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federal register

Monday
May 14, 1984

Selected Subjects

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Federal Trade Commission

Animal Diseases
Animal and Plant Health Inspection Service

Aviation Safety
Federal Aviation Administration

Bees
Animal and Plant Health Inspection Service
Customs Service

Conflict of Interests
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Estate Taxes
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General Services Administration

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

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Presidential Documents

Title 3—

The President

Proclamation 5192 of May 9, 1984

National P.O.W./M.I.A. Recognition Day, 1984

By the President of the United States of America

A Proclamation

Ever since the Revolutionary War, America's men and women have heroically served their country in times of conflict. In each of America's wars, our prisoners of war have been required to make special sacrifices, serving their country under conditions of hardship. Their burden greatly increased when they were treated in violation of the fundamental standards of morality and international codes of conduct for the treatment of prisoners of war.

Our P.O.W.s and M.I.A.s have earned a very special place in the hearts of all Americans because of their selfless devotion to duty and unflinching courage. We must not forget or fail to honor those who have served their country so faithfully.

Our Nation deeply appreciates the acute suffering and pain experienced by the families of our servicemen held captive or missing in action. The loss of a loved one is a tragic situation under any circumstance, but that burden is magnified when the fate of the loved one is unknown. All Americans fully support efforts to end the uncertainties with which they continue to live.

We accept and remember our obligation to these missing servicemen. Until the P.O.W./M.I.A. issue is resolved, it will remain a matter of the highest national priority. On July 20, 1984, the P.O.W./M.I.A. Flag will fly over the White House, the Departments of State and Defense, and the Veterans' Administration as a symbol of our unswerving commitment to achieve the fullest possible accounting for the servicemen and civilians.

By Senate Joint Resolution 171, the Congress has designated July 20, 1984, as "National P.O.W./M.I.A. Recognition Day." On this day, I firmly believe that we should recognize the special debt all Americans owe to our fellow citizens who gave up their freedom in the service of our country and to the families who have undergone a great travail.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Friday, July 20, 1984, as National P.O.W./M.I.A. Recognition Day. I call on all Americans to join in honoring all former American prisoners of war, those still missing, and their families who endured the uncommon sacrifices on behalf of this country. I also call upon State and local officials and private organizations to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 9th. day of May, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 84-12980
Filed 5-10-84; 12:23 pm]
Billing code 3195-01-M

Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 463; Lemon Regulation 462, Amendment 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 325,000 cartons during the period May 13–19 1984, and increases the quantity of lemons that may be shipped to 330,000 cartons during the period May 6–12, 1984. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

DATES: The regulation becomes effective May 13, 1984, and the amendment is effective for the period May 6–12, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, ANS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. 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.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on May 8, 1984, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports that lemon order business continues very active.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

1. Section 910.763 is added as follows:

§ 910.763 Lemon Regulation 463.

The quantity of lemons grown in California and Arizona which may be handled during the period May 13, 1984, through May 19, 1984, is established at 325,000 cartons.

2. Section 910.762 Lemon Regulation 462 (49 FR 18995) is revised to read as follows:

§ 910.762 Lemon Regulation 462.

The quantity of lemons grown in California and Arizona which may be handled during the period May 6, 1984, through May 12, 1984 is established at 330,000 cartons.

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

Dated: May 10, 1984.

Thomas R. Clark,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84–12972 Filed 5–11–84; 8:45 am]
BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 51

[Docket No. 83–146]

Animals Destroyed Because of Brucellosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the regulations governing the payment of indemnity for animals destroyed because of brucellosis by adding 28 breed associations to the list of registered breed associations. This action is necessary in order to include in the regulations all the registered breed associations that maintain records concerning the purebreeding of animals adequate to identify an animal as a registered animal of that breed association. The effect of this action is to allow for proper payment of indemnities to owners of cattle destroyed because of brucellosis, thereby encouraging the elimination of these reactor cattle as a disease source.

DATES: The effective date of this document is May 14, 1984. Written comments must be received on or before July 13, 1984.

ADDRESS: Written comments concerning this interim rule should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal

Building between 8 a.m. and 4:30 p.m., Monday through Friday except holidays.

FOR FURTHER INFORMATION CONTACT:

Dr. Thomas J. Holt, Cattle Diseases Staff, VS, APHIS, USDA, Room 817, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20872, 301–436–8711.

SUPPLEMENTARY INFORMATION:

Background

The "Animals Destroyed Because of Brucellosis" regulations (contained in 9 CFR Part 51 and referred to below as the regulations) provide for the payment of indemnities to owners of cattle, bison, and swine destroyed because of brucellosis. Under these regulations indemnity is paid to an owner of such animals slaughtered because of brucellosis to encourage the owner to cooperate in the timely removal of infected animals from the herd or, in the case of herd depopulation, to remove a foci of infection in an otherwise clean area and thereby prevent transmission of brucellosis to nearby susceptible herds. Under § 51.3(a)(1) of the regulations, the indemnity shall not exceed $250 for any registered cattle or nonregistered dairy cattle or, with certain exceptions, $50 for any other nonregistered cattle or bison.

To receive indemnity for registered cattle destroyed because of brucellosis, a claimant must provide registration papers for each animal, issued in the name of or transferred by the registered breed association to the name of the claimant/owner.

Registered cattle are defined in § 51.1(o) of the regulations as:

> Cattle for which individual records of ancestry are recorded and maintained by a breed association whose purpose is the improvement of the bovine species, and for which individual registration certificates are issued and recorded by such breed association.

Section 51.1(cc) of the regulations lists known registered breed associations. It also defines a registered breed association as:

> An association formed and perpetuated for the maintenance of records of purebreeding of animal species for a specific breed whose characteristics are set forth in Constitutions, By-Laws, and other rules of the association. The records maintained by such an association shall include an Official Herd Book or other recordkeeping format and Certificates of Registration or Recordation which identify an animal as a registered animal of that registered breed association.

A claimant is eligible to receive indemnity for cattle as registered animals if they are registered with a breed association listed in § 51.1(cc) of the regulations.

It has been determined that each of the following registered breed associations, in addition to those already listed, are within the definition of a registered breed association in § 51.1(cc):

American Beefalo Association, Inc.
The American Black Maine-Anjou Association
American Brahmental Association
American Breed Association, Inc.
American Dexter Cattle Association
American Gelbvieh Association
American International Marchigiana Society
American Normande Association
American Pinzgauer Association
American Red Brangus Association
American Salers Association
American Tarentaise Association
Ankina Breeders, Inc.
Barzona Breed Association of America
Brahmanstein Breeders Association
Brown Swiss Beef International, Inc.
Char-Swiss Breeders Association
Foundation Beefmaster Association
International Braford Association
International Maine-Anjou Association
Marky Cattle Association
Mid America RX_3 Cattle Company
Pan American Zebu Association
Red and White Dairy Cattle Association
Red Poll Beef Breeders, International
Red Poll Cattle Club of America
South Devon Breed Society
White Park Cattle Association of America

Therefore, it is necessary to add these registered breed associations to the list of registered breed associations in § 15.1(cc).

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. It is necessary to make this interim rule effective immediately in order to allow for proper payment of indemnities to owners of cattle destroyed because of brucellosis, thereby encouraging the elimination of these reactor cattle as a disease source.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest and good cause is found for making this interim rule effective upon signature. Comments are solicited for 60 days following publication and a final document discussing comments received and any amendments required will be published in the **Federal Register.**

Executive Order 12291 and Regulatory Flexibility Act

This emergency action has been reviewed in accordance with Executive Order 12291 and has been determined to be not a major rule. The Department has determined that this action will not have a significant effect on the economy and will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This change will affect less than one percent of the cattle annually destroyed because of brucellosis in the United States.

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.

List of Subjects in 9 CFR Part 51

Animal diseases, Bison, Cattle, Hogs, Indemnity payments, Brucellosis.

PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

Under the circumstances referred to above, 9 CFR Part 51 is amended by revising § 51.1(cc) to read as follows:

§ 51.1 Definitions.

* * * * *

(cc) *Registered breed association.* An association formed and perpetuated for the maintenance of records of purebreeding of animal species for a specific breed whose characteristics are set forth in Constitutions, By-Laws, and other rules of the association. The records maintained by such an association shall include an Official Herd Book or other recordkeeping format and Certificates of Registration or Recordation which identify an animal as a registered animal of that registered breed association. Known registered breed associations are: American Angus Association, American Beefalo Association, Inc., The American Black Maine-Anjou Association, American Brahman Breeders Association, American Brahmental Association, American Breed Association, Inc., American Chianina Association, American Dexter Cattle Association, American Galloway Breeders

Association, American Gelbvieh Association, American Guernsey Cattle Club, American Hereford Association, American International Charolais Association, American International Marchigiana Society, American Jersey Cattle Club, American Maine-Anjou Association, American Milking Shorthorn Society, American Murray Grey Association, American Normande Association, American Pinzgauer Association, American Polled Hereford Association, American Red Brangus Association, American Red Poll Association, American Salers Association, American Scotch Highland Breeders Association, American Shorthorn Association, American Simmental Association, Inc., American Tarentaise Asssociation, Ankina Breeders, Inc., Ayrshire Breeders Association, Barzona Breed Association of America, Beefmaster Breeders Universal, Belted Galloway Society, Brahmanstein Breeders Association, Brown Swiss Beef International, Inc., Brown Swiss Cattle Breeders Association of U.S.A., Char-Swiss Breeders Association, Devon Cattle Association, Inc., Dutch Belted Cattle Association of America, Inc., Foundation Beefmaster Association, Galloway Cattle Society of America, Inc., Galloway Performance International, Holstein-Friesian Association of America, International Braford Association, International Brangus Breeders Association, Inc., International Maine-Anjou Association, Marky Cattle Association, Mid America RX_3 Cattle Company, North American Limousin Foundation, Pan American Zebu Association, Red and White Dairy Cattle Association, Red Angus Association of America, Red Poll Beef Breeders International, Red Poll Cattle Club of America, Santa Gertrudis Breeders International, South Devon Breed Society, Sussex Cattle Association of America, Texas Longhorn Breeders Association of America, and White Part Cattle Association of America.

Authority: Secs. 3, 4, 5, 11, and 13, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; sec. 3, 33 Stat. 1265, as amended; sec. 3, 76 Stat. 130 (21 U.S.C. 111–113, 114, 114a–1, 120, 121, 125, 134b); 7 CFR 2.17, 2.51, and 371.2(d).

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

B. G. Johnson,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 84-12909 Filed 5-11-84; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 336

Employee Responsibilities and Conduct

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") hereby adopts as a final rule a revision to Part 336 of its rules and regulations, 12 CFR Part 336, which governs the standards of ethical and other conduct of FDIC employees. Significant changes include increasing the categories of employees subject to credit restrictions; easing existing restrictions on credit from affiliates of prohibited creditors; permitting assumptions of home mortgage loans from prohibited creditors; easing existing restrictions on ownership of bank securities; reporting of family member employment by insured banks; increasing the categories of employees reporting indebtedness; and reporting the acceptance of private sector employment upon resignation.

The rule requires: (1) Liquidators, assessment auditors, corporate auditors, and certain Division of Bank Supervision employees at or above the grade 5 level to file statements of employment and financial interests; (2) certain Division of Bank Supervision employees to file reports of indebtedness; and (3) certain employees to file a report regarding private sector employment upon resignation. It would also subject certain Division of Bank Supervision employees to restrictions on extensions of credit. These provisions were not part of the proposed rule; therefore, additional comment on these provisions will be accepted for 30 days.

DATE: The rule is effective May 14, 1984. Comments on the new requirements must be submitted by June 13, 1984.

ADDRESS: Comments should be addressed to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429, or hand-delivered to Room 6108 at the same address, Monday through Friday, between the hours of 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Hoyle L. Robinson, Executive Secretary and Ethics Counselor, at (202) 389–4425, or Emily F. Samaha, Deputy Ethics Counselor, at (202) 389–4446.

SUPPLEMENTARY INFORMATION: On November 8, 1983, the FDIC issued for public comment a proposed revision to Part 336 of its rules and regulations, 12 CFR Part 336, which part governs standards of ethical and other conduct of FDIC employees. (48 FR 51317). Further comment was directly solicited from the unions representing various components of FDIC employees and each employee was mailed a copy of the proposed rule. In addition, the Office of Government Ethics ("OGE") and the Department of Justice reviewed the regulation for consistency with applicable law and regulation.

Eight written comments were received on the proposal; all but one were from assessment auditors. The general thrust of these comments was that the proposed restriction on extensions of credit from insured banks subject to audit for deposit insurance assessment purposes was overly broad and unnecessary. The other comment noted the lack of specific guidance in the regulation and requested that more detailed interpretation be provided.

After considering all comments, the Board of Directors has determined to adopt the regulation substantially in the form proposed, with the following changes:

1. The definition of "assuming bank" has been changed to include only those banks which have entered into a purchase and assumption transaction within the two preceding calendar years. The change was made as the prior definition was too broad, since the indemnity contract continues indefinitely.

2. The restriction on extensions of credit from insured nonmember banks is being extended to all Division of Bank Supervision employees (except clerical) in order to include financial analysts and other specialists who are not examiners. Only those positions at or above the grade 11 level would be included. These employees have an increased role in the activities of the Division and the restriction is necessary to avoid conflicts of interest and appearances thereof. Similarly, the requirement that employment of certain family members by insured banks be reported to the appropriate director is also extended to such employees.

3. As requested by commenters, the rule provides that assessment auditors may, with the prior written permission of the appropriate director, choose *one* insured bank subject to audit for deposit insurance assessment purposes from which to accept or become obligated on extensions of credit. Any assessment auditor who has received such written permission will be disqualified from participating in any audit or other action having an impact on that bank. Also, a

definition of assessment auditor was added to include Washington office supervisory personnel (*i.e.*, those persons in the presently constituted Assessments and Financial Operations Section of the Division of Accounting and Corporate Services).

4. Reports of indebtedness will have to be filed by all Division of Bank Supervision employees (except clerical) and not just examiners and others at or above the grade 11 level. Liquidators and liquidation counsel will also have to report any extension of credit in excess of $5,000 from any source. Voting members and designees of any FDIC standing committee will have to file reports. Reports will include extensions of credit to the employee's spouse and dependent child. These changes are made to insure that employees avoid conflicts of interest and the appearance thereof. Report will only be made semi-annually, however, and not every time credit is extended.

5. Statements of employment and financial interests will be required of all Division of Bank Supervision employees (except clerical), liquidators, and assessment auditors who are at or above the grade 5 level instead of the grade 11 level. Also, corporate auditors at or above the grade 5 level will file statements. These changes are made at the recommendation of the OGE. Also, the reporting date will remain June 30 as the OGE will not permit the skipping of the June 1984 filing, if a December filing date were adopted.

6. At the recommendation of the OGE, the majority of FDIC's professional staff will have to report to the Ethics Counselor information relating to the acceptance of private sector employment upon resignation from the FDIC. The purpose of this requirement is to monitor compliance with 18 U.S.C. 208, which prohibits a Federal employee from participating personally and substantially in any matter in which any person with whom the employee is negotiating or has an arrangement regarding future employment has a financial interest. The report is required two weeks prior to the effective date of the employee's resignation. Employees subject to this requirement are: a Division of Bank Supervision employee; a liquidator; an attorney; an assessment auditor; a corporate auditor; an employee of the Division of Accounting and Corporate Services at or above the grade 9 level who evaluates, recommends, purchases or contracts for equipment, materials or services; a member of the Board of Directors (except the Comptroller of the Currency); an assistant or deputy to the Board of Directors or an individual Board member (except the Comptroller of the Currency) and any assistant thereto; and a division or office head and the holders of the positions immediately subordinate thereto.

The Board recognizes that the changes relating to the filing of confidential statements by Division of Bank Supervision employees, liquidators, corporate auditors, and assessment auditors at or above the grade 5 level, the restrictions on indebtedness from nonmember banks for Division of Bank Supervision employees (other than examiners), and reports regarding employment upon resignation were not the subject of prior comment. Because of the upcoming June 30 filing for statements of financial interests, it was necessary to adopt these changes as a final rule. In order to give employees the opportunity to comment on these changes, the Board will accept comment on these changes for 30 days following publication of this rule. Employees will be notified if any changes are made based on comments received.

Finally, it is noted that the Ethics Counselor will circulate to employees a memorandum providing more detailed advice regarding the obligations and responsibilities imposed by Part 336. Employees are, however, encouraged to consult at any time with the Ethics Counselor or Deputy Ethics Counselors regarding any questions they may have on this part.

List of Subjects in 12 CFR Part 336

Conflicts of interest, Credit, Disclosure requirements, Government employees.

Accordingly, Part 336, is revised to read as follows:

PART 336—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Subpart A—Scope, Definitions and Administrative Provisions

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336.1 Scope.
336.2 Definitions.
336.3 Employee responsibility, counseling and distribution of regulations.
336.4 Designation of Ethics Counselor, Alternate Ethics Counselor and Deputy Ethics Counselors.
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336.20 Outside employment and other activity.
336.21 Employment of family members.

Subpart D—Reports of Indebtedness, Interest in FDIC Decision, and Employment Upon Resignation; Statements of Employment and Financial Interests

336.22 Report of indebtedness.
336.23 Report of interest in FDIC decision.
336.24 Report of employment upon resignation.
336.25 Statement of employment and financial interests.
336.26 Financial disclosure reports under the Ethics in Government Act.

Subpart E—Ethical and Other Conduct and Responsibilities of Special FDIC Employees

336.27 Use of FDIC employment.
336.28 Use of inside information.
336.29 Coercion.
336.30 Gifts, entertainment, favors and loans.
336.31 Miscellaneous statutory provisions.
336.32 Statements of employment and financial interests.

Authority: E.O. 11222, 3 CFR 1964–1965 Comp.; 5 CFR 735.104.

Subpart A—Scope, Definitions and Administrative Provisions

§ 336.1 Scope.

This part establishes the policies and procedures of the FDIC with regard to the ethical and other standards of conduct and responsibilities for employees and special employees. Permissible financial interests, obligations and outside employment are set forth. This part further sets out the policies and procedures for employee reporting of financial interests and obligations.

§ 336.2 Definitions.

For the purposes of this part:

(a) "Affiliate" means any holding company of which the bank is a subsidiary, any other subsidiary of the holding company, and any other entity defined as an affiliate under 12 U.S.C. 221a, and "subsidiary" means a company the voting stock of which is 50 percent or more owned or controlled by another company.

(b) "Appropriate director" means the head of the division or office to which an employee is assigned.

(c) "Assessment auditor" means any individual employed as an auditor of insured banks for deposit insurance assessment purposes whether assigned to a field office or the Washington office and includes Washington office personnel having oversight and review responsibility for the collection of assessments.

(d) "Assisted bank" means any bank which has received financial assistance from the FDIC under section 13 of the Federal Deposit Insurance Act (except for transactions under section 13(i)), but only to the extent that a financial relationship presently exists between the bank and the FDIC.

(e) "Assuming bank" means any bank which in the two preceding calendar years entered into either a purchase and assumption or a deposit transfer transaction with the FDIC.

(f) "Attorney" means any individual employed as an attorney whether assigned to the Legal Division, another Washington office or division, a regional office, an area office or a liquidation field office, but the term does not include outside attorneys retained by the FDIC but otherwise engaged in the private practice of law.

(g) "Chairman" means Chairman of the Board of Directors of the FDIC.

(h) "Dependent child" means a son, daughter, stepson or stepdaughter who either: (1) Is unmarried, under 21 and living in the employee's household, or (2) has received over half of his or her support from the employee in the preceding calendar year.

(i) "Division of Bank Supervision employee" means any employee of the Division of Bank Supervision, including an examiner, assigned to a regional office or the Washington office, but does not include any clerical employee, as determined by the Director of the Division of Bank Supervision.

(j) "Employee" means any individual member of the Board of Directors, officer or employee, including a liquidation graded employee, of the FDIC, but does not include a special employee.

(k) "Examiner" means any commissioned bank examiner and any employee assigned to the Division of Bank Supervision in a position of the 570 series.

(l) "Insured bank subject to audit for deposit insurance assessment purposes" means any one of the 500 largest insured banks which are routinely audited by the FDIC for assessment purposes.

(m) "Liquidation counsel" means any individual employed by the FDIC as an attorney and assigned to an area office or a liquidation field office.

(n) "Liquidator" means any employee of the Division of Liquidation, including a liquidation graded employee, assigned to an area office, a liquidation field office or the Washington office, but does not include any clerical employee, as determined by the Director of the Division of Liquidation.

(o) "Member of the employee's immediate household" means a person who is related to the employee by blood, marriage or adoption and who resides in the same household as the employee.

(p) "Person" means an individual, bank, corporation, company, association, partnership, firm, society, or any other organization or institution.

(q) "Regional counsel" means any individual employed by the FDIC as an attorney and assigned to a regional office.

(r) "Security" means any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement, preorganization certificate or subscription, investment contract, voting trust certificate, or, in general, any interest or instrument commonly known as a security, but does not include a deposit.

(s) "Special employee" means any employee serving with or without compensation for up to 130 days during any 365-day period on a full time or intermittent basis.

§ 336.3 Employee responsibility, counseling and distribution of regulation.

(a) Each employee is responsible for being familiar with and complying with the provisions of this part. The Ethics Counselor and Deputy Ethics Counselors shall be available for counseling and guidance as to the statutes and regulations affecting employee responsibility and conduct, including interpretation of this part.

(b) The Ethics Counselor shall provide to each new employee and special employee a copy of this part within 90 days of commencement of employment. The Ethics Counselor shall annually distribute a reminder to each employee and each special employee of the basic provisions of this part.

§ 336.4 Designation of Ethics Counselor, Alternate Ethics Counselor and Deputy Ethics Counselors.

(a) The FDIC's ethics program shall be coordinated and managed by the Ethics Counselor. The Executive Secretary of the FDIC shall act as the FDIC's Ethics Counselor.

(b) The Chairman shall appoint an Alternate Ethics Counselor, who shall act as Ethics Counselor in the absence of the Ethics Counselor.

(c) The Ethics Counselor shall appoint one or more Deputy Ethics Counselors, to whom the Ethics Counselor may delegate duties and responsibilities under this part.

§ 336.5 Review of adverse determination.

An employee or special employee may appeal an adverse determination under this part to the Chairman within 20 days of receipt of notice of such determination. Any such appeal shall be in writing and shall contain a statement of reasons therefor. The Chairman will promptly review the matter and shall provide written notice to the employee of his or her determination.

§ 336.6 Sanctions.

Any violation of this part by an employee or special employee may be cause for remedial or disciplinary action, which may be in addition to any penalty prescribed by law. Disciplinary action may include, but is not limited to, oral or written warning or admonishment, reprimand, suspension, or removal from office, which action shall be taken in accordance with applicable law, executive order and regulation. Remedial action, when appropriate, may include, but is not limited to, divestment of conflicting interests, changes in assigned duties, or disqualification for a particular assignment.

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

§ 336.7 General rules.

(a) In order to assure the proper performance of FDIC business and to maintain public confidence in Government, FDIC employees are expected to maintain unusually high standards of honesty, integrity, impartiality and conduct and to avoid misconduct and conflicts of interest, or the appearance of conflicts of interest.

(b) No employee shall engage in any action, whether or not specifically prohibited by this part, which might result in, or create the appearance of:

(1) Using public office for private gain

(2) Giving preferential treatment to any person;

(3) Impeding the FDIC's efficiency or economy;

(4) Losing complete independence or impartiality;

(5) Making an FDIC decision outside official channels; or

(6) Adversely affecting the public's confidence in the integrity of the FDIC.

§ 336.8 Gifts, entertainment, favors and loans.

(a) Except as provided in paragraph (b) of this section, no employee may solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or other thing of monetary value from a person who:

(1) Has or seeks contractual or other business or financial relationships with the FDIC;

(2) Is or may be regulated or examined by the FDIC; or

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duties.

(b) The prohibitions of paragraph (a) of this section do not apply:

(1) Where it is clear from the circumstances that personal or family relationships are the sole motivating factors and that business or financial interests are not motivating factors;

(2) To the acceptance of food, refreshments and accompanying entertainment of nominal value on infrequent occasions in the ordinary course of an official conference, official meeting or other official function at which the employee is properly in attendance;

(3) To the acceptance of unsolicited advertising or promotional material such as pens, pencils, note pads, calendars and other items the value of which is $10.00 or less; and

(4) Except as otherwise provided in § 336.16, to the acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees.

(c) No examiner shall accept any gratuity from any insured nonmember bank, from any insured bank examined by the examiner, or from any person connected therewith (18 U.S.C. 213).

(d) Whenever an employee receives an unsolicited gift or other item of monetary value, the acceptance of which is prohibited by paragraphs (a) or (c) of this section, the gift or item shall be returned to the sender or otherwise disposed of as directed by the Ethics Counselor. The cost of returning such gift or item shall be borne by the FDIC.

(e) No employee may solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior or accept a gift from an employee receiving less pay, unless it is a voluntary gift or donation of nominal value made on a special occasion such as marriage, illness or retirement (5 U.S.C. 7351).

(f) No employee may accept a gift, present, decoration or other thing from a foreign government except as permitted by law (5 U.S.C. 7342).

§ 336.9 Travel expenses.

(a) It is the policy of the FDIC that expenses of travel, lodging and subsistence incurred by an employee while on official duty shall be paid for or reimbursed by the FDIC (in accordance with FDIC General Travel Regulations) and that an employee shall not accept payment or reimbursement for such expenses from any private source.

(b) On rare occasions where there is no practical alternative to acceptance, an employee may accept travel, lodging or subsistence from a private source while on official duty. The employee must report within 30 days the acceptance, value and circumstances thereof to the appropriate director and the Ethics Counselor. When appropriate, the FDIC will reimburse the private source the fair market value of such travel, lodging or subsistence.

(c) When an employee is not on official duty and there is no payment or reimbursement by the FDIC for expenses of travel, lodging or subsistence, the employee may accept payment or reimbursement from a private source where acceptance is compatible with the purposes of this part and does not present a conflict of interest or the appearance thereof.

(d) For the purpose of this section, "subsistence" does not include food or refreshments accepted on infrequent occasions in the ordinary course of an official function as permitted by § 336.8(b)(2).

(e) The provisions of this section do not prohibit, or require a report of, the acceptance of travel, lodging or subsistence provided by family members or personal friends.

§ 336.10 Use of official information.

(a) An employee may not, directly or indirectly, use or allow the use of information which is obtained as a result of his or her FDIC employment but which is not available to the general public in order to engage in any financial transaction or to further a private interest, except as permitted in § 336.11.

(b) An employee may not maintain, disclose or otherwise use personal information in a manner which violates the Privacy Act, 5 U.S.C. 552a, or Part 310 of FDIC's regulations.

(c) An examiner may not disclose information from a bank examination report except as authorized by law (18 U.S.C. 1906).

(d) An employee may not disclose confidential business information except as authorized by law (18 U.S.C. 1905).

§ 336.11 Lectures, speeches and manuscripts.

(a) No employee shall publish any material or speak before banking or public organizations on matters involving the FDIC unless the employee receives the prior approval, and prior clearance of material to be published, by the appropriate director.

(b) An employee shall not use in any teaching, lecturing, speaking or writing engagement information obtained as a result of his or her FDIC employment unless the information is available to the general public or the appropriate director gives authorization of the use, upon the determination that the use of the information is in the public interest.

(c) No employee may receive any compensation or other thing of monetary value for any speech, lecture, publication or similar engagement, the subject matter of which either relates substantially to matters involving the FDIC or contains information that is not otherwise available to the general public.

(d) No employee may accept an honorarium of greater than $2,000 for any appearance, speech or article (2 U.S.C. 441i).

§ 336.12 Employment by FDIC of relatives.

(a) For the purposes of this section:

(1) A "relative" is any person related to an FDIC official as parent, step-parent, child, step-child, brother, sister, step-brother, step-sister, half-brother, half-sister, spouse, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law;

(2) An "official" is any employee who has authority to appoint, employ, promote or advance employees or to recommend anyone for appointment, employment, promotion or advancement at the FDIC;

(3) A "supervisor" is any employee whose position requires independent judgment to appoint, employ, promote, advance, assign, direct, reward, transfer, suspend, discipline, remove, adjust grievances or furlough any person or to recommend any such action.

(b) An FDIC official may not:

(1) Appoint, employ, promote or advance any relative to a position at the FDIC;

(2) Advocate a relative's appointment, employment, promotion or advancement at the FDIC; or

(3) Appoint, employ, promote, or advance a relative of another FDIC

official if the official has advocated the relative's appointment, employment, promotion, or advancement.

(c)(1) No employee may be a supervisor of any relative.

(2) Whenever any employee becomes a supervisor of a relative, the employee shall report in writing that fact to the appropriate director. The appropriate director, in consultation with the Director of FDIC's Office of Personnel Management and the Ethics Counselor, shall determine whether the relative's position may be removed from the scope of the supervisor's authority, taking into consideration the nature of the supervisor's position, the operational needs of the division and the potential for conflicts of interest or the appearance thereof. If it is determined that it is not feasible to remove the relative's position from the scope of the supervisor's authority, the appropriate director, the Director of FDIC's Office of Personnel Management and the Ethics Counselor shall determine whether the relative may be assigned to another position at the FDIC which is outside the scope of the supervisor's authority.

§ 336.13 Use of FDIC property.

An employee shall not, directly or indirectly, use or allow the use of any kind of FDIC property, including leased property, for other than officially approved activities. An employee has a positive duty to protect and conserve FDIC property, including equipment, supplies and other property entrusted or issued to the employee.

§ 336.14 Indebtedness, gambling and other conduct.

(a) *Indebtedness.* An employee shall pay his or her just financial obligations in a manner such that the FDIC will not be asked to assist in the collection of the obligations. For the purpose of this section, a "just financial obligation" is one acknowledged by the employee or reduced to judgment by a court or one imposed by law such as Federal, state, or local taxes. An employee who has difficulty in meeting his or her financial obligations may seek counseling with FDIC's Office of Personnel Management. This does not require the FDIC to determine the validity or amount of any debt which is the subject of dispute between the employee and an alleged creditor.

(b) *Gambling.* An employee shall not participate in any gambling activity, including gambling devices, lotteries, pools, games for money or property, or numbers tickets, while on property owned or leased by the FDIC or while on duty for the FDIC.

(c) *Crimes and dishonesty.* An employee shall not engage in criminal, dishonest or other conduct prejudicial to the FDIC.

(d) *Miscellaneous.* Other provisions with which an employee should be familiar include:

(1) Prohibitions relating to bribery, conflicts of interest and graft (18 U.S.C. 201 *et seq.*).

(2) Prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(3) Prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(4) Prohibitions against the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783).

(5) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(6) Prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(7) Prohibition against the misuse of the franking privilege (*i.e.*, prepaid postage) (18 U.S.C. 1719).

(8) Prohibition against the use of deceit in an examination of personnel action in connection with Government employment (18 U.S.C. 1917).

(9) Prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(10) Prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(11) Prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(12) Prohibitions against embezzlement of Government money or property (18 U.S.C. 641); failing to account for public money (18 U.S.C. 643); and embezzlement of the money or property of another person in the possession of an employee by reason of his or her employment (18 U.S.C. 654).

(13) Prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(14) Prohibitions against political activities in subchapter III of chapter 73 of title 5, United States Code (the Hatch Act) and 18 U.S.C. 602, 603, 607 and 608.

(15) Prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(16) The "Code of Ethics for Government Service," which prescribes general standards of conduct. Pub. L. 96-303, 94 Stat. 855-856.

Subpart C—Financial Interests and Obligations; Outside Employment

§ 336.15 General rules.

