur should OSM assume full control of permitting, the issue is moot because of the decision being announced today. ODOM will retain control of permitting, although under increased oversight by OSM; (j) ODOM did submit program amendments to OSM on May 13, 1983, that included amendments required by the Secretary's conditions of approval (see 46 FR 4910, January 19, 1981) plus a proposed amendment that would change Oklahoma's regulations to reduce the frequency of partial inspections on certain inactive sites.

The Director finds that while a reduced level of inspection on certain inactive sites would have allowed for increased inspection activity at other sites, the impact of this one change would not have significantly improved the other aspects of the program. See Director's Finding No. 1, Inspection and Enforcement for additional information.

11. A commenter stated that ODOM would cite violations only when accompanied by an OSM inspector (OK–545). The Director finds that ODOM inspectors have issued a disproportionate number of its citations for violations when OSM inspectors were present. See Director's Finding No. 2, at Inspection and Enforcement for a discussion in greater detail regarding ODOM's enforcement activities during field inspections.

12. A commenter requested that certain additional information be added to the public record (OK–565). The Director finds this comment to be valid and, as a result, added to the Administrative Record all documents on file in the OSM Tulsa Field Office relating to Oklahoma's permanent regulatory program since July 20, 1981, except for certain internal memoranda (OK–568).

13. One commenter stated that ODOM records indicate that ODOM has continued to process permits for a coal mining company having a large number of unabated violations on its operations (OK–551). The Director agrees with the commenter and finds the practice is more widespread than suggested by the commenter. See Director's Finding No. 3, at Permitting for a discussion in greater detail regarding ODOM's issuance of permits to applicants having unabated violations.

14. One commenter stated that ODOM lacked sufficient agency effort and expertise to carry out its regulatory functions. The commenter alleges ODOM with improper enforcement of regulations, poor application of civil penalty assessment and collection procedures, and unjustified dismissal of unabated violations. The commenter identified specific concerns including ODOM allowance of illegal diversions, inadequately treated discharges, and failure to require new source NPDES permits in certain instances (OK–570). A mine operator, in defending his company's extraction of coal without an NPDES permit (new source category) that had been applied for, stated that Oklahoma has allowed as general industry practice, pre-NPDES permit extraction of coal upon application for such a permit (OK–565). The Director notes that in the instance of the mine operator's testimony, the ODOM did not coordinate the processing of the mining permit application with the Environmental Protection Agency (EPA), and the operator did mine coal until issued a closure order by EPA for a violation of NPDES requirements. The Director concurs with the comment and finds that ODOM has shown a lack of intent to carry out its regulatory responsibilities in the areas identified by the commenter.

15. One commenter criticized ODOM's handling of petitions filed to designate lands unsuitable for mining (OK–570). Another commenter provided a history of the petitions to designate certain lands as unsuitable for mining filed by the Concerned Citizens for the Environment (CCE) and the permit in the petitioned area issued to an Oklahoma mining company (OK–564). The Director previously found that ODOM did not properly process petitions LU–82–1 and LU–82–2, and ODOM was also in error in issuing a permit for acreage in the petitioned area. ODOM has subsequently made a decision that two of ten sections of a third petition to designate lands as unsuitable for mining (LU–83–01) are suitable for surface coal mining. A decision has not been made on the remaining eight sections. ODOM has issued a permit to mine in the two sections ODOM determined to be suitable for mining and mining has commenced. In a recent evaluation of ODOM's processing of the petitions to designate lands unsuitable for mining, OSM found that ODOM did not comply with the technical requirements of Oklahoma regulations 764.11, 19, and 21(a) nor did it establish a planning process to enable objective petition decisions based on sound technical data as required. OSM therefore agrees, in part, with the comments and has taken them into consideration in the Director's Finding, State Actions on Petitions to Designate Lands as Unsuitable for Surface Coal Mining.

16. Three commenters state that ODOM has failed to enforce its regulations in a consistent manner with all Oklahoma coal producers (OK–551, OK–553, OK–561). Some of the commenters cited examples of the additional expense associated with contemporaneous reclamation and stated that operators who are allowed deferred reclamation by ODOM are being provided an unfair economic advantage over those operators who were attempting to maintain current reclamation. One of the commenters claims that such an advantage is having an unfair negative impact on his ability to compete in the coal market. Another of the commenters submitted for the record a substantial amount of documentation allegedly demonstrating ODOM's failure to enforce its regulations. The commenter alleges that practices of deferred reclamation have created a substantial backlog of unreclaimed land on which numerous violations exist. Most of these allegations were sustained during subsequent OSM investigations at a number of the operations documented by the commenter. OSM's investigation resulted in the issuance of TDN's citing 138 violations, in response to which ODOM cited over 80 violations. The Director recognizes the economic advantages that can result from lax enforcement procedures and preferential treatment by regulatory agencies. While reluctant to identify specific operators that may have profited from ODOM's inconsistent application of the regulations, the Director finds the commenter's allegations generally accurate and agrees that such practices are inconsistent with the intent and purposes of SMCRA.

17. Two commenters stated that the reclamation on their property is not capable of supporting the uses that it had been capable of supporting before surface mining took place (OK–551). Furthermore, that on three other occasions the landowners pressed ODOM on the issue of postmining vegetation without satisfaction. In reviewing the events presented by the commenters, the Director finds the mine operator did comply with the provisions of the reclamation plan as outlined in the approved initial regulatory permit. However, in his review of the approved permit and as alleged by the commenters, the Director finds no evidence that ODOM or the permittee provided the surface owners with any input in the proposed reclamation plan or proposed postmining land use.

18. One commenter identified what he felt was a discrepancy in bond amounts

set by ODOM for similar areas mined by different operators. The commenter alleges that ODOM is providing preferential treatment to some operations and that the bond set for preferred operations would be inadequate to provide for third party reclamation in the event of forfeiture. The Director recognizes the problems associated with Oklahoma's bonding system and has addressed it under "Bonding" in the findings portion of this document. The record does not contain, however, evidence adequate to support specific charges of ODOM favoritism in the setting of bond rates.

19. One commenter expressed concern for the overall inadequacy of information provided in permit applications related to water discharges from mining sites. The commenter recommends the use of a generic environmental impact statement for geographical regions that would help both industry and the public by providing a cost-effective, administratively efficient, and environmentally sound method of addressing discharge requirements in permit applications. The commenter suggests that the development of a geographically generic environmental impact statement would facilitate increased public participation and education regarding existing or new source facilities (OK–570). The Director acknowledges the commenter's concern and agrees that the interest of the public could be better served by a more complete description of water quality information in permit applications. The deficiencies of the hydrologic aspects of ODOM's permitting program are discussed in Director's Finding No. 1, Permitting.

20. One commenter stated that, according to ODOM's enforcement record logs, one coal operator had amassed $1,200,000 in outstanding assessed penalties (OK–551). According to information submitted to OSM by the ODOM on December 21, 1983 (OK–550), the operator in question has outstanding assessed penalties during the period of January 20, 1983, to December 16, 1983, of $767,970. Assessments outstanding for 1982 were not submitted by ODOM. During the same period, ODOM, through hearings or assement conferences, dismissed three penalties totalling $5,400 and reduced nine penalties a total of $36,470. During the period of January 19, 1983, to December 16, 1983, the ODOM assessed 301 NOVs or COs. The assessments for the NOVs or COs totalled $4,931,560, of which only $10,800 has been collected by ODOM. Assessments made during calendar year 1982 are not included in the above. The Director finds that the ODOM has allowed the operator in question and other operators to accumulate an inordinate amount of outstanding penalties with very few collections. These comments were considered in the Director's Finding Nos. 6 and 7, Inspection and Enforcement.

21. One commenter alleged that OSM had exceeded its proper role in the matter of a citizen's group petition to declare lands in Latimer and Pittsburg Counties as unsuitable for mining. The commenter states that although his company had been awarded a permit from ODOM, the OSM unfairly sought to damage his company by participating in the closure of one of his company's mines for reasons other than the fair administration of SMCRA (OK–565). The Director has reviewed the circumstances surrounding the submission of the petition by the citizens' group and the subsequent events eventually leading to the suspension of the commenter's mining activities. The Director finds that the petition was properly and timely filed but that ODOM violated the rules in its own approved program in denying the citizens group's petition. Since the petition was timely filed under Rule 764.15(a)(7), ODOM should not have made a decision on the permit until after completion of the unsuitability study. The Director finds that the permit was improperly issued and should have been declared void and immediately suspended by ODOM until a full review of the petition could be conducted and a decision rendered. The Director notes that the initial closure order for the commenter's mine was made by the EPA, not OSM or ODOM, when EPA discovered that ODOM had improperly issued the permit prior to EPA's approval of an NPDES permit to the applicant. The commenter's mining operation was subsequently enjoined by a State court in an action brought by the aggrieved citizens. The Director finds that ODOM's unwillingness to take appropriate action may be a factor contributing to the commenter's assertion that he held a valid mining permit and should have been allowed to mine. The Director disagrees with the commenter's allegation that OSM has taken an unfair position with respect to his mining operation.

22. Two commenters discussed ODOM's internal organization. One of the commenters stated that, although ODOM was adequately organized, it lacked the expertise necessary for the organization to fulfill its mission (OK–553). The other commenter recommended that OSM create a Federal task force to work with ODOM in reviewing permit applications and to assist ODOM in the management of its organization in order to correct past problems and to establish procedural direction (OK–551). The Director acknowledges the comments and, in reviewing his options in the matter of Oklahoma's program, has considered the merits of these comments and recommendation.

23. A commenter alleges that there are operators mining coal in Oklahoma under the guise of mining other minerals. The commenter stated that such illegal mining creates unfair competition with operators mining under the provisions of Oklahoma's coal regulations (OK–553). OSM is aware of only one operator mining a mineral other than coal in conjunction with a coal operation, and has determined that that operation is mining within the exception allowed under Section 701(28) of SMCRA for removing less than 16⅔ percent of coal in conjunction with the commercial mining of other minerals. ODOM has advised OSM that it is monitoring the operation closely to ensure that it remains in compliance with § 700.11(c) of Oklahoma's regulations. The Director requests that knowledge of any unpermitted operations not entitled to the exemption provided for in § 700.11(c) of Oklahoma's regulations be brought to the attention of ODOM or OSM for investigation.

24. One commenter was critical of the competency of ODOM inspectors, claiming they are not knowledgeable of operators problems and appear to be penalty oriented rather than interested in making the law work without excessive fines. The commenter should be aware that mine inspectors do not levy the fines. The assessment of financial penalties is done at ODOM headquarters based on the inspectors' reports about the violations. The Director finds that ODOM inspectors have received some formal inspection training and have received considerable on-the-job training during joint ODOM-OSM oversight inspections. However, ODOM has not developed an inspector training program, and inspectors are not always sufficiently trained prior to assuming inspection responsibility.

25. A commenter stated that there should be more cooperation between the State and OSM. The commenter asserts that the State appears to fear OSM rather than to appreciate OSM's oversight role. The Director agrees that, unfortunately, TDN's on specific violations and the oversight review process is often interpretated as placing OSM and States in an adversary

position. This may be inevitable since TDN's may result in OSM asserting jurisdiction over a violation, and oversight may result in a State losing primacy in some or all aspects of its program if corrective actions are not taken. In the case of Oklahoma, OSM has been very specific in its findings, recommendations, and action required of ODOM to correct the deficiencies in its program. However, although some progress has been made in certain areas, ODOM has failed to show improvement in many important aspects of its program, leading to the decision being announced today. OSM has provided and will continue to provide training to ODOM and other State regulatory authorities but expects that State regulatory authorities will respond to training with improved performance. Where performance declines, OSM will continue to take action to urge improvements, including exercise of its responsibilities to initiate Federal enforcement when necessary.

26. A commenter requested that OSM review, in connection with this 30 CFR Part 733 action, the transcript and photographs submitted by himself at the public hearing held November 19, 1981. That public hearing was conducted by OSM to solicit comments and information on the status of Oklahoma's permanent regulatory program in connection with a 30 CFR Part 733 action initiated October 8, 1981, for the State of Oklahoma. That action was terminated on April 2, 1982. The transcript and photographs submitted November 19, 1981, although received by OSM prior to the termination of the earlier 30 CFR Part 733 action, have been incorporated into the record (OK–568); however, because those documents were considered by the Director in the rulemaking of April 2, 1982 (47 FR 14152), they have not been reconsidered in today's rulemaking.

27. A commenter cited some of the findings of OSM's 1983 annual evaluation report in pointing out the State's failure to meet certain of its regulatory responsibilities. The commenter addressed the repermitting of initial regulatory program permits, bonding, inspection frequency and practices, civil penalties, lands unsuitable for mining petitions, and administrative functions. All of the areas identified by the comments have been addressed by the Director in the findings portion of this document.

28. A commenter alleged that ODOM's response to a citizen's complaint regarding a possible illegal operation resulted in the issuance of a cessation order followed by an improperly approved permit in an effort to legalize the operation. The commenter alleged that the approved permit was incomplete, did not adequately meet public participation requirements, and was technically deficient in thirteen areas. A preliminary review of the permit revealed that the processing of the permit met most of the public participation requirements. That same preliminary review showed that OSM agreed with the commenter in seven of thirteen instances of alleged technical deficiencies. The commenter also stated that the permit applicant was a different entity than the intended mine operator, and that information regarding the mine operator was intentionally omitted from the mine permit application in an attempt to conceal the name of the mine operator from the public. The mine operator is presently unable to secure permits in its own name due to currently outstanding, unabated violations. The Director finds that generally ODOM followed its public participation rules but that the technical review of the permit was substantively deficient. The Director agrees with the commenter regarding the failure of the applicant to correctly identify the name of the mine operator as required by Oklahoma regulation 778.13(a)(5). As a result of the comment, OSM issued a ten-day notice to ODOM. ODOM subsequently issued a cessation order to the permittee.

29. The commenter recommended that OSM assume responsibility for the inspection and enforcement element of Oklahoma's surface coal mining program while at the same time assisting ODOM to regain inspection and enforcement program approval. The commenter recommended that OSM institute a high quality, limited duration Federal program staffed entirely by personnel who have had no involvement in Oklahoma's present troubles. The commenter also recommended that ODOM be allowed to retain its authority, subject to Federal supervision, to process and issue new permanent program surface mining permits. The Director has considered the above comments in reaching his findings and decisions stated herein.

Director's Decision

Having reviewed and considered all available information on ODOM's implementation of the Oklahoma program, including the hearing record, OSM's oversight findings, public comments and all other contents of the administrative record in these proceedings, the Director has made the following determinations.

Oklahoma has made some progress addressing certain problems identified by OSM in the State's implementation of its program. The Director has determined that the steps taken by ODOM to resolve the identified program deficiencies demonstrate the State's intent and capabilities in certain areas to administer its regulatory program as approved by the Secretary. For this reason, the Director finds that, at this time, withdrawal of program approval is not justified.

The Director has also concluded that the reforms made by Oklahoma are not extensive enough nor progressing fast enough to ensure that surface coal mining operations in the State will be regulated in full compliance with SMCRA and the approved Oklahoma program. The State does not have adequate staff and resources to implement all aspects of its program as required. To ensure that the adverse effects of surface mining are controlled as required under SMCRA and the State program, OSM must assume the responsibility for enforcement of parts of the program in Oklahoma until the State is able to administer all segments of its program in accordance with the approved provisions. OSM will conduct increased oversight activities and provide additional assistance to Oklahoma in other program areas to ensure that the progress shown to date continues.

OSM will directly enforce the inspection and enforcement provisions of the approved State program. This will enable ODOM to reallocate its inspection and enforcement resources and concentrate its efforts in resolving deficiencies in other areas of its program. During the period when OSM conducts full Federal enforcement of the State inspection and enforcement functions, ODOM will formulate a plan to correct its inspection and enforcement problems. OSM will increase its monitoring of the State's permittting, bonding and lands unsuitable petition processing systems. Because OSM believes that it is preferable that States hold the primary responsibility for regulation of surface coal mining operations, it will provide the State with assistance and guidance as necessary to resolve identified deficiencies and to regain full authority for inspection and enforcement. The Director will designate a special representative who will be responsible for coordinating such guidance and assistance and for working with State officials to help assure that the State has full opportunity to regain these authorities.

The Director has developed a process by which Oklahoma would resume full

authority for all aspects of its approved program. Failure by Oklahoma to seek and obtain such approval or failure by the State to perform satisfactorily in the areas in which it retains enforcement authority will result in additional Federal action. During this interim period, and except as specified, the Secretary's approval of the Oklahoma program is not otherwise affected.

Following is a detailed description of the actions to be taken under the Director's decision.

OSM Actions

A. Direct Federal Enforcement of State Program

Starting on the effective date of this decision and until otherwise specified by the Director, OSM shall directly implement, administer and enforce the Oklahoma program requirements to the extent outlined below pursuant to the enforcement provisions of the Federal Act and regulations. The authority of the Oklahoma Department of Mines (ODOM) to implement the Oklahoma regulatory program is suspended with regard to those provisions listed below, with the following exception. With respect to enforcement actions initiated by the State prior to the effective date of this notice, ODOM shall have authority to take administrative actions to process outstanding violations to a final disposition (including issuing proposed assessments, assessing penalties, holding informal conferences and hearings and collecting penalties). However, any termination or vacation of enforcement actions by ODOM shall not take effect until approved by OSM.

1. OSM will conduct all inspections of all coal exploration and surface coal mining and reclamation operations on non-Indian and non-Federal lands within the State, including bond release inspections in accordance with Sections 517, 518, 521, 525, and 526 of the Federal Act, 30 U.S.C. 1267, 1268, 1271, 1275, and 1276, and 30 CFR Parts 842, 843 and 845, and 43 CFR Part 4. With respect to enforcement actions initiated by ODOM prior to the effective date of this decision, OSM will conduct follow-up inspections at all sites with outstanding violations on or after the abatement dates specified in the State-issued notices of violation.

2. OSM will issue, modify, enforce and terminate notices of violation, cessation orders and show cause orders in accordance with Sections 517, 518, 521, 525, and 526 of the Federal Act, 30 U.S.C. 1267, 1268, 1271, 1275, and 1276, and 30 CFR Parts 842, 843 and 845, and 43 CFR Part 4. With respect to enforcement actions initiated by ODOM prior to the effective date of this decision, OSM will issue a failure-to-abate cessation order if the operator has not abated or does not abate the violation by the abatement date set in the State-issued notice of violation. OSM will issue a notice of violation for any violation observed by an OSM inspector which has not been previously cited by the State. OSM will issue a cessation order for any condition or practice which creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

3. OSM will impose civil and criminal sanctions, as appropriate, for violations of the State program approved as indicated in 30 CFR 936.11 and 936.15, in accordance with Sections 517, 518, 521, 525 and 526 of the Federal Act, 30 U.S.C. 1267, 1268, 1271, 1275, and 1276, 30 CFR Parts 842–845, and 43 CFR Part 4.

4. OSM shall promptly inform ODOM of the results of all follow-up inspections conducted and of enforcement actions taken which pertain to enforcement actions initiated by ODOM prior to the effective date of this decision.

5. OSM will monitor permitting and bonding activities of ODOM. If during its review or during the inspection of active operations OSM determines that ODOM issued a permit or took other actions with respect to a permit in violation of applicable State laws, regulations, procedures or approved program requirements, OSM will:

a. Notify ODOM of the State program provisions which were not implemented properly and a date by which ODOM must take corrective measures; failure by the State to respond properly will result in appropriate additional Federal actions.

b. If applicable, notify the permittee of actions that must be taken, including interim steps, to conform to all requirements of the approved program and specify a reasonable time for the operator to take such actions. Failure by the operator to implement the corrective measures specified by OSM will lead to action to suspend or revoke the operator's permit. Exact procedures for OSM to notify the State or operator of corrective actions to be taken and for suspending or revoking an operator's permit are set forth under a new section 936.17(b) of the OSM rules for the approved Oklahoma program set forth below.

6. All activities relating to administrative review of OSM enforcement actions will be carried out pursuant to 43 CFR Part 4.

B. Increased Oversight/Assistance:

Permitting and Bonding

ODOM will continue to be responsible for all permitting actions, including the review of applications and approval of new permits and permit revisions. ODOM will continue to be responsible for processing all reclamation bond determinations, adjustments and releases.

To ensure that the State's actions in these areas are in compliance with the approved program, OSM will intensify its monitoring of the State's activities and provide feedback to the State on the adequacy of its administration of these program functions. Additionally, OSM may provide technical assistance to the State in correcting deficient permits, issuing new permits, making bond calculations and making bond release determinations. For each bond release request received by ODOM, OSM will make the bond release inspection, as noted above under (A)(1), and complete the appropriate State form recommending approval or disapproval of the release of bond in whole or in part.

Remedial Actions To Be Taken by State

To demonstrate its intent and capability to fully implement the Oklahoma program as approved by the Secretary, the State will be required to implement the following remedial actions. Failure of the State to accomplish any one or more of these remedial measures could lead OSM to take other actions including but not limited to direct Federal enforcement of additional parts of the Oklahoma program and ultimately to the Director's recommending to the Secretary that approval of the State program be withdrawn.

1. By the effective date of this decision, ODOM shall submit to OSM a list of all outstanding enforcement actions specifying the abatement date set for each violation cited.

2. In accordance with the requirements of the approved State program, ODOM shall bring to a final disposition all enforcement actions that were initiated by the State prior to the effective date of this decision.

3. Not later than twelve months from the effective date of this decision, Oklahoma shall submit to OSM a plan to reassume full authority for implementing the inspection and enforcement system of the approved program or a specified portion thereof. At a minimum, the proposal must provide specific and adequate

provisions that address the following problems:

a. Staffing: The proposal must demonstrate to the satisfaction of the Director a State commitment to hire a sufficient number of inspection and enforcement personnel to comply with all inspection and enforcement requirements of the approved program. It must affirmatively demonstrate that these personnel will be qualified.

b. Training and Supervision: The proposal must demonstrate to the satisfaction of the Director that these personnel will be trained and supervised in order to implement all inspection and enforcement requirements of the approved program.

c. Adherence to Approved Program: The proposal must include provisions, policy statements, and other affirmative evidence sufficient to assure the Director Oklahoma will be in full compliance at all times with the provisions of its approved program.

4. Starting three months after the effective date of this decision, ODOM shall submit to OSM and provide to the public a report once every three months on the State's progress in the following areas:

(a) Reevaluating existing permits, including bond adequacy;

(b) Reevaluating bond release actions since July 20, 1981;

(c) Notifying operators of additional permit application and/or bond information requirements;

(d) Processing new permits or permit revisions;

(e) Processing petitions to designate land unsuitable for mining.

5. By six months after the effective date of this decision, ODOM shall submit to OSM a plan to ensure;

(a) That permit applications are reviewed in accordance with all approved program procedures, and that problems identified by OSM in the State's permitting system do not reoccur;

(b) That bond calculations and bond release determinations are made in accordance with approved program procedures and that problems identified by OSM in the State's bond calculation and bond release systems do not reoccur;

(c) That ODOM staff involved in reviewing permit applications have the necessary expertise in technical disciplines necessary to review permit applications in accordance with approved program requirements;

(d) That the ODOM permitting section is adequately staffed with a qualified full time supervisor and that adequate staff with appropriate skills be added commensurate with permitting workload.

6. Effective April 30, 1984, the State of Oklahoma must require that all new bonds and adjustments are made payable to both "the United States Government or the State of Oklahoma." The purpose of this requirement is to enable OSM to obtain the proceeds of bond should forfeiture be required and should OSM be the regulatory authority.

7. Effective April 30, 1984, the State of Oklahoma shall take all steps necessary to ensure that all records, documents, correspondence, inspector logs, etc. are made secure and to supply copies of all documents to OSM upon request. The purpose of this requirement is to ensure that records are made available for OSM's use in following up on State enforcement actions.

Resumption of State Authority for Inspection and Enforcement Operations

In order to resume enforcement of any portion of the inspection and enforcement provisions of the State program, ODOM must formally petition the Director. The Director will entertain such a petition upon completion of the actions listed under (3) above under "Remedial Actions" and a showing of adequate progress and specifying the other remedial actions.

Prior to making a decision to allow the State to resume responsibility for any portion of the inspection and enforcement operations, the Director will schedule a public comment period and hold a public hearing as outlined under § 936.19 of the OSM rules for the Oklahoma program set forth below. On the basis of the information available to him, the Director will determine if the State will be allowed to resume enforcement of a portion of its inspection and enforcement operations.

Assuming the Director makes a favorable decision on the State's request following the public hearing and comment period, the State would assume responsibility for inspection and enforcement operations on certain mines, subject to such conditions as the Director may specify, and direct Federal enforcement would continue at all other mining operations.

After conducting inspection and enforcement operations in part for a specified period of time, the State could again petition the Director to resume inspection and enforcement operations on all mines in the State. Following a second public hearing and comment period, the Director would make a decision to grant or deny the State's request.

733 Action

The proceedings initiated by the Director on March 10, 1983, pursuant to 30 CFR Part 733 will be kept open.

Any additional findings and decisions by OSM pursuant to these proceedings will be published in the **Federal Register** and 30 CFR Part 936 will be amended accordingly.

Funding

The Director has decided that no additional grant funds will be provided to the State for initiation of new projects under the State's approved Abandoned Mined Land program pursuant to Title IV of SMCRA. OSM will review the status of any uninitiated projects which are currently funded under one or more AML construction grants as well as any high-priority proposed projects and take action as appropriate.

Because the State's responsibilities are being modified, funding under future administration and enforcement grants for implementation of the State regulatory program must reflect actual regulatory authority responsibilities. The State may submit an application for a new administration and enforcement grant based on its modified responsibilities.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary had determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 936

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, 30 CFR Part 936 is amended as set forth herein.

(Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: April 5, 1984.

Ann D. McLaughlin,

Under Secretary.

PART 936—[AMENDED]

1. A new § 936.17 is added to read as follows:

§ 936.17 Direct Federal enforcement of State program.

(a) Starting on the effective date of this decision and until otherwise specified by the Director, OSM shall directly implement, administer and enforce the approved Oklahoma regulatory program to the extent specified below. The authority of the Oklahoma Department of Mines to implement the Oklahoma regulatory program is suspended with regard to those program provisions listed under this paragraph, with the following exception. With respect to enforcement actions initiated by the State prior to the effective date of this notice, ODOM shall have authority to take administrative enforcement actions to bring outstanding violations to a final disposition (including issuing proposed assessments, assessing penalties, holding informal conferences and hearings, and collecting penalties). However, any termination or vacation of enforcement actions by ODOM shall not take effect until approved by OSM.

(1) OSM will conduct all inspections of coal exploration and surface coal mining and reclamation operations on non-Indian and non-Federal lands within the State, including bond release inspections, in accordance with Sections 517, 518, 521, 525, and 526 of the Federal Act, 30 U.S.C. 1267, 1268, 1271, 1275, and 1276 30 CFR Parts 842, 843 and 845, and 43 CFR Part 4. With respect to enforcement actions initiated by ODOM prior to the effective date of this decision, OSM will conduct follow-up inspections at all sites with outstanding violations on or after the abatement dates specified in the State-issued notices of violation.

(2) OSM will issue, modify, enforce and terminate notices of violation, cessation orders and show cause orders in accordance with Sections 517, 518, 521, 525, and 526 of the Federal Act, 30 U.S.C. 1267, 1268, 1271, 1275, and 1276, and 30 CFR Parts 842, 843 and 845, and 43 CFR Part 4. With respect to enforcement actions initiated by ODOM prior to the effective date of this decision, OSM will issue a failure-to-abate cessation order if the operator has not or does not abate the violation by the abatement date set in the State-issued notice of violation. OSM will issue a notice of violation for any violation observed by an OSM inspector which has not been previously cited by the State. OSM will issue a cessation order for any condition or practice which creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(3) OSM will impose civil and criminal sanctions as appropriate for violations of the State law, regulations and conditions of permits and exploration approvals, including civil and criminal penalties, in accordance with Sections 517, 518, 521, 525, and 526 of the Federal Act, 30 U.S.C. 1267, 1268, 1271, 1275, and 1276, and 30 CFR Parts 842, 843 and 845, and 43 CFR Part 4.

(4) OSM will promptly inform ODOM of the results of all follow-up inspections conducted by OSM and of enforcement actions taken which pertain to enforcement actions initiated by ODOM prior to the effective date of this decision.

(b) If at any time OSM determines that the Oklahoma Department of Mines issued a permit or took other actions with respect to a permit in violation of State laws, regulations, procedures or requirements of the Oklahoma regulatory program approved by the Secretary, OSM may require the State to take corrective action and may suspend or revoke an operator's permit in accordance with the following procedures.

(1) OSM will notify ODOM in writing of the actions taken which do not appear to be in compliance with the approved program, the remedial actions to be taken and the deadline for accomplishing the remedial measures.

(2) If OSM determines that ODOM's failure to comply with approved program requirements has or will likely result in any hazard to the health or safety of the public or harm to the environment, OSM will notify the permittee in writing of actions that must be taken, including interim steps, to conform to all requirements of the approved program and specify a reasonable time for the operator to take such actions.

(3) If the permittee fails to accomplish the remedial measures by the specified date, OSM will initiate action to suspend or revoke this permit.

(4) ODOM will have ten business days from the date of receipt of notification from OSM that the State appears to have violated requirements of the approved program to submit to OSM written evidence that the State has not violated those program requirements. OSM will review any submitted material and within 10 business days from OSM's receipt of the material provide written notification to the State of any modifications in the specified remedial measures or timeframes for accomplishing the remedial measures. If the evidence submitted by the State has a bearing on corrective measures required to be taken by a permittee under paragraph (b)(2) of this section, OSM will notify in writing the permittee in writing within 10 business days from receipt of evidence from the State of any modifications in the corrective actions to be taken or timeframes for completing the corrective actions. Failure by OSM to meet the timeframe shall not void any enforcement action taken by OSM under this paragraph.

(c) Any administrative review of OSM enforcement actions under this section will be carried out pursuant to 43 CFR Part 4.

2. A new § 936.18 is added to read as follows:

§ 936.18 Remedial actions.

As a prerequisite to the Oklahoma Department of Mines reassuming authority to implement the provisions of the Oklahoma surface coal mining regulatory program which are being directly enforced by the Office of Surface Mining as specified under 30 CFR 936.17, the Director requires that Oklahoma carry out the remedial measures specified below to demonstrate its intent and capability to fully implement the Oklahoma program as approved by the Secretary.

(a) By the effective date of this decision, ODOM shall submit to OSM a list of all outstanding enforcement actions specifying the abatement date set for each violation cited.

(b) In accordance with the requirements of the approved State program, ODOM shall bring to a final disposition all enforcement actions which were initiated by the State prior to the effective date of this decision.

(c) Not later than twelve months from the effective date of this decision, Oklahoma shall submit to OSM a plan to reassume full authority for implementing the inspection and enforcement functions of the approved program or a specified portion thereof.

At a minimum, the proposal must provide specific and adequate provisions that address the following problems:

(1) *Staffing:* The State proposal must include demonstration to the satisfaction of the Director of the State's commitment to hiring a sufficient number of inspection and enforcement personnel to fully comply with all inspection and enforcement requirements of the approved program. It must affirmatively demonstrate that these personnel will be qualified.

(2) *Training and Supervision:* The proposal must demonstrate to the satisfaction of the Director that these personnel will be trained and supervised in order to implement all inspection and enforcement requirements of the approved program.

(3) *Adherence to Approved Program:* The proposal must include provisions, policy statements and other affirmative evidence sufficient to assure the Director that Oklahoma will be in full compliance at all times with the provisions of the approved program.

(d) Starting three months after the effective date of this decision, ODOM shall submit to OSM a report once every three months on the State's progress in the following:

(1) Reevaluating existing permits, including bond adequacy;

(2) Reevaluating bond release actions since August 10, 1982;

(3) Notifying operators of additional permit application and/or bond information requirements;

(4) Processing new permits or permit revisions;

(5) Processing land unsuitable petitions.

(e) By six months after the effective date of this decision, ODOM shall submit to OSM a plan to ensure:

(1) That permit applications are reviewed in accordance with all approved program procedures, and that problems identified by OSM in the State's permitting system do not reoccur;

(2) That bond calculations and bond release determinations are made in accordance with approved program procedures and that problems identified by OSM in the State's bond calculation and bond release systems do not reoccur;

(3) That ODOM staff involved in reviewing permit applications have the expertise in technical disciplines necessary to review permit applications in accordance with approved program requirements;

(4) That the ODOM permitting section is adequately staffed with a qualified full time supervisor and that adequate staff with appropriate technical skills be added commensurate with the permitting workload.

(f) Effective April 30, 1984, the State of Oklahoma must require that all new bonds and adjusted bonds are made payable to the "United States of America or the State of Oklahoma."

(g) Effective April 30, 1984, the State of Oklahoma shall take all steps necessary to ensure that all records, documents, correspondence, inspector logs, etc. are made secure and to supply copies of all documents to OSM upon request.

3. A new § 936.19 is added to read as follows:

§ 936.19 Termination of Federal enforcement of State program.

(a) The Director will consider returning to Oklahoma authority suspended under 30 CFR 936.17(a) provided the following requirements have been met:

(1) The State has accomplished to the satisfaction of the Director all remedial actions specified under 30 CFR 936.18(a) and the State has demonstrated progress in satisfying the other remedial actions specified under § 936.18;

(2) The State has petitioned the Director in writing to consider returning authority to the State.

(b) Upon satisfaction of the requirements specified in paragraph (a) of this section, the Director will schedule a public comment period and hearing on the State's request.

(c) Following the close of the hearing and the comment period, the Director will announce in the **Federal Register** his decision to grant in whole or in part, or to deny the State's request.

(d) Following the Director's decision to grant, in part, or to deny the State's request, the Director will publish in the **Federal Register** further actions the State will be required to take and the timeframes for taking such actions before the Director will consider a second request from ODOM to return additional authority to the State which has been suspended.

[FR Doc. 84-9722 Filed 4-11-84; 8:45 am]

BILLING CODE 4310-05-M

Federal Register

Thursday
April 12, 1984

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Flight Crewmembers; Limitations on Use of Services; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 23174; Ref. Notice 82-10]

Flight Crewmembers; Limitations on Use of Services

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of advance notice of proposed rulemaking.

SUMMARY: This notice withdraws an FAA advance notice of proposed rulemaking which solicited information needed to form the basis of a program that the Federal Aviation Administration (FAA) was considering developing and implementing. Such a program would have gathered data that might support a determination as to whether persons age 60 or older can safely serve as pilots of airplanes operated under Part 121 of the Federal Aviation Regulations (FAR). That notice also requested information on the possibility of establishing age limitations for required flight engineers employed by Part 121 air carriers. The notice is being withdrawn because, in the absence of validly selective tests, there are not sufficient means for collecting quantitative medical and performance data on airline pilots over age 60 under conditions of actual operational stress and fatigue that do not introduce an unacceptable safety risk. In addition, the FAA has determined that it is not appropriate to proceed with rulemaking to propose a mandatory retirement age for flight engineers at this time.

FOR FURTHER INFORMATION CONTACT: Larry Bedore, Project Development Branch (AFO-240), Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone (202) 472-4621.

SUPPLEMENTARY INFORMATION:

Background

On June 23, 1982, the FAA issued Notice No. 82-10 (47 FR 29782; July 8, 1982), an advance notice of proposed rulemaking (ANPRM). The ANPRM announced that the FAA was considering developing and implementing a program to gather data that might support a determination as to whether persons age 60 or older can safely serve as pilots of airplanes under Part 121 of the Federal Aviation Regulations (FAR). Section 121.383(c) ("age 60 rule") prohibits a certificate holder from using the services of any person, and prohibits any person from serving, as a pilot on any airplane engaged in operations under Part 121, Certification and Operations: Domestic, Flag, and Supplemental Air Carriers and Commercial Operators of Large Aircraft, if that person has reached his or her 60th birthday. The issuance of ANPRM 82-10 was in response, in part, to the recommendations contained in the August 1981 report of the National Institute of Aging (NIA) Panel on the Experienced Pilots Study. The study was accomplished in response to Public Law 96-171, passed on December 29, 1979, which directed the National Institutes of Health (NIH) to conduct a study to determine whether mandatory retirement for certain pilots at age 60 or any other age is warranted.