(a) No employee shall have any direct or indirect financial interest or obligation that conflicts or appears to conflict with the employee's FDIC duties and responsibilities.

(b) No employee may participate personally and substantially, by decision, approval, disapproval, recommendation, the rendering of advice, examination or other action, in any matter in which the employee, the employee's spouse, dependent child, partner or organization in which the employee serves as an officer, director, trustee, partner or employee, has a financial interest (other than a deposit) unless (1) the financial interest is specifically permitted in this part or (2) the employee receives the prior written determination of the Ethics Counselor, who shall consult with the appropriate director, that the interest is too inconsequential to affect the integrity of the employee's service to the FDIC. Otherwise, an employee shall disqualify himself or herself from participation in any matter in which he or she has a financial interest by advising the appropriate director and the Ethics Counselor that disqualification is required by this provision. Any such interest shall be reported to the Ethics Counselor and the appropriate director on a prescribed form.

§ 336.16 Extensions of credit.

(a) An examiner, any other Division of Bank Supervision employee at or above the grade 11 level, an assessment auditor, a liquidator, a liquidation counsel, a regional counsel, a member of the Board of Directors (except the Comptroller of the Currency), an assistant or deputy to the Board of Directors or an individual Board member (except the Comptroller of the Currency) and any assistant thereto, and a division or office head and the holder(s) of the position(s) immediately subordinate to such division or office head may not, directly or indirectly, accept or become obligated on any extension of credit, including credit extended through the use of a credit card, from a prohibited creditor. For the purposes of this section, a "prohibited creditor" is an insured nonmember bank, in the case of an examiner, any other Division of Bank Supervision employee at or above the grade 11 level, a member of the Board of Directors, an assistant or deputy to the Board of Directors or an individual Board member and assistant thereto, and a division or office head and the holder(s) of the position(s) immediately subordinate to such division or office head; an insured bank subject to audit for deposit insurance assessment purposes, in the case of an assessment auditor; an assisted or assuming bank,

in the case of a liquidator or liquidation counsel; and an insured nonmember bank whose principal place of business is within the region in which the attorney is assigned, in the case of a regional counsel.

(b) If the adoption of this regulation, change in marital status, commencement of employment, or action affecting the status of the creditor [1] results in an extension of credit prohibited by paragraph (a) of this section, that extension of credit may be retained by the employee if it is liquidated under its original terms, without renegotiation. In the case of credit extended through the use of a credit card issued by a prohibited creditor, the credit card must be returned to the creditor. If an otherwise prohibited extension of credit is retained in accordance with this paragraph, the employee shall (1) be disqualified from participating in any decision, examination, audit or other action having an impact on the creditor and (2) report that retention as provided for in § 336.22.

(c) An employee subject to the restriction of paragraph (a) of this section may accept or become obligated on an extension of credit from an affiliate or a prohibited creditor (if the affiliate itself is not a prohibited creditor). The employee shall be disqualified from participating in any decision, examination, audit or other action having an impact on the affiliate whenever the total amount of the credit exceeds $10,000 at any time; *Provided*, That an examiner shall be disqualified from participating in any examination of an insured bank affiliate which has extended credit to the examiner regardless of the amount of credit. Further, the appropriate director, in consultation with the Ethics Counselor, may disqualify an employee from participating in any decision, examination, audit or other action having an impact on the prohibited creditor if it is determined that the extension of credit from the affiliate may present a conflict of interest or the appearance thereof.

(d) Nowithstanding the restriction of paragraph (a) of this section, an assessment auditor may request the written permission of the appropriate director to accept or become obligated on any extension of credit from one particular insured bank subject to audit for deposit insurance assessment purposes. An assessment auditor who has received written permission as provided for in this paragraph shall be disqualified from participating in any audit or other action having an impact on that bank. The appropriate director shall provide to the Ethics Counselor a copy of such permission.

(e) Notwithstanding the restriction of paragraph (a) of this section, an employee may assume a mortgage loan made by a prohibited creditor under the following circumstances:

(1) The loan is for the employee's personal residence;

(2) The employee is unable to arrange, without undue financial hardship, a loan from a nonprohibited creditor;

(3) The assumption is made on terms no more favorable than those available to the general public;

(4) The employee receives the prior approval of the appropriate director, who shall consult with the Ethics Counselor; and

(5) The employee is disqualified from participating in any decision, examination, audit or other action having an impact on the creditor.

(f)(1) An extension of credit to an employee's spouse or dependent child shall constitute an extension of credit to the employee unless—

(i) The loan is made to the spouse or dependent child entirely upon his or her own credit and without the employee's being a party to the credit instrument as co-maker, endorser or guarantor;

(ii) The loan is supported by the spouse's or dependent child's own income or means so that neither the creditor nor the spouse or dependent child will look to the employee, to his or her income, or to his or her property for the payment thereof; and

(iii) The spouse or dependent child has the income, the ability and the means to meet the loan obligation at maturity.

(2) Even though an extension of credit to a spouse or dependent child is, by virtue of paragraph (f)(1) of this section, not deemed to be an extension of credit to an employee, as a matter of policy the employee will be disqualified from participating in any decision, examination, audit, or other action having an impact on the creditor to the same extent as if the employee were obligated on the extension of credit.

§ 336.17 Bank securities.

(a) While employed by the FDIC an employee may not purchase, own or control, directly or indirectly, any securities of an insured bank or affiliate thereof, except as permitted in this section.

(b)(1) Except as provided in paragraph (b)(2) of this section, an employee (other than a member of the Board of Directors) may own or control securities of an insured bank or affiliate thereof whenever—

(i) Ownership or control was acquired prior to commencement of FDIC employment, through a change in marital status, or through circumstances beyond the employee's control, such as inheritance, gift, or merger, acquisition or other change in corporate ownership;

(ii) The employee makes full, written disclosure on the prescribed form to the Ethics Counselor within 30 days of commencing employment or acquiring the interest; and

(iii) The employee is disqualified from participating in any decision, examination, audit or other action having an impact on the bank or affiliate: *Provided*, That, at the Ethics Counsel or, in consulation with the appropriate director, may determine that disqualification is not necessary as the employee's interest is too inconsequential to affect the integrity of the employee's services to the FDIC.[2]

An employee may own or control additional securities which result from a stock split, stock dividend, reinvestment of dividends or the exercise of preemptive rights arising out of such securities.

(2) The Ethics Counselor may require that an employee divest his or her interest in securities whenever disqualification under paragraph (b)(1) of this section might result in a substantial impairment of the employee's ability to perform his or her FDIC duties and responsibilities.

(c) An employee may have an indirect interest in securities of an insured bank or affiliate thereof which arises through ownership of shares (or other investment units) of publicly held holding companies, mutual funds or investment trusts but only if (1) the assets of the holding company, mutual fund or investment trust consist primarily of securities of nonbank entities and (2) the employee does not own or control 5 percent or more of the shares (or other investment units) of the holding company, mutual fund or investment trust. Such an indirect interest in securities of an insured bank or affiliate is deemed too inconsequential to affect the integrity of the employee's services to the FDIC.

(d)(1) Interests of an employee's spouse or dependent child shall be considered interests of the employee unless—

[1] Such actions include mergers, acquisitions, transactions under section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823) or similar actions beyond the employee's control.

[2] Employees who have received approval under previous regulations to retain an interest need not report that interest under this section.

(i) The interest is solely the financial interest and responsibility of the spouse or dependent child;

(ii) The interest is not in any way, past or present, derived from the income, assets or other activity of the employee; and

(iii) Any financial or economic benefit from the interest is for the spouse's or dependent child's personal use.

(2) Even though an interest of a spouse or dependent child is, by virtue of paragraph (d)(1) of this section, not deemed to be an interest of an employee, as a matter of policy, the employee will be disqualified from participating in any decision, examination, audit or other action having an impact on that interest to the same extent as if the interest were that of the employee.

§ 336.18 Purchase of property from the FDIC.

(a) An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, purchase any property which the FDIC holds in its capacity as receiver, liquidator or liquidating agent of the assets of a bank.

(b) An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, purchase any property which the FDIC holds in its corporate capacity unless: (1) The property has been declared excess property by the Director of the Division of Accounting and Corporate Services in accordance with standards and procedures prescribed by the Director of the Division of Accounting and Corporate Services and (2) the property is sold at a public auction or by other means which assure that the selling price is the property's fair market value. In no case shall an employee, the employee's spouse or dependent child, or members of the employee's immediate household directly or indirectly purchase any property from the FDIC in reliance upon information obtained by the employee in the course of his or her employment with the FDIC, other than knowledge of the proposed sale of the property, which is not available to the general public.

§ 336.19 Providing goods or services to the FDIC.

An employee, the employee's spouse or dependent child or members of the employee's immediate household shall not, directly or indirectly, provide any goods or services for compensation to the FDIC either in its corporate capacity or in its capacity as receiver, liquidator or liquidating agent of the assets of a bank unless the Director of the Division of Accounting and Corporate Services or the Director of the Division of Liquidation determines, in accordance with standards and procedures approved by the Board of Directors, that it is in the best interest of the FDIC to acquire goods or services from such a person. For the purpose of this section, the term "services" does not include services as required by the employee's position with the FDIC.

§ 336.20 Outside employment and other activity.

(a) An employee shall not engage in employment or other activity outside the scope of his or her FDIC employment which is not compatible with the full and proper discharge of the employee's duties and responsibilities to the FDIC. Employment or activity which is not compatible with the employee's duties and responsibilities to the FDIC includes, but is not limited to, that which results in, or creates an appearance of, a conflict of interest or impairs the employee's physical or mental capacity to perform the duties and responsibilities of his or her position with the FDIC. Such employment or activity may involve:

(1) Service, with or without compensation, as an organizer, incorporator, director, officer, trustee, or representative of, or advisor or consultant to, or in any other capacity with, any financial institution, including a bank, a savings and loan association and a credit union, except the Federal Deposit Employees' Federal Credit Union;

(2) Service, with or without compensation, in any capacity with an investment advisor, investment company, investment fund, mutual fund, insurance company, stockbroker, underwriter or any other person engaged in providing financial services; or

(3) The negotiation or arrangement of future employment with a person whose interests may be directly and substantially affected by the employee's performance of his or her FDIC duties and responsibilities (18 U.S.C. 208).

Any employee who engages in, or intends to engage in, outside employment or activity has the responsibility to consult with the Ethics Counselor as to whether such employment or activity results in or creates an appearance of a conflict of interest with the employee's FDIC duties and responsibilities.

(b) An examiner shall not perform any service for compensation for any bank, or any officer, director or employee thereof, or any person connected therewith (18 U.S.C. 1909).

(c) An employee shall not accept any money or anything of monetary value from a private source as compensation for service to the FDIC (18 U.S.C. 209).

(d) This section does not preclude an employee from participating in the activities of: (1) Charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service or civic organizations or (2) if not prohibited by law, national or state political parties.

§ 336.21 Employment of family members.

In order to avoid a conflict of interest or the appearance of a conflict, the below identified employees shall report to the appropriate director the employment by, or service in another capacity with, an insured bank or its affiliate of the employee's spouse, child, parent, brother, sister, or a member of the employee's immediate household, within 30 days of the commencement of employment of the family members. Generally, employees will not be assigned to any examination, investigation, application or other matter involving the bank or affiliate unless the appropriate director, in consultation with the Ethics Counsel or makes the prior determination that the nature of the family member's employment makes it unlikely that the employee's services to the FDIC will be affected by participation in the matter. In making determinations under this section, significant weight shall be given to the policy-making character of the family member's position. Under most circumstances, positions which are clerical or lacking policy-making character would not require disqualification. The following employees are covered by this section: examiners, other Division of Bank Supervision employees at or above the grade 11 level, assessment auditors, attorneys, corporate auditors, liquidators, voting members and designees appointed to any FDIC standing committee, members of the Board of Directors (except the Comptroller of the Currency), assistants or deputies to the Board of Directors or an individual Board member (except the Comptroller of the Currency) and assistants thereto, division or office heads and the holder(s) of the position(s) immediately subordinate to such division or office heads.

Subpart D—Reports of Indebtedness, Interest in FDIC Decision, and Employment Upon Resignation; Statements of Employment and Financial Interests

§ 336.22 Report of indebtedness.

(a) In order to assist managers and supervisors in the scheduling of employees for assignments and in monitoring compliance with the provisions of this part, a Division of Bank Supervision employee, assessment auditor, liquidator, attorney, voting member and designee appointed to any FDIC standing committee, member of the Board of Directors (except the Comptroller of the Currency), assistant or deputy to the Board of Directors or an individual Board member (except the Comptroller of the Currency) and any assistant thereto, division or office head and the holder(s) of the position(s) immediately subordinate to such division or office head shall report any extension of credit from an insured bank or its affiliates to the employee or to his or her spouse or dependent child; *Provided*, that Division of Bank Supervision employees shall also report extensions of credit from noninsured banks; and *Provided further*, That liquidators and liquidation counsel shall also report all extensions of credit which exceed $5,000 from any source. The Ethics Counselor may require any other employee whose position can have an economic impact on an insured bank or its affiliates to make such a report.

(b) Reports shall be on a prescribed form and shall disclose the identity of the creditor and the nature and particulars of all extensions of credit outstanding at any time during the preceding six months. The report dates shall be June 30 and December 31 of each year and reports shall be filed within 30 days of such dates.

(c) Reports required under this section shall be made as follows:

(1) Assessment auditors, area directors, liquidators assigned to the Washington office, attorneys (except liquidation counsel), voting members and designees appointed to any FDIC standing committee, holders of positions immediately subordinate to division and office heads, and any other employee designated by the Ethics Counselor to file reports, to the appropriate director;

(2) Division of Bank Supervision employees assigned to a regional office, to the regional director;

(3) Regional directors and Division of Bank Supervision employees assigned to the Washington office, to the Director of the Division of Bank Supervision;

(4) Liquidators assigned to an area office or a liquidation field office and liquidation counsel, to the area director;

(5) Members of the Board of Directors, assistants or deputies to the Board of Directors or individual Board members and assistants thereto, and division and office heads, to the Ethics Counselor; and

(6) The Ethics Counselor, to the Chairman.

(d) Regional directors, area directors, appropriate directors, the Ethics Counselor and the Chairman shall review the reports respectively filed therewith to determine whether any extension of credit presents a conflict of interest or the appearance of a conflict of interest with the employee's duties and responsibilities to the FDIC or is otherwise prohibited by this part. In the event it is determined that there is a conflict of interest or the appearance thereof or a violation of this part, the regional director, area director, appropriate director, Ethics Counselor or the Chairman shall resolve the matter.

(e) All reports received under this section shall be treated as confidential. Information in a report shall be disclosed only as necessary to carry out the purposes of this part or as the Chairman may determine for good cause shown.

§ 336.23 Report of interest in FDIC decision.

Except for interests reported in accordance with §§ 336.17 and 336.22, an employee with a financial interest (other than a deposit) in a bank or other entity that may be affected by his or her participation in an FDIC decision must report that interest to the Ethics Counselor on a prescribed form. Reports are to be made within 30 days of entrance on duty; within 30 days of acquiring the interest, if acquired subsequent to employment; or within 30 days of the bank or other entity becoming subject to an FDIC decision, if the interest was previously acquired. Reports filed under this section shall be treated as confidential. Information in a report shall be disclosed only as necessary to carry out the purposes of this part or as the Chairman may determine for good cause shown.

§ 336.24 Report of employment upon resignation.

The following employees shall report to the Ethics Counselor on a prescribed form his or her resignation to accept employment in the private sector: a Division of Bank Supervision employee; a liquidator; an attorney; an assessment auditor; a corporate auditor; an employee of the Division of Accounting and Corporate Services at or above the grade 9 level who evaluates, recommends, purchases or contracts for equipment, materials or services; a member of the Board of Directors (except the Comptroller of the Currency); an assistant or deputy to the Board of Directors or an individual Board member (except the Comptroller of the Currency) and any assistant thereto; and a division or office head and the holders of the positions immediately subordinate thereto. Reports shall disclose pertinent information regarding the prospective employment and shall be made at least two weeks prior to the effective date of resignation.

§ 336.25 Statement of employment and financial interests.

(a) *Employees required to file.* Except for those employees who file statements pursuant to § 336.26, the following employees shall file statements of employment and financial interests:

(1) Assistants to assistants or deputies to the Board of Directors or individual Board members;

(2) Holder(s) of the position(s) immediately subordinate to a division or office head;

(3) Branch or comparable office heads;

(4) Division of Bank Supervision employees at or above the grade 5 level;

(5) Liquidators at or above the grade 5 level;

(6) Assessment auditors at or above the grade 5 level;

(7) Employees of the Division of Accounting and Corporate Services at or above the grade 9 level who evaluate, recommend, purchase or contract for equipment, materials and services;

(8) Persons employed by the FDIC as attorneys;

(9) Corporate auditors at or above the grade 5 level;

(10) Voting members and designees appointed to any FDIC standing committee;

(11) The Alternate Ethics Counselor and Deputy Ethics Counselors; and

(12) The holders of any other positions determined by the Ethics Counselor to require the incumbents to report employment and financial interests in order to carry out the purposes of law, executive order, this part or other FDIC regulation; *Provided*, that reporting by holders of such positions below the grade 13 level will be subject to the prior concurrence of the Office of Government Ethics. Such positions may include, but are not limited to, those the incumbents of which are responsible for making decisions or taking actions with respect to contracting or procurement.

administering or monitoring grants or subsidies, regulating or auditing a private or non-Federal enterprise, or other activities where the decision or action has an economic impact on any bank or other enterprise.

(b) *Submission of statements.* (1) Employees shall annually file statements of employment and financial interests with information as of June 30. Statements shall be filed with the Ethics Counselor.

(2) The Ethics Counselor shall notify employees required to file statements of this obligation and provide a copy of the prescribed reporting form no later than June 25 of each year, with instructions that statements are to be returned after July 1 but not later than July 31.

(3) Employees commencing employment in or reassigned or promoted to positions, the incumbents of which must file statements in accordance with this section, shall file statements within 30 days after entrance on duty or reassignment or promotion.

(4) Notwithstanding any other provision of this section, the filing of a statement may be required prior to employment in, or reassignment or promotion to, executive level positions and certain other senior positions.

(c) *Financial interests of spouse and dependent child.* For the purpose of this section, a financial interest of the employee's spouse or dependent child is considered an interest of the employee unless—

(1) The interest is solely the financial interest and responsibility of the spouse or the dependent child and the employee has no knowledge of it;

(2) The interest is not in any way, past or present, derived from the income, assets or activities of the employee; and

(3) The employee neither derives, nor expects to derive, any financial or economic benefit from the interest.

(d) *Information not known by employee.* If any information required to be included on a statement of employment and financial interests, including holdings placed in trust, is not known to an employee but is known to another person, the employee shall request that other person to submit information on his or her behalf.

(e) *Excepted information.* This section does not require an employee to submit on a statement of employment and financial interests any information relating to the employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed business enterprises and are required to be included in an employee's statement of employment and financial interests.

(f) *Confidentiality of statements.* Statements of employment and financial interests shall be held in confidence. Statements shall be received, reviewed and retained in the office of the Ethics Counselor, who shall be responsible for maintaining the statements in confidence. The Ethics Counselor shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part. Information in a statement will not otherwise be disclosed except as the Chairman or the Director of the Office of Government Ethics may determine for good cause shown.

(g) *Review of statements.* (1) Annual statements submitted under this section will be reviewed by the Ethics Counselor no later than three months following the filing of the statements. The Ethics Counselor may be assisted in his or her review by the Deputy Ethics Counselors.

(2) Whenever a statement or other information indicates a possible conflict between the interest of an employee and the performance of his or her service to the FDIC:

(i) The Ethics Counselor shall investigate the matter and allow the employee a reasonable opportunity, orally and in writing, to explain why he or she does not believe a conflict or appearance of a conflict exists; and

(ii) The Ethics Counselor shall attempt to resolve the matter. If the matter cannot be resolved within 60 days, the information concerning the conflict or the appearance of a conflict shall be reported to the Chairman for resolution.

(h) *Effect on other reporting requirements.* The statements of employment and financial interests required of employees are in addition to, and not in substitution for or in derogation of, any similar requirement imposed by law or regulation.

§ 336.26 Financial disclosure reports under the Ethics in Government Act.

Individual Board members, employees at or above the grade 16 level and employees whose positions are excepted from competitive service by reason of being of a confidential or policy-making character (unless otherwise excluded by the Office of Government Ethics) must file financial disclosure reports (SF 278) in accordance with the requirements of the Ethics in Government Act and regulations of the Office of Government Ethics, 5 CFR Part 734.

Subpart E—Ethical and Other Conduct and Responsibilities of Special FDIC Employees

§ 336.27 Use of FDIC employment.

A special employee shall not use his or her FDIC employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or herself or another person, particularly one with whom he or she has family, business or financial ties.

§ 336.28 Use of inside information.

(a) A special employee shall not use inside information obtained as a result of his or her Government employment for private gain for himself or herself or another person either by direct action on his or her part or by counsel, recommendation or suggestion to another person, particularly one with whom he or she has family, business or financial ties. For the purpose of this section, "inside information" means information obtained under FDIC authority which has not become part of the body of public information.

(b) A special employee may teach, lecture or write in a manner not inconsistent with § 336.11 with regard to employees.

§ 336.29 Coercion.

A special employee shall not use his or her Goverment employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or herself or another person, particularly one with whom he or she has family, business or financial ties.

§ 336.30 Gifts, entertainment, favors and loans.

(a) Except as provided in paragraph (b) of this section, a special employee, while so employed or in connection with his or her employment, shall not receive or solicit from a person having business with the FDIC anything of value as a gift, gratuity, loan, entertainment or favor for himself or herself or another person, particularly one with whom he or she had family, business or financial ties.

(b) Exemptions to paragraph (a) of this section are the same as those authorized to employees under § 336.8.

§ 336.31 Miscellaneous statutory provisions.

Each special employee shall acquaint himself or herself with each statute that relates to his or her ethical and other conduct as a special employee of the

FDIC and of the Government. In addition to the statutes cited in the body of the regulations in this part, the attention of each special employee is directed to the statutory provisions listed in § 336.14(d).

§ 336.32 Statements of employment and financial interests.

(a) Except as provided in paragraphs (b) and (c) of this section, each special employee shall submit a statement of employment and financial interests to the Ethics Counselor which reports:

(1) All other employment; and

(2) The financial interests of the special employee which the FDIC determines are relevant in the light of the duties he or she is to perform.

(b) The Ethics Counselor may waive the requirement in paragraph (a) of this section for the submission of a statement of employment and financial interests in the case of a special employee who is not a consultant or an expert when the Ethics Counselor finds that the duties of the position held by that special employee are of a nature and at such a level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the FDIC. For the purpose of this paragraph, "consultant" and "expert" have the meanings given those terms by chapter 304 of the Federal Personnel Manual, but do not include a physician, dentist or medical specialist whose services are procured to provided care and service to patients. Special employees who are relieved of the requirement of filing a statement include, but are not limited to: summer personnel, student interns and individuals paid out of "Imprest Funds" to assist in bank liquidations.

(c) Special employees at or above the grade 16 level shall file financial disclosure reports in accordance with the Ethics in Government Act and regulations of the Office of Government Ethics, 5 CFR Part 734.

(d) A statement of employment and financial interests required to be submitted under this section shall be submitted not later than the time of employment of the special employee. Each special employee shall keep his or her statement current throughout his or her employment with the FDIC by the submission of amended or annual statements as required.

(e) The provisions of section 336.24(c–h) shall apply to statements filed under this section.

By order of the Board of Directors this 7th day of May, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84–12845 Filed 5–11–84; 8:45 am]

BILLING CODE 6714–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 23557; Special Conditions No. 23–ACE–3]

Special Conditions; Cessna 208 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction of final rule.

SUMMARY: This action corrects Special Conditions No. 23–ACE–3 applicable to Cessna 208 Series airplanes. This correction is necessary because the Cessna 208 Series airplanes were inadvertently referred to as the Cessna Model 208 airplane.

EFFECTIVE DATE: May 21, 1984.

FOR FURTHER INFORMATION CONTACT: William L. Olson, Aerospace Engineer, Regulations and Policy Office (ACE–110), Aircraft Certification Division, Central Region, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374–5688.

SUPPLEMENTARY INFORMATION: Special Conditions No. 23–ACE–3, applicable to Cessna Model 208 single-engine turbopropeller-powered airplanes, were published in the **Federal Register** on June 27, 1983 (48 FR 29466). These Special Conditions, which required additional dynamic evaluation of the airplane were necessary because the applicable airworthiness standards of Part 23 of the Federal Aviation Regulations did not contain adequate or appropriate safety standards for a turbopropeller engine installation in a single-engine airplane.

Manufacturers update airplanes and designate new configurations by model numbers, i.e., Cessna Model 172, 172A, 172B, etc., without affecting the airplane's certification basis. In the case of the Cessna 208 Series, the Cessna Model 208 is a passenger airplane and the Cessna Model 208A is a cargo airplane, the FAA was aware of the need to cite the applicability in terms of the Cessna 208 Series, but, inadvertently, cited the applicability in terms of the one model.

Accordingly, Special Conditions No. 23–ACE–3 are being corrected by specifying "Cessna 208 Series airplanes" instead of the "Cessna Model 208 airplane." Because this action is clarifying in nature, notice and public procedure are not considered necessary.

List of Subjects in 14 CFR Part 23

Air transportation, Aircraft, Aviation safety, Safety, Tires.

PART 23—[AMENDED]

In Special Conditions No. 23–ACE–3 (48 FR 29466, 29467) appearing on page 29466 in the **Federal Register** of June 27, 1983, make the following corrections:

Strike the words "Cessna Model 208 airplane" where they appear (except in the background paragraphs) and insert in their place the words "Cessna 208 Series airplanes".

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); and 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983))

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

Murray E. Smith,

Director, Central Region.

[FR Doc. 84–12826 Filed 5–11–84; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 4

Organization, Procedures, and Rules of Practice

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Commission has amended § 4.11(c) of its Rules of Practice and Procedure to clarify that the General Counsel and appropriate liaison officers have the authority to deny, as well as to grant, requests from federal and state law enforcement agencies for document disclosures. For further clarification, the rule has also been amended to require that requests be referred to the Commission if the General Counsel and the Bureau having documents that are sought do not agree on a disposition.

EFFECTIVE DATE: May 14, 1984.

FOR FURTHER INFORMATION CONTACT: Alexandra Buek (202) 523–3906, Office of General Counsel, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Rule 4.11(c) is a rule of agency organization, procedure or practice. It is therefore

being amended without notice and comment. 5 U.S.C. 553(b)(A); see 16 CFR 1.21.

List of Subjects in 16 CFR Part 4

Administrative practice and procedure, Freedom of Information, Privacy, Sunshine Act.

Accordingly, the Commission amends 16 CFR 4.11(c) to read as follows:

PART 4—MISCELLANEOUS RULES.

§ 4.11. Requests for disclosure of records.

* * * * *

(c) *Requests from Federal and State law enforcement agencies.* Requests from law enforcement agencies of the Federal government should be addressed to the liaison officer for the requesting agency, or if there is none, to the General Counsel. Requests from state agencies should be addressed to the General Counsel. With respect to requests under this subsection, the General Counsel or the appropriate liaison officer is delegated the authority to dispose of them or may refer them to the Commission for determination, except that requests must be referred to the Commission for determination where the Bureau having the documents sought and the General Counsel do not agree on the disposition.

(15 U.S.C. 41 et seq.)

By direction of the Commission dated March 13, 1984.

Benjamin I. Berman,

Acting Secretary.

Dissenting Statement of Commissioner Pertschuk Concerning Modification of Rule Governing States' Access to Information

The Commission has modified what has, until recently, been a perfectly workable rule in order to make it more difficult for state Attorneys General to get access to investigational materials. The origin of this change is a request by the Michigan Attorney General in June 1983 for a copy of the GM/Toyota Memorandum of Understanding. Under 15 U.S.C. 57b–2(b)(6), AG's may obtain non-public material in Commission investigative files when they certify it will be used only for law enforcement purposes and will be maintained in confidence. Such a certification was made in the June request, but the General Counsel—without consulting the Commission—denied it. Only when I asked the General Counsel in January of this year whether any AG's had requested GM/Toyota material did we learn of the request and denial.

I objected to the General Counsel's denial of the request, not only because his substantive grounds were inadequate, but also because the rule which the Commission has now modified authorized the General Counsel only to grant, not to deny, requests by states when the proper certification was made. The old rule provided:

> The appropriate liaison officer or the General Counsel may *grant* the request or where appropriate may authorize the custodian to *grant* the request, *or refer it to the Commission for determination.* (emphasis added)

Furthermore, a 1977 General Counsel memorandum, in commenting on Rule 4.11(c) stated:

> Requests from federal and nonfederal agencies will be granted by the liaison officer or the General Counsel subject to the usual caveat of confidentiality. If the General Counsel or the relevant Bureau or Office recommends against disclosure, the matter will ordinarily be presented to the Commission for resolution.

The rule has been applied in the past to grant requests whenever the Commission could lawfully do so. When the requests were properly certified, the only past limitations by the General Counsel have been occasional delays in providing internal memos to the states until the Commission had received them itself or delays in providing documents that were currently being reviewed by the staff for its own use.

When I objected to the General Counsel denying on his own initiative a properly certified request from a state Attorney General, he claimed to rely on prior precedent to prove his interpretation was correct. He told the Commission, "the record indicates that then-Chairman Pertschuk's General Counsel partially declined on his own authority a state access request apparently without notice to the Commission and without complaint from Chairman Pertschuk." In fact, the case which the General Counsel cited as precedent involved a broadly-worded request from the Oklahoma Attorney General which included within its scope an income tax return. The General Counsel granted the request in its entirety, with the exception of the income tax return which, as he explained to the Attorney General, the Commission was precluded from releasing by 26 U.S.C. 6103(a)(1) and 7213(a)(1). To cite this as a precedent for *discretionary* denial by the General Counsel is playing fast and loose with history.

Now the majority has come full circle to modify the rule so it is perfectly clear that the General Counsel can *deny* properly certified requests from state Attorneys General. It is bad policy to authorize a member of the staff to frustrate the law enforcement objectives of a state without the Commission even being informed of his determination. Indeed, I feel that the attorneys general deserve the courtesy of a review by the full Commission of any staff recommendation to deny an attorney general access to information in our files.

[FR Doc. 84–12785 Filed 5–11–84; 8:45 am]

BILLING CODE 6750–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33–6533; IC–13927; File No. S7–6–84]

Revised Procedures of Processing Post-Effective Amendments Filed by Registered Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of rule amendments.

SUMMARY: The Commission is adopting amendments to rules 485(b) and 486(b) under the Securities Act of 1933 (the "Securities Act"), which permit certain post-effective amendments filed by open-end investment companies and unit investment trusts to become automatically effective immediately upon filing without prior staff review. The amendments to rules 485(b) and 486(b) will permit post-effective amendments filed solely for the purpose of complying with an undertaking to file an amendment containing financial statements, within four to six months after the effective date of the registrant's Securities Act registration statement, to become automatically effective immediately upon filing or on any subsequent day through the twentieth day after the date of filing designated by the registrant. The amendments eliminate review of certain routine filings and permit the allocation of staff resources to other filings that are more likely to require staff review.

EFFECTIVE DATE: June 13, 1984.