The ANPRM also stated that the FAA was considering the possibility of establishing age limitations for required flight engineers employed by Part 121 operators. This action was in response to a suggestion received from United Air Lines, Inc. In making this suggestion, United expressed the belief that " * * * the flight safety rationale for the Age 60 rule requires the conclusion that it is safer for United's Second Officers to retire at age 60 and justifies the FAA's specifically requiring the United's third seat occupants, and those of other carriers performing comparable functions in Part 121 operations, cease services at age 60."

The "age 60 rule" was adopted on December 1, 1959. It was prompted by the recognition that certain physiological and psychological functions deteriorate with age, the significant medical defects attributable to this degenerative process occur at an increasing rate as age increases, and that it is impossible to predict accurately when an incapacitating event might occur with respect to any given individual age 60 or over. In applying that rule to air carrier pilots, it was noted at the time the rule was issued that the number of active air carrier pilots age 60 or over had been increasing and that pilots in this age group were being employed in carrying a substantial number of passengers. It was concluded that the hazards of a sudden or subtle incapacitating event inherent in the older pilot's medical condition present too serious a question of safety to allow a pilot to carry a large number of passengers in Part 121 operations. At that time the rule was not applied to other flight crewmembers.

The ANPRM requested the public to provide specific comments and suggestions to assist the FAA in determining what action, if any, should be taken regarding age limitations for flight crewmember employees of Part 121 air carriers.

Comments and Discussion

Hundreds of comments were submitted dealing with two broad issues raised by the ANPRM: Whether to conduct a study and what type of study to conduct to determine whether pilots can safely fly beyond age 60; and whether flight engineers should be subject to a mandatory retirement age.

Comments on Proposed Age 60 Study

A number of persons submitted inconclusive comments on how a study might be conducted to gather data that might support a determination as to who could safely serve as pilots after reaching age 60. Therefore, as will be discussed more fully below, the FAA is still not aware of any means by which a scientifically valid study can be done to produce information which would support such a determination.

The ANPRM suggested the possibility of conducting a study using volunteer air carrier pilots. A number of commenters point out, however, that in a study of this sort it is very important to have a statistically valid sample of the entire population to obtain good data. This is especially important in a test program whose results are likely to be later applied to a larger population. Using only volunteers for the study would likely introduce bias in the results of the study. For instance, pilots who had any fear that their performance testing or health might not be of the highest level would be far less likely to volunteer. The FAA agrees with these comments. Studying a group of volunteer pilots as proposed would not produce information with sufficient scientific validity.

Several commenters suggested enrolling the entire population of airline pilots in the study, having them undergo an extensive series of physiological and performance tests, and allowing them to work until testing showed them to be unable to safely perform their duties. Aside from the still unanswered question of what tests could be used to predict incapacitation before it happens, the FAA does not agree that it would be practical for all airline pilots to participate in such a study.

The NIA panel on the Experienced Pilots Study concluded that no medical or performance appraisal system could then be identified by Panel that would single out pilots who would pose a hazard to safety. The NIA pointed out that no protocol presently exists that could be used to determine the effects of aging on performance. In the absence of

such appraisal systems and protocol, any program involving a temporary relaxation of the age 60 rule for the purpose of collecting data on performance and medical conditions of over age-60 airline pilots would itself pose an unacceptable safety risk.

The ANPRM invited commenters to suggest tests to quantify and measure individual performance that could be developed before initiating the study. In response some commenters state that current simulators and Line-Oriented Flight Training (LOFT) simulation methods are adequate to test performance and any degradation in performance which may come with advancing age. Other commenters disagree, stating that current technology does not exist to provide adequate, quantitative tests. The Air Transport Association (ATA), for instance, states that its airline members have extensive experience in training and checking cockpit crewmembers. It points out that LOFT is a training vehicle not suited to making quantitative performance checks on individual pilots, and ATA is not aware of any way it could be modified to serve that purpose. In addition, two scientists employed by the National Aeronautics and Space Administration (NASA), state: "The performance measurement and assessment problem is a complex one not likely to be solved by some immediate breakthrough." The FAA agrees with ATA and the commenters from NASA that there currently is not sufficient means to collect performance data under conditions of stress and fatigue. To conduct a scientifically valid study, an objective means of gathering quantitative data is essential. Such a means does not currently exist, and a reasonable investment of time and money is not likely to produce such a system.

Some commenters state that the cardiovascular risks faced by airmen could be assessed using existing medical tests. These commenters note, however, that there is no battery of tests at this time that can adequately determine which individual pilots are subject to incapacitation. The FAA agrees. Further, the cardiovascular condition of pilots is only one among many areas of concern. For instance, the incidence of stroke and other manifestations of cerebrovascular disease is well known to rise dramatically with increasing age, as does degradation of the numerous performance factors. There simply are insufficient means of accurately testing whether individual pilots will become incapacitated to gather data sufficient to support a determination on the age 60 rule. As the Medical Director of a large aerospace firm states: "Until more precise methods of detecting physiological changes brought on by aging are developed, no program of data gathering or physical examination will provide meaningful information."

The ANPRM asked a number of specific questions regarding the economic and social impacts of the age 60 rule. A number of pilots and pilot organizations state that the age 60 rule produces a financial drain on pilots who must retire 5 years earlier than the usual age; therefore, over their careers more must be deducted from their pay to fund larger retirement and medical insurance funds. They state that airlines are adversely affected because they must train pilots to replace those who retire at age 60. Some commenters state that there is little work available for a pilot retired at age 60, their aviation skills disappear, and their pride suffers a blow. On the other hand, the Air Line Pilots Association (ALPA) states that working agreements with airlines include retirement and insurance plans which conform to retirement at age 60. It states that over 80 percent of its members were hired after the age 60 rule became effective in 1959, and its members have adapted personal finances and career and personal goals with age 60 retirement in mind. Several commenters state that consideration of the social and economic impact is irrelevant to making a safety determination. In considering these comments, it must be remembered that the FAA's foremost duty, as mandated by Congress in the Federal Aviation Act of 1958 (FA Act), is to promote safety of flight of civil aircraft in air commerce. Indeed, in section of the FA Act, Congress instructed the Administrator to prescribe reasonable rules and regulations governing, in the interests of safety, the maximum periods of service of airmen employed by air carriers and to "give full consideration to the duty resting upon air carriers to perform their services with the highest possible degree of safety in the public interest * * *." After consideration of all the comments, the FAA has determined that the bases for the age 60 rule outweigh any adverse social effects from the rule. Pilots have the opportunity to structure their finances and personal lives knowing that they must retire at age 60. Any adverse psychological consequences from forcing retirement on pilots who believe they still can safely perform their duties must be secondary to safety concerns.

Many commenters point out that the Federal Government has prohibited age discrimination in other areas and state that it is inconsistent with the Government's policy to allow it in this instance. The FAA is convinced that to maintain the highest standards of safety for Part 121 operations, as airlines are required to do, airline pilots should not be permitted to serve past age 60. This is based on the findings made by the FAA in 1959 that were supported by the NIA study and by a number of comments. Those findings are that advanced age does indeed adversely affect the level of safety for Part 121 operations and that currently no medical or performance tests are available which afford a sufficiently reliable basis for predicting or precluding those adverse effects in any individual case.

Comments on Proposal To Consider a Mandatory Retirement Age for Flight Engineers

Many commenters address the question of whether required flight engineers should be subject to a mandatory retirement age, as airline pilots are.

Some commenters address the question of whether flight engineers may be subject to sudden or subtle incapacitation with advanced age. Statistics such as increased medical disability payments and the rate of failing qualifying tests for flight engineer positions in the Lockheed 1011 are cited as indications of their increasing incapacitation with age. Others challenge these statistics, arguing that they are not probative of the rate that flight engineers become incapacitated with advancing age.

After review of all the comments and the information which supports the age 60 rule for pilots, the FAA is not aware of any reason to believe that flight engineers are not subject to the same risks of diminishing health and performance to which pilots are subject. The question is, rather, whether the risks associated with advancing age are compatible with the duties and responsibilities placed on the flight engineer. Of utmost importance is whether safety would be compromised by failing to place an age limitation on flight engineers. This involves the question of whether accidents would likely be caused by the sudden incapacitation of flight engineers or by subtle incapacitation coming from reduced reaction time, psychological changes, and other performance factors.

Some commenters state that flight engineers play a critical role in cockpit safety. They point out that flight engineers monitor electrical, fuel, pneumatic, and hydraulic systems

instruments which are not readily accessible to the pilots. They argue that during a critical stage of a flight, the incapacitation of a flight engineer could cause a life-threatening situation. One carrier states that today's flight engineers, in addition to their regular duties, have responsibility for irregular and emergency functions which traditionally were performed by pilots. The carrier asserts that most flight engineers today are also certificated pilots. The conclusion of these commenters is that flight engineers should be subject to a mandatory retirement age.

Other commenters are of the opinion that flight engineers are not critical to flight safety on the level that pilots are. Some point out that flight engineers' duties are very different from pilots'—that they serve in a secondary support position. For instance, it is claimed that a flight engineer never touches the primary controls of the aircraft. Others state that due to the physical location of the flight engineer in the cockpit, she or he is not able to make a substantial contribution to the critical, complex tasks of flight control. Others assert that although the cockpit crew functions may be similar, the degree of skill and reaction time required of a flight engineer is considerably less than is required of a pilot. One commenter describes the major functions as gathering information from easy-to-read instruments; problem solving using well established procedures; very little decision making; and a relatively low level of psycho-motor coordination.

One flight engineer states that the reason many flight engineers today are also certificated pilots is not for safety reasons, but rather in response to pressure on airlines from a pilot organization. According to one commenter, the additional duties performed by today's flight engineers which traditionally were performed by pilots are not required by the FAR to be performed by pilots. Further, even though a number of aircraft were required to have flight engineers at the time, the age 60 rule was not effective as to flight engineers when it was adopted. Some commenters point to the increasing use of airliners such as the Boeing 737 and 757 and the Douglas DC–9, which do not use flight engineers. They state this is an indication of the noncritical role of flight engineers; for instance, it is not vital that the flight engineer conduct visual exterior sighting or monitor the pilot's flight instruments during IFR approaches. Some commenters also point out that, under § 121.385(d), on airplanes requiring a flight engineer, at least one other flight crewmember must be qualified to perform the flight engineer's functions if he or she becomes incapacitated. Some refer to a study conducted by United Air Lines which investigated subtle or obvious incapacitation of the flight engineer in a DC–8, under a number of different circumstances. They state that United's study found that the pilot or copilot would satisfactorily assume the necessary flight engineer duties so as to effect a safe landing.

One commenter points to the Presidential Task Force which on July 2, 1981, issued a report entitled "Report of the President's Task Force on Aircraft Crew Complement." The commenter states that the Task Force concluded, after looking at accident statistics and training programs designed to reduce danger from incapacitation of crewmembers, that the flight engineer does not enhance safety.

The FAA finds that, on those modern transport category airplanes which require three flight crewmembers, the flight engineers perform duties which contribute to the safe and efficient operation of the aircraft. The flight engineer and other flight crewmembers, regardless of age, must perform normal, abnormal, and emergency functions with professionalism and timeliness to provide the highest degree of safety in the public interest.

A number of commenters submitted statistics and examples in support of their positions. One commenter asserts that flight engineers over age 60 have caused unsafe situations, such as flameout of engines due to inattention to fuel crossfeed procedures and depressurization of the cabin at high altitude due to improper techniques. On the other hand, the Flight Engineers International Association (FEIA) cites National Transportation Safety Board (NTSB) figures from 1962 to 1981, which were also provided to the FAA by the NTSB. These figures indicate that flight engineers have been cited as a causal or contributing factor in only 17 (1 percent) out of the 1,616 total air carrier accidents or incidents during the period; flight engineers were involved in 5 (3 percent) of the 164 fatal accidents; and flight engineers have been cited as a cause in only 13 (0.8 percent) of all accidents or incidents and as a factor in 4 cases. FEIA states that in its review of the reports, none of these 13 involved a flight engineer over age 60. FEIA also states that of the five cases of in-flight incapacitation in the last 10 years, none jeopardized safety.

Commenters raised some other safety considerations. Many state that if flight engineers may be older than 60, pilots on reaching age 60 may downbid to those positions, with several adverse effects. Some commenters believe that having a former captain in the flight engineer position can lead to poor relations within the cockpit. They assert that former captains would find it difficult to adjust to a subordinate position. One commenter states that many accidents are attributable to poor crew coordination. He asserts that the psychological effects on a captain assuming a position of lesser authority as a flight engineer will contribute to poor coordination. Another commenter states that, at least in United Air Lines, if flight engineers can serve past age 60, shortly all flight engineers would be over 60 and that soon the higher paying aircraft (which presumably would be flown by those with the most seniority) would have crews with average ages in the high 50's or even 60's. Other commenters state that these concerns are misplaced. They state that captains have returned to the flight engineer position in the past, for instance, because of a restricted medical certificate or a disciplinary downgrade, with no problems. Some commenters indicate that in an emergency, safety would be enhanced by having a flight engineer with the valuable experience of having served as a captain. They also assert that cockpit crew relations would not be adversely affected, though an internal realignment may take place. On the other hand, United Air Lines indicated that safety is enhanced by a career progression program in which crewmembers advance from flight engineer through copilot to captain. It states that above-age 60 flight engineers occupy the best training seats for future airline captains.

After review of all the comments, the FAA is unable to determine that flight engineers should be subject to the same age limits as pilots in command and seconds in command. While a flight engineer has important duties which contribute to the safe operation of the airplane, he or she may not assume the responsibilities of the pilot in command. In the event of the incapacitation of the pilot in command, the second in command would be expected to assume command of the aircraft.

There are a number of comments on the economic and social effects of a mandatory retirement age for flight engineers. Many note that flight engineers retiring at 60 would be drawing Social Security benefits rather than paying into the system. Some commenters state that pension plans are not geared to early retirement. Others

state that younger flight engineers, particularly the many who are now furloughed, would have better employment and advancement opportunities with such a rule. Others also state that Vietnam veterans are being discriminated against because they are in the group of young flight engineers who have been furloughed. Some commenters state that it would be a hardship on some airlines to have to replace their many over-60 flight engineers; others state that when downbidding is allowed it is a burden on airlines to retrain captains to serve as flight engineers and to pay them the higher salaries that are commensurate with their seniority.

Many commenters state that there are physiological and psychological consequences from forced retirement of a person still capable of working. Some charge that subjecting flight engineers to an age 60 rule would be blatant age discrimination, while others charge that excepting flight engineers from such a rule is discriminatory to pilots.

Reasons for Withdrawal

There can be no real dispute that, with advancing age, the risks of suffering incapacitating medical events and of adverse psychological, emotional, and physical changes rise. Although risks of incapacitation are present in younger people, overall they are so low as to be acceptable. At some point in the aging process, the risk becomes unacceptably high. The NIA Panel attached no medical significance to age 60, or to any other specific age, as a mandatory retirement age. The Panel concluded that age-related health changes endanger aviation safety and further concluded that no medical or performance appraisal system can be identified that would single out pilots who would pose a hazard to safety. The Panel recommended retaining the age 60 rule. The FAA agrees. The conclusions reached by the NIA Panel and the supportive statements contained in the report point to a present inability to distinguish those pilots who, as a consequence of aging, present a threat to air safety from those who do not. Furthermore, public comments, expecially those received from two experts from NASA and the Medical Director of a large aerospace firm, agree that there are currently no methods to obtain medical and performance data on older pilots which would provide significantly meaningful data to consider relaxing the age 60 rule. The inability to detect or predict with precision an individual's risk of sudden or subtle incapacitation, in the face of known age-related risks, counsels against relaxation of the rule.

Accordingly, as recommended by the NIA Panel, the present age limit for air carrier pilots in command and seconds in command is being retained. While science and technology may at some future time develop accurate, validly selective tests which would allow a scientific study to be made to accurately determine whether the age 60 rule should be changed, safety cannot be compromised in the meantime for lack of such tests.

The FAA has also determined not to propose an age beyond which flight engineers should not be permitted to serve. Available data is not sufficient in and of itself to support imposing a mandatory retirement age on flight engineers. The NTSB provided to the FAA air carrier accident/incident data in which the flight engineer was either a cause or a factor. The NTSB data for the years from 1962 through 1981 showed a total of 1,616 accidents/incidents, in which the flight engineer was cited as a cause in 13 cases and as a factor in 4 cases. It should be noted that, as FEIA states, the flight engineers involved in these accidents/incidents were younger than 60 years of age.

The FAA recognizes the concerns raised by representatives of both industry and labor that downbidding and cockpit discipline problems could impact safety. The FAA's air carrier operations inspectors will be sensitive to these concerns during their monitoring activities and will report any such finding. If this monitoring shows examples of significant safety problems created by the presence of downbidding flight engineers, remedial action through the rulemaking process will be actively pursued.

This rulemaking action has been classified as significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Withdrawal of Advance Notice

Accordingly, I conclude that the FAA should not proceed with a data-gathering program on senior pilot flight crewmembers or with rulemaking based on the advance notice of proposed rulemaking. Therefore, Notice No. 82–10 is withdrawn. This action does not preclude the FAA from considering rulemaking in the future or commit it to any future course of action on this subject.

(Sec. 313, 601, 602, 604, and 609 of the Federal Aviation Act of 1958 (as amended) (49 U.S.C. 1354, 1421, 1422, 1424, and 1429); and 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 2, 1983))

Issued in Washington, D.C., on March 30, 1984.

William T. Brennan,

Acting Director of Flight Operations.

[FR Doc. 84–9807 Filed 4–10–84; 8:45 am]

BILLING CODE 4910–13–M

federal register

Thursday
April 12, 1984

Part V

Nuclear Regulatory Commission

10 CFR Parts 2 and 50

Regulatory Reform Proposal Concerning Rules of Practice and Rules for Licensing Production and Utilization Facilities; Request for Public Comment

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 50

Request for Public Comment on Regulatory Reform Proposal Concerning the Rules of Practice, Rules for Licensing of Production and Utilization Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for public comment on suggestions for procedural changes in nuclear power plant licensing process.

SUMMARY: In November, 1981, the NRC created a Regulatory Reform Task Force charged with conducting a detailed evaluation of the NRC licensing process for nuclear power plants. The Commission directed the Task Force to develop proposals both for legislation and for rule changes to improve the process by which nuclear power plants are licensed.