FOR FURTHER INFORMATION CONTACT: Jane A. Kanter, Esq., Special Counsel (202) 272–2115, or Larry L. Greene, Esq. (202) 272–7320, Office of Disclosure Legal Services, Division of Investment Management, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is today adopting amendments to rules 485(b) [17 CFR 230.485(b)] and 486(b) [17 CFR

230.486(b)] under the Securities Act, which permit certain post-effective amendments filed by open-end investment companies and unit investment trusts, which satisfy certain conditions specified in those rules, to become automatically effective, without prior staff review, either on the day of filing or on any subsequent day through the twentieth day after the date of filing chosen by the registrant.[1] These amendments expand the category of filings under paragraph (b) of rules 485 and 486 to include post-effective amendments filed solely in compliance with an undertaking to file a post-effective amendment containing financial statements, which may be unaudited, within four to six months after the effective date of the registrant's Securities Act registration statement.

Background and Discussion

Rules 485[2] and 486[3] were adopted in order to eliminate delay in processing investment company filings and to concentrate staff review where it is most needed. In light of the staff's experience since the adoption of these rules, the Commission felt that it was appropriate to expand the category of filings that may become effective immediately upon filing in order to further permit the Commission to allocate its resources to those filings that most need review and, at the same time, expedite the review and processing of all post-effective amendments.[4]

On February 15, 1984, the Commission proposed for comment amendments to rules 485(b) and 486(b) to expand the category of filings that may become automatically effective upon filing to include post-effective amendments filed by registered investment companies solely in compliance with an undertaking to file financial statements, which may be unaudited, within four to six months after the effective date of the registrant's Securities Act registration statement.

The Commission received two letters in response to its request for comment. Both commentators expressed strong support for the proposal. In light of the comments, and based on the staff's experience since the adoption of rules 485 and 486, the Commission believes that it is appropriate to expand the category of filings that may become effective automatically upon filing to include post-effective amendments filed solely to include unaudited financial statements within four to six months after the effective date of an investment company's Securities Act registration statement. Consequently, the Commission is adopting the amendments as proposed without modification.

List of Subjects in 17 CFR Parts 230

Reporting and recordkeeping requirements, Securities.

Text of Amendments to Part 230

In accordance with the foregoing Part 230 of Chapter II of Title 17 of the Code of Federal Regulations, is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. By removing the word "and" from the end of paragraph (b)(1)(ii) of § 230.485, adding the word "and" to the end of paragraph (b)(1)(iii), and adding new paragraph (b)(1)(iv) to § 230.485 to read as follows:

§ 230.485 Effective date of post-effective amendments filed by certain registered investment companies.

* * * * *

(b) * * *

(1) * * *

(iv) Complying with an undertaking to file an amendment containing financial statements, which may be unaudited, within four to six months after the effective date of the registrant's registration statement under the Securities Act of 1933 [15 U.S.C. 77a et seq.].

* * * * *

2. By removing the word "and" from the end of paragraph (b)(1)(ii) of § 230.486, adding the word "and" to the end of paragraph (b)(1)(iii), and adding new paragraph (b)(1)(iv) to § 230.486 to read as follows:

§ 230.486 Effective date of post-effective amendments filed by registered separate accounts of insurance companies.

* * * * *

(b) * * *

(1) * * *

(iv) Complying with an undertaking to file an amendment containing financial statements, which may be unaudited, within four to six months after the effective date of the registrant's registration statement under the Securities Act of 1933 [17 U.S.C. 77a et seq.].

* * * * *

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Chairman of the Commission previously certified that the amendments to rules 485 and 486 will not have a significant economic impact on a substantial number of small entities. The Commission did not receive any comment on that certification.

Statutory Authority

The Commission hereby adopts amendments to rules 485 and 486 pursuant to the provisions of sections 7, 8 and 19(a) of the Securities Act of 1933 [15 U.S.C. 77g, 77h and 77s(a)].

By the Commission.

Dated: May 7, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-12839 Filed 5-11-84; 8:45 am]

BILLING CODE 8010-01-M

[1] See Investment Company Act Release No. 13769 (February 15, 1984) [49 FR 6918 (February 24, 1984)].

[2] Securities Act Release No. 6229 (August 25, 1980) [45 FR 57702 (August 29, 1980)].

[3] Securities Act Release No. 6402 (May 14, 1982) [47 FR 22356 (May 24, 1982)].

[4] The release proposing amendments to rules 485 and 486 was issued in conjunction with a release announcing new selective review procedures for disclosure filings by registered investment companies. Investment Company Act Release No. 13768 (February 15, 1984 [44 FR 8708 (February 24, 1984)]. Under the announced procedures, the Division will selectively review registration statements and certain post-effective amendments filed by investment companies, and will permit, except in certain cases, an issuer whose preliminary proxy statement or information statement has been on file for the required ten day period to mail to shareholders such materials without receiving any notice or comments from the staff.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 274

[Docket No. RM79-3-004; Order No. 373]

Identification of State and Federal Jurisdictional Agencies

Issued: May 9, 1984.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is revising the list of jurisdictional agency addresses to be used when filing for Natural Gas Policy Act (NGPA) well category determinations. These revisions will facilitate the processing of NGPA determinations by the federal and state agencies.

EFFECTIVE DATE: May 9, 1984.

FOR FURTHER INFORMATION CONTACT: Elisabeth Pendley, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C 20426, (202) 357-8511.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, J. David Hughes, A. G. Sousa and Oliver G. Richard III.

The Federal Energy Regulatory Commission is revising its list of jurisdictional agency addresses to be used when filing for well category determinations under the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301–3432 (1982). The Bureau of Land Management, which is the jurisdictional agency for gas wells on onshore Federal and Indian lands, and the Minerals Management Service, which is the jurisdictional agency for the Outer Continental Shelf (OCS) regions, notified the Commission of their new addresses on January 26, 1984. The Commission also updated the jurisdictional agency addresses for gas wells on Other Lands.

Under section 503(c) of the NGPA, a federal or state agency that has regulatory jurisdiction over the production of natural gas (jurisdictional agency) is authorized to make well category determinations required under sections 102, 103, 107 and 108 of the NGPA. Section 274.501(a)(2) lists the names and addresses for the federal and state agencies that have notified the Commission of their jurisdiction.

The Commission is amending § 274.501 of its regulations to update the addresses of the jurisdictional agencies.

The Commission finds that prior notice and public procedure under section 553 of the Administrative Procedure Act, (APA), 5 U.S.C. 553 (1982), are unnecessary because the amendment simply notifies the public of the change in location of previously identified jurisdictional agencies. For the same reason, we find good cause to make the rule effective immediately, under section 553(d) of the APA.

List of Subjects in 18 CFR Part 274

Natural gas, Wage and price controls.

In consideration of the foregoing, the Commission amends Chapter I, Title 18, Code of Federal Regulations, as set forth below, effective May 9, 1984.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 274—IDENTIFICATION OF STATE AND FEDERAL JURISDICTIONAL AGENCIES

1. The authority citation for Part 274 is revised to read as follows:

Authority: Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order 12009, 3 CFR 142 (1978).

2. Section 274.501 is amended by revising the table in paragraph (a)(2) to read as follows:

§ 274.501 Jurisdictional agency.

(a) * * *

(2) * * *

State in which well is located	Jurisdictional agency for wells on—	
	Federal lands	Other lands
Alabama	Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett St., Alexandria, VA 22304.	State Oil and Gas Board, Drawer O, University, AL 35486.
Alaska		Oil & Gas Conservation Commission, 3001 Porcupine Dr., Anchorage, AK 99501.
Anchorage District	Asst. District Manager for Mineral Resources, Bureau of Land Management, 4700 East 72nd Ave., Anchorage, AK 99507.	
Fairbanks District	Asst. District Manager for Mineral Resources, Bureau of Land Management, North Post Fort Wainwright, Box 1150, Fairbanks, AK 99707.	
Only Alaska OCS Region	Regional Supervisor for Field Operations, 800 "A" Street, Suite 201, Anchorage, AK 99501.	
Arizona	Deputy State Director for Mineral Resources, Bureau of Land Management, Arizona State Office, 2400 Valley Bank Center, Phoenix, AZ 85073.	Oil & Gas Conservation Commission, Suite 420, 1645 W. Jefferson, Phoenix, AZ 85007.
or		
Arizona (Only the Navaho and Hopi Indian Reservations).	District Manager, Bureau of Land Management, Albuquerque District Office (NGPA), P.O. Box 6770, Albuquerque, NM 87107.	
Arkansas	Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.	Oil & Gas Commission, a Division of the Arkansas Dept. of Commerce, 314 East Oak, El Dorado, AR 71730.
California:		
Except for Naval Petroleum Reserve No. 1 (Elk Hills) and Naval Petroleum Reserve No. 2 (Buena Vista).	Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Division of Mineral Resources (C–920), 2800 Cottage Way, Rm. E–1827, Sacramento, CA 95825.	Department of Conservation, Division of Oil & Gas, 1416 Ninth St., Rm. 1316, Sacramento, CA 95814.
Only Naval Petroleum Reserve No. 1 (Elk Hills) and Naval Petroleum Reserve No. 2 (Buena Vista).	Assistant Secretary for Environmental Protection, Safety and Emergency Preparedness, DOE, 1000 Independence Ave., SW, Rm. 4G 084, Washington, D.C. 20585.	
Only Pacific OCS Region	Regional Supervisor for Field Operations, 1340 West 6th Street, Los Angeles, CA 90017.	
Colorado	Deputy State Director for Mineral Resources, Bureau of Land Management, Colorado State Office (CO–920), 1037 20th Street, Denver, CO 80202.	Oil & Gas Conservation Commission, 1313 Sherman Street, Rm. 721, Denver, CO 80203.
Florida	Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.	Administrator Oil and Gas, Bureau of Geology, Department of Natural Resources, 903 W. Tennessee Street, Tallahassee, FL 32304.
Georgia	Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.	Department of Natugal Resources, Geologic & Water Resources Division, 19 Martin Luther King Drive, SW., Atlanta, GA 30334
Idaho	Deputy State Director for Mineral Resources, Bureau of Land Management, Idaho State Office (920), 3380 Americana Terrace, Bosie, ID 83706.	Idaho Public Utilities Commission, Statehouse Mail, Boise, ID 83720.
Illinois	Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.	Department of Mines and Minerals, Oil & Gas Division, 704 Stratton Office Building, 400 S. Spring Street, Springfield, IL 62706.
Indiana	Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.	Department of Natural Resources, Oil & Gas Division, 911 State Office Bldg., 100 N. Senate Avenue, Indianapolis, IN 46204.
Iowa	Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.	

State in which well is located	Jurisdictional agency for wells on—	
	Federal lands	Other lands
Kansas	Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.	State Corporation Commission, NGPA Department, 200 Colorado Derby Building, 202 West 1st Street, Wichita, KS 67202.
Kentucky	Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.	Department of Mines and Minerals, Oil & Gas Division, Box 690, Lexington, KY 40586.
Louisiana	Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.	Office of Conservation, Box 44275, Baton Rouge, LA 70804.
Only Gulf of Mexico OCS Region	Regional Supervisor for Field Operations, P.O. Box 7944 or 3301 N. Causeway Blvd., Metairie, LA 70010.	
Maryland	Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.	Energy and Coastal Zone Administration, Department of Natural Resources, Tawes State Office Bldg., Annapolis, MD 21404.
Michigan	Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.	Geological Survey Division, Department of Natural Resources, Box 30028, Lansing, MI 48909.
Mississippi	Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.	State Oil & Gas Board, Box 1332, Jackson, MS 39205.
Missouri	Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.	Missouri Department of Natural Resources, P.O. Box 250, Rolla, MO 65401.
Montana	Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Division of Mineral Resources, P.O. Box 36800, Billings, MT 59107.	Board of Oil and Gas Conservation, 2535 St. John's Ave., Billings, MT 59102, or 325 Fuller Ave., P.O. Box 217, Helena, MT 59601.
Nebraska	Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.	Oil & Gas Conservation Commission, Box 399, Sidney, NE 69261.
Nevada	State Director, Bureau of Land Management, Nevada State Office (NV-920), 300 Booth Street, Reno, NV 89520.	Department of Conservation and Natural Resources, Division of Mineral Resources, Capitol Complex, 201 S. Fall Street, Carson City, NV 89710.
New Mexico:		
Northern New Mexico	District Manager, Bureau of Land Management, Albuquerque District Office (NGPA), P.O. Box 6770, Albuquerque, NM 87107.	Department of Energy and Minerals, Oil Conservation Division, Box 2088, Santa Fe, NM 87501.
Southern New Mexico	District Manager, Bureau of Land Management, Roswell District Office (NGPA), P.O. Box 1397, Roswell, NM 88201.	
New York	Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.	Department of Environmental Conservation, Divison of Mineral Resources, 50 Wolf Road, Albany, NY 12233.
North Carolina	Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.	Department of Natural Resources and Community Development, 512 N. Salisbury Street, Raleigh, NC 27611.
North Dakota	Chief, Branch of Fluid Minerals, Bureau of Land Management Division of Mineral Resources, P.O. Box 36800, Billings, MT 59107.	Industrial Commission, State Office Building, 900 East Boulevard, Bismarck, ND 58505.
Ohio	Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.	Department of Natural Resources, Divison of Oil and Gas, Fountain Square, Building A-2, Columbus, OH 43224.
Oklahoma:		
Except the Osage Reservation	District Manager, Bureau of Land Management, Tulsa District Office (NGPA), 6136 East 32nd Place, Tulsa, OK 74135.	NGPA Section, Oil & Gas Conservation Division, Oklahoma Corporation Commission, Jim Thorpe Bldg., Oklahoma City, OK 73105.
or		
Only the Osage Reservation	Superintendent, Osage Indian Agency, Bureau of Indian Affairs, U.S. Department of the Interior, Pawhuska, OK 74056.	
Oregon	Deputy State Director for Mineral Resources, Bureau of Land Management, Oregon State Office, P.O. Box 2965 Portland, OR 97208.	Department of Geology & Mineral Industries, 1069 State Office Bldg., Portland, OR 97201.
Pennsylvania	Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.	Department of Environmental Resources, Bureau of Oil & Gas Management, Highland Bldg., 121 South Highland Mall, Pittsburgh, PA 15206.
South Carolina	Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.	South Carolina Public Service Commission, P.O. Drawer 11649, Columbia, SC 29211.
South Dakota	Chief, Branch of Fluid Minerals, Bureau of Land Management, Division of Mineral Resources, P.O. Box 36800 Billings, MT 59107.	Geological Survey, Science Center University, Vermillion, SD 57069.
Tennessee	Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.	State Oil & Gas Board, Division of Geology, 701 Broadway—Custom House, Nashville, TN 37203.
Texas:		
East of the 100th Meridian	District Manager, Bureau of Land Management, Tulsa District Office (NGPA), 6136 East 32nd Place, Tulsa OK 74135.	Railroad Commission, Drawer 12967, Austin, TX 78711.
or		
West of the 100th Meridian	District Manager, Bureau of Land Management, Roswell District Office (NGPA), P.O. Box 1397, Roswell, NM 88201.	
Utah	Chief, Branch of Fluid Minerals, Bureau of Land Management, Utah State Office (U-922), 136 E. South Temple, Salt Lake City, UT 84111.	Division of Oil Gas and Mining, 4241 State Office Building, Salt Lake City UT 84114.
or		
Utah (Navajo and Hopi Indian Reservation)	District Manager, Bureau of Land Management, Albuquerque District Office (NGPA), P.O. Box 6770, Albuquerque, NM 87107.	
Virginia	Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.	Department of Labor and Industry, Division of Mines and Quarries, Oil & Gas Section, 2095 W. Main Street, Abingdon, VA 24210.
Only Atlantic OCS Region	Regional Supervisor for Field Operations, 1951 Kidwell Drive, Suite 601, Vienna, VA 22180.	
Washington	Deputy State Director for Mineral Resources, Bureau of Land Management, Oregon State Office, P.O. Box 2965, Portland, OR 97208.	Department of Natural Resources, Geology and Earth Resources Division, Olympia, WA 98504.

State in which well is located	Jurisdictional agency for wells on—	
	Federal lands	Other lands
West Virginia	Chief, Branch of Fluid and Solid Minerals, Bureau of Land Management, Eastern States Office (972), 350 South Pickett Street, Alexandria, VA 22304.	Department of Mines, Oil & Gas Division, 1613 Washington Street, East, Charleston, WV 25311.
Wyoming		Oil & Gas Conservation Commission, Box 2640, Casper, WY 82602.
Casper District	District Manager, Bureau of Land Management, 951 Rancho Road, Casper, WY 82601.	
Rawlins District	District Manager, Bureau of Land Management, 1300 Third Street, Rawlins, WY 82301.	
Rock Springs District	District Manager, Bureau of Land Management, Highway 187 N., Rock Springs, WY 82901.	
Worland District	District Manager, Bureau of Land Management, 1700 Robertson Avenue, Worland, WY 82401.	
or		
Only Naval Petroleum Reserve No. 3 (Teapot Dome).	Assistant Secretary for Environmental Protection, Safety and Emergency Preparedness, DOE, 1000 Independence Ave., SW, Room 4G 084, Washington, D.C. 20585.	

[FR Doc. 84-12687 Filed 5-11-84; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 20

[T.D. 7956; EE-86-82]

Estate Tax; Taxable Years Beginning After December 31, 1978; Employee Retirement Benefits Excluded From Gross Estate

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: The document contains final regulations relating to the estate tax exclusion for lump-sum distributions payable under qualified employee pension, profit-sharing and stock bonus plans. The final regulations have been prepared to remove administrative difficulties encountered by taxpayers and the Service and would affect both the estates of decedents with respect to whom such distributions are payable under such plans and the individuals receiving such distributions.

DATES: The regulations are generally effective July 13, 1984.

FOR FURTHER INFORMATION CONTACT: Patricia K. Keesler of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3430) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On September 27, 1983, the Federal Register published proposed amendments to the Estate Tax Regulations (26 CFR Part 20) under section 2039(f) of the Internal Revenue Code of 1954. Only one public comment was received and there were no requests for a public hearing. After consideration of the written comment received, the regulations are adopted as revised by this Treasury decision.

Public Comment

These final regulations require the recipient's signature to appear on the election statement so that the executor may not file the election statement on behalf of the recipient, without the recipient's knowledge.

Regulatory Flexibility Act

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for interpretative regulations. Accordingly, the Regulatory Flexibility Act (5 U.S.C. Chapter 6) does not apply and no Regulatory Flexibility Analysis is required for this rule.

Nonapplicability of Executive Order 12291

The Treasury Department has determined that this final regulation is not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 29, 1983.

Paperwork Reduction Act

The recordkeeping requirements contained in section 20.2039-4 (d) of this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Drafting Information

The principal author of these regulations is Patricia K. Keesler of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

List of Subjects in 26 CFR Part 20

Estate taxes.

Adoption of Amendments to the Regulations

PART 20—[AMENDED]

Accordingly, the proposed amendments to 26 CFR Part 20 are hereby adopted, subject to the change set forth below:

Section 20.2039-4(d)(2) is amended by inserting the phrase "be signed by the recipient and" in the third sentence after "The statement must", as set forth below.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

(Approved by the Office of Management and Budget under control number 1545-0015)

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: April 23, 1984.

Ronald A. Pearlman,

Acting Assistant Secretary of the Treasury.

The amendments to 26 CFR Part 20 are as follows:

Section 20.2039-4 is amended by revising paragraphs (d) and (e) to read as follows:

§ 20.2039-4 Lump sum distributions from "qualified plans;" decedents dying after December 31, 1978.

* * * * *

(d) *Method of election.*—(1) *General rule.* The recipient of a lump sum distribution shall make the section 402(a)/403(a) taxation election by:

(i) Determining the income tax liability on the income tax return (or amended return) for the taxable year of the distribution in a manner consistent with paragraph (c) (1) or (2) of this section,

(ii) Rolling over all or any part of the distribution under section 402(a)(7), or

(iii) Filing a section 2039(f)(2) election statement described in paragraph (d)(2) of this section.

(2) *Election statement.* A recipient may file a section 2039(f)(2) election statement indicating that the recipient elects to treat a lump sum distribution in the manner described in paragraph (c) of this section. The statement must be filed where the recipient would file the income tax return for the taxable year of the distribution. The statement must be signed by the recipient and include the individual's name, address, social security number, the name of the decedent, and a statement indicating the election is being made. A section 2039(f)(2) election statement may be filed at any time prior to making the election under paragraph (d)(1) (i) or (ii) of this section.

(3) *Effect on estate tax return.* If the date the estate tax return is filed precedes the date on which the recipient makes the section 402(a)/403(a) taxation election with respect to a lump sum distribution, the estate tax return may not reflect the election. However, if after the estate tax return is filed, the recipient makes the section 402(a)/403(a) taxation election, the executor of the estate may file a claim for refund or credit of an overpayment of the Federal estate tax within the time prescribed in section 6511. See also, § 20.6081–1 for rules relating to obtaining an extension of time for filing the estate tax return.

(e) *Election irrevocable.* If a recipient of a lump sum distribution files a section 2039(f)(2) election statement, an income tax return (or amended return) or makes a rollover contribution that constitutes the section 402(a)/403(a) taxation election described in paragraphs (c) and (d), the election may not be revoked. Accordingly, a subsequent and amended income tax return filed by the recipient that is inconsistent with the prior election will not be given effect for purposes of section 2039 and section 402 or 403.

* * * * *

(Approved by the Office of Management and Budget under control number 1545–0015)

[FR Doc. 84–12941 Filed 5–11–84; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 902

Extension of Deadline for Submission of Program; Amendments to the Alaska Permanent Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing its decision to extend the deadline for Alaska to (1) promulgate rules governing the training, examination and certification of blasters and (2) to develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation. On February 29, 1984, Alaska requested a twelve month extension of time for the development of a blaster certification program. All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) are required to develop and adopt a blaster certification program within twelve months after program approval or within twelve months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause. In accordance with the State's request, the Director is granting the State a twelve-month extension of time to submit a proposed blaster certification program.

EFFECTIVE DATE: May 14, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. William Thomas, Director, Casper Field Office, Office of Surface Mining, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644; Telephone: (307) 328–5830.

SUPPLEMENTARY INFORMATION: On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter VII, Subchapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of Alaska's program, the applicable date is 12 months after approval of the State program, or May 2, 1984.

On February 29, 1984, Alaska advised OSM that it would be unable to meet the May 2, 1984 deadline and requested an additional twelve months to develop and adopt a blaster certification program.

The Alaska Department of Natural Resources, Division of Mining, the regulatory authority for Alaska's program, advised OSM that the State would require the additional time in order to develop a mine safety training program in conjunction with the University of Alaska. The safety program will include blaster training and certification. The State also indicated that the additional time was needed due to the newness of the Alaska program and the many program areas that are currently being developed and implemented.

In the March 27, 1984 **Federal Register** (49 FR 11684), OSM proposed a twelve month extension for Alaska to submit to OSM a proposed blaster training program. Public comment on this proposal was sought for 30 days ending April 26, 1984. No comments were submitted to OSM during the comment period.

Director's Determination

In accordance with the State's request, the Director has decided to extend the deadline for Alaska to submit a proposed blaster training program until May 2, 1985. This extension will allow the Alaska Department of Natural Resources, Division of Mining, to develop, in conjunction with the University of Alaska, an adequate blaster training and certification program.

I. Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared 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 902

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: May 7, 1984.

J. Lisle Reed,

Acting Director, Office of Surface Mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201–1326, 91 Stat. 40532).

PART 902—ALASKA

30 CFR Part 902 is amended by adding a new § 902.16 to read as follows:

§ 902.16 Required program amendments.

Pursuant to 30 CFR 732.17, Alaska is required to submit for OSM's approval the following proposed program amendments by the dates specified.

(a) By May 2, 1985 Alaska shall submit for OSM's approval—

(1) Rules governing the training, examination and certification of blasters and

(2) A program to examine and certify all persons who are directly responsible for the use of explosives in surface coal mining operation.

[FR Doc. 84–12858 Filed 5–11–84; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 914

Extension of Deadline for Submission of Program; Amendments to the Indiana Permanent Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing its decision to extend the deadline for Indiana to (1) promulgate rules governing the training, examination and certification of blasters and (2) to develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation. On March 6, 1984, Indiana requested a six or twelve month extension of time for the development of a blaster certification program. All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) are required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause. In accordance with the State's request, the Director is granting the State a twelve month extension of time to submit a proposed blaster certification program.

EFFECTIVE DATE: May 14, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. McNabb, Director, Indianapolis Field Office, Office of Surface Mining, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204; Telephone: (317) 269–2600.

SUPPLEMENTARY INFORMATON: On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter VII Subchapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of Indiana's program, the applicable date is 12 months after publication date of OSM's rule, or March 4, 1984.

On March 6, 1984, Indiana advised OSM that it would be unable to meet the March 4, 1984 deadline and requested an additional six or twelve months to develop and adopt a blaster certification program.

The Director of the Indiana Department of Natural Resources, the regulatory authority for Indiana's program, advised OSM that the State would require the additional time in order to promulgate and submit proposed rules for its blaster certification and training program. He stated that the rules necessary to implement a blaster certification and training program were preliminarily adopted on June 22, 1983. However, substantial public comment was received, primarily in opposition to the rules as proposed. Therefore, it was necessary for the Hearing Officer to review and make a recommendation on the subtantial comment received and to evaluate the proposed rules. If the Hearing Officer's recommendation on the rules for final adopton had resulted in rules not substantially different from those that Indiana preliminarily adopted, the rules could be promulgated and submitted to OSM by September 1, 1984. If the Hearing Officer's recommendation would result in substantially different rules from those preliminarily adopted, the Natural Resources Commission would have to reinitiate its process to promulgate rules, resulting in promulgation and submission of the rules by March 1, 1985. Also, the Indiana Blasting Specialist who would have conducted training and examination of blasters recently resigned.

In the March 22, 1984 **Federal Register** (49 FR 10674), OSM proposed a six or twelve month extension for Indiana to submit to OSM a proposed blaster training program. Public comment on this proposal was sought for 30 days ending April 23, 1984. No comments were submitted to OSM during the comment period.

However, during that time Indiana indicated to OSM that the six month extension would not be sufficient time to properly and adequately resolve the issues which prompted the extension request. Although there is a possibility that the full twelve months may not be necessary, Indiana has requested the twelve months with the idea that, even though the full time may not be used, the State would have the full twelve months if necessary to develop and adopt an acceptable program. OSM has decided to grant a twelve month extension to Indiana to give the State the necessary time to develop a program that is consistent with the Federal requirements.

Director's Determination

In accordance with the State's request, the Director has decided to extend the deadline for Indiana to submit a proposed blaster training program until March 4, 1985. This extension will allow the Director of the Indiana Department of Natural

Resources to consider develop and adopt an adequate blaster certification and training program consistent with Federal requirements.

I. Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared 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 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: May 7, 1984.

J. Lisle Reed,

Director, Office of Surface Mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

PART 914—INDIANA

30 CFR Part 914 is amended by adding a new §914.16 to read as follows:

§ 914.16 Required program amendments.

Pursuant to 30 CFR 732.17, Indiana is required to submit for OSM's approval the following proposed program amendments by the dates specified.

(a) By March 4, 1985, Indiana shall submit for OSM's approval—

(1) Rules governing the training, examination and certification of blasters and

(2) A program to examine and certify all persons who are directly responsible for the use of explosives in surface coal mining operation.

[FR Doc. 84–12860 Filed 5–11–84; 8:45 am]
BILLING CODE 4310–05–M

30 CFR Part 926

Extension of Deadline for Submission of Program; Amendments to the Montana Permanent Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing its decision to extend the deadline for Montana to, (1) promulgate rules governing the training, examination and certification of blasters, and (2) to develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation. On March 6, 1984, Montana requested an extension until May 31, 1984, for the development of a blaster certification program. All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) are required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause. In accordance with the State's request, the Director is granting the State an extension until May 31, 1984, to submit a proposed blaster certification program.

EFFECTIVE DATE: May 14, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. William Thomas, Director, Casper Field Office, Office of Surface Mining, Freden Building, 925 Pendell Boulevard, Mills, Wyoming 82644; Telephone: (307) 328–5830.

SUPPLEMENTARY INFORMATION: On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter VII, Subchapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of Montana's program, the applicable date is 12 months after publication date of OSM's rule, or March 4, 1984.

On March 6, 1984, Montana advised OSM that it would be unable to meet the March 4, 1984 deadline and requested until May 31, 1984, to develop and adopt a blaster certification program.

The Director of the Montana Department of State Lands, the regulatory authority for Montana's program, advised OSM that the State would require the additional time in order to consider a number of substantive comments submitted at a public hearing conducted by the State on February 2, 1984.

In the March 22, 1984 **Federal Register** (49 FR 10675), OSM proposed an extension until May 31, 1984 for Montana to submit to OSM a proposed blaster training program. Public comment on this proposal was sought for 30 days ending April 23, 1984. No comments were submitted to OSM during the comment period.

Director's Determination

In accordance with the State's request, the Director has decided to extend the deadline for Montana to submit a proposed blaster training program until May 31, 1984. This extension will allow the Montana Department of State Lands to consider all comments submitted at the public hearing and make necessary revisions to the proposed blaster certification regulations.

I. Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared 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 926

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: May 7, 1984.

J. Lisle Reed,

Director, Office of Surface Mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

PART 926—MONTANA

30 CFR Part 926 is amended by adding a new § 926.16 to read as follows:

§ 926.16 Required program amendments.

Pursuant to 30 CFR 732.17, Montana is required to submit for OSM's approval the following proposed program amendments by the dates specified.

(a) By May 31, 1984, Montana shall submit for OSM's approval—

(1) Rules governing the training, examination and certification of blasters and

(2) A program to examine and certify all persons who are directly responsible for the use of explosives in surface coal mining operation.

[FR Doc. 84–12861 Filed 5–11–84; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 931

Extension of Deadline for Submission of Program; Amendments to the New Mexico Permanent Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing its decision to extend the deadline for New Mexico to (1) promulgate rules governing the training, examination and ceritification of blasters and (2) to develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation. On March 5, 1984, New Mexico requested a twelve month extension of time for the development of a blaster certification program. All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) are required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause. In accordance with the State's request, the Director is granting the State a twelve month extension of time to submit a proposed blaster certification program.

EFFECTIVE DATE: May 14, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hagen, Director, Albuquerque Field Office, Office of Surface Mining, 219 Central Avenue NW., Albuquerque, New Mexico 87102; Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION: On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter VII, Subchapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of New Mexico's program, the applicable date is 12 months after publication date of OSM's rule, or March 4, 1984.

On March 5, 1984, New Mexico advised OSM that it would be unable to meet the March 4, 1984 deadline and requested an additional twelve months to develop and adopt a blaster certification program.

The Director of the Mining and Minerals Department of the New Mexico Energy and Minerals Department, the regulatory authority for New Mexico's program, advised OSM that the State would require the additional time in order to develop the instructional program and to finalize the State regulations that were recently proposed. The State indicated a need for additional time to complete these tasks so as to develop an adequate program consistent with the requirements of 30 CFR Part 850.

In the March 27, 1984 **Federal Register** (49 FR 11686), OSM proposed a twelve month extension for New Mexico to submit to OSM a proposed blaster training program. Public comment on this proposal was sought for 30 days ending April 26, 1984. No comments were submitted to OSM during the comment period.

Director's Determination

In accordance with the State's request, the Director has decided to extend the deadline for New Mexico to submit a proposed blaster training program until March 4, 1985. This extension will allow New Mexico to finalize its recently proposed regulations and to develop an instructional program so that the New Mexico program will be consistent with the requirements of 30 CFR Part 850.

I. Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared 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 931

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: May 7, 1984.

J. Lisle Reed,

Acting Director, Office of Surface Mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

PART 931—NEW MEXICO

30 CFR Part 931 is amended by adding a new subsection 931.16 to read as follows:

§ 931.16 Required program amendments.