The Task Force reviewed a large number of proposals for reforming the licensing process through rule changes. A number of such proposals were forwarded to the Commission in a Draft Report in November, 1982.[1] The fact that a proposal was included in the Draft Report indicates only that a consensus of Task Force members believed that further evaluation of the proposal was appropriate. Members of the Task Force frequently held strongly differing views on the merits of individual proposals. Hence, presentation of the proposal does not signify that the particular proposal necessarily commanded the support of a majority of Task Force members.

The Draft Report was reviewed internally by a Senior Advisory Group, composed of NRC personnel, and by an Ad Hoc Committee for the Review of Nuclear Reactor Licensing Reform Proposals. The latter group, established by the Commission, was composed of non-NRC persons with experience in the Commission's licensing process and procedures. In both the Senior Advisory Group and the Ad Hoc Committee, different members held quite different views on the merits of particular proposals, and so advised the Commission.

On November 17, 1983, the Commission discussed the package of proposals at a public meeting. The Commission decided, based on all the information before it, to solicit public comment on the entire package of proposals before deciding on a particular course of action with respect to any or all of the individual proposals.

The individual proposals thus are not Commission proposals, nor do they necessarily command the support of a majority of the Task Force, the Senior Advisory Group, or the Ad Hoc Committee. Rather, they are suggestions for improvements in the licensing process which have been brought to the Commission's attention and on which the Commission now seeks the views of the public.

As a drafting matter, the proposals have been cast in the form of "proposed rules." It should be emphasized, however, that the present document is *not* a notice of proposed rulemaking. If the Commission decides, based upon the comments received, that a particular proposal warrants adoption through rulemaking, then a formal notice of proposed rulemaking will be required.

DATES: Comment period expires June 11, 1984. Comments received after June 11, 1984 will be considered if it is practical to do so, but assurances of consideration cannot be given except as to comments filed on or before the due date specified herein.

ADDRESS: Submit written comments and suggestions to: the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Examine copies of comments received at: the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: James R. Tourtellotte, Regulatory Reform Task Force, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: (202) 492–7678.

SUPPLEMENTARY INFORMATION:

Introduction

In November, 1981, the NRC created a Regulatory Reform Task Force charged to conduct a detailed evaluation of the NRC licensing process for nuclear power plants. The Commission directed that the Task Force develop proposals for legilation and for regulatory changes to improve the licensing process for nuclear power plants. The Task Force conducted its review and submitted a report identifying certain deficiencies in the existing licensing process and containing proposals for amendments to the NRC's regulations to remedy these deficiencies. This notice of proposed rulemaking contains amendments to the NRC's regulations designed to implement the Task Force's recommendations.

The Regulatory Reform Task Force found that the quality of the existing hearing process can and should be improved. The three principal parts of the hearing process, i.e., the screening process, the actual conduct of the hearing, and the decisionmaking process, were closely examined and changes in all three areas were proposed. In the discussion which follows, the improvements proposed within eath of the three categories are summarized. A section-by-section analysis of the proposed changes follows. The section-by-section analysis explains the major proposed changes in more detail. However, minor conforming changes of an editorial or insignificant nature are not broken out for specific discussion.

Many of the proposed changes are applicable only to "initial licensing proceedings" (as defined in proposed § 2.4(r)) and, therefore, do not affect proceedings under Subpart B of 10 CFR Part 2, "Rules of Practice for Domestic Licensing Proceedings" to modify, suspend or revoke a license. For example, the proposed creation of the screening Atomic Safety and Licensing Board to rule on hearning requests, petitions for leave to intervene and contentions is applicable only to initial licensing. However, certain proposed changes will, if adopted, affect all agency proceedings, including enforcement proceedings. Examples in this category include the proposed requirement that judicial standards for determining whether a potential party has standing will be applied to determine whether a hearing request or intervention petition should be granted and the proposed elimination of the Atomic Safety and Licensing Appeal Board as an intermediate appellate tribunal.

No amendments to Subparts D and E of Part 2 are proposed at this time. Those subparts specify the additional procedures applicable to standardized plant designs subject to the requirements of Appendices M and N of 10 CFR Part 50. Standardization is the subject of a separate rulemaking. Any necessary changes to Subparts D and E will be addressed in that rulemaking.

I. Summary of Improvements

A. Screening Process

For purposes of the discussion which follows, the "screening process" refers to the process for determining whether a hearing should be held and, if so, what issues should be heard by the presiding

[1] The Draft Report contained proposed rule changes concerning backfitting, the hearing process, separation of functions/*ex parte*, and participation of the NRC staff in initial license proceedings. It also included legislative proposals.

officer. The Regulatory Reform Task Force identified three major ways in which the screening process could be improved. The first major improvement is the proposed creation of a screening Atomic Safety and Licensing Board ("screening board"). In initial licensing proceedings all requests for hearings, petitions for leave to intervene, and proposed contentions will be referred to a screening board. Under existing practice, the presiding officer designated to conduct the hearing usually rules on all such requests. The screening board will determine whether standing requirements have been met, whether a hearing or petition for intervention should be granted and which contentions are admissible. Late filed contentions and issues which the presiding officer conducting the hearing proposes to consider *sua sponte* will also be referred to a screening board for a determination of admissibility. As a central "clearinghouse" for hearing requests, intervention petitions, and contentions, the screening board will add a necessary measure of predictability to such rulings. Under present practice, this predictability is lacking because intervention rulings are made by numerous Atomic Safety and Licensing Boards. Public comment is particularly invited on the advisability of creating a screening board or whether the existing system permitting the presiding officer designated to conduct the hearing to rule on intervention matters and raise issues *sua sponte* should be retained.

Second, under existing Commission practice, a person who fails to meet judicial standards of standing may nonetheless be permitted to intervene (or to trigger a hearing) in Commission proceedings. See *Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI–76–27, NRC 610 (1976). The proposed rule requires presiding officers to apply judicial requirements for standing in determining whether a person may trigger a hearing or intervene in an ongoing proceeding. Requiring a person to demonstrate standing will help ensure that all participants in NRC proceedings have an interest in the proceeding sufficient to justify their participation in the proceeding and the necessary commitment of additional Commission resources.

The third proposed improvement would raise the threshold for the admission of contentions to essentially require the proponent of the contention to tender evidence suggesting the existence of a genuine factual dispute. This is consistent with Supreme Court precedent. See *Costel v. Pacific Legal Foundation*, 445 U.S. 198, 214 (1980), citing *Weinberger v. Hynson, Westcott and Running, Inc.*, 412 U.S. 609 at 620–621 (1973). Under existing regulations, once a petitioner is admitted to the proceeding he or she is only required to draft contentions which set forth the basis for the contentions with reasonable specificity. 10 CFR 2.714(a)(3). No inquiry is made into the merits of the contention and the petitioner is under no obligation to demonstrate the existence of some factual support for the contention as a precondition for its acceptance. In practice, this requirement may be met by copying contentions from another proceeding involving another reactor. Thus, an intervenor need not fully understand a contention and frivolous contentions are easily admitted. The increased evidentiary threshold for admission of contentions will ensure that frivolous contentions are not litigated in NRC proceedings.

B. Conduct of the Hearing

A number of improvements are proposed to improve the conduct of the hearing itself. First, under the proposed rules, pretrial discovery will be more rigorously controlled by presiding officers. To prevent abusive or burdensome discovery, a party will be required to sign each discovery request, answer, objection, or motion. The signature certifies, among other things, that the party's discovery filing is based on good faith and not primarily for the purpose of delay. Permissible discovery against the staff will also be appropriately limited to matters which form the basis for the staff's position on a given issue; discovery requests may not require the staff to perform additional work on matters beyond what is needed to support the staff's position on the issue or to explain why matters not relied on by the staff were not considered.

Second, substantial changes are proposed in how evidence is presented in initial licensing proceedings. To the fullest extent possible, all evidence, direct and rebuttal, will be submitted in writing; a special need for live testimony, including cross-examination, must be demonstrated. In this regard, cross-examination plans which assure that cross-examination would be meaningful must be submitted to assist the presiding officer in deciding whether to permit cross-examination. Legal scholars and critics of the current system have suggested that the scientific and technical issues, well stated and properly understood, may generally be amenable to resolution on written pleadings, that credibility of the witnesses usually is not a central issue and that testimony of a scientific nature is well-suited to being reduced to writing. Under existing practice most *direct* testimony in licensing proceedings is submitted in writing. See 10 CFR 2.743(b). Limitations on cross-examination are also desirable because, although the existing rules authorize the Licensing Boards to Control cross-examination, the Boards often fail to do so. In addition, in practice, the value of cross-examination is often diminished by unskilled questioning. This results in a cluttered trial record.

Third, a new provision is proposed which would allow the screening board or the presiding officer conducting the hearing to appoint a panel of technical subject matter experts. The screening board could request the assistance of the experts to help it determine whether there is a technical basis for reaching a conclusion that a proposed contention raises a genuine issue of disputed fact. The presiding officer conducting the hearing could appoint a panel to sit with him or her to hear the evidence on a particular issue. The panel would then prepare a report with recommendations or conclusions. Panel members could be appointed from inside or from outside the agency, but each member would be subject to the existing notice and disqualification procedures contained in § 2.704.

A number of miscellaneous improvements are also suggested. The *sua sponte* rule, which allows presiding officers to raise issues on their own motion, would be tightened so that in all but the most unusual situations the scope of the hearing woud be confined to the disputed issues of fact properly placed into controversy by the parties; to encourage the use of summary procedures to dispose of issues prior to hearing, summary disposition motions could be filed at any stage of the proceeding; motions which are not controverted by other parties must be granted; and an express provision is added to recognize that the Commission may designate a qualified hearing examiner to preside in initial licensing proceedings in lieu of a three member licensing board.

C. Improvements to the Decisionmaking Process

Several improvements to the decisionmaking process are also proposed. The most fundamental is the proposed removal of the Atomic Safety and Licensing Appeal Board as an independent, intermediate administrative appellate tribunal. The

Appeal Board will function as a staff office of the Commission with the responsibility to draft proposed decisions for Commission review. It will no longer function as an administrative "court of appeals." This change will permit the Commission itself to expeditiously resolve the important policy questions which frequently arise in the course of its licensing and enforcement proceedings. In addition, the Commission will also be able to exercise a greater degree of supervision over the conduct of its proceedings. Finally, removal of the Appeal Board as a separate appellate tribunal should also expedite final agency action on adjudicated matters by eliminating a layer of review.

Another major improvement is the proposed addition of a rule which will allow the expeditious codification of generic factual issues resolved in initial licensing proceedings as regulations. This rule is intended to preclude the relitigation of generic factual issues resolved in one proceeding in subsequent proceedings involving similar facilities or reactors. The rule would only apply to generic factual issues which are litigated to a conclusion, i.e. issues not dismissed on summary disposition or withdrawn by a party, to ensure that the merits of the issues have been fully considered in the proceeding. Once resolved, the generic issue will be expeditiously issued as a proposed rule on the basis of the hearing record with a 45-day period for public comment. If the Commission adopts the rule after considering the public comments, the generic issue could not be litigated in subsequent adjudications unless special circumstances could be shown pursuant to § 2.758.

The third proposed improvement would prohibit an intervening party from filing proposed findings of fact and conclusions of law, or filing exceptions to initial decisions, on issues not placed in controversy by that party. Present practice permits any party to file proposed findings, conclusions of law, and exceptions on any issue in the proceeding, including issues not raised by it. The purpose of this change is to ensure that presiding officers and the agency appellate tribunal, i.e. the Commission, are able to focus on the disputed issues in the proceeding as presented and argued by the parties with the chief interest in the issue. The proponent of a contention is expected to present and argue its case on the contention much more persuasively than a party who elects to argue an issue only in legal papers filed after the evidentiary portion of hearing is completed. These filing limitations are expected to improve the decisionmaking process by allowing presiding officers and the Commission to focus their energies on the arguments made by the proponents (and opponents) of each particular issue.

Fourth, the immediate effectiveness rule will be restored for all initial decisions. Following the TMI accident, the rule was substantially modified to require a limited Appeal Board or Commission review of initial decisions authorizing construction permits or operation at more than 5 percent of full power. Experience gained since the TMI accident has shown this restriction on effectiveness has not had a positive effect on safety and has been procedurally cumbersome. Restoration of the immediate effectiveness rule does not affect the right of a party to seek a stay of an initial decision pursuant to the provisions of § 2.788.

Finally, under existing practice, the Director of Nuclear Reactor Regulation or Nuclear Material Safety and Safeguards, as appropriate, issues licenses authorized by initial decisions. Under the proposed rules, responsibility for license issuance will rest with the Executive Director for Operations, the chief staff officer of the Commission.

II. Section-by-Section Analysis

1. Definitions (10 CFR 2.4)

Two new definitional sections are proposed. Proposed § 2.4(r) defines "initial licensing" in accordance with the guidance contained in the 1947 Attorney General's Manual on the Administrative Procedure Act. See pp. 50–51 of the Manual. In general, all agency proceedings for the issuance or amendment of licenses fall within the definition, but proceedings in the nature of enforcement or renewal actions are not included. The definition of "initial licensing" is added so that procedures applicable to "initial licensing" are clearly distinguished from procedures which may be applicable to other types of proceedings. Proposed § 2.4(s) defines the term "presiding officer." This term is used in numerous provisions in Part 2, but has heretofore not been explicitly defined. Note that the screening atomic safety and licensing board (see proposed § 2.721) is a "presiding officer."

2. Notice of Hearing (10 CFR 2.104)

The primary purpose of revised § 2.104 is to limit presiding officers to deciding disputed issues of fact. Section 2.104 has also been reorganized to clearly distinguish between different types of applications. Paragraph (a) is limited to mandatory construction permit proceedings. The major difference between this provision and the existing provisions applicable to construction permit proceedings is that in contested proceedings, except for issues which must be considered under NEPA, presiding officers will consider only disputed issues placed in controversy by the parties. Therefore, the notice of hearing will no longer state that in contested proceedings the presiding officer will automatically consider the issues listed in existing § 2.104(b)(1). Paragraph (b) of revised § 2.104 is applicable to all other notices of hearing for proceedings within the scope of subpart A of Part 2, except for antitrust proceedings held in connection with a CP or OL license. (The notice for antitrust proceedings is contained in revised § 2.104(c)). Proposed § 2.104(b) differs from the existing provision (§ 2.104(c)) primarily in that, as in the case of CP proceedings, except for NEPA issues which must be considered by the presiding officer, only controverted issues will be considered by the presiding officer. As noted above, proposed § 2.104(c), specifies the notice of hearing for antitrust proceedings and is substantially the same as the existing provision (§ 2.104(d)). Proposed paragraph (d) is identical with existing paragraph (e).

3. Notice of Opportunity for Hearing (10 CFR 2.105)

Proposed § 2.105, "Notice of Opportunity for Hearing," differs in several minor respects from the existing provision. First, proposed § 2.105(e)(2) reflects the creation of the screening atomic safety and licensing board (see proposed § 2.721) by specifying that the screening board will rule on requests for hearing. Second, a new paragraph (d)(3) is proposed which provides that the notice of opportunity for hearing will state that a person's participation in any hearing held on the proposed action will be limited to the issues specified in the notice of hearing, unless good cause is shown for considering additional issues. This provision is intended to ensure that persons whose interest may be affected by the proceeding raise issues on a timely basis by responding to the notice of opportunity for hearing rather than waiting until a notice of hearing, if any, is subsequently published. Third, paragraph (e)(1) is changed to designate the Executive Director for Operations as the individual who may take the proposed action if a timely request for hearing is not filed. The existing provision designates the Director of Nuclear Reactor Regulation or Director

of Nuclear Material Safety and Safeguards. The purpose of this change is to enhance the concept of a strong Executive Director for Operations and ensure management accountability for licensing. Finally, the notice published pursuant to this section will now be called a "notice of opportunity for hearing" rather than a "notice of proposed action."

4. Exceptions (10 CFR 2.700a)

A new paragraph (c) is added to § 2.700a, "Exceptions," which provides that the Commission, notwithstanding any other provision to the contrary in Part 2, may prescribe such alternative procedures as it deems necessary in initial licensing proceedings. The notice of hearing of opportunity for hearing will specify the procedures. This provision is intended to allow the Commission to make full use of the procedural flexibility allowed under the Administrative Procedure Act. See *Vermont Yankee Nuclear Power Corporation* v. *NRDC*, 435 U.S. 519 (1978).

5. Designating of Presiding Officer, Disqualification, Unavailability (10 CFR 2.704)

Minor revisions to § 2.704 are proposed to specify that an administrative law judge may be designated by the Commission to preside at hearings. A conforming change in paragraph (d) is also proposed to allow the Chief Administrative Law Judge to designate a replacement for an administrative law judge who may become unavailable during the course of a proceeding.

6. Requests for Hearings and Petitions to Intervene (10 CFR 2.714)

Section 2.714 has been reorganized and substantially modified. The major changes from the existing intervention rule are as follows:

- A potential intervenor must meet judicial standards for standing in order to be admitted to an NRC proceeding. Proposed § 2.714(f). The purpose of this provision is to abolish the concept of discretionary intervention which the Commission first recognized in *Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2) CLI–76–27, 4 NRC 610 (1976).
- Contentions must be filed at the time the request for hearing or petition for leave to intervene is filed. Proposed § 2.714(g)(2). The existing provision requires only that an "aspect" of the subject matter of the proceeding be identified at the time the hearing request or intervention petition is filed and final contentions need not be filed until 15 days prior to the special prehearing or prehearing conference. The purpose of requiring the filing of contentions with the request for hearing or petition to intervene is to require the identification of issues as early as possible in the proceeding. The applicant's safety and environmental reports are publicly available by this time in the Commission's Public Document and Local Public Document Rooms. However, since the staff's environmental reviews are not completed until after the time for filing requests or petitions has passed, amended or additional contentions based on the staff environmental documents may be filed if the data or conclusions differ significantly from those in the applicant's documents. Proposed § 2.714(g)(1)(ii). Non-timely filings of contentions will not be entertained absent a determination by the screening ASLB or other presiding officer designated to rule on contentions that the filing should be permitted based on a balancing of the factors listed in paragraph (c)(4). The factors to be considered in ruling on late filed contentions are identical to those specified in the current rule. Therefore, the screening ASLB or other presiding officer will have a considerable body of NRC case law to assist it in making any such determinations.
- The threshold for admission of contentions is raised. Proposed contentions must show that a genuine dispute exists with the applicant on an issue of law, fact or policy and the showing must include references to the *specific* portions of the application which are disputed. The contention must be supported by a concise statement of the alleged facts or expert opinion, together with specific sources and documents of which the petitioner is aware, which will be relied on to establish the facts or expert opinion. The purpose of the increased threshold is to ensure that the resources of all parties are focused on real rather than imaginary issues.
- A provision has been added (proposed § 2.714(i)(4)) which provides that a contention raising only an issue of law will not be admitted for resolution in an evidentiary hearing but shall be decided on the basis of briefs and/or oral argument.
- In initial licensing proceedings, the screening board will rule on requests for hearings, petitions for intervention and contentions contained therein. (Proposed § 2.714(j)). In other types of proceedings, e.g. enforcement proceedings, these rulings will be made by the presiding officer designated by the Commission.

7. Appeals From Certain Rulings on Petitions for Leave To Intervene and/or Requests for Hearing (10 CFR 2.714a)

Section 2.714a is proposed to be modified so that appeals of such rulings lie with the Commission rather than the Atomic Safety and Licensing Appeal Board. This change is consistent with the removal of the Appeal Board as an intermediate appellate tribunal.

8. Consolidation of Parties of Construction Permit or Operating License Proceedings (10 CFR 2.715a)

Proposed § 2.715a is expanded in scope. Absent a showing by a party that its rights would be prejudiced, the proposed rule would require presiding officers to consolidate parties in initial licensing proceedings after first offering the parties an opportunity to consolidate voluntarily. State and local government entities appearing in NRC proceedings represent unique interests. Therefore, the Commission would not expect presiding officers to consolidate these participants with private intervenors.

9. Subpoenas (10 CFR 2.720)

Discovery against the NRC staff is tightened in proposed § 27.20(h)(2)(ii). Specifically, while interrogatories may seek to elicit factual information reasonably related to the staff's position at the hearing, interrogatories may not be used to require that staff to explain why alternative data, assumptions or analyses were not relied on in the staff review. In addition, interrogatories may not require the staff to perform additional research or analytical work beyond that needed to support the staff's position on any particular matter. These provisions are intended to avoid the unnecessary expenditure of scarce staff resources at pretrial stages of the hearing on matters not directly pertinent to the staff's position in the hearing. Of course, it would still be permissible for a party to argue at the hearing that the staff should have performed additional studies or relied on alternative data. Finally, a specific reference is added regarding the Commission's Public and Local Public Document Rooms. The purpose of this provision is to make clear that if an interrogatory requests information already in the Public Document Rooms, such information is "resonably obtainable from any other source" and, therefore, need not be provided. A sufficient answer to such a question would be the title and page reference to the relevant document.

10. Atomic Safety and Licensing Boards (10 CFR 2.721)

Section 2.721 is revised to authorize the establishment of one or more screening atomic safety and licensing boards. A screening board will be composed of three members with the same qualifications as members of a regular atomic safety and licensing board. The principal function of the screening board will be to rule on requests for hearings, petitions for leave to intervene and contentions in all initial licensing proceedings. The screening board may hold prehearing conferences, appoint expert panels and utilize any other procedures available to presiding officers to enable it to rule on hearing requests, intervention petitions and contentions. The screening board will then transfer the proceeding with the list of admitted issues to the presiding officer designated to conduct the hearing. If no party has demonstrated standing and filed an admissible contention, the screening board will dismiss the proceeding except in construction permit applications in which there is a mandatory hearing requirement. Late filed contentions and revised or new contentions filed after the staff's environmental documents are issued will be referred back to the screening board for a determination of admissibility, even if filed after the hearing has commenced. Similarly, issues which the presiding officer proposes to raise *sua sponte* during the course of a proceeding will be referred to the screening board for a determination of admissibility.

The screening board will serve as a centralized and specialized forum for resolution of the difficult questions faced by presiding officers in resolving issues of standing and the admissibility of contentions. It is expected that the screening board(s) will develop substantial expertise in resolving these issues and add a measure of predictability and consistency to intervention rulings. This has been difficult to achieve under present practice because a multiplicity of licensing boards now make these rulings.

A new paragraph (e) is also proposed to explicitly recognize that the Commission may appoint a qualified administrative law judge in lieu of an atomic safety and licensing board to preside in its proceedings.

11. Special Assistants to the Presiding Officer and Expert Panels (10 CFR 2.722)

Section 2.722 is revised to permit the presiding officer, including a screening board, to appoint an expert panel consisting of one, three or five members with specific subject matter expertise. The panel will assist the presiding officer designated to conduct the hearing by hearing evidentiary presentations, either oral or written, within its subject matter expertise and may examine the witnesses of the parties as a technical interrogator. The panel will advise the presiding officer of its recommendations and conclusions through an on-the-record report. The report is advisory only. In the case of an expert panel appointed by a screening board, the panel will assist the board in determining whether sufficient evidence had been tendered to conclude that there exists a genuine issue of disputed fact.

It is expected that expert panels will be used only in those situations when the subject matter of the issue at hand is both highly technical and not within the general expertise of the technical members of the licensing board conducting the hearing. The proposed rule provides for one, three or five expert panel members to avoid an evenly divided panel report. Panel members may be selected from either inside or outside the agency.

All are subject, however, to the notice and disqualification provisions described in § 2.704.

12. Motions (10 CFR 2.730)

A new paragraph is added to § 2.730 to expressly provide that uncontroverted motions shall be granted by the presiding officer to the extent authorized by law. In addition, the term "presiding officer" is substituted for the narrow reference to "the Board" in paragraph (e).

13. Examination of Experts (10 CFR 2.733)

A minor addition to § 2.733 is proposed to make clear that examination and cross-examination of expert witnesses by technically qualified individuals may be permitted only to the extent that oral direct or cross-examination is otherwise permitted. See the discussion of revised § 2.743.

14. General Provisions Governing Discovery (10 CFR 2.740)

Section 2.740 has been revised to ensure that presiding officers have ample tools to prevent and remedy unnecessary, burdensome or abusive discovery. Proposed paragraph (b)(2) allows the presiding officers upon his or her own initiative, or upon a motion for a protective order, to limit the use of discovery, including the number of interrogatories a party may serve. In addition, proposed paragraph (g) requires that every discovery request, response, objection thereto, or motion for a protective order be signed by the party or its authorized representative. The signature constitutes a certification that, among other things, the signatory has read the filing and that it has been filed in good faith and not primarily to cause delay. Failure to sign negates the effect of the document. The presiding officer may impose sanctions if a certification is falsely made.

15. Evidence (10 CFR 2.743)

Section 2.743 is substantially revised. The major proposed changes, applicable only to initial licensing proceedings, are as follows:

- Direct and rebuttal testimony will be submitted in written form unless otherwise ordered by the presiding officer for good cause. A schedule for the filing of such testimony is established in proposed paragraph (b)(3).
- Cross-examination is permitted only upon the request of a party filed within 10 days after service of the written testimony concerning a particular issue. Cross-examination is available to an intervening party only on those issues on which the requesting party has proffered an admissible contention. This is a departure from the present practice in which oral cross-examination is the rule rather than the exception and which does not necessarily limit cross-examination by an intervening party to issues proffered by it. The NRC staff, a governmental representative admitted to the proceeding pursuant to § 2.715(c), and the license applicant may move to cross-examine on any admitted contention in the proceeding. The proposed rule places the burden of establishing the need for cross-examination on the requesting party, including the NRC staff, a governmental representative and the license applicant. A motion to cross-examine, among other things, must include a detailed cross-examination plan and a statement as to why written testimony could not establish the same points. See proposed paragraphs (b)(5)–(8). The cross-examination plan will be kept confidential by the presiding officer until the completion of the cross-examination, if allowed, at which time it will be inserted into the record. This provision is intended to ensure an adequate record is made for possible appellate review of orders granting or denying cross-examination.

16. Authority of Presiding Officer To Dispose of Certain Issues on the Pleadings (10 CFR 2.749)

Section 2.749 is modified in two respects. First, the rule as proposed would permit summary disposition motions to be filed at any time during the proceeding rather than, as provided in the existing rule "within such time as may be fixed by the presiding officer." This change is intended to give the parties maximum flexibility to file such motions and to make it possible to terminate litigation at any point during the proceeding when it becomes apparent that a genuine issue of fact is no longer in dispute. Second, the proposed rule eliminates the present prohibition against determining on summary disposition the ultimate issue as to whether a construction permit should issue. This prohibition is unnecessary.

17. Proposed Findings and Conclusions (10 CFR 2.754)

Paragraph (c) of § 2.754 is revised to limit filings of proposed findings of fact and conclusions of law by parties who do not have the burden of proof or who have only a limited interest in the proceeding to those issues placed in contention by the party. The proponent of a contention is responsible for making its case on the issue at the hearing. The revision recognizes that the proponent of a contention is in the best position to present the arguments in support of the contention and is intended to ensure that presiding officers are not inundated with a multiplicity of extraneous filings from persons with no stake in the resolution of a particular issue. Since license applicants have the burden of proof and the NRC staff has a general interest in the proceeding to ensure that the public health and safety and environmental values are protected, the limitation on filings in paragraph (c) are not applicable to either; each has an obvious interest in filing proposed findings and conclusions on most, if not all, contested issues. Presiding officers will be expected to strike those portions of proposed findings and conclusions of law filed in contravention of this section.

18. Authority of Presiding Officer To Regulate Procedures in a Hearing (10 CFR 2.754)

Section 2.754 is revised to make mandatory the Commission's presently permissive admonition that presiding officers should limit the number of witnesses whose testimony may be cumulative, strike argumentative, repetitious, cumulative, or irrelevant evidence. This is intended to tighten up the proceeding and produce a better record.

19. Codification of Generic Factual Issues Resolved in Initial Licensing Proceedings (10 CFR 2.758a)

A new § 2.758a is proposed. This section requires that generic factual issues resolved in initial licensing proceedings be considered for promulgation as final Commission rules after public comment is sought in accordance with the rulemaking provisions of the Administrative Procedure Act. The purpose of this provision is to ensure that generic issues resolved in an evidentiary proceeding are not relitigated in subsequent proceedings. Generic factual issues codified as final rules will be subject to challenge in Commission licensing proceedings only to the extent permitted under the existing provisions of § 2.758, "Consideration of Commission rules and regulations in adjudicatory proceedings," i.e. upon a showing of special circumstances.

20. Initial Decisions in Contested Proceedings on Applications for Facility Operating Licenses (10 CFR 2.760a)

Section 2.760a is revised to revoke the 1979 relaxation of the *sua sponte* rule for review of uncontested matters by adjudicatory boards. See 44 FR 67088 (November 23, 1979). Experience under the relaxed standard has indicated that issues have been raised *sua sponte* which do not warrant such consideration. For example, contentions raised and later dropped by intervenors have been adopted by some Licensing Boards with little apparent regard for the seriousness of the issues involved. Accordingly, the *sua sponte* authority of presiding officers to raise new issues will be limited to extraordinary circumstances and is to be used sparingly. A similar change is proposed to be made to § 2.785(b)(2). Any issue(s) proposed to be raised *sua sponte* by the presiding officer conducting the hearing is to be referred with an explanation to the screening Atomic Safety and Licensing Board for a determination whether the matter should be considered at the hearing.

21. Appeals to the Commission From Initial Decisions (10 CFR 2.762)

Section 2.762 is revised to provide that an intervening party may file exceptions only on those issues which the party placed in controversy or sought to place in controversy in the proceeding. This will reverse the rule established in *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB–244, 8 AEC 857, 863 (1974), that an intervenor can appeal on all issues, whether or not raised by his or her own contentions. The rationale for this revision is the same as that discussed in regard to proposed § 2.754(c), *supra.*

22. Immediate Effectiveness of Decisions Directing Issuance or Amendment of Construction Permit or Operating License (10 CFR 2.764)

Section 2.764 is revised to return to the pre-TMI rule that initial decisions of presiding officers are immediately effective. Accordingly, it is proposed that paragraphs (e) and (f), which provide for Appeal Board and/or Commission consideration of effectiveness of initial decisions authorizing construction permits and operating licenses at greater than 5% power, be deleted. The Commission has tentatively concluded that the lessons learned from TMI have been sufficiently factored into the licensing and regulatory process to make limited Commission review on the question of effectiveness no longer necessary. Stays of initial decisions may continue to be sought in accordance with the provisions of § 2.788.

23. Elimination of the Atomic Safety and Licensing Appeal Board (10 CFR 2.785, 2.786, and 7.787)

The Commission proposes to delete §§ 2.785, 2.786 and 2.787. These provisions establish and describe the functions of the Atomic Safety and Licensing Appeal Board. Unlike most agencies, the Commission's adjudicative process resembles that of the Federal Court system. The Commission sits as the administrative "supreme court," the Appeal Boards sit as the administrative "courts of appeal" and Licensing Boards and administrative law judges sit as the "district" or trial courts. The amendments would substantially change the existing three-tiered adjudicative structure of the NRC by eliminating the Appeal Board as the middle rung of this process. While the Appeal Board would retain its existing review functions, it will function as a staff office of the Commission. It will not issue decisions, but will prepare draft opinions and rulings for the Commission. After appropriate review, the Commission will issue its decision. Thus, the Appeal Board will function as a Commission staff office responsible for reviewing and drafting decisions on adjudicatory matters, rather than as an intermediate appellate tribunal. Elimination of the intermediate tribunal would have several benefits. First, the

Commission will be able to supervise its adjudicatory process more closely. This supervision is especially crucial when, as happens frequently, issues of a policy nature arise during the course of its proceedings. Second, elimination of sequential Appeal Board and possible Commission review should expedite final agency action on adjudicatory matters. Third, some duplication of resource commitment would be eliminated since the need for separate review by the Commission's offices of Policy Evaluation and General Counsel could be eliminated or reduced. Conforming changes to § 2.788 are also proposed to eliminate references to stays of Appeal Board decisions.

24. Appendix A to Part 2

"Statement of General Policy and Procedure: Conduct of Proceedings for the Issuance of Construction Permits and Operating Licenses for Production and Utilization Facilities for Which a Hearing is Required Under Section 189a of the Atomic Energy Act of 1954, as Amended," is proposed to be deleted as unnecessary.

25. License Required (10 CFR 50.10)

Two conforming changes to § 50.10 are proposed to note that the Executive Director for Operations rather than the Director of Nuclear Reactor Regulation will issue limited work authorizations. This is consistent with the revisions discussed *supra*, which provide that the Executive Director rather than particular Office Directors will issue licenses authorized after hearing.

Paperwork Reduction Act Review

The Nuclear Regulatory Commission has submitted this proposed rule to the Office of Management and Budget for such review as may be appropriate under the Paperwork Reduction Act of 1980, Pub. L. 96-511, 94 Stat. 2812, 44 U.S.C. § 3501 *et seq.*

Regulatory Flexibility Statement

The proposed rule will reduce the procedural burden on NRC licensees by improving the hearing process. The impact on intervenors or potential intervenors will be neutral. While intervenors or potential intervenors will have to meet a higher threshold to gain admission to NRC proceedings and, thereby, incur some additional economic costs in preparing its request for hearing or intervention request, the proposed improvements should reduce an intervenors costs once the hearing commences. Thus, in accordance with the Regulatory Flexibility Act, 5 U.S.C. § 605(b), the NRC hereby certifies that this rule, if promulgated, will not have a significant economic impact upon a substantial number of small entities.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 50

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

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and Sections 552 and 553 of Title 5 of the United States Code, notice is hereby given that adoption of the following amendments to 10 CFR Parts 2 and 50 are contemplated:

It is proposed that 10 CFR Parts 2 and 50 be amended as follows:

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 68 Stat. 948, 953 (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended by Pub. L. 94-79, 89 Stat. 413 (42 U.S.C. 5841); 5 U.S.C. 552.

(Section 2.101 also issued under secs. 53, 62, 81, 103, 104, 105, 68 Stat. 930, 932, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2093, 211, 2133, 2134, 2135); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 68 Stat. 936, 937, 938, 954 955, as amended (42 US.C. 2132, 2133, 2134, 2135, 2233, 2239). Sections 2.200-2.206 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600-2.606, 2.730, 2.772 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557, section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133). Sections 2.800-2.807 also issued under 5 U.S.C. 553, section 2. 808 also issued under 5 U.S.C. 553 and sec. 102, 83 Stat. 853 (42 U.S.C. 4332). Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 95-209, 91 Stat. 1483 (42 U.S.C. 2039).

2. In § 2.4, paragraph (r) is redesignated as paragraph (u), paragraph (s) is redesignated as paragraph (r), and new paragraphs (s) and (t) are added to read as follows:

§ 2.4 Definitions.

* * * * *

(s) "Initial licensing" includes any proceeding on an application for a construction permit, operating license, or any other license for a facility or other activity, or for any amendment or modification thereof, but normally does not include licensing proceedings involving the renewal, revocation, suspension, annulment, withdrawal, or agency-initiated modification or amendment of licenses.

(t) "Presiding officer" means one or more members of the Commission, an administrative law judge, an atomic safety and licensing board, a screeing atomic safety and licensing board, or a named officer who has been delegated authority to preside in an evidentiary hearing under this chapter.

* * * * *

3. Section 2.104 is revised to read as follows:

§ 2.104 Notice of hearing.

(a)(1) In the case of an application for the issuance of a construction permit for a facility of the type described in § 50.21(b) or § 50.22 of this chapter or a testing facility, the Secretary will issue a notice of hearing to published in the **Federal Register** as required by law at least thirty (30) days, prior to the date set for hearing in the notice.[1] In addition, the notice (other than a notice pursuant to paragraph (c) of this section) shall be issued as soon as practicable after the application has been docketed: Provided, that if the Commission, pursuant to § 2.101(a)(2), decides to determine the acceptability of the application on the basis of its technical adequacy as well as completeness, the notice shall be issued as soon as practicable after the application has been tendered. The notice will state:

(i) The time, place, and nature of the hearing and/or prehearing conference, if any;

(ii) The authority under which the hearing is to be held;

(iii) The matters of fact and law to be considered; and

[1] If the notice of hearing does not specify the time and place of initial hearing, a subsequent notice will be published in the **Federal Register** which will provide at least thirty (30) days notice of the time and place of that hearing. After this notice is given the presiding officer may reschedule the commencement of the initial hearing for a later date or reconvene a recessed hearing without again providing thirty (30) days notice.