Pursuant to 30 CFR 732.17, New Mexico is required to submit for OSM's approval the following proposed program amendments by the dates specified.

(a) By March 4, 1985, New Mexico shall submit of OSM's approval—

(1) Rules governing the training, examination and certification of blasters, and

(2) A program to examine and certify all persons who are directly responsible for the use of explosives in surface coal mining operation.

[FR Doc. 84-12859 Filed 5-11-84; 8:45 am]
BILLING CODE 4310-05-M

VETERANS ADMINISTRATION

38 CFR Part 36

Increase in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is increasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also increased. These increases are necessary because previous rates were not competitive enough to induce lenders to make guaranteed or insured home loans without substantial discounts, or to make manufactured home loans. The increase in the interest rates will assure a continuing supply of funds for home mortgages, home improvement and manufactured home loans.

EFFECTIVE DATE: May 8, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Loan Guaranty Service (264), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420 (202-389-3042).

SUPPLEMENTARY INFORMATION: The Administrator is required by section 1819(f), title 38, United States Code, to establish maximum interest rates for manufactured home loans guaranteed by the VA as he finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general increase in interest rates charged on conventional manufactured home loans, and the increase in other short-term and long-term interest rates—have shown that the manufactured home capital markets have become more restrictive. It is now necessary to increase the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans in order to assure an adequate supply of funds from lenders and investors to make these types of VA loans.

The Administrator is also required by section 1803(c), title 38, United States Code, to establish maximum interest rates for home and condominium loans, including graduated payment mortgage loans, and for loans for home improvement purposes. Recent market indicators—including the rate of discount charged by lenders on VA and Federal Housing Administration loans and the general increase in interest rates charged by lenders on conventional loans, have shown that the mortgage money market has become more restrictive. The maximum rates in effect for VA guaranteed home and condominium loans and those for energy conservation and home improvement purposes have not been sufficiently competitive to induce private sector lenders to make these types of VA guaranteed or insured loans without imposing substantial discounts. To assure a continuing supply of funds for home mortgages through the VA loan guaranty program, it has been determined that an increase in the maximum permissible rates applicable to home and improvement loans is necessary. The increased return to the lender will make VA loans competitive with other available investments and assure a continuing supply of funds for guaranteed and insured mortgages.

Regulatory Flexibility Act/Executive Order 12291

For the reasons discussed in the May 7, 1981 **Federal Register**, (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to chapter 37 of title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601-612.

These regulatory amendments have also been revised under the provisions of Executive Order 12291. The VA finds that they do not come within the definition of a "major rule" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, the VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured, and direct home and condominium loans, loans for energy conservation and other home improvement purposes, and loans for manufactured home purposes would create an acute shortage of funds pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers, 64.113, 64.114, and 64.119)

These regulations are adopted under authority granted to the Administrator by sections 210(c), 1803(c)(1), 1811(d)(1) and 1819 (f) and (g) of title 38, United States Code. The regulations are clearly within that statutory authority and are consistent with Congressional intent.

These increases are accomplished by amending §§ 36.4212(a) (1), (2), and (3), and 36.4311 (a), (b), and (c), and 36.4503(a), title 38, Code of Federal Regulations.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan Programs—housing and community development, Manufactured Homes, Veterans.

Approved: May 7, 1984.

Harry N. Walters,

Administrator.

PART 36—LOAN GUARANTY

The Veterans Administration is amending 38 CFR Part 36 as follows:

1. In § 36.4212, paragraph (a) is revised as follows:

§ 36.4212 Interest rates and late charges.

(a) The interest rate charged the borrower on a loan guaranteed or insured pursuant to 38 U.S.C. 1819 may not exceed the following maxima except on loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration prior to the respective effective date: (38 U.S.C. 1819(f))

(1) Effective May 8, 1984, 15½ percent simple interest per annum for a loan which finances the purchase of a manufactured home unit only.

(2) Effective May 8, 1984, 15 percent simple interest per annum for a loan which finances the purchase of a lot only and the cost of necessary site preparation, if any.

(3) Effective May 8, 1984, 15 percent simple interest per annum for a loan which will finance the simultaneous acquisition of a manufactured home and a lot and/or the site preparation necessary to make a lot acceptable as the site for the manufactured home.

* * * * *

2. In § 36.4311, paragraphs (a), (b), and (c) are revised as follows:

§ 36.4311 Interest rates.

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 13½ per centum per annum, effective May 8, 1984, the interest rate on any home or condominium loan other than a graduated payment mortgage loan, guaranteed or insured wholly or in part on or after such date may not exceed 13½ per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

(b) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 13¾ per centum per annum, effective May 8, 1984, the interest rate of any graduated payment mortgage loan guaranteed or insured wholly or in part on or after such date may not exceed 13¾ per centum per annum. (38 U.S.C. 1803(c)(1))

(c) Effective May 8, 1984, the interest rate or any loan solely for energy conservation improvements or other alterations, improvements or repairs, which is guaranteed or insured wholly or in part on or after such date may not exceed 15 per centum per annum on the unpaid balance. (38 U.S.C. 1803(c)(1))

* * * * *

3. In § 36.4503, paragraph (a) is revised as follows:

§ 36.4503 Amount and amortization.

(a) The original principal amount of any loan made on or after October 1, 1980, shall not exceed an amount which bears the same ratio to $33,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to $27,500. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Except as to home improvement loans, loans made by the VA shall bear interest at the rate of 13½ percent per annum. Loans solely for the purpose of energy conservation improvements or other alterations, improvements, or repairs shall bear interest at the rate of 15 percent per annum. (38 U.S.C. 1811(d)(1) and (2)(A))

* * * * *

[FR Doc. 84-12870 Filed 5-11-84; 8:45 am]
BILLING CODE 6320-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-6

[FPMR Amdt. A-36]

Ridesharing

AGENCY: Office of Federal Supply and Services, GSA.

ACTION: Final rule.

SUMMARY: This regulation provides information and guidelines for the promotion of ridesharing by Federal executive agencies. The objectives of the program are to conserve fuel, reduce traffic congestion, improve air quality, provide an economical way for Federal employees to commute to and from work, and to reduce the need for parking at Federal facilities.

EFFECTIVE DATE: May 14, 1984.

FOR FURTHER INFORMATION CONTACT: For further technical information contact Mr. Lowell A. Stockdale, Office of Transportation (FTS 557-1256), and for general information contact Mr. Robert Renner, Director, Regulations Management Division (FTS 557-7990).

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

List of Subjects in 41 CFR Part 101-6

Government property management, Civil rights, Grant programs, Intergovernmental relations, Surplus Government property, Relocation assistance, Real property acquisition, Ridersharing.

PART 101-6—MISCELLANEOUS REGULATIONS

1. The authority citation for Subpart 101-6.3 reads as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), Executive Order 12191 dated February 1, 1980.

2. Subpart 101-6.3 is added as follows:

Subpart 101-6.3—Ridesharing

Sec.

101-6.300 Federal facility ridesharing general policy.
101-6.301 Definitions.
101-6.302 Employee transportation coordinators.
101-6.303 Reporting procedures.
101-6.304 Exemptions.
101-6.305 GSA assistance.

Subpart 101-6.3—Ridesharing

§ 101-6.300 Federal facility ridesharing—general policy.

This section sets forth policy and procedures governing promotion by executive agencies of ridesharing at Federally owned or operated facilities and provides for the establishment and administration of a nationwide system of Federal facility employee transportation coordinators (ETC's). The authority for this subpart is Executive Order 12191, dated February 1, 1980, which established the Federal Facility Ridesharing Program and delegated the primary responsibility for program development, implementation, and administration to the Administrator of General Services in consultation with the Secretary of Transportation.

(a) Executive agencies shall actively promote the use of ridesharing at all Federal facilities. This promotion shall include cooperation with State and local ridesharing agencies where such agencies exist. In the process of promoting ridesharing, the Government shall not favor or endorse one commercial firm or nonprofit organization to the exclusion of other commercial firms or nonprofit organizations.

(b) Each executive agency shall issue instructions as may be necessary to implement Federal facility ridesharing programs and to obtain annual ridesharing program reports at those facilities where the agency is responsible for providing the ETC. The information provided by each ETC should include methods used to promote ridesharing at his/her facility and any achievements or significant barriers encountered. Each executive agency shall maintain a current record of the names, titles, addresses, and telephone numbers of its facility ETC's, nationwide.

(c) Agencies are required to submit a Federal Facility Ridesharing Report to GSA, Office of Transportation, Washington, DC 20406, by June 1 of each year (see § 101–6.303). The report shall contain a summary of the information provided by the facility ETC's and any other pertinent information applicable to the agency's ridesharing program.

(d) Wherever possible, agencies shall use and promote existing ridematching services. Where ridematching services do not exist, they shall be established, preferably in conjunction with nearby facilities. Ridematching systems may be manual i.e., bulletin board or locator board, or computerized. All systems must comply with the provisions of the Privacy Act of 1974.

(e) Wherever possible, agencies shall implement parking incentives which promote ridesharing and the efficient use of federally controlled parking areas. Agencies are also encouraged to work with private parking management concerns in or near Federal facilities to encourage the use of carpools and vanpools.

(f) Whenever feasible, agencies should consider providing for flexibility in employee working hours to facilitate ridesharing arrangements.

§101–6.301 Definitions.

(a) *Ridesharing.* Sharing of the commute to and from work by two or more people, on a continuing basis, regardless of their relationship to each other, in any mode of transportation, including but not limited to: carpools, vanpools, buspools and mass transit.

(b) *Ridematching.* Any manual or automated system that gathers commuter information from interested individuals and processes this information to identify potential ridesharing arrangements among these individuals.

(c) *Facility.* Either a single building or a group of buildings or work locations at a common site.

(d) *Third party operator.* A ridesharing agency or other organization, whether public or private, that leases vans or buses to employers or individual employees.

(e) *Federal facility employee transportation coordinator.* An individual appointed by the agency who provides commuter ridesharing services to all employees at the facility and who serves as a point of contact for local and State ridesharing agencies, where they exist.

(f) *Agencywide employee transportation coordinator.* An individual appointed by the agency, who is responsible for planning, organizing, and directing an agencywide ridesharing program, and serves as a point of contact for the agency's Federal facility ETC's and also as the ridesharing liaison between the agency and GSA.

§ 101–6.302 Employee Transportation Coordinators.

(a) *Federal facility employee transportation coordinator.* Agencies shall designate an ETC at each Federal facility with 100 or more full-time employees on one shift. Agencies are encouraged to appoint coordinators at facilities with less than 100 full-time employees where such a coordinator can provide significant benefits to the ridesharing program. At a facility occupied by more than one Federal agency, the executive agency having the largest number of employees shall have the lead responsibility for program coordination and implementation for all the Federal agencies at the facility and shall provide the ETC for the facility. Should a smaller agency volunteer to provide the facility ETC, the lead agency may transfer this responsibility to the smaller agency. The Federal facility ETC shall:

(1) Promote ridesharing at the facility by:

(i) Publicizing the name, location, and telephone number of the employee transportation coordinator by using bulletin boards, memoranda, newsletters, etc.;

(ii) Assisting employees in joining or forming carpools or vanpools;

(iii) Aiding employee participation in ridematching programs (Where ridematching programs do not exist, action should be taken to establish them);

(iv) Working closely with the parking management offices to promote ridesharing through preferential parking incentives;

(v) Establishing ridesharing orientation for new and transferring employees at the facility;

(vi) Utilizing ridesharing resources provided by State and local ridesharing agencies and participating in special ridesharing events;

(vii) Publicizing the availability of public transportation;

(viii) Communicating employee transportation needs to local public transportation authorities and other organizations (such as private bus companies) furnishing multipassenger modes of transportation; and

(ix) Establishing ridesharing goals and objectives for the facility.

(2) Prepare a facility report for annual submission to the agencywide coordinator.

(b) *Agencywide employee transportation coordinator.* Agencies shall appoint an individual to serve as an agencywide ETC. The agencywide ETC shall:

(1) Serve as a point of contact for the agency's facility ETC's;

(2) Serve as a liaison between other agencywide ETC's, State, and local ridesharing agencies and the GSA Central Office;

(3) Assist in the development and implementation of an agencywide ridesharing program; and

(4) Submit promptly any change in the name, address, title, or telephone number of the agencywide ETC to GSA.

§ 101–6.303 Reporting procedures.

(a) The head of each agency shall submit to GSA by June 1 of each year a report which shall include:

(1) The name, address, title, and telephone number of the agencywide ETC;

(2) A narrative on actions taken and barriers encountered in promoting ridesharing within the agency;

(3) Information on any notable facility achievements; and

(4) A copy of instructions issued to the agency's facility ETC's for implementing the Federal Facility Ridesharing Program.

(b) Reports shall be submitted to: Federal Facility Ridesharing Program, General Services Administration (FT), Washington, D.C. 20406, Telephone: FTS 557–1256/(703–557–1256).

(c) Interagency report control number 0258–GSA–AN has been assigned to this report.

§ 101–6.304 Exemptions.

Facilities with less than 100 full-time employees or less than 100 full-time employees on the largest shift are not required to submit an annual report. Agencies shall not subdivide buildings, groups of buildings, or worksites for the purpose of meeting the exemption standards.

§ 101–6.305 Assistance to agencies.

(a) Due to the large number of Federal, State, local and private sector groups involved in the promotion of ridesharing programs, there are various resources available to Federal agencies interested in technical assistance and promotional materials for use in their ridesharing programs. To aid agencies in identifying these resources, GSA has designated ridesharing coordinators at each of its regional offices. A list of these coordinators and information concerning the national program can be obtained by contacting the office listed in § 101–6.303(b).

(b) Ridesharing management assistance is often available from local ridesharing agencies found in most cities throughout the country. These agencies may be sponsored by State or local governments, public transportation authorities, universities, Chambers of Commerce, Councils of Governments, etc. In addition to providing commuter matching services, these agencies have experience in local ridesharing promotion activities, vanpool and buspool programs, and are familiar with management of commuter disruptions such as transit strikes, bridge closings, as well as air pollution alerts. ETC's are encouraged to use the services of the local ridesharing agencies to the greatest extent possible.

Dated: April 24, 1984.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 84–12831 Filed 5–11–84; 8:45 am]

BILLING CODE 6820–24–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 87 and 90

Procedures for Submission of Requests for Waivers of the Rules Governing the Private Radio Services; Clarification

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document clarifies the procedure for submission of requests for waivers of the rules governing the Private Radio Services. This action is being taken in order to facilitate the identification and processing of waiver requests, which by their nature, may require expeditious handling by the Commission's staff.

DATES: Effective May 14, 1984.

FOR FURTHER INFORMATION CONTACT: Harold Salters, Private Radio Bureau, Washington, D.C. 20554, (202) 632–7597.

List of Subjects

47 CFR Part 0

Requests for waivers.

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 87

Applications, Authorizations.

47 CFR Part 90

Private land mobile radio services, Radio.

Order

In the matter of amendment of Parts 0, 1, 87 and 90 of the commission's rules to clarify procedures for submission of requests for waivers of the rules governing the private radio services.

Adopted: May 1, 1984.
Released: May 4, 1984.

By the Managing Director.

1. This Order amends the Commission's Rules governing Commission Organization (47 CFR Part 0), Practice and Procedure (47 CFR Part 1), the Aviation Services (47 CFR Part 87) and the Private Land Mobile Radio Services (47 CFR Part 90) by requiring those licensees and applicants desiring expeditious handling of their requests for waiver of the rules governing the Private Radio Services to mark both their request for waiver and the envelope containing it with the words "WAIVER—TIMELY ACTION REQUESTED."

2. Due to the high volume of mail received at the Commission's offices at Gettysburg, Pennsylvania, it is difficult for the staff to separate from more routine correspondence those envelopes containing waivers requiring expeditious processing. In order to facilitate the identification and processing of waivers requiring expeditious handling, we are requiring those licensees and applicants who submit such waiver requests to identify them as such by marking them and the envelopes they come in as specified in the attached Appendix. We stress that these rule amendments do not relieve licensees and applicants of their responsibilities to comply with the Commission's Rules in a timely manner and to meet the deadlines set for actions involving their radio facilities. Additionally, we would emphazise that only waiver requests that are time sensitive will be processed expeditiously; the associated applications will be processed in the normal manner.

3. We conclude that the adoption of the amendments set forth in the Appendix relate to agency practice and procedure, will serve the public interest, and, inasmuch as these amendments raise no issue upon which comments would serve any useful purpose, notice and public procedure thereon are unnecessary and contrary to the public interest. Authority for this action is set forth in the Administrative Procedure Act codified at 5 U.S.C. 553(b)(3).

4. Therefore, it is ordered, That pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and the authority delegated to the Managing Director by § 0.231 of the Commission's Rules, 47 CFR 0.231, the Commission's Rules ARE AMENDED as set forth in the attached Appendix effective upon publication in the **Federal Register.**

Federal Communications Commission.

Edward J. Minkel,

Managing Director.

Appendix

Parts 0, 1, 87 and 90 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 0—COMMISSION ORGANIZATION

Subpart C—General Information

A new § 0.482 is added to read as follows:

§ 0.482 Applications for waiver of private radio rules.

Applications requesting waiver of the rules governing the Private Radio Services shall be submitted to the Commission's offices in Gettysburg, Pennsylvania. Applicants requiring expeditious processing of their request for waiver shall clearly caption both their request for waiver and the envelope containing it with the words "WAIVER—TIMELY ACTION REQUESTED."

PART 1—PRACTICE AND PROCEDURE

Subpart F—Private Radio Services Applications and Proceedings

A new § 1.931 is added to read as follows:

§ 1.931 Requests for waiver of private radio rules.

(a) All requests for waiver of the rules governing the Private Radio Services shall be submitted to the Commission's offices in Gettysburg, Pennsylvania and shall be addressed to: Federal Communications Commission, Gettysburg, Pennsylvania 17325.

(b) Applicants requiring expeditious processing of their request for waiver shall clearly caption both their request for waiver and the envelope containing it with the words "WAIVER—TIMELY ACTION REQUESTED."

PART 87—AVIATION SERVICES

Subpart A—General Information

In § 87.45, paragraph (c) is revised to read as follows:

§ 87.45 Defective applications.

* * * * *

(c) Applications which are not in accordance with the provisions of this chapter, or other requirements of the Commission will be considered defective and may be dismissed unless accompanied either by:

(1) A petition to amend any rule or regulation with which the application is in conflict, or;

(2) A request of the applicant for waiver of, or exception to, any rule, regulation or requirement with which the application is in conflict. Such request shall show the nature of the waiver or exception desired and set forth the reasons in support thereof. Applicants requiring expeditious processing of their request for waiver, shall, pursuant to § 1.931 of this chapter, clearly caption both their request for waiver and the envelope containing it with the words "WAIVER—TIMELY ACTION REQUESTED."

(3) Applications may be dismissed if the accompanying petition for waiver or amendment of rules does not set forth reasons which would justify a waiver or change of the rules.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

Subpart G—Applications and Authorizations

Section 90.151 is revised to read as follows:

§ 90.151 Requests for waiver.

(a) Requests for waiver of the rules in this part shall state the nature of the waiver or exception desired, and set forth reasons in support thereof including a showing that unique circumstances are involved and that there is no reasonable alternative solution within existing rules.

(b) Applications may be dismissed if the accompanying petition for waiver of the rules does not set forth reasons which, sufficient if true, would justify a waiver or exception.

(c) Applicants requiring expeditious processing of their request for waiver, shall, pursuant to § 1.931 of this chapter, clearly caption both their request for waiver and the envelope containing it with the words "WAIVER—TIMELY ACTION REQUESTED."

(d) All requests for waiver of the rules in this part shall be submitted to the Federal Communications Commission, Gettysburg, Pennsylvania 17325.

[FR Doc. 84-12877 Filed 5-11-84; 8:45 am]
BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 49, No. 94
Monday, May 14, 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

Animal and Plant Health Inspection Service

[Docket No. 82-343]

7 CFR Part 319

Exotic Bee Diseases and Parasites

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to establish regulations imposing restrictions on the importation into the United States of the following articles from any foreign country or locality other than Canada:

(a) Live bees, other than honeybees of the genus *Apis*, in any life stage;

(b) Dead bees of any genus;

(c) Used bee boards, hives, nests and nesting material;

(d) Used beekeeping equipment, e.g., smokers, hive tools, gloves or other clothing, and shipping containers;

(e) Beeswax, unless it has been liquified,

(f) Pollen for bee feed; and

(g) Honey for bee feed.

This appears to be necessary to prevent the introduction into the United States of exotic bee diseases and parasites and thereby to prevent damage to crops and other plants that depend upon bees for pollination.

DATE: Written comments must be submitted on or before July 13, 1984.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 728 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building, between 8:00 and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Philip J. Lima, Staff Specialist, Biological Assessment Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 628 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–6603.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule is issued in conformance with Executive Order 12291 and Secretary's Memorandum No. 1512–1, and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this proposed rule will not have a significant effect on the economy; 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 cause significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The proposed rule, if adopted, would impose restrictions on the importation into the United States of the following articles from any foreign country or locality other than Canada:

(a) Live bees, other than honeybees of the genus *Apis*, in any life stage;

(b) Dead bees of any genus;

(c) Used bee boards, hives, nests, and nesting material;

(d) Used beekeeping equipment, e.g. smokers, hive tools, gloves or other clothing, and shipping containers;

(e) Beeswax, unless it has been liquified;

(f) Pollen for bee feed; and

(g) Honey for bee feed.

Consideration was given concerning whether (1) to allow the importation of such articles without the imposition of the proposed restrictions, (2) to impose the proposed restrictions on the importation of such articles from all foreign countries and localities, including Canada, or (3) to impose the proposed restrictions on the importation of such articles from all foreign countries and localities except Canada.

Alternative (1) is not proposed because it appears that the unrestricted entry of such articles would present a significant risk of introducing exotic bee diseases and parasites into the United States. Alternative (2) is not proposed because it appears that exotic bee diseases and parasites do not occur in Canada and that Canada has in operation precautions adequate to prevent the introduction of exotic bee diseases and parasites into Canada from other countries and localities. Alternative (3) is proposed because it appears that the proposed restricted articles can be imported under the proposed provisions without a significant risk of introducing exotic bee diseases and parasites into the United States.

It appears that this action would not have a significant economic effect since there is little, if any, importation into the United States of articles proposed to be designated as restricted articles. Further, it appears that there is no feasible alternative to consider in compliance with the requirement that agencies choose the alternative that maximizes net benefits to society at the lowest net cost.

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

Paperwork Reduction Act

In accordance with Section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the information collection provisions included in this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have assigned OMB control number 0579–0072.

Background

Pursuant to the Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*), this document proposes to establish restrictions on the importation into the United States of certain articles in order to prevent the introduction of various exotic bee diseases and parasites.

Based on departmental expertise and a review of the scientific literaure [1], it

[1] A list of this literature can be obtained from the Biological Assessment Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, USDA, Room 628 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

appears that exotic bee diseases and parasites introduced into the United States (defined in the proposed regulations as the States, District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States) could kill or weaken bees (Apoidea). These exotic bee diseases include diseases caused by species of *Aspergillus, Bacillus, Entomophthora, Beauveria, Cordyceps,* and *Saccharomyces.* These exotic bee parasites include *Coelioxys* spp. and *Chrysis* spp., *Varroa jacobsoni, Euvarroa sinhai, Tropilaelaps clareae,* and *Acarapis woodi.*

The dissemination into the United States of these exotic bee diseases and parasites would cause substantial reductions in pollination by bees and thereby indirectly cause serious damage to crops and other plants. Modern agriculture has come to depend to a great degree upon bees, including leaf cutter bees, alkali bees, bumble bees and honeybees, to meet its need for pollination in the production of important agricultural commodities such as forage crops, fruits, vegetables, and oil crops. About ninety crops in the United States, including alfalfa seeds, apples, citrus, cucumbers, and sunflower seeds, depend to a large extent upon bees for pollination. The farm value of products derived from these crops has been estimated to be over $18 billion. Production of hybrid seed, crop yield and quality, and even survival of some plant species depend upon an adequate national supply of pollinating bees. Most of the plants which require bees for pollination would decline, disappear, or be replaced by less desirable species, and hybrid vigor in many crops would be seriously diminished if bees were not available to cross-pollinate.

It appears that it is necessary to restrict the importation into the United States of the following articles from any foreign country or locality other than Canada because of such exotic bee diseases and parasites:

(a) Live bees, other than honeybees of the genus *Apis,* in any life stage;

(b) Dead bees of any genus;

(c) Used bee boards, hives, nests, and nesting material;

(d) Used beekeeping equipment, e.g. smokers, hive tools, gloves or other clothing, and shipping containers;

(e) Beeswax, unless it has been liquified;

(f) Pollen for bee feed; and

(g) Honey for bee feed.

It appears that, unless subject to restrictions, the importation of these articles would cause a significant risk of introducing such exotic diseases or parasites into the United States.

Under the proposed regulations, these articles would be listed in proposed § 319.76–2 as restricted articles, and pursuant to proposed § 319.76(a) they would not be allowed to be imported into the United States unless imported in conformity with all of the restrictions in the proposed regulations. There do not appear to be other feasible methods for preventing the introduction into the United States of exotic bee diseases and parasites accompanying such imported articles.

The list of restricted articles does not include living honeybees of the genus *Apis* in any life stage. The Honeybee Act (7 U.S.C. 281 *et seq.*) and regulations in 7 CFR Part 322 prohibit the importation into the United States of all life stages of honeybees of the genus *Apis* except for importations under certain conditions that appear to be adequate to prevent the introduction of exotic bee diseases and parasites. Accordingly, a footnote is added to explain that honeybees of the genus *Apis* are subject to the Honeybee Act and regulations in 7 CFR Part 322. However, even though such honeybees are not restricted articles under the proposed regulations, the proposed regulations appear to be necessary to protect honeybees, as well as other bees, against exotic bee diseases and parasites.

There is authority under the Federal Plant Pest Act to impose restrictions on the importation of articles proposed to be designated as restricted articles. Exotic bee diseases and parasites are plant pests within the meaning of the Federal Plant Pest Act. Section 106 of the Federal Plant Pest Act (7 U.S.C. 150ee), among other things, provides that the Secretary of Agriculture may promulgate such regulations imposing conditions on the movement into the United States of products and articles of any character whatsoever and means of conveyance as is deemed necessary to prevent the dissemination into the United States of plant pests, in any situation in which such regulations are not authorized under the Plant Quarantine Act (7 U.S.C. 151 *et seq.*). The Plant Quarantine Act does not contain authority to restrict the importation of the listed articles because of exotic bee diseases and parasites. Therefore, under the Federal Plant Pest Act there is authority to impose conditions on the movement into the United States of those articles listed above as is deemed necessary to prevent the dissemination into the United States of exotic bee diseases and parasites.

Section 102 of the Federal Plant Pest Act (7 U.S.C. 150aa) defines the term "plant pest" as the egg, pupae, and larval stages as well as any other living stage of "[a]ny insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured, or other products of plants". Exotic bee diseases and parasites are "plant pests" under this definition. Through interference with the ability of bees to carry out plant pollination, they indirectly injure and cause damage in plants.

It is not proposed to impose restrictions on the importation of such articles from Canada. It appears that exotic bee diseases and parasites do not occur in Canada and that Canada has in operation precautions adequate to prevent the introduction of exotic bee diseases and parasites into Canada from other countries and localities.

Proposed § 319.76(b) provides that an article refused importation for noncompliance with the provisions of the proposed regulations would be required to be promptly removed from the United States or abandoned by the importer for destruction, and that pending removal or abandonment, the article would be subject to the immediate application of such safeguards against escape of plant pests as the inspector determines necessary to prevent the introduction into the United States of plant pests. Proposed § 319.76(b) also provides that such restricted articles may be seized, destroyed, or otherwise disposed of if not promptly safeguarded, removed from the United States, or abandoned by the importer. These provisions appear to be necessary to implement sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff) which authorize emergency measures against restricted articles determined to be not in compliance with regulations issued under the Federal Plant Pest Act.

Further, proposed § 319.76(c) provides that any restricted article may be imported without complying with other restrictions under this subpart if:

(1) Imported by the U.S. Department of Agriculture for experimental or scientific purposes;

(2) Imported at the Plant Germplasm Quarantine Center, Building 320, Beltsville Agricultural Research Center East, Beltsville, MD 20705, or at a port of

entry designated by an asterisk in § 319.37–14(b);

(3) Imported pursuant to a departmental permit issued for such article and kept on file at the port of entry;

(4) Imported under conditions specified on the departmental permit and found by the Deputy Administrator to be adequate to prevent the introduction into the United States of plant pests, i.e., conditions of treatment, processing, shipment, disposal; and

(5) Imported with a departmental tag or label securely attached to the outside of the container or securely attached to the article itself if not in a container, and with such tag or label bearing the name of the person to whom the permit is issued.

It is consistent with the purposes of the Federal Plant Pest Act to allow articles to be imported by the U.S. Department of Agriculture for experimental or scientific purposes under special conditions not allowed for other importers. Further, the specified conditions appear to be necessary to identify restricted articles imported for experimental or scientific purposes; to assure that the conditions for treatment, processing, shipment, and disposal are understood; and to assure that qualified personnel would be available at the port of entry to take any necessary action in accordance with such conditions. The imposition of more specific conditions would have to be made on a case-by-case basis, since all of the specific conditions cannot be anticipated. If the proposal were adopted and it would appear that additional general criteria could be developed, amendment of the regulations in this regard would be considered.

Definitions of the terms "Bee," "Deputy Administrator," "Exotic bee diseases," "Exotic bee parasites," "Import," "Inspector," "Person," "Plant pest," "Plant Protection and Quarantine," "Secretary," and "United States," are set forth in proposed § 319.76–1.

It is provided in proposed § 319.76–3(a) that a restricted article may not be imported unless a written permit has been issued by Plant Protection and Quarantine (referred to below as PPQ), the unit within the Animal and Plant Health Inspection Service which has been delegated responsibility for enforcing provisions of the Act. It is further provided in proposed § 319.76–3(b) that prior to the issuance of a written permit, a written application must be made to PPQ and must include the following information:

(1) Name, address, and telephone number of the importer;

(2) Approximate quantity and kinds of articles intended to be imported;

(3) Country or locality of origin;

(4) Intended United States port of entry;

(5) Means of transportation; and

(6) Expected date of arrival.

Also, it is provided in § 319.76–3(b) that the application does not have to be on any particular form, but, in addition to including the information set forth above, it must indicate that it is an application for a written permit.

It appears that this permit system is necessary for PPQ to determine whether the intended importation would be allowed under the regulations, and to prevent the arrival of restricted articles under conditions that could cause unnecessary risk of introduction into the United States of exotic bee diseases and parasites.

It is further provided in proposed § 319.76–3(b) that an application for a written permit should be submitted to PPQ at least 30 days prior to the arrival of the article at the United States port of entry. This should allow sufficient time for PPQ to respond to the applicant prior to shipment, and to help prevent the arrival at a port of entry of articles which are not eligible for importation.

Pursuant to proposed § 319.76–3(c), a written permit indicating the applicable conditions in the proposed regulations for importation of a restricted article would be issued for the importation of the article described in the application if the article were to appear to be eligible for importation.

Proposed § 319.76–3(c) also states that a restricted article may not be imported, even if a permit has been issued, if an inspector at the port of entry determines upon inspection that emergency measures pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) are necessary with respect to such article. This is consistent with the provisions in section 105 of the Federal Plant Pest Act which are set forth in relevant part in a footnote accompanying proposed § 319.76–3(c).