(iv) The time within which answers to the notice or petitions for leave to intervene shall be filed.

(2) Except in the case of a construction permit proceeding noticed pursuant to paragraph (c) of this section and unless the Commission determines otherwise, the notice of hearing will state in implementation of paragraph (a)(1)(iii) of this section:

(i) That, if the proceeding is not a contested proceeding, the presiding officer will determine (A) without conducting a de novo evaluation of the application, whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission's staff has been adequate, to support the safety findings required by the Atomic Energy Act of 1954, as amended, proposed to be made and the issuance of the construction permit proposed by the Executive Director for Operations, and (B) if the application is for a construction permit for a nuclear power reactor, a testing facility, a fuel reprocessing plant, or other facility whose construction or operation has been determined by the Commission to have a significant impact of the environment whether the review conducted by the Commission pursuant to the National Environmental Policy Act (NEPA) has been adequate.

(ii) That regardless of whether the proceeding is contested or uncontested, the presiding officer will, in accordance with Part 51 of this chapter:

(A) Determine whether the requirements of section 102(2)(A), (C) and (E) of the National Environmental Policy Act and Part 51 of this chapter have been complied with in the proceeding;

(B) Independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; and

(C) Determine whether the construction permit should be issued, denied, or appropriately conditioned to protect environmental values.

(b)(1) In the case of any other application within the scope of this subpart in which the presiding officer has determined that a hearing should be held, the presiding officer will issue a notice of hearing to be published in the **Federal Register** as required by law at least fifteen (15) days prior to the date set for hearing in the notice. The notice will state:

(i) The time, place, and nature of the hearing and/or prehearing conference, if any;

(ii) The authority under which the hearing is to be held;

(iii) The matters of fact and law to be considered; and

(iv) The time within which answers to the notice or petition for leave to intervene shall be filed.

(2) Except in the case of an operating license proceeding noticed pursuant to paragraph (c) of this section, and unless the Commission determines otherwise, if the application is for an operating license for a nuclear power reactor, a testing facility, or a fuel reprocessing plant, or other facility whose operation has been determined by the Commission to have a significant impact on the environment, the notice of hearing will state in implementation of paragraph (b)(1)(iii) of this section that the presiding officer will determine whether, in accordance with the requirements of Part 51 of this chapter, the operating license should be issued as proposed.

(c) In an application for a construction permit or an operating license for a facility on which a hearing is required by the Act or this chapter, or in which the Commission finds that a hearing is required in the public interest to consider the antitrust aspects of the application, the notice of hearing will, unless the Commission determines otherwise, state:

(1) A time of the hearing, which will be as soon as practicable after the receipt of the Attorney General's advice and compliance with sections 105 and 189a of the Act and this part:[2]

(2) The presiding officer for the hearing who shall be either an administrative law judge or an atomic safety and licensing board established by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel;

(3) That the presiding officer will consider and decide whether the activities under the proposed license would create or maintain a situation inconsistent with the antitrust laws described in section 105a of Act; and

(4) That matters of radiological health and safety and common defense and security, and matters raised under the National Environmental Policy Act of 1969, will be considered at another hearing for which a notice will be published pursuant to paragraphs (a) and (b) of this section, unless otherwise authorized by the Commission.

(d) The Secretary will give timely notice of the hearing to all parties and to other persons, if any, entitled by law to notice. The Secretary will transmit a notice of hearing on an application for a facility license or for a license for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee or for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter to the Governor or other appropriate official of the State and to the chief executive of the municipality in which the facility is to be located or the activity is to be conducted or, if the facility is not to be located or the activity conducted within a municipality, to the chief executive of the county (or to the Tribal organization if it is to be so located or conducted within an Indian reservation).

4. In § 2.105, the section heading, the introductory text of paragraph (b), and paragraphs (a), (d), and (e) are revised to read as follows:

§ 2.105 Notice of opportunity for hearing.

(a) If a hearing is not required by the Act or this chapter, and if the Commission has not found that a hearing is in the public interest, it will, prior to acting thereon, cause to be published in the **Federal Register** a notice of opportunity for hearing with respect to an application for—

(1) A license for a facility;

(2) A license for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee. All licenses issued under Part 61 of this chapter shall be so noticed.

(3) An amendment of a license specified in paragraph (a)(1) or (2) of this section and which involves a significant hazards consideration;

(4) A license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter.

(b) The notice of opportunity for hearing will set forth—

* * * * *

(d) The notice of opportunity for hearing will provide that within thirty (30) days from the date of publication of the notice in the **Federal Register**, or

[2] As permitted by subsection 105c of the Act, with respect to proceedings in which an application for a construction permit was filed prior to December 19, 1970, and proceedings in which a written request for antitrust review of an application for an operating license to be issued under section 104b has been made by a person who intervened or sought by timely written notice to the Commission to intervene in the construction permit proceeding for the facility to obtain a determination of antitrust considerations or to advance a jurisdictional basis for such determination within 25 days after the date of publication in the **Federal Register** or notice of filing of the application for an operating license or December 19, 1970, whichever is later, the Commission may issue a construction permit or operating license which contains the conditions specified in § 50.55b of this chapter before the antitrust aspects of the application are finally resolved.

such lesser period authorized as the Commission may specify:

(1) The applicant may file a request for a hearing; and

(2) Any person whose interest may be affected by the proceeding may file a request for a hearing.

(3) Any person's participation as a party in any hearing held on the proposed action shall be limited to the issues specified in the notice of hearing unless the screening Atomic Safety and Licensing Board determines that good cause for considering additional issues is shown in accordance with the provisions of § 2.714.

(e)(1) If no request for a hearing is filed within the time prescribed in the notice, the Executive Director for Operations may take the proposed action, inform the appropriate State and local officials, and publish in the **Federal Register** a notice of issuance of the license or other action.

(2) If a request for a hearing is filed within the time prescribed in the notice, the screening Atomic Safety and Licensing Board will rule on the request in accordance with the provisions of § 2.714.

* * * * *

5. In § 2.106, paragraph (a) is revised to read as follows:

§ 2.106 Notice of issuance.

(a) The Executive Director for Operations will cause to be published in the **Federal Register** notice of, and will inform the State and local officials specified in § 2.104(d) of the issuance of:

(1) A license or an amendment of a license for which a notice of opportunity for hearing has been previously published; and

(2) An amendment of a license for a facility of the type described in § 50.21(b) or § 50.22 of this chapter, or a testing facility, whether or not a notice of opportunity for hearing has been previously published.

* * * * *

6. Section 2.700 is revised to read as follows:

§ 2.700 Scope of Subpart.

The general rules in this subpart govern procedure in all adjudications initiated by the issuance of a order to show cause, an order pursuant to § 2.205(e), a notice of hearing, a notice of opportunity for hearing issued pursuant to § 2.105, or a notice issued pursuant to § 2.102(d)(3).

7. In § 2.700a, paragraph (c) is added to read as follows:

§ 2.700a Exceptions.

* * * * *

(c) Notwithstanding any other provisions to the contrary in this Part, in any initial licensing proceeding the Commission may prescribe such procedures as it deems necessary. The notice of opportunity for hearing or notice of hearing will specify the procedures.

8. In § 2.703, paragraph (a) is revised to read as follows:

§ 2.703 Notice of hearing.

(a) In a proceeding in which the terms of a notice of hearing are not otherwise prescribed by this part, the order or notice of hearing will state:

(1) The nature of the hearing, and its time and place, or a statement that the time and place will be fixed by subsequent order;

(2) The legal authority and jurisdication under which the hearing is to be held;

(3) The matters of fact and law asserted or to be considered; and

(4) The time within which an answer or petition for leave two intervene shall be filed.

* * * * *

9. In § 2.704, paragraphs (a), (d) introductory text and (d)(1)(i) are revised to read as follows:

§ 2.704 Designation of presiding officer, disqualification, unavailability.

(a) The Commission may provide in the notice of hearing that one or more members of the Commission, an administrative law judge, an atomic safety and licensing board, or a named officer who has been delegated final authority in the matter, shall preside. If the Commission does not so provide, the Chairman of the Atomic Safety and Licensing Board Panel will issue an order designating an atomic safety and licensing board appointed pursuant to section 191 of the Atomic Energy Act of 1954, as amended, or, if the Commission has not provided for the hearing to be conducted by an atomic safety and licensing board, the Chief Administrative Law Judge will issue an order designating an administrative law judge appointed pursuant to section 3105 of title 5 of the United States Code.

* * * *

(d) If a presiding officer or a designated member of an atomic safety and licensing board becomes unavailable during the course of a hearing, the Commission, the Chief Administrative Law Judge, or the Chairman of the Atomic Safety and Licensing Board Panel, as appropriate, will designate another presiding officer or atomic safety and licensing board member. If he becomes unavailable after the hearing has been concluded:

(1)(i) The Commission or the Chief Administrative Law Judge, as appropriate may designate another presiding officer to make the decision; or

* * * * *

10. Section 2.714 is revised to read as follows:

§ 2.714 Requests for hearings and petitions to intervene.

(a) *Requests for hearings.* Any person whose interest may be affected in a proceeding noticed pursuant to §§ 2.102(d)(3), 2.105, 2.202, or 2.204 may file a written request for hearing which includes the information specified in paragraph (d) of this section. The request shall be filed within the time specified in paragraph (c) of this section. The requestor must also file a list of the contentions which the requestor seeks to have litigated in the hearing within the time specified in paragraph (g) of this section.

(b) *Petitions to intervene.* Any person whose interest may be affected by a proceeding in which a notice of hearing has been published and who desires to participate as a party in such a proceeding shall file a written petition for intervention which includes the information specified in paragraph (d) of this section. The petition shall be filed within the time specified in paragraph (c) of this section. The petitioner must also file a list of the contentions which petitioner seeks to have litigated in the hearing within the time specified in paragraph (g) of this section.

(c) *Time for filing requests for hearing and petitions to intervene.* (1) A request for hearing shall be filed not later than the time specified in the notice of opportunity for hearing or notice published pursuant to §§ 2.102(d)(3), 2.202 or 2.204.

(2) A petition for leave to intervene shall be filed not later than the time specified in the notice of hearing.

(3) Non-timely filings will not be entertained absent a determination by the Commission or the presiding officer designated to rule on the intervention petition or request for hearing, that the intervention or hearing should be granted based upon a balancing of the following factors in addition to those set our in paragraph (f) of this section:

(i) Good cause, if any, for failure to file on time.

(ii) The availability of other means whereby the requestor's or petitioner's interest will be protected.

(iii) The extent to which the requestor's or petitioner's participation may reasonably be expected to assist in developing a sound record.

(iv) The extent to which the requestor's or petitioner's interest will be represented by existing parties.

(v) The extent to which the requestor's or petitioner's participation will broaden the issues or delay the proceeding.

(d) *Contents of request for hearing or petition to intervene.* A request for hearing or petition to intervene shall be filed with the Secretary of the Commission and served on such others as may be specified in the notice. It shall be filed in the format required by § 2.708 and shall set forth with particularity:

(1) The nature of the requestor's or petitioner's right under the Act to be made a party to the proceeding.

(2) The nature and extent of the requestor's or petitioner's property, financial or other interest which could be affected by the outcome of the proceeding.

(3) The possible effect of any order which may be entered in the proceeding on the requestor's or petitioner's interest.

(e) *Answer to request for hearing or petition to intervene.* The applicant or licensee and any party to the proceeding may file an answer to a petition for leave to intervene or request for a hearing within ten (10) days after service of the request or petition. The staff may file an answer within fifteen (15) days after service of the request for hearing or the petition.

(f) *Ruling on request for hearing or petition to intervene.* The Commission or the presiding officer designated to rule on the intervention petition or request for hearing shall, in ruling on the request or petition shall consider the following factors, among other things:

(1) The nature of the requestor's or petitioner's right under the Act to be made a party to the proceeding.

(2) The nature and extent of the requestor's or petitioner's property, financial, or other interest in the proceeding.

(3) The possible effect of any order which may be entered in the proceeding on the requestor's or petitioner's interest. No request for hearing or petition to intervene may be granted unless the Commission or the presiding officer designated to rule on the request or petition determines that the requestor or the petitioner meets judicial standards for standing.

(g) *Filing of contentions.* (1) The requestor or the petitioner shall also file a list of the contentions which the requestor or the petitioner seeks to have litigated in the hearing. Each contention shall consist of a specific statement of the issue of law, fact or policy to be raised or controverted. In addition, except for contentions advanced in enforcement proceedings noticed under §§ 2.105, 2.202 or 2.204, the requestor or the petitioner must provide the following information with respect to each contention:

(i) A brief explanation of the bases of the contention.

(ii) A concise statement of the alleged facts or expert opinion which support the contention and which at the time of the filing the requestor or petitioner intends to rely upon in proving its contention at the hearing, together with references to the specific sources and documents of which petitioner is aware which will be relied on to establish such facts or expert opinion.

(iii) Sufficient information (which may include information pursuant to § 2.714(g)(1) (i) and (ii) to show that a genuine dispute exists with the applicant on an issue of law, fact or policy. This showing must include references to the specific portions of the application (including the applicant's environmental and safety report) which the requestor or petitioner disputes and the supporting reasons for each such dispute, or, if the requestor or petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each such failure and the supporting reasons for the requestor's or petitioner's belief. On issues arising under NEPA, a petitioner shall file contentions based on the applicant's environmental report. The petitioner can amend those contentions or file new contentions if there are data or conclusions in the NRC draft or final environmental impact statement or appraisal that differ significantly from the data or conclusions in the applicant's document. Amended or new contentions based on NRC environmental documents shall be filed and ruled upon in initial licensing proceedings in accordance with paragraph (j) of this section.

(2) The information required by paragraph (g)(1) of this section shall be filed at the time the petition or request is filed.

(3) Non-timely filing of the information required by paragraph (g)(1) of this section will not be entertained absent a determination by the Commission or the presiding officer designated to rule on the admissibility of contentions that the filing should be permitted based upon a balancing of the factors set out in paragraph (c)(3) of this section.

(4) A requestor or petitioner that fails to comply with the requirements of (g)(1) of this section with respect to at least one contention will not be permitted to participate as a party.

(h) *Response to contentions.* The applicant or licensee and any party to a proceeding may file an answer to the contentions within ten (10) days after service of the contentions. The staff may file such an answer within fifteen (15) days after service of the contentions.

(i) *Admissibility of Contentions.* The Commission or the presiding officer designated to rule on the admissibility of contentions shall refuse to admit a contention if:

(1) The contention and supporting material fail to satisfy the requirements of paragraph (g) of this section. In determining whether a genuine dispute exists on a material issue of law, fact or policy, the Commission or the presiding officer shall consider whether the information presented pursuant to paragraph (g) of this section prompts reasonable minds to inquire further as to the validity of the contention; or

(2) It appears unlikely that petitioner can prove a set of facts in support of its contention; or

(3) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.

(4) A contention raising only an issue of law shall not be admitted for resolution in an evidentiary hearing, but rather, shall be decided on the basis of briefs and/or oral argument as directed by the Commission or presiding officer.

(j) *Rulings on contentions in initial licensing proceedings by the screening Atomic Safety and Licensing Board.*— (1) *Requests for hearings.* The screening Atomic Safety and Licensing Board shall rule on requests for hearings and contentions contained in the requests in all initial licensing proceedings. After providing the staff and the licensee or license applicant an opportunity to respond to the request for hearing in accordance with paragraphs (e) and (h) of this section, the screening Atomic Safety and Licensing Board shall issue an order granting or denying, in whole or in part, each request for hearing and contention therein. An order granting a request for a hearing shall specify the parties to the proceeding and the issues in controversy.

(2) *Petitions to intervene.* (i) The screening atomic safety and licensing board shall rule on petitions to intervene and the contentions contained in the petitions which are filed in all initial licensing proceedings in which a notice of hearing has been published. The screening atomic safety and licensing board shall issue an order granting or denying, in whole or in part, each petition and contention therein. An order granting a petition shall specify

the parties to the proceeding and the issues admitted to the proceeding.

(ii) Issues not specified in the notice of hearing shall not be admitted to the proceeding unless the screening atomic safety and licensing board first determines that such issues should be admitted based upon a balancing of the factors set out in paragraph (c)(3) of this section.

(k)(1) An order permitting intervention and/or directing a hearing may be conditioned on such terms as the Commission or the presiding officer may direct in the interests of: (i) Restricting irrelevant, duplicative, or repetitive evidence and argument, (ii) having common interests represented by a spokesperson, and (iii) retaining authority to determine priorities and control the scope of the hearing.

(2) In any case in which, after consideration of the factors set forth in this paragraph, the Commission or the presiding officer finds that the petitioner's interest is limited to one or more of the issues involved in the proceeding, any order allowing intervention shall limit his participation accordingly.

(l) Unless otherwise expressly provided by the Commission, the granting of a petition for leave to intervene and/or hearing request does not enlarge upon the scope of issues specified in the notice of hearing or notice of opportunity for hearing.

(m) A person permitted to intervene becomes a party to the proceeding, subject to any limitations imposed pursuant to paragraph (k) of this section.

11. In § 2.714a, paragraph (a) is revised to read as follows:

§ 2.714a Appeals from certain rulings on petitions for leave to intervene and/or requests for hearing.

(a) Notwithstanding the provisions of § 2.730(f), an order of the presiding officer designated to rule on petitions for leave to intervene and/or requests for hearing may be appealed, in accordance with the provisions of this section to the Commission within ten (10) days after service of the order. The appeal shall be asserted by the filing of a notice of appeal and accompanying supporting brief. Any other party may file a brief in support of or in opposition to the appeal within ten (10) days after service of the appeal. No other appeals from rulings on petitions and/or requests for hearing shall be allowed.

* * * * *

12. In § 2.715, paragraph (c) is revised to read as follows:

§ 2.715 Participation by a person not a party.

* * * * *

(c) The presiding officer will afford representatives of an interested State, county, municipality, and/or agencies thereof, a reasonable opportunity to participate and to introduce evidence, interrogate witnesses as authorized under § 2.743 and advise the Commission without requiring the representative to take a position with respect to the issue. Such participants may also file proposed findings and exceptions pursuant to §§ 2.754 and 2.762 and petitions for review by the Commission pursuant to § 2.786. The presiding officer may require such representative to indicate with reasonable specificity, in advance of the hearing, the subject matters on which he desires to participate.

* * * * *

13. Section 2.715a is revised to read as follows:

§ 2.715a Consolidation of parties in initial licensing proceedings.

On motion or on its or his own initiative, the Commission or the presiding officer shall, after first affording the parties an opportunity to consolidate voluntarily and absent a showing by a party subject to consolidation that its rights would be prejudiced, order any parties in an initial licensing proceeding who have substantially the same interest that may be affected by the proceeding and who raise substantially the same questions, to consolidate their presentation of evidence, cross-examination, briefs, proposed findings of fact, and conclusions of law and argument. A consolidation under this section may be for all purposes of the proceeding, all of the issues of the proceeding, or with respect to any one or more issues thereof.

14. In § 2.717, paragraph (a) is revised to read as follows:

§ 2.717 Commencement and termination of jurisdiction of presiding officer.

(a) Unless otherwise ordered by the Commission, the jurisdiction of the presiding officer designated to conduct a hearing over the proceeding, including motions and procedural matters, commences when the proceeding commences. If no presiding officer has been designated, the Chief Administrative Law Judge has such jurisdiction or, if he is unavailable, another administrative law judge has such juriscition. A proceeding is deemed to commence when a notice of hearing or a notice of opportunity for hearing pursuant to § 2.105 is issued. When a notice of hearing provides that the presiding officer is to be an administrative law judge, the Chief Administrative Law Judge will designate by order the administrative law judge who is to preside. The presiding officer's jurisdiction in each proceeding will terminate upon the expiration of the period within which the Commission may direct that the record be certified to it for final decision, of when the Commission renders a final decision, or when the presiding officer shall have withdrawn himself from the case upon considering himself disqualified, whichever is earliest.

* * * * *

15. In § 2.720, paragraph (h)(2)(ii) is revised to read as follows:

§ 2.720 Subpoenas.

* * * * *

(h) * * *

(2) * * *

(ii) In addition, a party may file with the presiding officer written interrogatories to be answered by NRC personnel with knowledge of the facts designated by the Executive Director for Operations. Upon a finding by the presiding officer that answers to the interrogatories are necessary to a proper decision in the proceeding and that answers to the interrogatories are not reasonably obtainable from any other source, such as from the Commission's Public Document Room or Local Public Document Rooms, the presiding officer may require that the staff answer the interrogatories. Such interrogatories may seek to elicit factual information reasonably related to the NRC staff's position in the proceeding, including data used, assumptions made, and analyses performed by the NRC staff. Such interrogatories shall not, however, be addressed to, or be construed to require: (A) Reasons for not using alternative data, assumptions, and analyses, where such alternative data, assumptions, and analyses were not relied on in the staff review, or (B) performance of additional research or analytical work beyond that which is needed to support the staff's position on any particular matter.

* * * * *

16. In § 2.721, paragraph (a) is redesignated as paragraph (a)(1), paragraph (a)(2) is added, paragraph (d) is revised, and paragraph (e) is added to read as follows:

§ 2.721 Atomic Safety and Licensing Boards.

(a) * * *

(2) The Commission or the Chairman of the Atomic Safety and Licensing

Board Panel shall establish one or more screening atomic safety and licensing boards in the manner described in paragraph (a)(1) of this section. The screening atomic safety and licensing board shall rule on all requests for hearing and petitions for leave to intervene in initial licensing proceedings, shall rule upon and refer admissible contentions to the appropriate forum for resolution in accordance with the provisions of this chapter, may designate issues to be heard by an expert panel pursuant to § 2.722 and shall perform such other adjudicatory functions as the Commission deems appropriate.

* * * * *

(d) An atomic safety and licensing board, including a screening atomic safety and licensing board, shall have the duties and may exercise the powers of a presiding officer as granted by § 2.718 and otherwise in this part. At any time when such a board is in existence but is not actually in session, any powers which could be exercised by a presiding officer or by the Chief Administrative Law Judge may be exercised with respect to such a proceeding by the chairman of the board having jurisdiction over it. Two members of an atomic safety and licensing board constitute a quorum, if one of those members is the member qualified in the conduct of administrative proceedings.

(e) Nothing in this section limits the discretion of the Commission to designate one or more administrative law judges appointed pursuant to section 3105 of title 5 of the United States Code to preside in proceedings for granting, suspending, revoking, or amending licenses or authorizations and to perform such other adjudicatory functions as the Commission deems appropriate.

17. In § 2.722, paragraph (c) is added to read as follows:

§ 2.722 Special assistants to the presiding officer and expert panels.

* * * * *

(c) In consultation with the Panel Chairman, the presiding officer may appoint an expert panel of one, three or five experts with specific subject matter expertise. Panel members may be selected from inside or outside the Commission. Such appointments may occur at any appropriate time during the proceeding but shall, at the time of the appointment, be subject to the notice and disqualification provisions as described in § 2.704. The expert panel, with the presiding officer designated to conduct the hearing, will hear evidentiary presentations by the parties on the specific issues related to the subject matter for which the panel possesses special expertise and may examine the witnesses of the parties as a technical interrogator. The panel will advise the presiding officer of its conclusions on the specific issues through an on-the-record report. This report is advisory only; the presiding officer shall retain final authority on issues for which the expert panel was designated. In the case of an expert panel appointed to assist a screening board, the panel shall assist the board in determining whether a sufficient showing has been made to admit a particular contention(s).

18. In § 2.730 paragraph (e) is revised and paragraph (i) is added to read as follows:

§ 2.730 Motions.

* * * * *

(e) The presiding officer may dispose of written motions either by written order or by ruling orally during the course of a prehearing conference or hearing. The presiding officer should ensure that parties not present for the oral ruling are notified promptly of the order.

* * * * *

(i) *Uncontroverted motions.* If no party controverts the grounds asserted and the relief sought by the movant within the time prescribed in paragraph (c) of this section, the presiding officer shall grant the motion to the extent authorized by law.

19. Section 2.733 is revised to read as follows:

§ 2.733 Examination by experts.

Subject to the requirements of § 2.743, a party may request the presiding officer to permit a qualified individual who has scientific or technical training or experience to participate on behalf of that party in the examination and cross-examination of expert witnesses. The presiding officer may permit such individual to participate on behalf of the party in the examination and cross-examination of expert witness where it would serve the purpose of furthering the conduct of the proceeding. Upon finding: (a) That the individual is qualified by scientific or technical training or experience to contribute to the development of an adequate decisional record in the proceeding by the conduct of such examination, (b) that the individual has read any written testimony on which he intends to examine or cross-examine and any documents to be used or referred to in the course of the examination or cross-examination, and (c) that the individual has prepared himself to conduct a meaningful and expeditious examinations or cross-examination. Examination or cross-examination conducted pursuant to this section shall be limited to areas within the expertise of the individual conducting the examination or cross-examination. The party on behalf of whom such examination or cross-examination is conducted and his attorney shall be responsible for the conduct of examination or cross-examination by such individuals.

20. In § 2.740, paragraph (b)(2) is redesignated (b)(3) and new (b)(3) is reprinted for the convenience of the reader, a new paragraph (b)(2) is added, paragraph (c) is revised, and a new paragraph (g) is added to read as follows:

§ 2.740 General provisions governing discovery.

* * * * *

(b) *Scope of discovery.* * * *

(2) *Supervision of discovery.* The frequency or extent of use of the discovery methods set forth in paragraph (a) of this section may be limited by the presiding officer if he or she determines that: (i) The discovery sought is unreasonably cumulative or duplicative, or obtainable from some other formal or informal source or method that is either more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the proceeding to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, given the needs of the case, and the number and complexity of the issues in controversy. The presiding officer may act upon its own initiative or pursuant to a motion under paragraph (c) of this section to specifically limit the use of discovery, for example, the number of interrogatories any party may serve.

(3) *Trial preparation materials.* A party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (b)(1) of this section and prepared in anticipation of or for the hearing by or for another party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the presiding officer shall protect against disclosure of the

mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding.

(c) *Protective order.* Upon motion by a party or the person from whom discovery is sought, and for good cause shown, the presiding officer may issue an order to further any of the purposes of paragraph (b) of this section, or which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) That the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters may be inquired into, or that the scope of discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the presiding officer; (6) that, subject to the provisions of §§ 2.744 and 2.790, a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (7) that studies and evaluations not be prepared. If the motion for a protective order is denied in whole or in part, the presiding officer may, on such terms and conditions as are just, order that any party or person provide or permit discovery.

* * * * *

(g) *Signing of discovery requests, responses, and objections.* Every request for discovery, response, or objection thereto, or motion for a protective order, shall be signed by the party or its authorized representative pursuant to § 2.713 and shall include the party's or representative's address. The signature of the attorney or other authorized representative constitutes a certification that he or she has read the request, response, objection, or motion and that it is (1) to the best of his or her knowledge, information, or belief formed after a reasonable inquiry, consistent with these rules; (2) filed in good faith and not primarily to cause delay or for any other improper purpose; and (3) insofar as discovery is requested, not unduly burdensome or expensive, given the needs of the case, its nature and complexity, and the discovery already had in the case. If a request, response, or objection is not signed it shall be of no effect. If a certification is falsely made in violation of this paragraph, the presiding officer, where appropriate and upon motion or upon its own initiative, shall impose upon the person who made the certification or the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction pursuant to § 2.707 or 2.713.

21. In § 2.743, paragraphs (a), (b), (c), and (d) are revised to read as follows:

§ 2.743 Evidence.

(a) *General.* Every party to a proceeding shall have the right to present written or documentary evidence and written rebuttal evidence under oath or affirmation. Oral evidence and/or cross-examination of oral or written evidence will be allowed only as provided in paragraph (b) of this section, provided, however, that every party to a proceeding under Subpart B for modification, suspension, or revocation of a license, or imposition of a civil penalty shall have the right to present such oral evidence and rebuttal evidence and conduct such cross-examination as may be required for full and true disclosure of the facts.

(b) *Testimony and cross-examination.* (1) The parties shall submit all direct and rebuttal testimony of witnesses, in written form, unless otherwise ordered by the presiding officer upon a showing of good cause that oral presentation of the evidence on any particular fact is reasonably necessary for the efficient identification, clarification and resolution of issues.

(2) If good cause is shown the presiding officer may schedule the taking of oral evidence either by deposition or by presiding at a hearing session where a transcript of oral testimony and cross-examination is made.

(3) The presiding officer may set dates for the filing of testimony on each factual issue in controversy as follows:

(i) The license applicant shall file written direct testimony first.

(ii) All parties other than the license applicant shall file their written direct testimony on said issue not later than 20 days after the date of filing of the testimony under the preceding subsection.

(iii) All written rebuttal testimony shall be filed no later than 20 days after the date of the filing of the testimony under the preceding subsection.

(iv) The presiding officer may allow such additional rounds of testimony as deemed necessary to develop an adequate record.

(4) Written testimony shall be incorporated in the record as if read or, in the discretion of the presiding officer, may be offered and admitted in evidence as an exhibit.

(5) A party may submit a request to cross-examine on any issue of material fact by filing a written motion within 10 days after service of the written testimony concerning the issue. A party may request to cross-examine only as to issues of material fact germane to the subject matter of an admitted contention advanced by that party; provided, however, the staff, license applicant or a governmental representative admitted pursuant to § 2.715 may move to cross-examine on any admitted contention in the proceeding. The motion shall specify: (i) The disputed issue of material fact regarding which cross-examination is requested, (ii) a description in the nature of an offer of proof (see paragraph (e) of this section) of what the movant will establish by the cross-examination, (iii) a statement as to why the cross-examination will result in resolving the issue of material fact involved, (iv) a statement as to why written testimony could not establish the same points, (v) a cross-examination plan consisting of a proposed line of questions along with postulated answers which might reasonably be anticipated and which may logically lead to achieving the objective of the cross-examination, (vi) an estimate of time necessary to complete the cross-examination, and (vii) the name of the individual who shall conduct the cross-examination.

(6) Answers to a motion for cross-examination may be filed by other parties within 10 days after service of the motion.

(7) The presiding officer shall promptly issue an order granting, denying or conditioning the request for cross-examination. If the request is granted the order shall specify:

(i) The issues on which cross-examination is granted;

(ii) The person(s) allowed to conduct cross-examination, and time allowed;

(iii) The date, time and place of the hearing at which cross-examination shall take place; and

(iv) That the party sponsoring the witness(es) subject to cross-examination shall be allowed a reasonable amount of time for oral redirect examination immediately following the cross-examination.

(8) The cross-examination plan submitted to the presiding officer shall be kept in confidence until the completion of the cross-examination, if granted, at which time it shall be physically inserted in the record.

(9) This subsection does not apply to proceedings under Subpart B for modification, suspension, or revocation

of a license, or the imposition of a civil penalty.

(c) *Admissibility.* The presiding officer shall admit only relevant, material, and reliable evidence which is not unduly repetitious. Immaterial or irrelevant parts of an admissible document will be segregated and excluded if practicable.

(d) *Objections.* An objection to the admission of evidence shall briefly state the grounds of objection. Unless oral presentation of the evidence has been ordered by the presiding officer, objections to written testimony filed pursuant to paragraph (b) of this section shall be made within 10 days after service of the objectionable testimony in accordance with the provisions of § 2.730 or the objections shall be deemed waived. The presiding officer shall rule on the objections promptly. Unless otherwise ordered by the presiding officer, the filing of objections shall not extend the time for filing written testimony. The transcript or record of the proceeding shall include the objection, the grounds, and the ruling. Exception to an adverse ruling is preserved without notation on the record.

* * * * *

22. In § 2.749, paragraphs (a) and (d) are revised to read as follows:

§ 2.749 Authority of presiding officer to dispose of certain issues on the pleadings.

(a) Any party to a proceeding may move, with or without supporting affidavits, for a decision by the presiding officer in that party's favor as to all or any part of the matters involved in the proceeding. There shall be annexed to the motion a separate short and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard. Motions may be filed at any time. Any other party may serve as an answer supporting or opposing the motion, with or without affidavits, within twenty (20) days after service of the motion. There shall be annexed to any answer opposing the motion a separate, short and concise statement of the material facts as to which it is contended that there exists a genuine issue to be heard. All material facts set forth in the statement required to be served by the moving party will be deemed to be admitted unless controverted by the statement required to be served by the opposing party. The opposing party may within ten days after service respond in writing to new facts and arguments presented in any statement filed in support of the motion. No further supporting statements or responses thereto shall be entertained.

* * * * *

(d) The presiding officer shall render the decision sought if the filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with the statements of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law.

23. In § 2.752, paragraphs (a)(5) and (c) are revised to read as follows:

§ 2.752 Prehearing conference.

(a) * * *

(5) The setting of a hearing schedule, including a schedule for the filing of direct and rebuttal testimony; and

* * * * *

(c) The presiding officer shall enter an order which recites the action taken at the conference, the amendments allowed to the pleadings and agreements by the parties, and which limits the issues or defines the matters in controversy to be determined in the proceeding. Objections to the order may be filed by a party within five (5) days after service of the order, except that the regulatory staff may file objections to such order within ten (10) days after service. Parties may not file replies to the objections unless the presiding officer so directs. The filing of objections shall not stay the decision unless the presiding officer so orders. The presiding officer may revise the order in the light of the objections presented and, as permitted by § 2.718(i) may certify for determination to the Commission or the Atomic Safety and Licensing Appeal Board, as appropriate, such matters raised in the objections as it deems appropriate. The order shall control the subsequent course of the proceeding unless modified for good cause.

24. In § 2.754, paragraph (c) is revised to read as follows:

§ 2.754 Proposed findings and conclusions.

* * * * *

(c) Proposed findings of fact shall be clearly and concisely set forth in numbered paragraphs and shall be confined to the material issues of fact presented on the record, with exact citations to the transcript of record and exhibits in support of each proposed finding. Proposed conclusions of law shall be set forth in numbered paragraphs as to all material issues of law or discretion presented on the record. Proposed findings of fact and conclusions of law submitted by a person who does not have the burden of proof and who has only a limited interest in the proceeding shall be confined to matters which affect his interests.

25. Section 2.757 is revised to read as follows:

§ 2.757 Authority of presiding officer to regulate procedures in a hearing.

To prevent unnecessary delays or an unnecessarily large record, the presiding officer shall, consistent with § 2.743:

(a) Limit the number of witnesses whose testimony may be cumulative;

(b) Strike argumentative, repetitious, cumulative, or irrelevant evidence;

(c) Take necessary and proper measures to prevent argumentative, repetitious, or cumulative cross-examination; and

(d) Impose such time limitations on arguments as he determines appropriate, having regard for the volume of the evidence and the importance and complexity of the issues involved.

26. Section 2.758a is added to read as follows:

§ 2.758a Codification of generic factual issues resolved in initial licensing proceedings.

(a) Within 15 days after a generic factual issue(s) is resolved in an initial licensing proceeding, the presiding officer who conducted the hearing shall inform the Executive Director for Operations in writing of the factual basis upon which such issue(s) was resolved. For purposes of this section, a generic factual issue means a controverted issue of fact which is common to facilities of similar type or design and which is the subject of an evidentiary presentation before a presiding officer which is not dismissed on motion or settled by stipulation of the parties. A generic issue is considered resolved at the earlier of the time when (1) the decision of the presiding officer has become the final agency action; or (2) the opportunity for a party to seek agency review of the presiding officer's finding on the generic fact has passed and no party has sought review.

(b) Within 15 days after receipt of the notification, the Executive Director for Operations shall prepare and transmit a notice of proposed rulemaking to the Commission which is consistent with the requirements set forth in Subpart H of this part. The notice shall provide for a 45-day period for public comment.

(c) Within 45 days after the close of the public comment period and after due consideration of the comments, the Commission shall take such further

action on the proposed rule as it deems appropriate.

27. Section 2.760a is revised to read as follows:

§ 2.760a Initial decision in contested proceedings on applications for facility operating licenses.