In addition, proposed § 319.76–3(d) provides a mechanism for the withdrawal of a permit by the Deputy Administrator if he or she determines that the permit holder has not complied with any conditions for the use of the permit. Due process requirements concerning such withdrawals are also set forth in proposed § 319.76–3(d).

Proposed § 319.76–4 sets forth inspection and treatment provisions for restricted articles. In this connection proposed § 319.76–4 provides that:

(a) Live bees, other than honeybees of the genus *Apis*, in any life stage shall be microscopically inspected by an inspector for exotic bee diseases and parasites, and any bee diseases or parasites found will be physically removed by an inspector or destroyed by an inspector by treatment with a pesticide registered by the Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 135 *et seq.*), for use on bees and used in accordance with directions on the label in connection with the registration under the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. The inspection may include dissection of a statistically designed representative sample of the bees, if deemed necessary by the inspector, for determinations concerning the absence or presence of bee diseases or parasites. If the inspector determines that a disease or parasite cannot be removed or otherwise destroyed, the bees shall be killed by immersion in a solution containing at least 70% alcohol.

(b) Any dead bees for research at the time of importation must be in a solution containing at least 70% alcohol or must be in a dry, sealed container. If in a dry, sealed container, the dead bees shall be kept in that container under the control of an inspector at the port of entry for 7 days.

(c) Any restricted article not covered by paragraphs (a) or (b) of this section, prior to movement into the United States from the port of entry, shall be treated under the supervision of an inspector as follows:

(1) Dead bees; used bee boards, hives, nests, or nesting material; used beekeeping equipment; and pollen for bee feed shall be treated in an airtight chamber with 450 mg of ethylene oxide per liter of chamber space at a temperature of at least 100°F (37.78°C) for 8 hours.

(2) Beeswax that has not been liquified shall be melted.

(3) Honey for bee feed shall be heated to 212°F (100°C) for 30 minutes.

It appears that these procedures and treatments would be adequate to destroy any exotic bee diseases or parasites. Except for importation by the U.S. Department of Agriculture for experimental or scientific purposes under conditions set forth in proposed § 319.76(c), it appears that such procedures and treatments are the only feasible methods for preventing the possible introduction into the United States of exotic bee diseases or parasites accompanying imported restricted articles.

The provisions in proposed § 319.76–5(a) provide that any restricted article for importation by means other than

mail shall at the time of importation bear on the outer container (if in a container) or on the article (if not in a container) the following information:

(1) General nature and quantity of the contents,

(2) Country or locality of origin,

(3) Name and address of shipper, owner, or person shipping or forwarding the article,

(4) Name and address of consignee, and

(5) Identifying shipper's mark and number.

It appears that this information would help the inspector to determine that the article is a restricted article, to contact persons for obtaining any necessary clarifications concerning the article, and to check whether a valid permit had been issued for the importation of the article in question. Also, it appears that the identifying shipper's mark and number would enable an inspector to locate the restricted article at the port of entry by comparing the shipper's mark and number on available entry documents (e.g., manifest, waybill) with such information on the restricted article or its container.

Proposed § 319.76–5(b) would require any restricted article for importation by mail to be mailed to PPQ at a port of entry designated by an asterisk in 7 CFR 319.37–14(b). Mailing the articles to PPQ appears to be necessary in order to prevent direct mailing to the intended recipient, and for the requirements of the proposed subpart to be met, e.g., inspection, treatment (port of entry requirements are discussed below). The proposal would further require a package containing a restricted article for importation by mail to contain within the package a sheet of paper bearing the name, address, and telephone number of the intended recipient. This would allow PPQ to be able to forward the package to the intended recipient. Also, inclusion of the telephone number of the intended recipient for mailed articles would allow PPQ to contact the intended recipient for the purpose of obtaining any necessary clarifications for determining eligibility for importation of such articles. With respect to importation of articles other than by mail, this requirement is not necessary because the representative or agent of the intended recipient would be available at the port of entry to provide any necessary clarifications.

In addition, proposed § 319.76–5(b) would require any restricted article for importation by mail to bear on the outer container the following information:

(1) General nature and quantity of the contents,

(2) Country or locality of origin, and

(3) Name and address of shipper, owner, or person shipping or forwarding the article.

This information would help the inspector to determine that the article is a restricted article, and to check whether a valid permit had been issued for the article in question.

The provisions in proposed § 319.76–5(c) would require that shipments containing restricted articles be accompanied by an invoice or packing list indicating the contents of the shipments. This appears necessary because such information on the outside of a package or on a restricted article could become illegible, or be destroyed or lost during shipment.

Also, proposed § 319.76–5(d) provides that live bees in any life stage may be imported only in loose cells within noncrushable (hard plastic, wood, or metal), insect-proof containers. This appears to be necessary to allow the bees to be inspected and to help assure that the bees would not escape during shipping.

The provisions of proposed § 319.76–6 would require the importer, upon arrival at a port of entry of any nonmailed shipment of any restricted article, to promptly notify PPQ of such shipment's arrival by such means as a manifest, Customs entry document, commercial invoice, waybill, a broker's document, or notice form provided for that purpose. This appears to be necessary to assure that PPQ is advised that any restricted article has arrived at a port of entry. It appears that this can be accomplished by any document which specifies what is contained in a shipment, such as those documents listed above.

The provisions of proposed § 319.76–7 relate to costs and charges in connection with the services of inspectors and treatment of articles. It is the policy of PPQ that the services of an inspector during regularly assigned hours of duty and at the usual places of duty be furnished without cost to the importer. A footnote is added to explain that provisions relating to costs for other services of an inspector are already established and are set forth in 7 CFR Part 354. With respect to treatments which would be required under proposed § 319.76–4, the Department only has facilities, treatment supplies, and personnel for treatments of live bees in any life stage, for holding dead bees in dry, sealed containers, and for supervision of other treatments. Accordingly, except for these actions concerning live bees and dead bees, it would be necessary that any other treatments be performed at the importer's expense, and it would also be the responsibility of the importer to arrange for such other treatments. Treatments not performed by federal inspectors would be required to be performed under the direction of an inspector to assure that they are properly performed.

Proposed § 319.76–8(a) provides that any restricted article, other than live bees in any life stages, imported by means other than mail, may be imported only at a port of entry listed in § 319.37–14(b) of the "Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products" regulations (7 CFR 319.37–14(b)). These are the ports of entry where inspectors are stationed and authorized to take appropriate action with the importation of these articles.

Proposed § 319.76–8(b) provides that any restricted article, other than live bees in any life stages, imported by mail may be imported only at a port of entry designated by an asterisk in § 319.37–14(b). These are the only ports of entry with adequate facilities for processing mailed shipments.

Proposed § 319.76–8(c) further provides that live bees in any life stage, other than honeybees of the genus *Apis*, may be imported only at the Bee Biology and Systematics Laboratory, USDA, ARS, 261 NRB–UMC 53, Utah State University, Logan, Utah 84322, or at the Plant Germplasm Quarantine Center, Building 320, Beltsville Agricultural Research Center East, Beltsville, Maryland 20705. These are the only places with personnel and special inspection facilities adequate for taking necessary action with respect to such live bees.

List of Subjects in 7 CFR Part 319

Bees, Honey, Imports, Transportation.

Under the circumstances set forth above, 7 CFR Part 319 is proposed to be amended by adding "Subpart—Exotic Bee Diseases and Parasites" to read as follows:

PART 319—FOREIGN QUARANTINE NOTICES

Subpart—Exotic Bee Diseases and Parasites

Sec.

319.76 Restrictions on importation of restricted articles; disposal of articles refused importation.
319.76–1 Definitions.
319.76–2 Restricted articles.
319.76–3 Permits.
319.76–4 Inspections and treatments.
319.76–5 Marking and shipping.
319.76–6 Arrival notification.
319.76–7 Costs and charges.
319.76–8 Ports of entry.

Authority: Secs. 105, 106, and 107; 71 Stat. 32–34 (7 U.S.C. 150dd, 150ee, 150ff); 7 CFR 2.17, 2.51, and 371.2.

SUBPART—EXOTIC BEE DISEASES AND PARASITES

§ 319.76 Restrictions on importation of restricted articles; disposal of articles refused importation.

(a) No person may import any restricted article unless in conformity with all of the restrictions in this subpart.

(b) Any article refused importation for noncompliance with the requirements of this subpart shall be promptly removed from the United States or abandoned by the importer, and pending such action shall be subject to the immediate application of such safeguards against escape of plant pests as the inspector determines necessary to prevent the introduction into the United States of plant pests. If such article is not promptly safeguarded, removed from the United States, or abandoned for destruction by the importer, it may be seized, destroyed, or otherwise disposed of in accordance with sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

(c) A restricted article may be imported without complying with other provisions under this subpart if:

(1) Imported by the U.S. Department of Agriculture for experimental or scientific purposes;

(2) Imported at the Plant Germplasm Quarantine Center, Building 320, Beltsville Agricultural Research Center East, Beltsville MD 20705, or at a port of entry designated by an asterisk in § 319.37–14(b);

(3) Imported pursuant to a departmental permit issued for such article and kept on file at the port of entry;

(4) Imported under conditions specified on the departmental permit and found by the Deputy Administrator to be adequate to prevent the introduction into the United States of plant pests, i.e., conditions of treatment, processing, shipment, disposal; and

(5) Imported with a departmental tag or label securely attached to the outside of the container or securely attached to the article itself if not in a container, and with such tag or label bearing the name of the person to whom the permit is issued.

§ 319.76–1 Definitions.

Terms used in the singular form in this subpart shall be construed as the plural, and vice versa, as the case may demand. The following terms, when used in this subpart, shall be construed respectively, to mean:

Bee. Any member of the superfamily Apoidea.

Deputy Administrator. The Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, U.S. Department of Agriculture, or any other officer or employee of the Department to whom authority to act in his or her stead has been or may hereafter be delegated.

Exotic bee diseases. Bee diseases of foreign origin, including but not limited to *Aspergillus* spp., *Bacillus* spp., *Entomophthora* spp., *Beauveria* spp., *Cordyceps* ssp., and *Saccharomyces* spp.

Exotic bee parasites. Bee parasites of foreign origin, including but not limited to *Coelioxys* spp., and *Chrysis* spp., *Varroa jacobsoni, Euvarroa sinhai, Tropilaelaps clareae,* and *Acarapis woodi.*

Import (importation, imported). To import or move into the United States.

Inspector. Any employee of Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person authorized by the Deputy Administrator in accordance with law to enforce the provisions of this subpart.

Person. Any individual, corporation, company, society, association, or any other organized group.

Plant pest. The egg, pupal, and larval stages as well as any other living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, or other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured, or other products of plants.

Plant Protection and Quarantine. The organizational unit within the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, delegated responsibility for enforcing provisions of the Federal Plant Pest Act and related legislation and regulations promulgated thereunder.

Secretary. The Secretary of Agriculture, or any other officer or employee of the Department of Agriculture to whom authority to act in his or her stead has been or may hereafter be delegated.

United States. The States, District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States.

§ 319.76–2 Restricted articles.

The following articles from any country or locality other than Canada are restricted articles:

(a) Live bees, other than honeybees of the genus *Apis,* in any life stage;[1]

(b) Dead bees of any genus;

(c) Used bee boards, hives, nests, and nesting material;

(d) Used beekeeping equipment, e.g. smokers, hive tools, gloves or other clothing, and shipping containers;

(e) Beeswax, unless it has been liquified;

(f) Pollen for bee feed; and

(g) Honey for bee feed.

§ 319.76–3 Permits.

(a) A restricted article may be imported only after issuance of a written permit by Plant Protection and Quarantine.

(b) An application for a written permit must be submitted to the Biological Assessment Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, Hyattsville, MD 20782, and should be submitted at least 30 days prior to arrival of the article at the United States port of entry. The completed application does not have to be on any particular form but must indicate that it is an application for a written permit, and include the following information:

(1) Name, address, and telephone number of the importer;

(2) Approximate quantity and kinds of articles intended to be imported;

(3) Country or locality of origin;

(4) Intended United States port of entry;

(5) Means of transportation; and

(6) Expected date of arrival.

(c) After receipt and review of the application by Plant Protection and Quarantine, a written permit indicating the applicable conditions in this subpart for importation shall be issued for the importation of the articles specified in the application if such articles appear to be eligible to be imported. Even though a written permit has been issued for the importation of an article, it may be moved into the United States from the port of entry only if all requirements of this subpart are met and only if an inspector at the port of entry does not determine that emergency measures pursuant to section 105 of the Federal

[1] The Honeybee Act, as amended (7 U.S.C. 281 *et seq.*), among other things, prohibits the importation into the United States of any live honeybees of the genus *Apis* in any life stage except as allowed under provisions of that Act and regulations in 7 CFR Part 322.

Plant Pest Act (7 U.S.C. 150dd) are necessary with respect to such article.[2]

(Approved by the Office of Management and Budget under control number 0579–0072)

(d) Any permit which has been issued may be withdrawn by an inspector or the Deputy Administrator if he or she determines that the permit holder has not complied with any condition for the use of the permit. The reasons for the withdrawal shall be confirmed in writing as promptly as circumstances allow. Any person whose permit has been withdrawn may appeal the decision in writing to the Deputy Administrator within 20 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the permit was wrongfully withdrawn. The Deputy Administrator shall grant or deny the appeal in writing, stating the reasons for the decision, as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing shall be held to resolve the conflict.

§ 319.76–4 Inspections and treatments.

(a) Live bees, other than honeybees of the genus *Apis*, in any life stage shall be microscopically inspected by an inspector for exotic bee diseases and parasites, and any bee disease or parasite found will be physically removed by an inspector or destroyed by an inspector by treatment with a pesticide registered by the Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 135 *et seq.*), for use on bees and used in accordance with directions on the label in connection with the registration under the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. The inspection may include dissection of a statistically designed representative sample of the bees, if deemed necessary by the inspector for determinations concerning the absence or presence of bee diseases or parasites. If the inspector determines that a disease or parasite cannot be removed or otherwise destroyed, the bees shall be killed by immersion in a solution containing at least 70% alcohol.

(b) Any dead bees for research at the time of importation must be in a solution containing at least 70% alcohol, or must be in a dry, sealed container. If in a dry, sealed container, the dead bees shall be kept in that container under the control of an inspector at the port of entry for 7 days.

(c) Any restricted article not covered by paragraphs (a) or (b) of this section, prior to movement into the United States from the port of entry, shall be treated under the supervision of an inspector as follows:

(1) Dead bees; used bee boards, hives nests, or nesting material; used beekeeping equipment; and pollen for bee feed shall be treated in an airtight chamber with 450 mg of ethylene oxide per liter of chamber space at a temperature of at least 100°F (37.78°C) for 8 hours.

(2) Beeswax that has not been liquified shall be melted.

(3) Honey for bee feed shall be heated to 212°F (100°C) for 30 minutes.

§ 319.76–5 Marking and shopping.

(a) Any restricted article for importation by means other than mail shall at the time of importation bear on the outer container (if in a container) or on the article (if not in a container) the following information:

(1) General nature and quantity of the contents,

(2) Country or locality of origin,

(3) Name and address of shipper, owner, or person shipping or forwarding the article,

(4) Name and address of consignee, and

(5) Identifying shipper's mark and number.

(b) Any restricted article for importation by mail must be addressed and mailed to Plant Protection and Quarantine at a port of entry designated by an asterisk in § 319.37–14(b) of this part; must be accompanied by a separate sheet of paper within the package bearing the name, address, and telephone number of the intended recipient; and must bear on the outer container the following information:

(1) General nature and quantity of the contents,

(2) Country or locality of origin, and

(3) Name and address of shipper, owner, or person shipping or forwarding the article.

(c) Any restricted article must be accompanied at the time of importation by an invoice or packing list indicating the contents of the shipment.

(d) Live bees in any life stage, other than honeybees of the genus *Apis*, may be imported only in loose cells within noncrushable (hard plastic, wood, or metal), insect-proof containers.

(Approved by the Office of Management and Budget under control number 0579–0072)

§ 319.76–6 Arrival notification.

Promptly upon arrival of any restricted article at a port of entry, except for mail shipments, the importer must notify Plant Protection and Quarantine of the arrival by such means as a manifest, Customs entry document, commercial invoice, waybill, a broker's document, or a notice form provided for that purpose.

(Approved by the Office of Management and Budget under control number 0579–0072)

§ 319.76–7 Costs and charges.

The services of the inspector during regularly assigned hours of duty and at the usual places of duty shall be furnished without cost to the importer.[3] The importer shall be responsible for arrangements for treatments required under § 319.76–4. Any treatment required under § 319.76–4 for a restricted article, other than for treatments of live bees in any life stage or for holding dead bees in dry, sealed containers, shall be performed at the port of entry by a nonfederal establishment at the importer's expense, and shall be performed under the direction of an inspector. Plant Protection and Quarantine will not be responsible for any costs or charges, other than those indicated in this section.

§ 319.76–8 Ports of entry.

(a) Any restricted article, other than bees in any life stage, imported by means other than mail may be imported only at a port of entry listed in § 319.37–14(b) of this Part.

(b) Any restricted article, other than bees in any life stage, imported by mail may be imported only at a port of entry designated by an asterisk in § 319.37–14(b) of this Part.

(c) Live bees in any life stage, other than honeybees of the genus *Apis*, may be imported at the Bee Biology and Systematics Laboratory, USDA, ARS, 261 NRB–UMC 53, Utah State University, Logan, Utah 84322; or at the Plant Germplasm Quarantine Center, Building 320, Beltsville Agricultural Research Center East, Beltsville, MD 20705.

[2] Section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) provides, among other things, that the Secretary of Agriculture may, whenever he deems it necessary as an emergency measure in order to prevent the dissemination of any plant pest new to or not theretofore known to be widely prevalent or distributed within and throughout the United States, seize, quarantine, treat, apply other remedial measures to, destroy, or dispose of, in such manner as he deems appropriate, subject to provisions in section 105 (b) and (c) of the Act (7 U.S.C. 150dd (b) and (c)), any product or article, including any article subject to this subpart, which is moving into or through the United States, and which he has reason to believe was infested or infected by or contains any plant pest at the time of such movement. Sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff) also authorize emergency measures against articles which are not in compliance with the provisions of this subpart.

[3] Provisions relating to costs for other services of an inspector are contained in 7 CFR Part 354.

Done at Washington, D.C., this 8th day of May 1984.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

DEPARTMENT OF THE TREASURY

[Docket No. 82-350]

7 CFR Part 322

Honeybees and Honeybee Semen

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to revise the regulations in 7 CFR Part 322 (1) to establish criteria concerning the importation of honeybees by the U.S. Department of Agriculture for experimental or scientific purposes, (2) to allow the importation of honeybees and honeybee semen from Canada without restrictions, and (3) to allow the importation of honeybee semen from Australia, Bermuda, France, Great Britain, New Zealand, and Sweden in accordance with certain restrictions. This appears to be necessary to update the regulations to reflect amendments to the Honeybee Act. The Honeybee Act allows honeybees and honeybee semen to be imported under such rules and regulations as the Secretary of Agriculture and the Secretary of the Treasury shall prescribe.

DATES: Written comments must be submitted on or before July 13, 1984.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 728 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Philip J. Lima, Staff Specialist, Biological Assessment Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 629 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8393.

SUPPLEMENTARY INFORMATION:

Background

The current regulations in 7 CFR Part 322 set forth provisions concerning the importation into the United States of adult honeybees of the genus *Apis* (the genus *Apis* consists of all honeybees). These regulations were established pursuant to the Honeybee Act (7 U.S.C. 281 *et seq.*) prior to the 1976 amendments to the Act. Prior to these amendments, the Honeybee Act only contained provisions concerning the importation of adult honeybees. The 1976 amendments defined the term honeybee to mean all life stages and the germ plasm of honeybees of the genus *Apis*, except honeybee semen. Further, these amendments revised the Honeybee Act to regulate the importation of all life stages of honeybees and honeybee semen. Accordingly, this document proposes to revise the regulations in 7 CFR Part 322 to set forth provisions concerning the importation of honeybees and honeybee semen.

The Honeybee Act was designed to prevent the movement into the United States of diseases harmful to honeybees, such as diseases caused by Kashmir virus, and species of *Aspergillus, Bacillus, Ascosphaera,* and *Saccharomyces,* and to prevent the movement into the United States of parasites harmful to honeybees, such as *Varroa jacobsoni, Euvarroa sinhai, Tropilaelaps clareae,* and *Acarapis woodi.* In addition, the Honeybee Act was designed to prevent the movement into the United States of undesirable species or subspecies of honeybees, such as *Apis mellifera capensis,* commonly known as the Cape honeybee, and *Apis mellifera adansonii,* commonly known in the United States as the African honeybee.

The establishment of these diseases, parasites, or undesirable honeybees in the United States could lead to multimillion dollar losses to American agriculture.

These diseases and parasites can kill or weaken honeybees, thereby causing substantial reductions in the production of honey and honeybee products and in pollination. Pollination is necessary in the production of important agricultural commodities such as forage crops, fruits, vegetables, and oil crops.

The Cape honeybee and the African honeybee can also cause substantial reductions in the production of honey and honeybee products and in pollinaton. The Cape honeybee is a poor pollinator and a poor producer of honey and honeybee products. The African honeybee is an extremely undesirable species of honeybee. Because of the African honeybee's aggressive foraging for food, domestic bees have disappeared in areas where the African strain has appeared. Also, the African honeybee may take over the hives of other honeybees, and then suddenly migrate to other areas, leaving hives without producing honeybees. Further, when the Cape honeybee and the African honeybee breed with other honeybees, they impart their undesirable traits to the offspring.

In addition, the African bee is potentially dangerous to livestock and people. This bee is often extremely vicious and difficult to handle. Accidental encounters with livestock and people have resulted in mass stingings that sometimes cause death. If the African bee should enter the United States and contaminate domestic strains, the present practice of maintaining bee hives near human habitation would probably not be tolerated.

The Honeybee Act allows the importation of honeybees and honeybee semen under certain conditions. The Act provides that honeybees may be imported by the United States Department of Agriculture (USDA) for experimental or scientific purposes. Proposed criteria for the importation of honeybees under these circumstances are set forth below.

The Act also sets forth criteria for allowing the importation of honeybees and honeybee semen without limitations as to the importer and without limitations as to the purpose of importation. The Honeybee Act provides that honeybees may be imported from countries determined by the Secretary of Agriculture:

> (A) To be free of diseases or parasites harmful to honeybees, and undesirable species or subspecies of honeybees; and
>
> (B) To have in operation precautions adequate to prevent the importation of honeybees from other countries where harmful diseases or parasites, or undesirable species or subspecies, of honeybees exist.

The Honeybee Act also provides with respect to honeybee semen that:

> Honeybee semen may be imported into the United States only from countries determined by the Secretary of Agriculture to be free of undesirable species or subspecies of honeybees, and which have in operation precautions adequate to prevent the importation of such undesirable honeybees and their semen.

The Honeybee Act further allows honeybees and honeybee semen to be imported under such rules and regulations as the Secretary of Agriculture and the Secretary of the Treasury shall prescribe. Accordingly,

these proposed regulations set forth proposed provisions concerning the importation of honeybees and honeybee semen. In accordance with the Act, these proposed regulations are issued jointly by USDA and the U.S. Department of the Treasury, except for the lists of countries from which honeybees and honeybee semen may be imported. As noted above, the Honeybee Act provides that the lists of countries must be determined by the Secretary of Agriculture.

It appears that Canada is the only country that meets the specified criteria for the importation of honeybees, and it appears that Australia, Bermuda, Canada, France, Great Britain, New Zealand, and Sweden are the only countries that meet the criteria for the importation of honeybee semen. It is proposed to allow honeybees and honeybee semen to be imported from Canada without restrictions. It is also proposed to designate honeybee semen from these countries other than Canada as restricted articles and to allow honeybee semen to be imported from these countries, only if imported in conformity with the restrictions set forth in the proposed regulations.

The determinations that the listed countries other than Canada meet the criteria for the importation of honeybee semen is based on a USDA review of the scientific literature [1] and a USDA review of the bee enforcement programs of those countries. It appears that the restrictions explained below are necessary to help assure that such listed countries continue to meet the criteria and to help assure that appropriate action could be promptly taken if a listed country were to fail to meet the criteria. These additional safeguards do not appear to be necessary with respect to the importation of honeybees and honeybee semen from Canada. The determination that Canada meets the criteria for the importation of honeybees and honeybee semen is based on a USDA review of the scientific literature; [1] an ongoing sampling program of Canadian honeybees by USDA; an ongoing exchange of information between Canada and the United States relating to bee diseases and parasites, and undesirable species and subspecies of bees; and a review by USDA of the bee enforcement program in Canada. This appears to be adequate to assure that if Canada were to fail to meet the specified criteria this would be readily detected and appropriate action could be promptly taken.

Proposed § 322.1(d) provides that honeybees may be imported without complying with other provisions of the proposed part if:

(1) Imported by the U.S. Department of Agriculture for experimental or scientific purposes;

(2) Imported at the Plant Germplasm Quarantine Center, Building 320, Beltsville Agricultural Research Center East, Beltsville, MD 20705, or at a port of entry designated by an asterisk in § 319.37–14(b);

(3) Imported pursuant to a departmental permit issued for such honeybees and kept on file at the port of entry;

(4) Imported under conditions specified on the departmental permit and found by the Deputy Administrator to be adequate to prevent the introduction into the United States of diseases or parasites harmful to honeybees, or genetically undesirable germ plasm of honeybees, i.e., conditions of treatment, processing, shipment, disposal; and

(5) Imported with a departmental tag or label securely attached to the outside of the container, and with such tag or label bearing the name of the person to whom the permit is issued.

As noted above, the Honeybee Act specifically allows for honeybees to be imported by the U.S. Department of Agriculture for experimental or scientific purposes. The specified conditions appear to be necessary to identify honeybees imported for experimental or scientific purposes; to assure that the conditions for treatment, processing, shipment, and disposal are understood; and to assure that qualified personnel would be available at the port of entry to take any necessary action in accordance with such conditions. The imposition of more specific conditions would have to be made on a case-by-case basis, since all of the specific conditions cannot be anticipated. If the proposal were adopted and it were to appear that additional general criteria were developed, actions would be taken to amend the regulations accordingly.

Proposed § 322.1(e) provides that honeybees or honeybee semen offered for import or intercepted entering the United States and not in compliance with the proposed regulations shall be immediately exported from the United States by the importer or shall be destroyed by an inspector. It is further provided that pending exportation or destruction, the honeybees or honeybee semen shall be subject to the immediate application of such safeguards against the escape of diseases or parasities harmful to honeybees, or undesirable species or subspecies of honeybees, as the inspector determines necessary to prevent the introduction into the United States of diseases or parasites harmful to honeybees, or undesirable species or subspecies of honeybees.

Definitions of the terms "Deputy Administrator," "diseases harmful to honeybees," "honeybee," "import," "inspector," "parasites harmful to honeybees," "person," "Plant Protection and Quarantine," "restricted article," "undesirable species or subspecies of honeybees," and "United States" are set forth in proposed § 322.2.

Proposed § 322.3(a) provides that a restricted article may not be imported unless a written permit has been issued by Plant Protection and Quarantine (referred to below as PPQ), the unit within the Animal and Plant Health Inspection Service which has been delegated responsibility for enforcing provisions of the Honeybee Act. It is further provided in proposed § 322.3(b) that prior to the issuance of a written permit, a written application must be made to the Biological Assessment Support Staff, PPQ and must include the following information:

(1) Name, address, and telephone number of the importer;

(2) Amount of semen intended to be imported and species or subspecies of the honeybees from which the semen was collected;

(3) Country or locality of origin;

(4) Intended United States port of entry;

(5) Means of transportation; and

(6) Expected date of arrival.

Also, it is provided in § 322.3(b) that the application does not have to be on any particular form but, in addition to including the information set forth above, it must indicate that it is an application for a written permit.

It appears that this permit system is necessary for PPQ to determine whether the intended importation would be allowed under the regulations, and to prevent the arrival of honeybee semen that could cause unnecessary risk of importation into the United States of undesirable honeybees and their semen.

It is further provided in proposed § 322.3(b) that an application for a written permit should be submitted to the Biological Assessment Support Staff, PPQ at least 30 days prior to the arrival of the article at the U.S. port of entry. This should allow sufficient time for PPQ to respond to the applicant prior to shipment, and to help prevent the arrival at a port of entry of articles which are not eligible for importation.

[1] A list of this literature can be obtained from the Biological Assessment Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, USDA, Room 628 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

Pursuant to proposed § 322.3(c), a written permit indicating the applicable conditions in the proposed regulations for importation of a restricted article would be issued for the importation of the article described in the application if the article were to appear to be eligible for importation.

Proposed § 322.3(c) also states that a restricted article may not be moved into the United States from the port of entry even if a permit has been issued, if an inspector at the port of entry determines that emergency measures are necessary with respect to such article. This appears to be necessary to assure that undesirable honeybees and their semen are not imported into the United States.

In addition, proposed § 322.3(d) provides a mechanism for the withdrawal of a permit by the Deputy Administrator if he or she determines that the permit holder has not complied with any conditions for the use of the permit. Due process requirements concerning such withdrawals are also set forth in proposed § 322.3(d).

Proposed § 322.4 provides that any restricted article is subject to inspection by an inspector at the time of importation for purpose of determining whether such article is eligible to be imported. It appears that these provisions would be necessary to provide a mechanism for assuring compliance with the proposed regulations.

The provisions in proposed § 322.5(a) provide that any restricted article for importation by means other than mail shall at the time of importation bear on the outer container the following information:

(1) Amount of semen and species or subspecies of the honeybees from which the semen was collected,

(2) Country or locality of origin,

(3) Name and address of shipper, owner, or person shipping or forwarding the article,

(4) Name and address of consignee, and

(5) Identifying shipper's mark and number.

It appears that this information would help the inspector to determine that the article is a restricted article, to contact persons for obtaining any necessary clarifications concerning the article, and to check whether a valid permit had been issued for the importation of the article in question. Also, it appears that the identifying shipper's mark and number would enable an inspector to locate the restricted article at the port of entry be comparing the shipper's mark and number on available entry documents (e.g., manifest, waybill) with such information on the container of the restricted article.

Proposed § 322(b) would require any restricted article for importation by mail to be mailed to PPQ at a place specified in proposed § 322.8. This appears to be necessary in order to prevent direct mailing to the intended recipient, and to help assure that the article would be imported in compliance with the provisions of the proposed regulations. The proposal would further require a package containing a restricted article for importation by mail to contain within each package a sheet of paper bearing the name, address, and telephone number of the intended recipient. This would permit PPQ to be able to forward the package to the intended recipient. Also, inclusion of the telephone number of the intended recipient for mailed articles would allow PPQ to contact the intended recipient for the purpose of obtaining any necessary clarifications for determining eligibility for importation of such articles. With respect to importation of articles other than by mail, this requirement is not necessary because the representative or agent of the intended recipient would be available at the port of entry to provide any necessary clarifications.

In addition, proposed § 322.5(b) would require any restricted article for importation by mail to bear on the outer container the following information:

(1) Species or subspecies of the honeybees from which the semen was collected,

(2) Country or locality of origin, and

(3) Name and address of shipper, owner, or person shipping or forwarding the article.

This information would help the inspector to determine that the article is a restricted article, and to check whether a valid permit had been issued for the article in question.

The provisions in proposed § 322.5(c) would require that shipments containing a restricted article be accompanied by an invoice or packing list indicating the contents of the shipments. This appears necessary because such information on the outside of a package containing a restricted article could become illegible, or be destroyed or lost during shipment.