In any initial decision in a contested proceeding on an application for an operating license for a production or utilization facility, the presiding officer shall make findings of fact and conclusions of law on the matters put into controversy by the parties to the proceeding and on matters which have been determined to be the issues in the proceeding by the Commission or the presiding officer. Where the presiding officer determines that a serious safety, environmental, or common defense and security matter exists and has not been put into controversy by the parties, he or she shall certify the matter to the screening atomic safety and licensing board with an explanatory statement. This authority is to be used sparingly. The screening atomic safety and licensing board shall determine whether the matter should be examined and decided by the presiding officer or may take such other action as may be appropriate. The Executive Director for Operations, after making the requisite findings, will issue, deny, or appropriately condition the license.

28. In § 2.762, paragraph (a) is revised to read as follows:

§ 2.762 Appeals to the Commission from initial decisions.

(a) Within ten (10) days after service of an initial decision any party may take an appeal to the Commission by filing of exceptions to that decision or designated portions thereof. Exceptions submitted by a party who does not have the burden of proof or who has only a limited interest in the proceeding shall be confined to issues which that party placed in controversy or sought to place in controversy in the proceeding. Each exception shall be separately numbered and shall (1) state concisely, without supporting argumentation, the single error of fact or law which is being asserted in that exception; and (2) identify with particularity the portion of the decision (or earlier order or ruling) to which the exception is addressed. A brief in support of the exceptions shall be filed within thirty (30) days thereafter (forty (40) days in the case of the staff). The brief shall be confined to a consideration of the exceptions previously filed by the party and, with respect to each exception, shall specify, inter alia, the precise portion of the record relied upon in support of the assertion of error.

* * * * *

29. In § 2.764, paragraphs (e), (f), and (g) are removed and paragraphs (a) and (b) are revised to read as follows:

§ 2.764 Immediate effectiveness of initial decision directing issuance or amendment of construction permit or operating license.

(a) Except as provided in paragraphs (c) and (d) of this section, or as otherwise ordered by the Commission in special circumstances, an initial decision relating to the issuance or amendment of a construction permit, a construction authorization, or an operating license shall be effective immediately upon issuance unless the presiding officer finds that good cause has been shown by a party why the initial decision should not become immediately effective, subject to the review thereof and further decision by the Commission upon exceptions filed by any party pursuant to § 2.762 or upon its own motion.

(b) Except as provided in paragraphs (c) and (d) of this section, or as otherwise ordered by the Commission in special circumstances, the Executive Director for Operations, notwithstanding the filing of exceptions, shall issue a construction permit, a construction authorization, or an operating license, or amendments thereto, authorized by an initial decision, within ten (10) days from the date of issuance of the decision.

* * * * *

§ 2.785 [Removed]

30. Section 2.785 is removed.

§ 2.786 [Removed]

31. Section 2.786 is removed.

§ 2.787 [Removed]

32. Section 2.787 is removed.

§ 2.787 Composition of Atomic Safety and Licensing Appeal Boards.

[Removed]

33. In § 2.788, the section heading is revised, the introduction text of paragraph (b) is reprinted for the convenience of the reader, paragraph (b)(3) is removed, paragraph (b)(4) is redesignated paragraph (b)(3) and new (b)(3) is reprinted for the convenience of the reader, the introductory text to paragraph (e) is revised, and paragraphs (a), (c), (f), (g) and (h) are revised to read as follows:

§ 2.788 Stays of decisions of presiding officers pending review.

(a) Within ten (10) days after service of a decision or action any party to the proceeding may file an application for a stay of the effectiveness of the decision or action pending filing of and a decision on an appeal. An application for a stay may be filed with the Commission or the presiding officer.

(b) An application for a stay shall be no longer than ten (10) pages, exclusive of affidavits, and shall contain the following:

* * * * *

(3) To the extent that an application for a stay relies on facts subject to dispute, appropriate references to the record or affidavits by knowledgeable persons.

(c) Service of an applicationf or a stay on the other parties shall be by the same method, e.g. telegram, mail, as the method for filing the application with the Commission or the presiding officer.

* * * * *

(e) In determining whether to grant or deny an application for a stay, the Commission or presiding officer will consider:

* * * * *

(f) An application for a stay ot a decision or action of a presiding officer may be filed before either the Commission or the presiding officer, but not both at the same time.

(g) In extraordinary cases, where prompt application is made under this section, the Commission or presiding officer may grant a temporary stay to preserve the status quo without waiting for filing of any answer. The application may be made orally provided the application is promptly confirmed by telegram. Any party applying under this paragraph shall make all reasonable efforts to inform the other parties of the application, orally if made orally.

(h) A party may file an application for a stay of a decision or action granting or denying a stay. As to a decision or action of a presiding officer, the application shall be filed with the Commission. In each case the procedures and criteria of (a)–(e) of this section shall be followed.

Appendix A [Removed]

34. Appendix A to Part 2 is removed.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

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

Authority: Secs. 103, 104, 161, 182, 183, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2239); Secs. 201, 202, 206, 88 Stat. 1243, 1244, 1246), unless otherwise noted. 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 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). § 50.54(i) issued under Sec. 161i 68 Stat. 949; (42 U.S.C. 2201(i)), §§ 50.70, 50.71, 50.78 issued under Sec. 161o, 68 Stat. 950, as amended; (42 U.S.C. 2201(o)) and the Laws referred to in Appendices.

36. In § 50.10, paragraphs (e)(1) and (e)(3)(i) are revised to read as follows:

§ 50.10 License required.

* * * * *

(e)(1) The Executive Director for Operations may authorize an applicant for a construction permit for a utilization facility which is subject to § 51.5(a) of this chapter, and is of the type specified in § 50.21(b)(2) or is a testing facility to conduct the following activities: (i) Preparation of the site for construction of the facility (including such activities as clearing, grading, construction of temporary access roads and borrow areas); (ii) installation of temporary construction support facilities (including such items as warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and construction support buildings); (iii) excavation for facility structures; (iv) construction of service facilities (including such facilities as roadways, paving, railroad spurs, fencing, exterior utility and lighting systems, transmission lines, and sanitary sewerage treatment facilities; and (v) the construction of structures, systems, and components which do not prevent or mitigate the consequences of postulated accidents that could cause undue risk to the health and safety of the public. No such authorization shall be granted unless the staff has completed a final environmental impact statement on the issuance of the construction permit as required by Part 51 of this chapter.

* * * * *

(3)(i) The Executive Director for Operations may authorize an applicant for a construction permit for a utilization facility which is subject to § 51.5(a) of this chapter, and is of the type specified in §§ 50.21(b) (2) and (3) or 50.22 or is a testing facility to conduct, in addition to the activities described in paragraph (e)(1) of this section, the installation of structual foundations, including any necessary subsurface preparation, for structures, systems and components which prevent or mitigate the consequences of postulated accidents that could cause undue risk to the health and safety of the public.

* * * * *

The additional views of Chairman Palladino and Commissioner Bernthal and the separate views of Commissioners Gilinsky and Asselstine follow.

Dated at Washington, D.C. this 6th day of April, 1984.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

Chairman Palladino's Additional Views

Because there could be some misunderstanding of my intent from a reading of Commissioner Asselstine's separate views, I have the following comments.

The matters on which the Commission seeks public comment are suggestions forwarded by the Regulatory Reform Task Force. It is my understanding that, while the Task Force has not voted on whether or not to support the eventual adoption of any or all of the proposals, the Task Force agrees that the proposals are a point of departure for discussion of hearing process reform.

While the suggestions forwarded by the Task Force have received review and comment by NRC groups, they have not been published for public comment; the public has not had the opportunity to agree or disagree with either those suggestions or Commissioner Asselstine's proposals.

I recognize that some of the suggestions may not be acceptable to some members of the public or to some members of the Commission, including myself. However, I do not believe that should be the criterion for deciding whether or not to request public comment. Given the conclusion that the suggestions are a point of departure for further discussion, I do not believe that it is inappropriate for the Commission to request public comment on them.

Additional Views of Commissioner Bernthal

It should be emphasized, as the summary statement indicates, that the ideas put forward by the Regulatory Reform Task Force (RRTF) do not and are not intended to have the imprimatur of the Commission. The fact that public comments are being solicited regarding these suggestions is *not* indicative of support by the Commission, or even by a majority of the Commission, for any given proposal. Indeed, neither the RRTF nor those who reviewed its work were able to arrive at a consensus on anything other than the appropriateness of further evaluation of the possible changes to the licensing process discussed in the Draft Report. The solicitation of public comment by the Commission should signify to the public only that the Commission seeks the broadest possible informational base prior to taking any further action regarding specific proposals discussed by the RRTF. In this case I believe this procedure is entirely appropriate in view of the extensive effort that has gone into developing these proposals, and the broad interest that attaches to them.

Separate Views of Commissioner Gilinsky (Parts 2 and 50)

I agree with Commissioner Asselstine's comments on the procedural proposals being put out by the Commission majority. I also agree with his proposed reform and urge that public comments concentrate on these as they are a far sounder starting point than the package of the Commission majority. I would add that I continue to believe that the staff should cease to be a full party seeking issuance of a license, and that the Commission should replace the Appeal Board as the direct reviewer of Licensing Board decisions.

Separate Views of Commissioner Asselstine

I disagree with the majority's decision to issue for public comment these proposals for procedural changes in the nuclear power plant licensing process. These proposals, which were presented to the Commission in a November, 1982 draft report from the Chairman's Regulatory Reform Task Force (RRTF), reflect the most extreme view of licensing "reform" and, if adopted, would as a practical matter effectively eliminate public participation in the hearing process. Moreover, the process by which these proposals were developed does not support the majority's decision to proceed to issue them for comment in their present form.

As the Commission's notice makes clear, these proposals, and the accompanying explanatory discussion in the November, 1982 draft report, do not represent the views and recommendations of the Regulatory Reform Task Force. Rather, these proposals constitute nothing more than a collection of possible changes to our hearing procedures for discussion purposes. In such circumstances, the Commission should first decide which changes to its licensing procedures it believes are appropriate and beneficial, and then seek public comment on those changes. Further, any public notice of possible changes to our hearing procedures should present a full, fair and even-handed discussion of the potential advantages and disadvantages

of each proposed change. The document being issued for comment by the majority today fails to meet this test. Such proposals, and the process by which they were developed, do not provide a basis for Commission development of a set of reasonable and constructive changes to the hearing process—changes that I believe are needed to improve the efficiency and effectiveness of the process and to enhance the opportunities for participation by all involved parties, including public intervenors, the utility applicants and the NRC staff.

The following proposals being issued by the majority for comment are of particular concern: the proposal to establish a higher evidentiary threshold for the admission of contentions; the proposal to require that contentions be filed at the time the request for hearing or petition for leave to intervene is filed; the proposal to limit the opportunity to amend or file contentions after the relevant staff review documents become available; the proposal to establish a single Screening Board with exclusive authority to rule on the admissibility of contentions and Licensing Board requests to pursue issues *sua sponte;* the proposal to restrict opportunities for cross-examination; the proposal to eliminate the Commission's immediate effectiveness reviews of initial licensing decisions; the proposal to eliminate the Atomic Safety and Licensing Appeal Boards; and the proposal to require the codification of all generic factual issues that are considered in individual licensing decisions.

Each of these proposals suffers from significant legal, policy or administrative disadvantages that are not readily apparent from the discussion in the document being issued by the majority. For example, the proposals for the filing of detailed support for contentions prior to any opportunity for discovery, together with the added restrictions on late-filed contentions, would impose an unfair and probably illegal burden on public intervenors. The proposal for a Screening Board would detract from the orderly continuing management of the hearing process by the Licensing Board and would remove the responsibility to rule on contentions from those best able to carry out that responsibility. The proposal to restrict opportunities for cross-examination would impose an unfair burden on public participants and would represent an improper attempt to eliminate present legal requirements for trial-type adjudicatory hearings. The proposal to eliminate Commission immediate effectiveness reviews would eliminate the only requirement for direct Commission review prior to the commencement of operation of a new plant. The proposal to eliminate the Appeal Boards would deprive the Commission of the benefits of the thorough, expert and independent reviews of Licensing Board initial decisions now provided by the Appeal Boards. The proposal to require the codification of all generic factual issues considered in an individual licensing proceeding would commit the Commission to codification even where there are no benefits to be gained by such action.

These proposals were strongly criticized by individual members of the Regulatory Reform Task Force and by members of the Senior Advisory Group, a group of senior NRC officials with extensive knowledge of, and experience with, the hearing process. In addition, the Ad Hoc Committee for Review of Nuclear Reactor Licensing Reform Proposals, a group of knowledgeable experts from outside the agency with diverse perspectives on regulatory reform issues, recommended against adoption of all but one of these proposals. Moreover, the Commission's two legal offices, either in comments on the proposals, or in previous regulatory reform evaluations, have questioned the Commission's legal authority to adopt several of these proposals.

Notwithstanding the serious legal and public policy concerns that have been raised repeatedly by members of the Task Force, the Senior Advisory Group, the Ad Hoc Committee, the Commission's legal offices and others, the draft report being issued by the Commission today paints these proposals only in the most favorable light. The discussion of the majority of the proposals is biased in favor of the proposal and fails even to mention, much less address, the countervailing legal and public policy considerations.

Despite repeated suggestions from knowledgeable individuals from within and outside the agency, the Commission has made little progress over the past two years in developing reasonable improvement in our hearing procedures. That lack of progress is directly attributable to the dogged pursuit of more radical and extreme proposals for restructuring the hearing process. Rather than continuing on this course, the Commission should: (1) Reject decisively the extreme and unwarranted proposals in this notice; (2) restructure the Task Force to assure that it will function as a source of objective advice to the Commission on the subject of regulatory reform; and (3) proceed immediately to develop appropriate rule changes and policy guidance that would result in improvements in the efficiency and effectiveness of the hearing process and in the opportunities for participation by all involved parties.

In the hope of encouraging a more sensible and constructive direction in our regulatory reform effort, I am including in these views my own suggestions for improving the hearing process. These suggestions are drawn largely from the comments and recommendations of individual members of the Regulatory Reform Task Force, the Senior Advisory Group, the Ad Hoc Committee for Review of Nuclear Reactor Licensing Reform Proposals, and from previous NRC licensing reform efforts. I would appreciate comments on whether these suggestions provide a reasonable basis for Commission development of a set of useful and appropriate changes to our hearing procedures.

In brief, I woud revise the present hearing procedures to provide for the following:

- A notice of the submission of each reactor license application. Following this notice, interested persons could notify the Commission of their interest. Such persons would then be notified of meetings between the NRC staff and the applicant, and the staff would hold periodic meetings with such interested persons to here and respond to their concerns regarding the application. A local public document room would also be established following the notice.
- A notice of opportunity for hearing would be issued following the staff's docketing review, as under present practice. The notice would require interested persons to file intervention petitions within one month. However, the only question to be considered by the Licensing Board in deciding on the petition is whether the person has standing to intervene. No contentions need be filed at this stage.
- Intervenors admitted as parties to the proceeding would be given three months after they are admitted to review available documents and to prepare contentions. Contentions filed at the end of the three-month period would be reviewed by the Licensing Board and admitted provisionally: (1) If the contention meets present Commission requirements for admissibility; (2) if it is accompanied by a statement of all significant facts known to the intervenor at that time supporting each contention, together with references to the specific sources and documents which have been or will be relied on to establish such facts; and,

(3) unless the Board determines that it appears beyond doubt that the intervenor can prove no set of facts in support of its claim which would entitle it to relief. The third part of this test is modeled after the test established by the Supreme Court in *Conley* v. *Gibson*, 355 U.S. 41 (1957) for federal courts in determining whether a motion to dismiss a complaint should be granted pursuant to Rule 12 (b)(6) of the Federal Rules of Civil Procedure. In applying this part of the test, the Licensing Board would consider whether, reviewing the contention in the light most favorable to its proponent and whether every doubt resolved in the proponent's behalf, the contention states any valid claim for relief. Legal issues would be admitted and considered based upon oral argument rather than upon an adjudicatory hearing.

• A period of 4–6 months would be provided for discovery on all provisionally admitted contentions. Extensions could be granted only for good cause. The Licensing Boards would be directed by the Commission as a matter of policy to supervise closely the discovery process and to use such measures as bi-weekly telephone conference calls to manage the discovery process.

• At the close of the discovery period, the Licensing Board would rule on whether to proceed with a hearing on factual contentions. At this stage, the Board would only proceed to conduct an adjudicatory hearing on those contentions for which an intervenor has established that a genuine issue of material fact exists. In making this determination, the Board would apply the test set forth by the Court in *Independent Bankers Ass'n.* v. *Board of Governors*, 516 F.2d 1206, 1220 n. 57 (D.C. Cir. 1975). Under this test, an intervenor need not make detailed factual allegations in order to meet the requirement that he or she raise "issues of material fact." Rather, the intervenor need only show that an "inquiry in depth" is appropriate.

• Late-filed contentions would be admitted as under the Commission's present rules. If the contention could not have been filed earlier due to the institutional unavailability (i.e., the unavailability of staff documents or emergency plans) of the information on which the contention is based, the intervenor will be presumed to have met the good cause factor in § 2.714. As a policy matter, the staff would be directed to pursue the goal of early availability of all staff documents, preferably within six months of the issuance of the notice of opportunity for hearing.

• The Licensing Boards would be granted the authority to call experts as board witnesses. As a matter of policy, the Commission would provide that parties to a proceeding could file requests with the Board to call expert witnesses on issues to be litigated in the proceeding.

• As a matter of policy, the Licensing Boards would be directed to require the preparation and use of cross-examination plans for extended cross-examination of witnesses in the hearing.

• As a matter of Commission policy, the Licensing Boards and parties to a licensing proceeding, including the NRC Staff, would be invited to recommend to the Commission generic issues considered in individual licensing proceedings which could be usefully codified.

• Hybrid hearing procedures similar to those specified in section 134 of the Nuclear Waste Policy Act of 1982 would be used on an experimental basis in a few selected cases. All parties to the proceeding would have to agree to the use of hybrid hearing procedures.

The majority of my suggestions could be adopted through the issuance of a revised Commission policy statement on the conduct of nuclear power plant licensing hearings and through some limited revisions to 10 CFR Parts 2 and 50. If adopted, I believe that changes to our hearing procedures along the lines suggested would help assure a more efficient and effective hearing process as well as one that is fair to all participants. I invite comments on this approach and would welcome the opportunity to discuss my suggestions with interested persons.

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H.J. Res. 432/Pub. L. 98–255

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