The provisions of proposed § 322.6 would require the importer, upon arrival at a port of entry of any nonmailed shipment of any restricted article, to promptly notify PPQ of such shipment's arrival by such means as a manifest, Customs entry document, commercial invoice, waybill, a broker's document, or notice form provided for that purpose. This appears to be necessary to assure that PPQ is advised when a restricted article has arrived at a port of entry. It appears that this can be accomplished by any document which specifies what is contained in a shipment, such as those documents listed above.

The provisions of proposed § 322.7 relate to costs and charges in connection with the services of inspectors and treatment of articles. It is the policy of PPQ that the services of an inspector during regularly assigned hours of duty and at the usual places of duty be furnished without cost to the importer. A footnote is added to explain that provisions relating to costs for other services of an inspector are already established and are set forth in 7 CFR Part 354.

Proposed § 322.8 provides that any restricted article may be imported only at a port of entry listed in § 319.37–14(b) of the "Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products" regulations (7 CFR 319.37–14(b)). These ports of entry are the places where inspectors are stationed and authorized to take appropriate action in connection with the importation of restricted articles.

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule is issued in conformance with Executive Order 12291 and Secretary's Memorandum No. 1512–1, and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this proposed rule would not have a significant effect on the economy; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and would not cause 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.

Alternatives were considered concerning the proposed rule.

The determination has been made that Canada meets the criteria for the importation of honeybees and honeybee semen. That determination is based on a USDA review of the scientific literature; an ongoing sampling program of Canadian honeybees by USDA; an ongoing exchange of information between Canada and the United States relating to bee diseases and parasites, and undesirable species and subspecies of bees; and a review by USDA of the bee enforcement program in Canada.

Consideration was given concerning whether (1) to allow the importation of honeybees and honeybee semen from Canada without restrictions, or (2) to allow the importation of honeybees and honeybee semen from Canada with restrictions. Alternative (1) is proposed. Additional safeguards do not appear to be necessary with respect to the importation of honeybees and honeybee semen from Canada because the existing safeguards appear adequate to assure that if Canada were to fail to meet the specified criteria this would be readily detected and appropriate action could be promptly taken.

Based on a USDA review of the scientific literature and a USDA review of bee enforcement programs it has been determined that, in addition to Canada, the following countries meet the criteria for the importation of honeybee semen: Australia, Bermuda, France, Great Britain, New Zealand, and Sweden.

Consideration was given concerning whether (1) to allow the importation of honeybee semen without restrictions from Australia, Bermuda, France, Great Britain, New Zealand, and Sweden, or (2) to allow the importation of honeybee semen from these six countries with restrictions as set forth in the proposed regulations. Alternative (2) is proposed. It appears that the restrictions are necessary to help assure that the specified countries continue to meet the criteria and to help assure that appropriate action could be promptly taken if a listed country were to fail to meet the criteria.

It appears that the adoption of the proposal would not have a significant economic effect since it is rare that persons desire to import honeybees or honeybee semen from other than Canada. Further, it appears that there is no feasible alternative to consider in compliance with the requirement that agencies choose the alternative that maximizes net benefits to society at the lowest net cost.

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

Paperwork Reduction Act

In accordance with Section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the information collection provisions included in this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0579-0073.

List of Subjects in 7 CFR Part 322

Bees, Honey, Imports, Transportation.

Under the circumstances set forth above, 7 CFR Part 322 is proposed to be revised to read as follows:

PART 322— HONEYBEES AND HONEYBEE SEMEN

Sec.

322.1 Importation of honeybees and honeybee semen.
322.2 Definitions.
322.3 Permits.
322.4 Inspections.
322.5 Marking and shipping.
322.6 Arrival notification.
322.7 Costs and charges.
322.8 Ports of entry.

Authority: Sec. 1; 90 Stat. 709 (7 U.S.C. 281); 7 CFR 2.17, 2.51, 371.2(c).

§ 322.1 Importation of honeybees and honeybee semen.

(a) No persons may import honeybees or honeybee semen, except as otherwise provided in this part.

(b) Honeybees or honeybee semen from Canada may be imported into the United States without any further restrictions under this part.

(c) Honeybee semen from any country listed below is designated as a restricted article and may be imported only in accordance with the provisions in this part.

Australia
Bermuda
France
Great Britain
New Zealand
Sweden

(d) Honeybees from any country or locality other than Canada, may be imported without complying with other provisions of this part if:

(1) Imported by the U.S. Department of Agriculture for experimental or scientific purposes;

(2) Imported at the Plant Germplasm Quarantine Center, Building 320, Beltsville Agricultural Research Center East, Beltsville, MD 20705, or at a port of entry designated by an asterisk in § 319.37-14(b);

(3) Imported pursuant to a departmental permit issued for such honeybees and kept on file at the port of entry;

(4) Imported under conditions specified on the departmental permit and found by the Deputy Administrator to be adequate to prevent the introduction into the United States of diseases or parasites harmful to honeybees, or genetically undesirable germplasm of honeybees, i.e., conditions of treatment, processing, shipment, disposal; and

(5) Imported with a departmental tag or label securely attached to the outside of the container, and with such tag or label bearing the name of the person to whom the permit is issued.

(e) Any honeybees or honeybee semen offered for import or intercepted entering the United States and not in compliance with this part shall be immediately exported from the United States by the importer or shall be destroyed by an inspector. Pending exportation or destruction, the honeybees or honeybee semen shall be subject to the immediate application of such safeguards against escape of diseases or parasites harmful to honeybees, or undesirable species or subspecies of honeybees, as the inspector determines necessary to prevent the introduction into the United States of diseases or parasites harmful to honeybees, or undesirable species or subspecies of honeybees.

§ 322.2 Definitions.

Terms used in the singular form in this part shall be construed as the plural, and vice versa, as the case may demand. The following terms when used in this part, shall be construed respectively, to mean:

Deputy Administrator. The Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, U.S. Department of Agriculture, or any other officer or employee of the Department to whom authority to act in his or her stead had been or may hereafter be delegated.

Diseases harmful to honeybees. Honeybee diseases, including but not limited to diseases caused by *Aspergillus* spp., *Bacillus* spp., *Ascosphaera* spp., Kashmir virus, and *Saccharomyces* spp.

Honeybee. Any live honeybee of the genus *Apis* in any life stage and the germplasm of honeybees of the genus *Apis*, except honeybee semen.

Import (importation, imported). To import or move into the United States.

Inspector. Any employee of Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person authorized by the Deputy Administrator in accordance with the law to enforce the provisions of this part.

Parasites harmful to honeybees. Honeybee parasites, including but not limited to *Varroa jacobsoni, Euvarroa sinhai, Tropilaelaps clareae,* and *Acarapis woodi.*

Person. Any individual, corporation, company, society, association, or any other organized group.

Plant Protection and Quarantine. The organizational unit within the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, delegated responsibility for enforcing provisions of the Honeybee Act, as amended, and regulations promulgated thereunder.

Restricted article. Any honeybee semen from countries listed in § 322.1(c).

Undesirable species or subspecies of honeybees. Apis mellifera adansonii, commonly known as the African honeybee, and its hybrids; and *Apis mellifera capensis,* commonly known as the Cape honeybee.

United States. The States, District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States.

§ 322.3 Permits.

(a) A restricted article may be imported only after issuance of a written permit by Plant Protection and Quarantine.

(b) An application for a written permit must be submitted to the Biological Assessment Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, Hyattsville, MD 20782, and should be submitted at least 30 days prior to arrival of the article at the port of entry. The completed application does not have to be on any particular form but must indicate that it is an application for a written permit and include the following information:

(1) Name, address, and telephone number of the importer;

(2) Amount of semen intended to be imported and species or subspecies of the honeybees from which the semen was collected;

(3) Country or locality or origin;

(4) Intended United States port of entry;

(5) Means of transportation; and

(6) Expected date of arrival.

(c) After receipt and review of the application by Plant Protection and Quarantine, a written permit indicating the applicable conditions in this subpart for importation shall be issued for the importation of the articles specified in the application if such articles appear to be eligible to be imported. Even though a written permit has been issued for the importation of an article, it may be moved into the United States from the port of entry only if all requirements of this subpart are met and only if an inspector at the port of entry does not determine that emergency measures are necessary with respect to such article to assure that diseases or parasites harmful to honeybees and that undesirable species or subspecies of honeybees are not introduced into the United States.

(d) Any permit which has been issued may be withdrawn by an inspector or the Deputy Administrator if he or she determines that the permit holder has not complied with any condition for the use of the permit. The reasons for the withdrawal shall be confirmed in writing as promptly as circumstances allow. Any person whose permit has been withdrawn may appeal the decision in writing to the Deputy Administrator within 20 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the permit was wrongfully withdrawn. The Deputy Administrator shall grant or deny the appeal in writing, stating the reasons for the decision, as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing shall be held to resolve the conflict.

(Approved by the Office of Management and Budget under control number 0579–0073)

§ 322.4 Inspections.

Any restricted article is subject to inspection by an inspector at the time of importation for the purpose of determining whether such article is eligible to be imported.

§ 322.5 Marking and shipping.

(a) Any restricted article for importation by means other than mail shall at the time of importation bear on the outer container the following information:

(1) Amount of semen and species or subspecies of the honeybees from which the semen was collected,

(2) Country or locality of origin,

(3) Name and address of shipper, owner, or person shipping or forwarding the article,

(4) Name and address of consignee, and

(5) Identifying shipper's mark and number.

(b) Any restricted article for importation by mail must be addressed and mailed to Plant Protection and Quarantine at a place specified in § 322.8; must be accompanied by a separate sheet of paper within the package bearing the name, address, and telephone number of the intended recipient; and must bear on the outer container the following information:

(1) Species or subspecies of the honeybees from which the semen was collected,

(2) Country or locality of origin, and

(3) Name and address of shipper, owner, or person shipping or forwarding the article.

(c) Any restricted article must be accompanied at the time of importation by an invoice or packing list indicating the contents of the shipment.

(Approved by the Office of Management and Budget under control number 0579–0073)

§ 322.6 Arrival notification.

Promptly upon arrival of any restricted article at a port of entry, except for mail shipments, the importer must notify Plant Protection and Quarantine of the arrival by such means as a manifest, Customs entry document, commercial invoice, waybill, a broker's document, or a notice form provided for that purpose.

(Approved by the Office of Management and Budget under control number 0579–0073)

§ 322.7 Costs and charges.

The services of the inspector during regularly assigned hours of duty and at the usual places of duty shall be furnished without cost to the importer.[1] Plant Protection and Quarantine will not be responsible for any costs or charges, other than those indicated in this section.

§ 322.8 Ports of entry.

(a) Any restricted article may be imported only at a port of entry listed in § 322.319.37–14(b) of the chapter.

Done at Washington, D.C., this 16th day of April, 1984.

John R. Block,

Secretary, Department of Agriculture.

J. M. Walker, Jr.,

Assistant Secretary, Department of the Treasury.

[FR Doc 84–12776 Filed 5–11–84; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1030

[Docket No. A0–361–A20]

Milk in the Chicago Regional Marketing Area; Extension of Time for Filing Exceptions to Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of time for filing exceptions to proposed rules.

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[1] Provisions relating to costs for other services of an inspector are contained in 7 CFR Part 354.

SUMMARY: This action extends the time for filing exceptions to a recommended decision concerning proposed amendments to the Chicago Regional order. The requests for additional time were submitted by interested parties who participated at the hearing.

DATES: Exceptions now are due on or before June 1, 1984.

ADDRESS: Exceptions (four copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–4829.

SUPPLEMENTARY INFORMATION: Prior documents in this 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).

Recommended Decision: Issued April 9, 1984; published April 12, 1984 (49 FR 14511).

Correction to Recommended Decision: Published April 20, 1984 (49 FR 16803).

Notice is hereby given that the time for filing exceptions to the recommended decision issued April 9, 1984 (49 FR 14511) on proposed amendments to the Chicago Regional milk order is extended to June 1, 1984.

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).

List of Subjects in 7 CFR Part 1030

Milk marketing orders, Milk, Dairy Products.

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

Signed at Washington, D.C. on: May 8, 1984.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 84–12851 Filed 5–11–84; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL TRADE COMMISSION

16 CFR Parts 300, 301 and 303

Rules and Regulations Under the Wool Products Labeling Act of 1939, the Fur Products Labeling Act, and the Textile Fiber Products Identification Act; Summary of Comments

AGENCY: Federal Trade Commission.

ACTION: Summary of comments.

SUMMARY: On October 20, 1983 (48 FR 48682), the Federal Trade Commission (FTC), in accordance with the Regulatory Flexibility Act, solicited comments on whether the rules under the Wool Products Labeling Act of 1939, the Fur Products Labeling Act, and the Textile Fiber Products Identification Act have had a significant economic impact on a substantial number of small entities and if they have, whether the rules should be amended to minimize any significant economic impact on small entities. This notice summarizes the comments received.

FOR FURTHER INFORMATION CONTACT: Earl Johnson, Federal Trade Commission, Washington, D.C. 20580, (202) 376–2891.

List of Subjects

16 CFR Part 300

Labeling, Textile, Trade Practices, Warranties, Wool.

16 CFR Part 301

Furs, Labeling, Sheep, Trade practices, Warranties.

16 CFR Part 303

Labeling, Textile, Trade Practices.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 et. seq. (RFA) requires that the FTC conduct a periodic review of rules which have or will have a significant economic impact upon a substantial number of small entities.

The Wool Products Labeling Act of 1939 (Wool Act) was enacted on October 14, 1940; the Act and the Commission's accompanying regulations became effective on July 15, 1941. The Act requires all wool products to bear a label showing the percentage of wool, recycled wool, and non-wool fibers contained in the product and the name of the manufacturer or other distributor. The Act prohibits the misbranding of wool products and is administered by the Commission, whose regulations establish the manner and format in which the information required by the Act is to be disclosed.

The Fur Products Labeling Act (Fur Act) was enacted on August 8, 1951. The Act and the Commission's accompanying rules became effective on August 9, 1952. The Act and rules contain requirements for the labeling, invoicing, and advertising of fur products. The Act requires fur products to be labeled with the name of the animal which produced the fur; the country of origin; whether the furs are natural, dyed or otherwise artificially colored; and certain other characteristics of the fur product used. To ascertain compliance with the Act, fur products marketers must maintain records for each product sold. The Act prohibits the misbranding, false and deceptive invoicing, and false and deceptive advertising of fur products and requires that animal names used conform to the Fur Products Name Guide established by the Commission, which is charged with administering the Act.

The Textile Fiber Products Identification Act (Textile Act) was enacted on September 2, 1958; the Act and the Commission's accompanying regulations became effective on March 3, 1960. The Act requires each household textile product to bear a label containing the percentage of each fiber contained in the product, the name of the manufacturer or distributor, and the country of origin if the product was principally manufactured in a foreign country. The Act prohibits misbranding and false advertising of the fiber content of textile products and requires that the appropriate generic name must be used for all fibers. Generic names and definitions for manufactured fibers are established by the Commission, which is charged with administering the Act.

The FTC, in accordance with the RFA, solicited comments and data on whether the rules issued under the Wool, Fur and Textile Acts have had a significant economic impact on a substantial number of small entities and if they have, whether any of these rules should be amended to minimize any significant economic impact on small entities (48 FR 48682).

Questions were posed on: (1) The continued need for the rules, (2) the burdens, if any, compliance with the rules places on small entities, (3) changes which should be made to minimize any economic impact the rules have had on small business, (4) the extent the rules overlap, duplicate, or conflict with other rules, and (5) any changed conditions that may have occurred which affect the rules.

Five organizations submitted comments. Three comments were

submitted for the Wool Act, three comments for the Textile Act and one comment for the Fur Act.

Based on the comments received the Commission has no basis to conclude that the rules have had significant economic impact on a substantial number of small entities.

The comments indicate there is a continued need for the rules, that they have accomplished the objectives contemplated by Congress and the Commission, serving the interests of both consumers and industry, and that any burdens imposed by the rules are outweighed by the benefits to consumers and industry.

No changes to the rules were suggested that would minimize the impact on small entities. According to the comments, there is no conflict between these rules and other federal rules or with state and local governmental rules. No conditions have changed since promulgation of the rules warranting further repeal or amendment of the rules.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 84-12784 Filed 5-11-84; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

Proposed Customs Regulations Amendment Relating to Honeybees and Honeybee Semen

AGENCY: U.S. Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations relating to honeybees and honeybee semen. The proposed amendment is part of a joint Department of Agriculture-Treasury proposal to revise current regulations to reflect amendments to the Honeybee Act. If adopted, this amendment would allow Treasury, through Customs, and in conjunction with Agriculture, through the Animal and Plant Health Inspection Service, to enforce the provisions of the Honeybee Act which now regulates not only the importation of honeybees but also honeybee semen.

DATES: Written comments must be received on or before July 13, 1984.

ADDRESS: Comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Harrison C. Feese, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8651).

SUPPLEMENTARY INFORMATION:

Background

Section 12.32, Customs Regulations (19 CFR 12.32), currently provides that honeybees may be imported into the United States by the Department of Agriculture for experimental or scientific purposes. Importation of honeybees for any other purpose is prohibited unless the Secretary of Agriculture has determined that the importation is from a country in which no diseases dangerous to honeybees exist. Section 12.32 additionally states that the importation of honeybees is to be governed by joint regulations of the Secretary of Agriculture and the Secretary of the Treasury.

The current Customs Regulations set forth in 19 CFR 12.32 and the U.S. Department of Agriculture (USDA) regulations set forth in 7 CFR Part 322, pertaining to the importation of honeybees, reflect the provisions of the Honeybee Act (7 U.S.C. 281 *et seq.*), before it was amended in 1976 by Pub. L. 94-319. The amended Honeybee Act now regulates not only the importation of honeybees, but also honeybee semen.

In a document published by the USDA in this issue of the **Federal Register**, a proposal is set forth to revise current Agriculture regulations to reflect amendments to the Honeybee Act. The amended Honeybee Act provides that honeybees may be imported into the United States by the USDA for experimental or scientific purposes. Proposed criteria for the importation of honeybees and honeybee semen are set forth as well. The Honeybee Act further allows honeybees and honeybee semen to be imported under such rules and regulations as the Secretary of Agriculture and the Secretary of the Treasury shall prescribe. These joint regulations are enforced by Treasury, through Customs, and in conjunction with the Animal and Plant Health Inspection Service of the USDA.

So that the Customs Regulations conform with those of USDA, Customs is proposing an amendment to section 12.32 to regulate not only the importation of honeybees, but also honeybee semen.

Section 12.32, as amended, would provide that honeybee semen may be imported into the United States only from countries determined by the Secretary of Agriculture to be free of undesirable honeybees, and which take adequate precautions to prevent the importation of undesirable honeybees and their semen.

Executive Order 12291

Because this document will not result in a regulation which would be a "major" rule as defined by section 1(b) of E.O. 12291, a regulatory impact analysis and review as prescribed by section 3 of the E.O. is not required.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis are not applicable to the proposal because the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 12

Bees.

Proposed Amendments

PART 12—SPECIAL CLASSES OF MERCHANDISE

It is proposed to revise § 12.32, Customs Regulations (19 CFR 12.32), to read as follows:

§ 12.32 Honeybees and honeybee semen.

(a) Honeybees from any country may be imported into the United States by the Department of Agriculture for

experimental or scientific purposes. All other importations of honeybees are prohibited except those from a country which the Secretary of Agriculture has determined to be free of diseases dangerous to honeybees.[19]

(b) Honeybee semen may be imported into the United States only from countries determined by the Secretary of Agriculture to be free of undesirable honeybees, and which take adequate precautions to prevent the importation of undesirable honeybees and their semen.

(c) The importation of honeybees and honeybee semen is governed by joint regulations of the Secretary of Agriculture and the Secretary of the Treasury published in Treasury Decisions and the **Federal Register** from time to time.

Authority

These changes are proposed under authority of R.S. 251, as amended; sec. 1, 42 Stat. 833, as amended; 90 Stat. 709; sec. 624, 46 Stat. 759 (7 U.S.C. 281, 19 U.S.C. 66, 1624).

Alfred R. De Angelus,

Acting Commissioner of Customs.

Approved: January 12, 1984.

John M. Walker., Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 84-12774 Filed 5-11-84; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 1710

[Docket No. R-84-1151; FR-1919]

Amendments Relating to Interstate Land Sales Registration

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would increase the fees required for registering a subdivision and for requesting an Advisory Opinion or Exemption Order under HUD's regulations implementing the Interstate Land Sales Full Disclosure Act (Act). In addition, the Annual Activity Report, which is an amendment to the file, would be accompanied by an amendment fee based upon the number of lots remaining in inventory.

DATE: Comments must be received by July 13, 1984.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban, 451 7th Street, SW., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John L. Brady, Director, Office of Interstate Land Sales Registration, Department of Housing and Urban Development, Room 4106, 451 7th Street, SW., Washington, D.C. 20410, (202) 755-8182. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Filing fees are proposed to be increased in order to offset increased costs associated with the administration of HUD's Office of Interstate Land Sales Registration (OILSR) Program. The details of the proposed increases are set forth in the proposed amendments of 24 CFR 1710.16, 1710.17, 1710.23, 1710.35 and 1710.310.

The present maximum $1,000 sliding scale for registration fees would be replaced with either a $800 fee or a $1,000 fee. The fee would be $800 for developers registering 200 or fewer lots and $1,000 for developers with 201 or more lots.

The present fee of $250 for an Advisory Opinion or Exemption Order would be raised to $500.

All effective statements of Record, including those certified by states, would be assessed an annual amendment fee of $800, which fee would accompany the Annual Activity Report submitted on the anniversary of the initial Statement of Record, unless, there are 100 or fewer registered and unsold lots remaining in inventory.

Developers wishing to reactivate a suspended filing would be required to pay an amendment fee of $800, unless there are 100 or fewer registered and unsold lots remaining in inventory.

HUD has been charging an amendment fee for second and subsequent pre-effective amendments. This particular fee would be eliminated.

Developers who discontinue lot sales should voluntarily suspend their registration, in which case neither the Annual Activity Report nor the amendment fee will be required. A form entitled Voluntary Suspension of Effectiveness of Statement of Record can be obtained by calling or writing the Office of Interstate Land Sales Registration.

The purpose of the new fees proposed in this rule is to offset increased costs associated with the administration of the Department's OILSR Program under section 1405 of the Interstate Land Sales Full Disclosure Act.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 which implement section 102(2)(C) of the National Environmental Policy act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10278, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 10, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The rule was not listed in the Department's Semiannual Agenda of Regulations published on October 17, 1983 (48 CFR 47418) under Executive Order 12291 and the Regulatory Flexibility Act.

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

With regard to the registration fee, while fees are being increased, this proposed rule takes into consideration low volume developers with 200 or fewer registered lots by providing for a lower fee than for the high volume developer. With regard to the new amendment fee, those developers with fewer than 100 registered and unsold lots remaining in inventory when the Annual Activity Report is submitted to HUD will not be charged an amendment fee.

Under the 1979 amendments to the Interstate Land Sales Full Disclosure Act a business must have at least 100 lots before it is required to register. Thus, the business would have to be a

relatively large business before it is impacted.

Copies of the HUD methodology used in proposing the fee increases can be obtained from the Office of Interstate Land Sales Registration, Room 4106, Department of Housing and Urban Development, 451 7th St., SW., Washington, D.C. 20410.

The Catalog of Federal Domestic Assistance Program number is 14.801.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget, and assigned approval number 2502–0243.

List of Subjects in 24 CFR Part 1710

Consumer Protection, Land sales, Reporting and recordkeeping requirements.

PART 1710—LAND REGISTRATION

Accordingly, 24 CFR Part 1710 is proposed to be amended as follows:

1. In § 1710.16, paragraph (b)(5) would be removed, and paragraph (b)(4) would be revised to read as follows:

§ 1710.16 Regulatory exemption—determination required.

* * * * *

(b) * * *

(4) The developer files a request for an exemption order and supporting documentation in accordance with paragraphs (c) and (d) of this section and submits a filing fee of $500.00 in accordance with § 1710.35(a). This fee is not refundable.

(5) [Reserved]

* * * * *

2. In § 1710.17, paragraph (b)(1) would be revised to read as follows:

§ 1710.17 Advisory opinion.

* * * * *

(b) * * *

(1) A $500.00 filing fee submitted in accordance with § 17.35(a). This fee is not refundable.

* * * * *

3. In § 1710.23, a new paragraph (c) would be added to read as follows:

§ 1710.23 Amendment—filing and form

* * * * *

(c) *Amendments to suspended filings.* Developers wishing to reactivate a suspended filing shall file the following:

(a) Any amendments necessary to bring the filing into compliance, submitted in accordance with paragraphs (a) and (b) of this section;

(2) An Activity Report in the form prescribed by § 1710.310; and

(3) An Amendment fee, if required under § 1710.35(d)(2).

4. In § 1710.35, paragraphs (b) through (d) would be revised to read as follows:

§ 1710.35 Payment of fees.

* * * * *

(b) *Fees for registration.* The fee for each initial and consolidated registration is set forth in the following schedule:

Number of lots	Fees
200 or fewer lots	$800
201 or more lots	1,000

(c) *Fee for Exemption Order or Advisory Opinion.* The filing fee for an Exemption Order or an Advisory Opinion (§ 1710.16 or § 1710.17) is $500. This fee is not refundable.

(d) *Amendment fee.* (1) A fee of $800 is charged when an Annual Activity Report reflects an annual ending inventory of 101 or more unsold registered lots.

(2) A fee of $800 is charged for an amendment to reactivate a Statement of Record subsequent to its suspension, unless the developer has 100 or fewer unsold lots included in the Statement of Record.

5. Section 1710.310 would be revised to read as follows:

§ 1710.310 Annual Report of Activity.

(a) As an integral part of the Statement of Record, the developer shall file with the Secretary an Annual Report of Activity on any initial or consolidated registration not under suspension. For this purpose, only one Annual Report of Activity will be expected for subdivisions on which developers have filed consolidations. For registrations certified by a State as provided for in § 1710.500, a developer need file only one Annual Report of Activity for any registration for which the OILSR number is the same (alphabetic designators indicate that the registration has been treated as a consolidation).

(b) The report shall be submitted within 30 days of the annual anniversary of the effective date of the initial Statement of Record.

(c) The report shall contain the following information:

(1) Subdivision name and address.

(2) Developer's name, address and telephone number.

(3) Agent's name, address and telephone number.

(4) Interstate Land Sales Registration number.

(5) The date on which the initial filing first became effective.

(6) The number of registered lots, parcels or units which are unsold as of the date on which the report is due.

(7) One of the following:

(i) A statement that the developer is still engaged in land sales activity at the subject subdivision and that there have been no changes in material fact since the last effective date was issued which would require an amendment to the Statement of Record; or

(ii) A statement that the developer is still engaged in land sales activity at the subject subdivision, that material changes have occurred since the last effective date, and that corrected pages to the Property Report portion or Additional Information and Documentation portion of the Statement accompany the report; or

(iii) A statement that the developer is no longer engaged in land sales activity at the subject subdivision, together with the reason the developer is no longer selling (e.g., all lots sold to the public or the remaining lots sold to another developer, along with the date of sale and the new developer's name, address and telephone number). A request may be made that the Statement of Record be voluntarily suspended. The request should be submitted in duplicate and will become effective upon the countersignature of the Secretary (or an authorized Designee) with the duplicate being returned to the developer.

(8) The report shall be dated and shall be signed by the senior executive officer of the developer on a signature line above his typed name and title. The senior executive officer's acknowledgment shall be attested to or certified by a notary public or similar public official authorized to attest or certify acknowledgments in the jurisdiction in which the report is executed.

(d) If the report indicates that there are 101 or more registered lots, parcels or units remaining for sale, the report shall be accompanied by an amendment fee in the amount and form prescribed in § 1710.35.

(e) Failure to submit the report when due shall be grounds for an action to suspend the effective Statement of Record.

Authority: Sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d); Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1718.

Dated: April 16, 1984.

Shirley M. Wiseman,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner

[FR Doc. 84–12885 Filed 5–11–84; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Receipt of a Petition To Initiate Rulemaking; Submitted by the State of Oklahoma

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of receipt of petition to initiate rulemaking.

SUMMARY: OSM is announcing receipt of a petition submitted by Oklahoma on April 27, 1984, to initiate rulemaking pursuant to 30 CFR 700.12. The State petitions OSM to amend the final rule at 30 CFR Part 936 as published in the **Federal Register** on April 12, 1984, pertaining to the decision of the Director, OSM to implement direct Federal enforcement for certain portions of the Oklahoma permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The Director is inviting public comment on the substance of the State's request in order that he may have the benefit of those comments prior to his decision on whether there is a reasonable basis to consider the petition.

DATES: Written comments not received on or before May 29, 1984, will not necessarily be considered.

ADDRESSES: Copies of the State's petition of April 27, 1984, 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 5124, 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, Oklahoma 74103; Telephone: (918) 581–7927

Oklahoma Department of Mines, Suite 107, 4040 N. Lincoln, Oklahoma City, Oklahoma 73105; Telephone: (405) 521–3659.

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, Oklahoma 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. See 46 FR 4910. On March 10, 1983, the Director, OSM, sent a notification to the Governor of Oklahoma stating that he had reason to believe that the State, through the Oklahoma Department of Mines (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, intended to address 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 addressing 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).

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). 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 addressing 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 (40 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).

On April 12, 1984, the Director published his findings in the **Federal Register** that Oklahoma was not adequately implementing certain aspects of its approved program. Therefore, in accordance with the provisions of 30 CFR 733.12(f), the Director, OSM, instituted direct Federal enforcement for those portions of Oklahoma's program that the State has not adequately enforced. (See 49 FR 14674–14689.)

In the April 12, 1984 **Federal Register** notice, the Director also stated that because he 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. The notice 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.

On April 27, 1984, OSM received from Oklahoma a petition to initiate rulemaking to amend the final rule at 30 CFR Part 936 published in the April 12, 1984 **Federal Register**. In summary, the State's petition is as follows:

Amend the effective date of the Director's decision from April 30, 1984 to May 14, 1984, to allow the newly named Deputy Chief Mine Inspector more time to implement necessary improvements in the Oklahoma program.

Amend inconsistencies in OSM's final rule which need to be clarified so that ODOM is properly informed of all effects of the final rule. Such inconsistencies include that on one page of the final rule, ODOM is directed to reevaluate bond release actions since July 30, 1981 (sic). At another page, ODOM is directed to reevaluate bond release actions since August 10, 1982. (Note.—OSM has prepared a notice to be published shortly in the **Federal Register** which corrects the date of August 10, 1982 to July 20, 1981.)

Further, ODOM is directed to require all new bonds and adjusted bonds to be made payable to the "United States of America or the State of Oklahoma". The State is concerned that to do so would place it in violation of Oklahoma Statutes that require bonds be made payable to the State of Oklahoma.

Also, the final rule states that OSM will conduct all inspections of coal exploration and surface coal mining and reclamation operations within Oklahoma. Oklahoma Statutes require that ODOM conduct monthly inspections. The State feels that a failure by ODOM to conduct the required inspections could result in liability under Oklahoma law.

In addition, the State indicated that more time is needed for the Oklahoma Attorney General to issue an opinion as to whether the OSM directives appear to require actions which would violate Oklahoma law.

Therefore, the Director, pursuant to 30 CFR 700.12, invites comments on the substance of the State's request in order that he may have the benefit of those comments prior to his decision on whether there is reasonable basis to consider the petition. Also, the Director notes that the State has indicated that it will submit an Attorney General's opinion with regard to its statements concerning bonds being payable to both the United States of America and the State and the State's responsibility to conduct inspections. This opinion must be received and considered prior to the Director's determination to consider the petition.

If the Oklahoma Attorney General's opinion results in a finding that ODOM would be in violation of its statute with regard to the two areas, the Director, pursuant to section 505(b) of SMCRA and 30 CFR 730.11(a), could consider temporarily superseding and preempting the State's statutory provisions in question. Comments are solicited concerning this possible action.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared 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 would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 926

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: May 7, 1984.

J. Lisle Reed,

Acting Director, Office of Surface Mining.

[FR Doc. 84–12857 Filed 5–11–84; 8:45 am]

BILLING CODE 4310–05–M

National Park Service

36 CFR Part 61

Procedures for Approved State and Local Government Historic Preservation Programs

AGENCY: National Park Service, Interior.

ACTION: Proposed rules with request for comments.

SUMMARY: The National Park Service is amending its regulations that establish procedures for approval of State and local government historic preservation programs, 49 FR 14899, April 13, 1984. This document proposes rules to establish procedures for: (1) The approval of State programs; (2) the certification of local governments when there is no approved State program; and (3) establish the process for funding certified local governments when there is no approved State program. These rules will provide the procedures and standards for these evaluations. These procedures are necessary to implement provisions specified in the National Historic Preservation Act as amended in 1980 (the Act).

DATES: Comments must be received on or before July 13, 1984.

ADDRESS: Send comments to: Lawrence E. Aten, Chief, Interagency Resources Division, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240 (202–343–9500).

FOR FURTHER INFORMATION CONTACT: Hardy L. Pearce, Chief, Survey and Planning Branch, Interagency Resources Division (202–343–9505).

SUPPLEMENTARY INFORMATION: This proposed rulemaking was necessitated by enactment of the National Historic Preservation Act Amendments of 1980, Pub. L. 96–515, on December 12, 1980.

Section 101(b)(2) of the Act requires the Secretary of the Interior (Secretary) to conduct performance evaluations of State historic preservation programs. These rules provide the procedures and standards for these evaluations.

The Secretary will evaluate each State program for compliance with 36 CFR Part 61 and other program requirements. The program evaluations will be conducted every second fiscal year. They will be rigorous with respect to assessing States' performance under the requirements of the Act. The State programs will be examined to the depth of existing regulations and standards pertinent to each requirement but only to the extent these were in effect during the performance period being evaluated. The Secretary will verify the accuracy of required periodic State reports used in allocating grant funds and in reporting on the status of the national historic preservation program; provide States with an analysis of program strengths and weaknesses; and, initiate a periodic program approval process based upon State compliance with statutory program responsibility and implementation of Federal administrative controls.

As required by § 101(c)(1) of the National Historic Preservation Act, as amended, States will be required to develop procedures for the certification of local governments and for the transfer of funds to local governments.

The Secretary also is required by the Act to issue rules for the certification of local governments in States that do not have an approved historic preservation program. These rules, which were reserved in the final rules published on April 13, 1984, are herein issued for comment.

When there is no approved State program, the Secretary will certify local governments directly. The Secretary will base the review of applications from local governments wishing to become certified, upon the requirements for local government certification contained in 36 CFR Part 61.

The Secretary will ensure that there is consistency and continuity in the CLG program of a State that does not have an approved program. Therefore, if a State has an approved local government certification process and has already certified local governments, the Secretary will consider the process in his review of any application for local government certification from within that State.

Under Section 101(c)(1) of the Act, the Secretary also is required to issue rules for the transfer of funds to local governments. When there is no approved State program, the Secretary

will directly administer the transfer of funds to CLGs. The Secretary will base the review of applications from local governments wishing to receive funding upon the requirements set forth in § 61.7.

There should be consistency and continuity in funding allocation policy of the CLG program of a State that does not have an approved program. Therefore, if a State has an approved allocation process, the Secretary will consider it in his review of any application for funding from CLGs within that State.

Classification

These rules are not substantive and deal with procedural aspects of State and local historic preservation programs. In accordance with Executive Order 12291, the Department of the Interior has determined that these rules are not major. The rules will not require States to assume significant additional costs. Local government certification under these rules is strictly voluntary. Additional expenses that may be incurred by local governments will be a result of their decision to seek certification. In accordance with the Regulatory Flexibility Act, the Department of the Interior has determined that these rules will not have a significant economic effect on a substantial number of small entities. Additional expenses that may be incurred by small local governments will be the result of their decision to seek certification. The information collection requirements contained in these proposed rules have been submitted to the Office of Management and Budget for approval under 44 U.S.C. 3507, *et seq.*

Regulatory Analysis

Not required for this rulemaking.

Environmental Impact Statement

This regulation does not significantly impact the environment. Because these rules have to do with procedural aspects of State and local historic preservation programs and have no impact on the environment, an Environmental Impact Statement is not required.

The originators of these procedures are Theodore Pochter, Preservation Planner, and John W. Renaud, Historian, Interagency Resources Division (202/343–9505).

Authority: National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 *et seq.*

List of Subjects in 36 CFR Part 61

Grant programs, Natural resources, Historic preservation.

Dated: December 5, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

36 CFR Part 61 is proposed to be amended as set forth below:

PART 61—PROCEDURES FOR APPROVED STATE AND LOCAL GOVERNMENT HISTORIC PRESERVATION PROGRAMS

1. Section 61.4(c)(2) is added to read as follows:

§ 61.4 Approved State Programs.

* * * * *

(c) * * *

(2) Procedures for Review and Approval of State Historic Preservation Programs:

(i) The Secretary will evaluate each State program for compliance with the requirements of 36 CFR Part 61. The program evaluation process will be conducted immediately after the end of every second fiscal year. It will be rigorous with respect to assessing the State's performance of the requirements in the Act. The State programs will be examined to the depth of existing regulations and standards pertinent to each requirement but only to the extent these were in effect during the performance period being evaluated. The Secretary will verify the accuracy of required periodic State reports used in allocating grant funds and in reporting on the status of the national historic preservation program and provide States with analyses of program strengths and weaknesses.

(ii) The categories of activities to be evaluated are:

(A) Requirements of the Act:

(*1*) Legal authority and designation of the State Historic Preservation Officer;

(*2*) State Staff Qualifications and Composition;

(*3*) State Review Board Qualifications and Composition;

(*4*) Historic Preservation Fund Grant Management;

(*5*) Comprehensive Historic Preservation Planning;

(*6*) Survey and Inventory;

(*7*) National Register;

(*8*) Public Participation;

(*9*) Technical Assistance to Governmental Agencies;

(*10*) Review and Compliance;

(*11*) Public Education;

(*12*) Certification Assistance to Local Governments;

(B) Conditions and other requirements as specified in *The National Register Program Manual;*

(C) Annual Historic Preservation Fund grant amendments;

(D) OMB circular and Treasury requirements;

(E) Appropriate implementing regulations.

(iii) The Secretary will use a combination of on-site and off-site inquiries to perform the evaluation. To achieve uniformity of review and comprehensive coverage of the approval criteria, the following questions will generally form the basis for verifying State activities for each of the requirements:

(A) Is there an adequate system or process in place for the requirement?

(B) Is the system or process being used such that a minimal level of activity for each requirement can be demonstrated?

(C) Have all conditions of any grant awards been met?

(D) Are the data contained in the previous year's End-of-Year Report accurate?

(iv) Approval Method.

(A) State meeting all requirements in the review will receive immediate official notice that their approved status is continued.

(B) States not meeting all requirements will receive immediate notice of deficiencies along with recommendations on how to correct them. The Secretary will defer making a decision on program approval for up to a 4 month period during which time technical assistance in correcting the problems will be offered. States must either correct cited deficiencies, or provide an acceptable justification for requiring additional time and a plan and timetable for correcting deficiencies. During this period, States have the opportunity to appeal to the Secretary and findings and recommendations.

(C) States successfully resolving deficiencies will receive notice from the Secretary that their approved status is continued. Once approved status is renewed, States will not be reviewed until the next regular biennial evaluation period, although evaluations may be conducted more often in individual States if the Secretary deems this necessary. The Secretary may disapprove a State program as a result of any such evaluation subject to the provisions of paragraphs (c)(2)(iv) (A), (B), and (D) of this section

(D) States will be "disapproved" only when, after the expiration of the specified period, they are officially notified that their approved status is removed for failure to correct cited deficiencies. The Secretary will then initiate financial suspension actions in accordance with administrative

guidelines specified in *The National Register Programs Manual.*

(v) Instructions on carrying out the evaluation process are to be provided in *The National Register Programs Manual.*

* * * * *

2. Section 61.5(n) is added to read as follows:

§ 61.5 Approved Local Programs.

* * * * *

(n) Procedures for direct certification by the Secretary where there is no approved State program:

(1) When there is no approved State program, local governments wishing to be certified must apply directly to the Secretary.

(2) The application must demonstrate that the local government meets the specifications for certification set forth in 61.4(c).

(3) The Secretary shall review certification applications under this subsection and take action within 90 days of receipt.

3. Section 61.7(q) is added to read as follows:

§ 61.7 Transfer of Grants to Certified Local Governments.

* * * * *

(q) Where there is no approved State program, the method for allocating funds will be determined by the Secretary in accordance with the procedures set forth for States in this section.

(National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 et seq.)

[FR Doc. 84-12789 Filed 5-11-84; 8:45 am]

BILLING CODE 4310-70-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84-442; RM-4724]

FM Broadcast Station in San Clemente, California; Proposed Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein, at the request of Sunbelt Television, Inc., proposes the assignment of Channel 285A to San Clemente, California. The assignment could provide that community with a second FM service.

DATES: Comments must be filed on or before June 25, 1984, and reply comments on or before July 10, 1984.

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

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, 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 § 73.202(b), Table of Assignments, FM Broadcast Stations. (San Clemente, California) MM Docket No. 84-442, RM-4724.

Adopted: April 30, 1984.
Released: May 4, 1984.

By the Chief, Policy and Rules Division.

1. A petition for rule making was filed on December 16, 1983, by Sunbelt Television, Inc., ("petitioner") seeking the assignment of Channel 285A to San Clemente, California, as the community's second FM assignment. Petitioner submitted information in support of the proposal and expressed an intention to apply for the channel, if assigned.

2. A site restriction is required of approximately 6.1 kilometers (3.8 miles) southeast of San Clemente California to avoid a short-spacing to Station KKGO-FM on Channel 286 at Los Angeles, California. Since San Clemente is located within 320 kilometers (199 miles) of the U.S.-Mexican border, the proposed assignment requires concurrence by the Mexican government.

3. In view of the fact that the proposed assignment could provide a second FM service to San Clemente, California, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules, for the following community:

City	Channel No.	
	Present	Proposed
San Clemente, Calif.	300	285A, 300

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 June 25, 1984, and reply comments on or before July 10, 1984, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or their counsel or consultant, as follows: Sunbelt Television, Inc., c/o Fletcher, Heald & Hildreth, 1225 Connecticut Avenue, N.W., Suite 400, Washington, D.C. 20036 (Counsel to petitioner).

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 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 Sections 72.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 Fed. Reg. 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Mark N. Lipp, 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)(i), 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 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 ⅛before 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. 84-12883 Filed 5-11-84; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-440; RM-4657; RM-4679]

FM Broadcast Station in Grand Junction, Colorado; Proposed Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to assign Class C FM Channels 282 and 300 to Grand Junction, Colorado, in response to separate petitions filed by Keith E. Lamonica and Daniel L. Harris. The proposed assignments could provide Grand Junction with its third and fourth local FM broadcast services.

DATES: Comments must be filed on or before June 25, 1984, and reply comments must be filed on or before July 10, 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 Rule Making

In the Matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Grand Junction, Colorado) MM Docket No. 84-440, RM-4657; RM-4679.

Adopted: April 30, 1984.
Released: May 4, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has under consideration two separate petitions for rule making requesting the assignment of Class C channels to Grand Junction, Colorado. The first petition, filed by Keith E. Lamonica ("Lamonica") (RM-4657), seeks the assignment of Channel 300, while that of the second petitioner, Daniel L. Harris ("Harris") (RM-4679), requests the allocation of Channel 282. Each petitioner stated his intention to apply for the respective channels, if assigned as proposed.

2. Although Harris submitted demographic data to support his proposal, that information is no longer required in noncomparative cases in light of the Commission's action in BC Docket No. 80-130, *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

3. Both channels can be assigned consistent with the minimum distance separation requirements of § 73.207 of the Commission's Rules. Therefore, and in view of the fact that the proposals could provide a third and fourth local FM broadcast service to Grand Junction for the dissemination of diverse viewpoints and programming, the Commission believes it appropriate to propose amending the FM Table of Assignments, § 73.202(b) of the Rules, as follows:

City	Channel No.	
	Present	Proposed
Grand Junction, Colo.	222, 226	222, 226, 282, and 300.

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 June 25, 1984, and reply comments on or before July 10, 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:

Keith E. Lamonica, 3607 Sierra Vista, Farmington, NM 87401
Daniel L. Harris, 20560 Treaty Line R, West Mansfield, OH 43358

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 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.

7. For further information concerning this proceeding, contact Nancy V. Joyner, 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 appending 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, § 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 persons 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. 84-12881 Filed 5-11-84; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84-441; RM-4659]

FM Broadcast Stations in Jasper, Texas; Proposed Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to assign Channel 265A to Jasper, Texas, as that community's second FM service, in response to a petition filed by Jasper Broadcasting Company

DATES: Comments must be filed on or before June 25, 1984, and reply comments must be filed on or before July 10, 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 Rule Making

In the matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Jasper, Texas) MM Docket No. 84-441, RM-4659.

Adopted: April 30, 1984.

Released May 4, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration a petition for rule making filed by Jasper Broadcasting Company ("petitioner"), requesting the assignment of Channel 265A to Jasper, Texas, as that community's second commercial FM assignment. Petitioner indicates that he will apply for the channel, if assigned as proposed.

2. A staff engineering study reveals that Channel 265A can be assigned to Jasper in conformity with the minimum distance separation requirements of § 73.207 of the Commission's Rules, provided the transmitter location is restricted to an area 2.7 miles northwest of the community to avoid short spacing on the co-channel to FM Station KTQQ, Sulphur, Louisiana.

3. In view of the fact that the proposed assignment could provide a second local FM service to Jasper for the expression of diverse viewpoints and programming, the Commission believes it is appropriate to propose amending the FM Table of Assignments, § 73.202(b) of the Commission's Rules with respect to that community, as follows:

City	Channel No.	
	Present	Proposed
Jasper, Tex.	272A	265A, 272A

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 June 25, 1984, and reply comments on or before July 10, 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: Julian P. Freret, Esq., Booth and Freret, 1302 18th Street, NW., Washington, D.C. 20036 (Counsel for petitioner).

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 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.

7. For further information concerning this proceeding, contact Nancy V. Joyner, 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, §73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

a. Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

b. With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

c. The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 84-12882 Filed 5-11-84; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84-438; RM-4666]

FM Broadcast Station in Vienna, West Virginia; Proposed Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein, at the request of Randy Jay Communications, proposes to assign FM Channel 261A to Vienna, West Virginia, as that community's first local FM allotment.

DATES: Comments must be filed on or before June 25, 1984, and reply comments on or before July 10, 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 § 73.202(b), Table of Assignments, FM Broadcast Stations. (Vienna, West Virginia) MM Docket No. 84–438, RM–4666.

Adopted: May 1, 1984.
Released: May 4, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration a petition for rule making filed by Randy Jay Communications ("petitioner") seeking the assignment of FM Channel 261A to Vienna, West Virginia, as that community's first local FM service. Petitioner has stated its intention to apply for the channel, should it be assigned.

2. Channel 261A can be assigned to Vienna in compliance with the Commission's minimum distance separation and other technical requirements with a site restriction of at least 1.8 miles northeast. This is necessary to avoid a short-spacing to an application for Channel 208A at Belpre, Ohio. Since Vienna is located within 320 kilometers (200 miles) of the U.S.-Canadian border, the concurrence of the Canadian government is required.

3. The Commission believes it is in the public interest to propose the assignment of Channel 261A to Vienna, West Virginia, as it could provide the

community with its first local FM service. Accordingly, it is proposed to amend the FM Table of Assignments, Section 73.202(b) of the Rules, as concerns the community listed below:

City	Channel No.	
	Present	Proposed
Vienna, W. Va.		261A

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 June 25, 1984, and reply comments on or before July 10, 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: Dennis F. Begley, Esq., Cheryl A. Kenny, Esq., Reddy, Begley & Martin, 2033 M Street, N.W., Washington, D.C. 20036 (Counsel to petitioner).

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 FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73–504 and 73–606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact 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 US.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, § 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 the *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 84–12880 Filed 5–11–84; 8:45 am]

BILLING CODE 6717–01–M

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47 CFR Part 73

[MM Docket No. 84–439; RM–4602]

Major Television Markets in Fresno-Visalia, California; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to amend the Table of Major Television Markets by including Visalia, California, with Fresno, California, as a hyphenated market in response to a Petition for Rule Making filed by Pappas Telecasting, Inc.

DATE: Comments must be filed on or before June 28, 1984, and reply comments must be filed on or before July 13, 1984.

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

FOR FURTHER INFORMATION CONTACT: Joel Rosenberg, 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 § 76.51, Major Television Markets, (Fresno-Visalia, California) MM Docket No. 84-439, RM-4602.

Adopted: May 1, 1984.

Released: May 7, 1984.

By the Chief, Policy and Rules Division.

Introduction

1. Before the Commission is a petition for rule making filed by Pappas Telecasting, Incorporated ("petitioner") requesting that the Commission revise its list of the top 100 television markets set forth in § 76.51 of its cable television rules by including Visalia, California, in the market now designated Fresno, California (#72). Petitioner, licensee of Television Station KMPH, Visalia, specifically proposes a Fresno-Visalia hyphenated market designation.

2. Petitioner asserts § 73.658(m) of the Commission's Rules "unfairly and unintentionally" eliminates the exclusivity in the purchase of non-network syndicated programming in the Fresno-Visalia market which it is entitled to, as it can now obtain exclusivity only against other television stations in communities within 35 miles of Visalia. Fresno is said to be located "slightly more than 35 miles" from Visalia. According to petitioner, its station places a city grade signal "well beyond" Fresno, and it is authorized to use a dual-city "Visalia-Fresno" identification, but, nevertheless, because KMPH was not in operation when the top 100 markets were originally designated, Visalia was not combined with Fresno in a hyphenated designation. Petitioner claims that this situation is "particularly unfair," because its principal competitors, as network affiliates, are provided with "many hours" of programming, while petitioners must purchase programming "at great expense." Petitioner asserts that Visalia has "steadily increased" in stature in the economy of the San Joaquin Valley and has nearly doubled in population to over 50,000 between 1970 and 1980. Petitioner states that both communities share "a great deal" in common, and travel between them is an "everyday occurrance" via an interstate highway.

3. Petitioner states that Commission policy is to designate hyphenated markets where communities should be treated as one market because of their "proximity and common social, cultural, trade, and economic interests," citing *Hampton-Norfolk-Portsmouth-Newsport News, Virginia*, 53 R.R. 2d 53, 55 (Mass Media Bureau 1983), and *Lancaster-Lebanon, Pennsylvania*, 24 R.R. 564 (1962). Petitioner also cites *New York, New York-Linden-Paterson, New Jersey and Newark, New Jersey*, 47 F.C.C. 2d 752 (1974), wherein the Commission added a community to a hyphenated designation in response to a request based on a station's inability to secure non-network exclusivity and where there was a showing that the communities involved comprised a single market within which stations located therein competed. According to petitioner, the television industry recognizes the "singularity" of the Fresno-Visalia market. Petitioner states that the Neilson and Arbitron designations reflect that both communities are served by all stations within their combined designation, that all stations rely on both communities for advertising revenues, and that the Fresno stations "regularly" cover news and public affairs in both communities.

4. Petitioner further asserts that it is significant that the Commission previously recognized developments in the Fresno-Visalia market subsequent to adoption of the cable television rules, citing *Fresno Cable Television Company, Inc.*, 57 F.C.C. 2d 134 (1975), wherein Section 76.54 of the Rules providing for determination of significantly viewed signals was amended so as to require cable coverage of KPMH on a county-wide basis. According to petitioner, there is no reason why developments in the market should not similarly be acknowledged with respect to §§ 76.51 and 73.658(m).

Discussion

5. Hyphenated markets recognized for purposes of the rule against territorial exclusivity in non-network arrangements[1] are those specified in Section 76.51 of the Rules and other (below the top 100) markets contained in Arbitron's Television Market Analysis. The hyphenated market exception is based on the premise that markets are designated as hyphenated so as to reflect the fact that stations located therein are, in fact, competitors in the same market. *CATV-Non Network Arrangements*, 46 F.C.C. 2d 892, 898 (1974). The Commission has defined a hyphenated television market as one characterized by more than one major population center supporting all stations in the market but with competing stations licensed to different cities within the market area. *Cable Television Report and Order*, 36 F.C.C. 2d 143, 176 (1972). The Commission subsequently referred to this definition in *New York, New York-Linden-Paterson, New Jersey and Newark, New Jersey* cited by petitioner, wherein the Commission recognized that a showing had been made that Newark qualified for inclusion in the existing hyphenated major television market designation and, accordingly, amended § 76.51.

6. Petitioner's prima facia showing that its city grade signal reaches beyond Fresno, that both Visalia and Fresno are served by all stations in these communities, that these stations rely on both communities for advertising revenues, and that Fresno stations regularly cover news and public affairs in both communities indicates that Visalia and Fresno constitute a single television market. In light of this showing, the Commission will propose to amend § 76.51 by adding Visalia to the Fresno designation to create a Fresno-Visalia hyphenated market designation. As set forth below, comments in response to this proposal should, among other things, address the issue of whether, in fact, these two communities constitute a single television market.

7. Accordingly, the Commission proposes to amend the Table of Major Television Markets, § 76.51 of the Commission's Rules, as follows:

Present	Proposed
(79) Fresno, Calif.	(72) Fresno-Visalia, Calif.

8. *Regulatory Flexibility Act Initial Analysis*

I. *Reason for Action.* This action derives from a request for a rule making filed with the Commission. In this proceeding, we seek to develop a record and to elicit comments on a proposed rule. The proposed rule is part of the Commission's ongoing review and evaluation of its rules and policies.

II. (a) *Objective.* This proceeding will elicit comments on the public interest benefits of the proposed rule change in accordance with fulfilling the mandate of Section 309(a) of the Communications Act of 1934, as amended.

(b) *Legal Basis.* The legal basis for eliciting comments on this proposed rule is found in Sections 4(i) and 303(r) of the Communications Act.

III. *Description, Potential Impact and Number of Small Entities Affected.* The proposed rule change would have no significant impact on small entities.

[1] Section 73.658(m) of the Commission's Rules provide that a television station may not secure territorial exclusivity for non-network programming against another station whose community of license is more than 35 miles distant from its own community of license, except that such exclusivity is not prohibited where the other station is located in a designated community in the same "hyphenated market."

IV. *Recording, Record Keeping and Other Compliance Requirements.* There is no additional impact.

V. *Federal Rules which Overlap, Duplicate or Conflict with the Proposed Rule Change.* There is no overlap, duplication, or conflict.

VI. *Any Significant Alternative Minimizing Impact on Small Entities and Consistent with Stated Objectives.* There is no significant alternative.

Filing Responses to This Notice

9. Interested parties may file comments on or before June 28, 1984, and reply comments on or before July 13, 1984.

10. The action herein is taken 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 §§ 0.281(b)(6) and 0.204(b) of the Commission's Rules.

11. *Showings Required*—Comments are invited on the proposal discussed in this *Notice of Proposed Rule Making.* The proponent will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed amendment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings.

12. *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 this *Notice of Proposed Rule Making.* 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.)

13. *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.

14. *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.

15. As required by Section 603 of the Regulatory Flexibility Act, the FCC has prepared an initial regulatory flexibility analysis (IRFA) of the expected impact of the proposed rule on small entities. Written public comments are requested on the IRFA. The comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must have a separate and distinct heading designating them as reponses to the regulatory flexibility analysis. The Secretary shall cause a copy of this *Notice*, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 50 U.S.C. 601, *et seq.* (1981).

16. For further information concerning this proceeding, contact Joel Rosenberg, 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 amendments to the Commission's Rules. 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.

[FR Doc. 84–12884 Filed 5–11–84; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[Gen. Docket No. 84–282; FCC 84–140]

Inquiry Into the General Fairness Doctrine Obligations of Broadcast Licensees

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: Action herein requests comment on the purposes, effects, relevancy, and legal aspects of the fairness doctrine referenced in § 73.1910 of the Commission's Rules and Regulations which imposes upon broadcasters the twofold obligation to cover controversial issues of public importance and to provide reasonable opportunities for the presentation of contrasting viewpoints on such issues. The purpose of the proceeding is to obtain as complete a record as possible to enable the Commission to recommend a firm course of action, if warranted, with respect to continued imposition of these obligations on broadcasters either through issuance of a notice of proposed rule making or, if more appropriate, submission of new legislative recommendations to Congress.

DATE: Comments are due by August 6, 1984 and replies by September 5, 1984.

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

FOR FURTHER INFORMATION CONTACT: Stephen A. Bailey, Office of General Counsel, (202) 254–6530.

List of Subjects in 47 CFR Part 73

Television, Radio broadcast.

Notice of Inquiry

In the matter of inquiry into § 73.1910 of the Commission's rules and regulations concerning the general fairness doctrine obligations of broadcast licensees; Gen. Docket No. 84–282.

Adopted: April 11, 1984.

Released: May 8, 1984.

By the Commission: Commissioner Quello issuing a separate statement; Commissioner Rivera concurring and issuing a statement at a later date.

I. Introduction

1. We are today initiating a notice of inquiry to reassess the wisdom of applying general fairness doctrine obligations to broadcast licensees. The fairness doctrine, which has been in effect for over thirty years, imposes upon broadcasters the obligation to cover controversial issues of public importance and to provide reasonable opportunities for the presentation of contrasting viewpoints on such issues.[1] A preliminary analysis indicates that significant new developments and changes in the electronic and print media over the past decade have

[1] The general fairness doctrine was officially incorporated into § 73.1910 of the Commission's Rules and Regulations by the Commission's action in *Order* (FCC 78–681) released October 16, 1978, 43 FR 45842, which further reorganized, restructured, and revised Part 73 of the Commission's Rules and Regulations applicable to broadcast licensees.

contributed to an extremely dynamic, robust, and diverse marketplace of ideas that may call into question the continued necessity of the doctrine as a means of ensuring the attainment of First Amendment objectives. In addition, recent developments in First Amendment jurisprudence and communications law in general raise questions as to whether our continued adherence to the doctrine might be contrary to the public interest and constitutional principles. Accordingly, we are hereby instituting this notice of inquiry to explore the question of the continued vitality of that doctrine.

2. At the outset, it is important that we dispel possible misconceptions that could arise in the public eye regarding the institution of this proceeding. First, we do not have any intention to alter or change any existing policies or laws relating to the fairness doctrine as the next procedural step following the submission of this round of comments. For this reason, we have decided to commence our examination of the fairness doctrine through institution of a notice of inquiry rather than notice of proposed rule making. Of course, it is possible that the comments could show that substantive changes relating to the doctrine should be made. If that proves to be the case, we shall institute a notice of proposed rule making. On the other hand, we may conclude that any proposed changes to the fairness doctrine we find to be appropriate should be accomplished only through congressional action. In that case, we shall consider submitting our proposals to Congress in the form of legislative recommendations. Finally, we may conclude based upon the evidence compiled in the proceeding that no further agency action is warranted. Should we so decide, then we are hopeful that our inquiry at a minimum will have served in providing a clearer, more accurate understanding of the fairness doctrine, its operation, and administration.

3. Similarly, we also wish to emphasize that institution of this proceeding is in no way intended to signal any relaxation of our administration and enforcement of fairness doctrine obligations applicable to broadcasters. We have previously stated our commitment to the vigorous enforcement of the fairness doctrine and its corollary obligations and we wish to reaffirm that commitment throughout the pendency of this proceeding. Accordingly, we expect broadcast licensees to comply with their fairness doctrine obligations as fully as before.

4. Our purpose in instituting this inquiry is to undertake the most searching and comprehensive reexamination of the fairness doctrine that this agency has ever had. Our goal is to obtain as complete a record as possible by inviting comment on all facets of the fairness doctrine, including its legal and policy justifications, its constitutional and statutory underpinnings, its purposes, effects, and relevancy. We are particularly interested in the impact the fairness doctrine has, or absence thereof might have, on broadcasters, government, but, most importantly of all, on members of the public. Indeed, in order to ensure that the record in this proceeding is as complete as possible, we intend, at a minimum, to provide an opportunity at some stage in this proceeding either thorough an *en banc* Commission meeting or some other oral proceeding for legal scholars, communications experts, government policymakers, and members of the public to discuss the profound First Amendment issues that are inherently involved in governmentally-imposed fairness doctrine regulation. Only after we have completed an exhaustive and thorough study of the doctrine, its aspects and many implications, will we then feel confident to recommend any firm course of action. In this connection, in an attempt to secure the widest possible comment and stimulate the widest exchange of ideas on the subject, we have set forth what we believe are some of the strongest arguments *against* retention of the fairness doctrine in the hope that, by proceeding in this fashion, this will in turn generate submission of the most compelling reason *for* its retention.

5. There are several reasons why we believe that an inquiry of this nature is particularly appropriate at this time. First, we have emphasized on previous occasions that we have a continuing obligation to re-evaluate our policies in light of changing circumstances; indeed, we have been reminded that a regulation that was reasonable when adopted may be most inappropriate if the problem addressed by the rule ceases to exist.[2] As intimated earlier, changes in the marketplace and the relevance of those changes to current First Amendment jurisprudence raise the question whether the aims of the fairness doctrine—"the right of the public to receive suitable access to political, aesthetic, moral and other ideas and experiences," [3] can be achieved without the necessity of governmental intervention. Second, we note that, very recently, the Senate Commerce Committee held hearings on S. 1917, the "Freedom of Expression Act of 1983," a bill introduced by Senator Robert Packwood intended to accord the broadcast media parity with the First Amendment Freedoms enjoyed by the print media.[4] Finally, we note that it was less than three years ago when we submitted a set of legislative proposals to Congress that included specific legislative recommendations that our statutory authority to impose fairness and equal time obligations on broadcast licensees be repealed.[5] Accordingly, we believe that this proceeding should prove instrumental in assuring that debate on these extremely important issues continues in a positive direction leading toward a fruitful and expeditious resolution either by this agency or, if more appropriate, by Congress.

6. We also believe that it bears emphasizing that the Commission has never undertaken a comprehensive analysis of the legal underpinnings of the fairness doctrine. While we have previously instituted exhaustive proceedings on the merits of the doctrine, including the possibility of alternatives "outside the Fairness Doctrine" such as access as a means of satisfying broadcast licensees' obligations, we have assumed that the statutory nature of the doctrine was a

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[2] *See, e.g., Home Box Office, Inc.* v. *FCC*, 567 F. 2d 9, 36 (D.C. Cir. 1977), *cert. denied* 434 U.S. 829 (1977) ("regulation perfectly reasonable and appropriate in the face of a given problem may be highly capricious if that problem does not exist"); *see also Geller* v. *FCC*, 610 F. 2d 973, 980 (D.C. Cir. 1979) ("Even a statute depending for its validity upon a premise extant at the time of enactment may become invalid if subsequently that predicate disappears").

[3] *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367, 390 (1969) (hereafter *"Red Lion"*). See also Report on the Handling of Public Issues under the Fairness Doctrine and the Public Interest Standards of the Communications Act, 48 FCC 2d 1, 6 (1974) (hereafter "1974 *Fairness Report"*) ("The purpose and foundation of the fairness doctrine is therefore that of the First Amendment itself: 'to preserve an uninhibited marketplace of ideas in which truth will undoubtedly prevail, rather than to countenance monopolization of that market, whether by the Government itself or a private licensee' " (citation omitted)).

[4] In an effort to ensure further that the record in this proceeding is as comprehensive as possible, we are hereby incorporating by reference the materials and evidence adduced during the Senate Commerce Committee hearings on S. 1917.

[5] On September 17, 1981, the Commission approved certain proposals for amending the Communications Act, *see* "FCC Sets Forth Proposals for Amending Communications Act," Report No. 5068 (September 17, 1981). On October 2, 1981, the Commission, in a transmittal letter to the Vice President, forwarded these legislative proposals to the United States Senate.

"given." [6] Not until approximately seven years ago in the agency's review of the original 1974 *Fairness Report, supra,* was a serious question raised as to whether the doctrine and the obligations thereunder were statutorily required by the Communications Act.[7] In that proceeding, then Chairman Wiley, in a separate statement to the Commission's action, urged the Commission to initiate an inquiry into the basis and utility of the fairness doctrine:

> While I recognize the fact that there is room for debate concerning the meaning of the 1959 amendments to the Act, I nevertheless believe that it would be desirable for the Commission to initiate a public inquiry which would afford interested parties an opportunity to comment on our legal authority, and also examine the appropriate size and scope of an experiment. I am hopeful that, in the not too distant future, the Commission or the Congress will look more favorably on the idea of reforming the fairness doctrine so as to apply it only in circumstances where there is a realistic need for government regulation.[8]

Accordingly, in order to revisit the question of whether the fairness doctrine comports with the public interest, we believe it is also important that we explore the question of what legal authority Congress vested in us under the Communications Act of 1934, as amended, and, in particular, under the 1959 legislative amendments to section 315 of the Act,[9] to determine whether we have the agency discretion to significantly modify or even repeal the fairness doctrine.

7. The remainder of this notice is divided into three major sections. In section II (paras. 9–24) we provide a review of the regulatory genesis and evolution of the fairness doctrine. Section III (paras. 25–95) provides a current reappraisal of the doctrine including an examination of the mass media marketplace; an examination of the policy reasons underlying the doctrine; and an examination of constitutional considerations, i.e., whether the doctrine continues to retain its constitutional vitality in the light of developing First Amendment jurisprudence that suggests a developing disfavor toward application of analogous regulation and principles to other media and forms of expression.

8. In section III (paras. 96–120) we also provide an analysis of the legislative history relating to the fairness doctrine discussing several alternative interpretations of its intended binding effect. These include: (1) That Congress, by including in section 315 of the Act specific language referencing the fairness doctrine, sought to impose statutorily the fairness doctrine and its obligations upon broadcasters; (2) that Congress did not intend to impose statutorily such obligations on broadcasters but merely gave recognition to the fairness doctrine in Section 315 because it did not wish to disturb the regulatory *status quo* in any respect other than by creating news exemptions from section 315's equal opportunity ("equal time") requirements; or (3) that Congress meant to guarantee that the Commission would continue to apply the fairness doctrine to broadcast coverage of political news to ensure that broadcasters could not abuse the newly-created news exemptions to the equal time laws. Although our analysis suggests that Congress may not have intended to strip completely our discretion to modify the application of the doctrine but rather merely intended that we guard against abuse of the exemptions, we admit that the answer is by no means clear-cut and, accordingly, specifically invite comment on whether the 1959 amendments to section 315 should be read as stripping this agency of any discretion to modify or repeal the fairness doctrine under the public interest standard of the Communications Act. The final section IV contains principal questions upon which we seek comment, as well as filing deadlines and other procedural information.

II. History of Fairness Doctrine

9. Before we proceed further, we shall first provide a summary review of the fairness doctrine, its constituent elements, and how they evolved under the public interest, convenience and necessity standard. Such a review is, in our estimation, extremely important to a full understanding of the fairness doctrine as well as of our decision to undertake a reappraisal of the doctrine.[10] an examination of the regulatory development and history of the doctrine reveals an evolutionary process,[11] spanning a considerable period of time, and marked by a considerable uncertainty as to the proper approaches and tools essential to insure that licensees operated in the public interest.

10. In *Great Lakes Broadcasting,* 3 F.R.C. Annual Rep. 32 (1929), *rev'd on other grounds,* 37 F. 2d 993 (D.C. Cir. 1930), *cert. denied* 281 U.S. 706 (1930), the first case to provide support for a fairness principle in broadcasting, the Federal Radio Commission struggled over the question of whether broadcast stations were public utilities. Although the FRC concluded that they were not public utilities in the same manner as telephone or telegraph companies that are required to accept and transmit for all persons on an equal basis, neither did it conclude that broadcasters were completely "out of the category of public utilities," *id.* at 33. Because broadcast frequencies were limited and not available to everyone as a matter of right, broadcasters were subject to a differing "standard of public interest, convenience, and necessity" based on their duties to listeners. *Id.* at 33.

11. In response to the argument that broadcasters were more like public utility common carriers, the FRC pointed out that the applicability of Section 18 of the Act which required equal opportunities for political candidates was not inconsistent with its own characterization of broadcasters because that section imposed no affirmative obligation to provide access to any particular political candidate. In this context, the FRC stated:

> [T]he emphasis is on the listening public, not on the sender of the message. It would not be fair, indeed it would not be good service, to the public to allow a one-sided presentation of the political issues of a campaign. In so far as a program consists of discussion of public questions, public interest requires ample play for the free and fair competition of opposing views, and the commission believes that the principle applies not only to addresses by political candidates but to all discussions of issues of importance to the public. *The great majority of broadcasting stations are, the commission is glad to say, already tacitly recognizing a broader duty than the law imposes upon them.* (emphasis added).

Id. at 33.[12]

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[6] *Study of Fairness Doctrine, Notice of Inquiry,* 30 FCC 2d 26, 27 (1971).

[7] *Reconsideration of Fairness Doctrine Report and Order,* 58 FCC 2d 691 (1976).

[8] 58 FCC 2d at 700–701.

[9] *See Act of September 14, 1959,* section 1, Pub. L. 86–274, 73 Stat. 556, amending 47 U.S.C. 315(a).

[10] This review is limited to the general fairness doctrine and, accordingly, does not include the personal attack and political editorializing rules. For a history of these rules and their evolution, *see Repeal or Modification of the Personal Attack and Political Editorial Rules, Notice of Proposed Rule Making in Gen. Docket 83–484,* 48 FR 28295 (June 21, 1983).

[11] The early evolution of the doctrine occurred primarily through case law rather than through the rule making proceedings that now characterize most major FCC policy initiatives and directives.

[12] In that same case, the FRC further observed that the public interest would not be served by persons engaged in broadcasting programs exclusively for the private interests of individuals or groups and, accordingly, propaganda stations "are not consistent with the most beneficial sort of discussion of public questions." *Id.* at 34. Instead, the FRC stated:

> As a general rule, postulated on the laws of nature as well as on the standard of the public interest, convenience, and necessity, particular

Continued

12. Subsequent decisions by the Federal Radio Commission reinforced the princple established in *Great Lakes* that the public interest standard did not encompass "operation of broadcasting stations exclusively by or in the private interests of individuals or groups so far as the nature of the programs are concerned, "*id.* at 34, but they did not articulate any clear obligation on the part of broadcasters to present controversial matters to the public. Thus, for example, in *Chicago Federation of Labor*, 3 F.R.C. Annual Rep. 36 (1929), *aff'd* 41 F.2d 422 (D.C. Cir. 1930), the FRC denied a licensee's application for modification on the grounds that its programming primarily focused upon the needs and interests of "labor", not the concerns of the general population, and as such did not serve the public interest. The FRC stated that "there are not enough frequencies within the broadcast band to give to each of the various groups of persons in the U.S. a channel on which to operate a broadcast station." *Id.* In finding that there was "no place for a station catering to any group," the FRC stressed that "all stations should cater to the general public and serve public interest as against group or class interest." *Id.*[13]

13. When the Federal Communications Commission was established by Congressional passage of the Communications Act in 1934, it followed the same regulatory philosphy as its predecessor agency. For example, in *Young People's Assoc. for the Propagation of the Gospel*, 6 FCC 178 (1938), the Commission denied an application for a new broadcast station that was intended to be used primarily to disseminate religious programs to advance a fundamentalist interpretation of the Bible.[14] The Commission held that facilities of a station "devoted primarily to one purpose" and serving "as a mouthpiece for a definite group or organization" could not be construed as "serving the public interest." *Id.* at 181. In addition, it specifically approved the principle enunciated in the *Chicago Federal* case that, under the public interests criterion, the interests of the listening public are paramount to the interests of the individual applicant." Thus, the new agency followed FRC decisions in requiring provision of program fare that appealed to the general public rather than a select few. Absent from these early FRC and FCC decisions, however, was any clearly expressed requirement that operation under the public interest standard campelled an obligation to provide contrasting viewpoints on controversial issues.

14. With the Commission's decision in *Mayflower Broadcasting Corp.*, 8 FCC 333 (1940), however, came a new, more expansive meaning of the public interest standard and also a more restrictive view of broadcaster's latitude under that standard. In considering whether to renew the license of Yankee Network, the Commission frowned on the licensee's activities in broadcasting editorials urging the election of certain candidates for public office and supporting particular views on questions of public controversy. This, the Commission declared, "revealed a serious misconception of its duties and functions under the law." *Id.* at 339.[15] The Commission also said:

> Radio can serve an instrument of democracy only when devoted to the communication of information and the exchange of ideas fairly and objectively presented. A truly free radio cannot be used to advocate the causes of the licensee. It cannot be used to support the candidacies of his friends. It cannot be devoted to the support of principles he happens to regard most favorably. In brief, the broadcaster cannot be advocate.

Id. at 340. Thus, the Commission expanded its general prohibition against use of broadcast facilities for private or individual interests to include a specific ban forbidding editorializing broadcast licensees.

15. The *Mayflower* decision was important not only because the agency enacted a specific edict against broadcast editorializing but because it appeared to break new ground by announcing that, under the public interest standard, broadcast licensees had specific *affirmative obligations to cover public issues:*

> one licensed to operate in a public domain * * * has assumed the obligation of presenting all sides of important public questions, fairly, objectively and without bias.

Id.[16] Thus, we see a considerable leap from *Great Lakes* and the early cases with their rudimentary notions of "fairness" to the subsequent Commission decision in *Mayflower* articulating a concept of "fairness" that encompassed broadcast coverage of controversial issues but not editorializing by licensees themselves.

16. As a result of the *Mayflower* decision, considerable controversy, confusion and uncertainty ensued, especially with respect to the nature and scope of broadcasters' obligations under the Act. In *United Broadcasting Co.*, 10 FCC 515 (1945), the Commission provided some guidance to one of the many questions surrounding this controversy by holding that a station could not adopt a general policy refusing to sell time for the discussion of controversial issues.[17] Although noting that broadcast stations are not common carriers under section 3(h) of the Act, the Commission held, as it had previously emphasized in *Mayflower*, that station licensees have "a duty to be sensitive to the problems of public concern in the community" and therefore must "make sufficient time available, on a nondiscriminatory basis, for full discussion thereof" without attempts by the licensee to impose its views through censorship of such matter. *Id.* at 517. According to the Commission, "the operation of any station under the extreme principles that no time shall be sold for the discussion of controversial public issues" is "inconsistent with the concept of the public interest established by the Communications Act." *Id.* at 518.[18] Although *United* provided some further but limited guidance to broadcasters concerning their obligations under the Act, the controversy over the breadth of *Mayflower* and its policies did not abate.

17. In 1948, "in view of the apparent confusion concerning certain of the Commission's previous statements on

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doctrines, creeds, and beliefs must find their way into the market of ideas by the existing public-service stations, and if they are of sufficient importance to the listening public the microphone will undoubtedly be available. If it is not, a well-founded complaint will receive the careful consideration of the commission in its future action with reference to the station complained of.

[13] *See also Trinity Methodist Church*, 62 F. 2d 850 (D.C. Cir.), *cert. denied*, 284 U.S. 685 (1932); and *KFKB Broadcasting Ass'n v. FRC*, 47 F. 2d 670 (D.C. Cir. 1931).

[14] The applicant stated that the broadcast of religious programs on its proposed facilities "would be extended only to those whose tenets and beliefs in the interpretation of the Bible coincide with those of the applicant." 6 FCC at 180.

[15] Indeed, the Commission further observed that "the station seems to have taken pride in the fact—that the purpose of these editorials was to win public support for some person or view favored by those in control of the station." 8 FCC at 339.

[16] 8 FCC at 140. The Commission added:

> The public interest—not the private—is paramount. These requirements are inherent in the conception of public interest set up by the Communications Act as the criterion of regulation.

[17] The station's policy was modelled upon provisions in the code of the National Association of Broadcasters which recommended, with certain expections not germane here, that no time should be sold for the presentation of public controversial issues.

[18] The Supreme Court's decision in *Columbia Broadcasting System, Inc.*, v. *Democratic National Committee*, 412 U.S. 94 (1972) (hereafter "*CBS v. DNC*"), subsequently established that neither the Communications Act nor the First Amendment requires broadcasters to accept paid political advertisements thereby undermining, if not outrightly overruling, the principle established in *United*.

these vital matters by broadcast licensees and members of the general public," the Commission *sua sponte* held several days of hearings on "the obligations of broadcast licensees in the field of news, commentary and opinion," and, in the following year, issued a comprehensive policy statement, *Report on Editorializing by Broadcast Licensees*, 13 FCC 1246 (1949) (hereafter *"Report on Editorializing"*). In this *Report*, which has served as the basis for all subsequent fairness rulings, the Commission not only reversed its policy on broadcast licensee editorializing but also framed for the first time that set of obligations which collectively are referred to as the fairness doctrine.[19] Expressing the view that "the development of an informed public opinion through the public dissemination of news and ideas concerning the vital public issues of the day" is "one of the most vital questions of mass communication in a democracy," the Commission further stated:

> The Commission has consequently recognized the necessity for licensees to devote a reasonable percentage of their broadcast time to the presentation of news and programs devoted to the consideration and disscussion of public issues of interest in the community served by the particular station. And we have recognized with respect to such programs, the paramount right of the public in a free society to be informed and have presented to it for acceptance or rejection the different attitudes and viewpoints concerning these vital and often controversial issues which are held by the various groups which make up the community.

Id. at 1249 (footnote omitted)[20].

Thus, in formalizing the fairness doctrine, the Commission explicity recognized a two part duty on the part of broadcasters (1) to devote a reasonable percentage of time for the coverage of controversial issues and (2) to provide a reasonable opportunity for the presentation of contrasting viewpoints on such issues.

18. In reversing its prior directive against broadcast licensee editorializing, the Commission expressed the view that "a station's willingness to stand up and be counted" might contribute more readily toward "a climate of fairness and equal opportunity for expression of contrary views" since the public would have less reason to fear "the open partisan" than the "covert propagandist". *Id.* at 1254. The Commission added, moreover, that just as a mere prohibition of a strongly held belief by a licensee would not necessarily "insure fair presentation of that issue," neither would "open advocacy necessarily prevent an overall presentation of the subject." *Id.* In sum, an open-partisan approach by broadcasters was seen as preferable to and less dangerous than one that had inherent in it a tendency toward covert broadcaster favoritism. This philosophy, which in part underlies our decision to reassess the fairness doctrine, is thus not a new one. Finally, the Commission swept aside constitutional arguments of broadcastrs by stating that "a requirement . . . in which the listening public may be assured of hearing varying opinions on the paramount issues facing the American people is within both the spirit and letter of the first amendment" *Id.* at 1256.

19. For a substantial time afterwards, there were relatively few regulatory developments in this area.[21] In 1963, the Commission, in *Cullman Broadcasting Co.*, 40 FCC 576, established the principle that a station licensee must provide free time for the presentation of opposing views even if a paid sponsor was unavailable.[22] In 1964, the Commission adopted *Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance*, 29 FR 10415 (1964) (commonly referred to as the "Fairness Doctrine Primer"), which spelled out in somewaht more detail the obligations of broadcasters under the fairness doctrine.

20. In 1967, however, a new storm of controversy developed from a Commission decision in *WCBS–TV*, 8 FCC 2d 381, *stay and recon. denied*, 9 FCC 2d 921 (1967), *aff'd Banzhaf* v. *FCC*, 405 F.2d 1082 (1968), *cert. denied* 396 U.S. 842 (1969), to extend the doctrine to broadcast advertising. For the first time, the Commission applied the fairness doctrine to product advertising by ruling that the advertisement of cigarettes on broadcast stations raised a controversial issue of public importance. The Commission reasoned that cigarette smoking itself was a controversial health issue and, accordingly, required broadcasters to provide opportunities for contrasting viewpoints. However, cognizant that extension of the doctrine to ordinary product advertising could seriously undermine the commercial foundation of the nation's broadcasting system, the Commission specifically emphasized the uniqueness of this particular case because, among other reasons, cigarette smoking had been found by congressional and other government action to pose a serious threat to general public health, *see* 9 FCC 2d at 943.

21. In subsequent cases, the Commission found itself unable to articulate any satisfactory standard by which to judge what types of programming would trigger fairness obligations. The Commission attempted to limit its review of licensee judgments concerning public health and safety factors raised by products advertised on broadcast stations, but such attempts proved futile. For example, a Commission decision declining to hold that product advertisements promoting the sale of high-powered automobiles and lead gasoline triggered fairness obligations on the part of broadcast licensees was reversed on the basis that such advertisements invoked fairness obligations by raising issues concerning the controversial effect of such products on public health and safety and therefore were indistinguishable from the rationale previously applied to cigarette advertising.[23] Thus, notwithstanding efforts to limit the scope of the cigarette advertising ruling, the Commission was unable to extricate itself from this area.

22. The Commission continued to grapple with a practical and meaningful administration of the fairness doctrine and its principles. Experience with its application to product advertising had proven less than ideal and considerable controversy had been raised whether broadcasters could adopt a policy refusing to accept editorial advertisements discussing controversial issues of public importance.[24] As a

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[19] In 1946, the Commission did adopt, however, *Public Service Responsibility of Broadcast Licensees* (commonly referred to as the "Blue Book"), which listed discussion of public issues by broadcast stations as one of the factors comprising the public interest standard applicable to broadcasters.

[20] Moreover, in language strikingly similar to that subsequently appearing in the Supreme Court's decision in *Red Lion, supra*, at 396, the Commission observed:

> It is this right of the public to be informed, rather than any right on the part of the Government, any broadcast licensee or any individual member of the public to broadcast his own particular views on any matter, which is the foundation of the American system of broadcasting.

[21] There was, however, a significant legislative development. In 1959, Congress adopted amendments to section 315 providing exemptions to news type programs from the "equal time" provisions. These amendments are the ones considered central to the question of whether Congress statutorily imposed fairness doctrine obligations on broadcasters.

[22] This constituted a further agency extension of the doctrine because it represented not only a licensee obligation to provide an opportunity for contrasting opposing viewpoints but, if no persons willingly came forward to sponsor such programming, an obligation on his part to bear whatever expenses might be entailed in presenting contrasting viewpoints.

[23] *See Friends of the Earth*, 24 FCC 2d 743 (1970), *rev'd*, 449 F.2d 1164 (D.C. Cir. 1971).

[24] This stemmed in part from the Commission's decisions in *Democratic National Committee*, 25 FCC 2d 216 (1970), and *Business Executives' Move for Vietnam Peace*, 25 FCC 2d 242 (1970), which were initially reversed in *Business Executives' Move for Vietnam Peace* v. *FCC*, 450 F.2d 642 (D.C. Cir. 1971), but later reinstated by the Supreme Court's decision in *CBS* v. *DNC, supra*.

result of continuing difficulties of this sort, in 1971 it instituted a wide ranging inquiry into the fairness doctrine and its efficacy "in the light of current demands for access to the broadcast media to consider issues of public concern." *Study of Fairness Doctrine, Notice of Inquiry, supra* n. 6.

23. Following this inquiry, in 1974, the Commission adopted the *1974 Fairness Report, supra,* which reaffirmed the earlier *Report on Editorializing* and upheld the application of a general fairness doctrine requirement for broadcast licensees on both statutory and constitutional grounds.[25] The Commission also rejected several alternative approaches toward satisfaction of fairness doctrine obligations including a system of mandated access on the basis that this regulatory option was neither practical nor desirable and could lead to excessive governmental intrusion into the journalistic discretion of broadcast licensees. In doing so, however, the Commission emphasized that it did not wish to discourage broadcasters from "experiment[ing] with new ways of providing for wide-open debate of public issues." [26]

24. The Commission's 1974 *Report* including its decision to narrowly apply fairness doctrine obligations to broadcast advertising, was generally affirmed in *National Citizens Committee for Broadcasting* v. *FCC,* 567 F.2d 1095, (D.C. Cir. 1977), *cert. denied,* 436 U.S. 926 (1978), but the court remanded the proceeding to the Commission "for further inquiry" concerning the right of access proposal as well as a proposal to require licensees to provide a numerical listing of controversial issues covered. *Id.* at 1115. In addition, the Commission was instructed to explore "other ways of achieving compliance with the Fairness Doctrine's first obligation." *Id.* This subsequently lead to *Report and Order in BC Docket No. 78-60,* 74 FCC 2d 163 (1979), *recon. denied,* 89 FC 2d 916 (1982), wherein the Commission declined to experiment further with new regulatory options, e.g., mandatory access to satisy fairness doctrine obligations, and thereby terminated furher deliberations concerning agency change of general fairness obligations applicable to broadcast licensees.[27]

III. Reappraisal of the Fairness Doctrine under the Public Interest Standard

25. In our reappraisal section, we examine the legal and policy premises underlying the fairness doctrine, all of which leads us to ask whether the objectives sought to be attained can be achieved without the need for governmental intervention. This section consists of five parts. In the first part, we provide a description of the mass media marketplace in 1950 shortly after fairness obligations were formalized by the Commission in the *Report on Editorializing* as well as a description of the changes in the electronic and print media marketplace over the past decade. The second part addresses the question of whether, in view of the technological and growth patterns that have occurred leading to the present marketplace of information and ideas, the fairness doctrine is an indispensable tool to assure that the public has suitable access to diverse ideas and experiences from diverse and antagonistic sources. The third part is devoted to a discussion of the negative attributes that may be associated with the doctrine including the question of the desirability and, indeed, the apparent inevitability, of various degrees of governmental surveillance over broadcast program content. In the fourth part of our reappraisal, we examine whether the applicability of the doctrine to broadcasting is consistent in principle with current First Amendment jurisprudence. In the final part, we discuss the question of whether the fairness doctrine is required by section 315 and/or under the general public interest standard of the Act.

A. The Mass Media Marketplace

26. Today, there appear to be many substitutes for the traditional broadcast media, radio and television, in their roles as sources of information and, similarly, substitutes for the traditional print media. This substitutability or interchangeability among media is witnessed to some extent by consumer acceptance of different media to satisfy individual informational and entertainment needs. For example, some might rely on broadcast stations for breaking news stories and later turn to newspapers or magazines for more in depth coverage of the issues underlying these events whereas others might initially turn in the morning to pages of daily newspapers for recent news developments and at leisure moments in the evening capture more information on events of the day through television viewing or radio listening. In short, public consumption of news, public affairs, and other information is obtained or obtainable through a diverse and complementary set of media, both electronic and print.

27. Changes in communications technology are primarily responsible for dramatically increasing the means by which information reaches the public. As more fully described herein, distribution systems once thought to be quite different, such as broadcasting and print, are becoming interchangeable, merging into one mass media marketplace. The mass media that are defined here are those forms of communications which serve as daily information sources for the general public. These include but are not limited to daily newspapers, radio, television, cable television and other related new technologies such as subscription television and multi-point distribution services.

28. In the following paragraphs of this section, we analyze the mass media marketplace as it existed when the *Report on Editorializing* was issued and the marketplace as now extant. Although it is quite clear that a technological scarcity still exists in our society that precludes the right of every person to broadcast over the airwaves, nevertheless, the enormous increase in sources of information suggests that there may no longer be a scarcity of voices and views available to the public to justify the abridgement of broadcast expression which we brought about in the 1949 Report; accordingly, we invite comment on this question. We also describe the changes that have occurred in the mass media since 1970 and the prospects of new sources of information in the foreseeable future. We have included this latter period because it is characterized by new developments and continued growth of the electronic media and with them, a decline in, as well as the need for, the print media to

[25] In addition, the Commission held in this 1974 *Report* that it would not apply the doctrine to paid editorial advertisements unless, in the reasonable judgment of the licensee, such advertising "presents a meaningful statement which obiously addresses, and advocates a point of view on, a controversial issue of public importance." 48 FCC 2d at 23. It also indicated that it would refrain from applying the doctrine to ordinary product advertising stating that its previous "mechanical approach * * * represented a serious departure from the doctrine's central purpose * * * to facilitate 'the development of an informed public opinion.' " *Id.* at 24. "Standard product commercials, such as the old cigarette ads," the Commission explained, "make no meaningful contribution toward informing the public." *Id.* Moreover, continued application of this policy to normal product commercials would, at best, according to the Commission, "provide the public with only one side of a public controversy." *Id.* at 25. Instead, the fairness doctrine would be applied only to those 'commercials' "which are devoted in "an obvious and meaningful way to the discussion of public issues." *Id.* at 26.

[26] *Id.* at 30. *See also Reconsideration of Fairness Report, supra,* n. 7, at 699.

[27] Even though the Commission concluded against such options, including the possibility of access as a substitute for a licensee's fairness obligations it did not rule out the possibility of licensees adopting access plans as a supplement to and in furtherance of overall fairness doctrine obligations.

incorporate new technologies, such as satellites, into its process.

1. State of the Mass Media—1950

29. There were approximately 43 million households served by a total of 2,867 radio stations consisting of 2086 standard AM stations and 781 FM stations (733 commercial and 48 educational) in 1950.[28] At the time, television was in the embryonic stage of its development with only 98 commercial VHF television stations in operation serving approximately 5 million television households.[29] Of this total, 96 were network owned or affiliated and only 2 were independently owned and operated.[30] There were no commercial UHF, educational UHF or VHF stations in operation at the time. Indeed, the *Sixth Report and Order in Dockets 8736, 8975, 8976, and 9175, (Amendment of the Commission's Rules, Regulations, and Engineering Standards Concerning the Television Broadcast Service)*, 41 FCC 148 (1952), setting forth the Commission's Television Table of Allocations was not released until two years later. There were very few other electronic media outlets at that time. Cable television was also in the embryonic development stage. As of 1952, there were only approximately 70 cable systems serving a total of approximately 14,000 subscribers.[31] Auxiliary television and radio services ("boosters" and translators) were virtually non-existent at the time although, as a result of the limited number of conventional broadcast outlets available throughout the country, these services were to develop significantly in the following years as a means of retransmitting signals from radio and television stations to neighboring areas or communities with no or only limited television service.[32]

30. In 1950, there were approximately 1,772 daily newspapers with an estimated total circulation of 53,829,000.[33] Although exact figures for 1950 were not available, statistics for 1953 show 1,453 cities with daily newspapers but only 91 cities (6.3 percent of the total) with two or more daily newspapers. In addition, the total number of periodicals (weekly, semi-monthly, etc.) in 1950 was 6,960.

2. State of the Mass Media—1970

31. The nation's approximately 63 million households were served by 6,451 commercial radio stations (4,267 AM and 2,184 FM) and 438 educational radio outlets (25 AM and 413 FM) in 1970. At that time, there were 862 television stations, of which 190 were classified as educational. Of the 677 commercial television stations, 568 were affiliated with one of the three national television networks (ABC, CBS, NBC) while the other 109 were independents.[34] Only 50 percent of the nation's 59 million television households were served by these independent stations.[35] The average home received 6.8 television signals with 90 percent of all television viewing going to the network affiliates.[36] The network affiliated stations were generally profitable. The average independent station, however, was not profitable.

32. In 1970, cable television was still primarily a broadcast television retransmission service used as a means of either distributing signals from nearby broadcast television stations to areas where reception was poor or importing more distant stations' signals to areas where few local stations existed. At that time, there were approximately 2,490 cable systems serving a total of 4.5 million television households.[37]

33. In 1970, the number of newspapers totaled 1,748 with a combined circulation of 62,108,000. In 1973, there were 1,519 cities with daily newspapers, but only 37 cities (2.4 percent of the total) with two or more daily newspapers.[38] The total number of periodicals in 1970 was 9,573.

3. The Current State of the Mass Media

34. The past three decades and, in particular, the 1970's have been marked by a significant and dramatic increase in the number of electronic media outlets available to the public represented not only by conventional radio and television broadcast stations but by other new electronic media and technologies such as cable television, subscription television broadcasting, and multipoint distribution service. These new technologies are impacting not only on the delivery of traditional broadcast media services to the public but on the dissemination of information services by traditional print media as well. In the period from 1950 to the present, we see the growth in the number of radio stations from 2,867 stations to 9,282 stations, an increase of over 300 percent. Table I shows the number of radio stations, by type, in 1950, 1970, and as of July, 1983, the date of the most recently published FCC data.

TABLE I.—NUMBER OF RADIO STATIONS

	1950	1970	1983
Total	2,867	6,889	9,282
Standard (AM)	2,086	4,292	4,723
AM Commercial	(*)	4,267	4,679
AM Educational	(*)	25	44
FM	781	2,597	4,559
FM Commercial	733	2,184	3,458
FM Educational	48	413	1,101

Sources: 1950 and 1970 figures as of Jan. 1 from Sterling and Haight, *The Mass Media* at 43–44; 1983 figures as of July, 1983 from FCC Release No. 6466 (September 13, 1983). 1950 figures for commercial and noncommercial AM radio stations were not available from this data.

35. We also see a dramatic increase in the number and different types of conventional television stations available throughout the United States which is attributable in large measure to the Commission's establishment of the table of television station allocations in 1952. From 1950 to the present, the percentage increase in the total number of television stations alone is over 1100 percent. These stations presently serve almost 84 million television households in this country.[39] Table II gives the changes in the number of television stations by type.

[28] Sources: *Television Factbook*, Services Volume No. 40, at 75-a (1981–1982 ed.) and *Statistical Abstract of the United States*, U.S. Department of Commerce, Bureau of the Census (100th ed. 1979) at 587.

[29] *Id.*

[30] Christopher H. Sterling and Timothy R. Haight, *The Mass Media: Aspen Institute Guide to Communication Industry Trends* at 53 (Praeger Publishers, New York 1978) (hereafter "Sterling and Haight, *The Mass Media*").

[31] *Television Factbook*, Services Volume No. 40 (1981–1982 ed.) at 83-a.

[32] *See Inquiry into the Future Role of Low Power Television Broadcasting and Television Translators in the National Telecommunications System, Report and Order*, 47 FR 21468 (1982) ("*Low Power Television Service*").

[33] Unless otherwise noted, sources for these and other statistics on newspapers and periodicals were obtained from Editor and Publisher, *Editor and Publisher International Year Book* (New York) (1973 and 1982 annual issues); Ayer Press, *Ayer Directory of Publications* (Bala Cynwyd, Pa. 1982); Sterling and Haight, *The Mass Media, supra*; B. M. Compaine, C. H. Sterling, T. Guback, and J. K. Noble, Jr., *Who Owns the Media?* (2d ed. 1982) (hereafter "*Who Owns the Media*").

[34] Sterling and Haight, *The Mass Media, supra*, at 53.

[35] Sources: Arbitron's *Television Markets and Ranking Guide* and *Statistical Abstract of the United States, supra*, at 587.

[36] *See Tentative Decision and Request for Further Comments, Amendment of 47 CFR 73.658(j)(1) (i) and (ii), the Syndication and Financial Interest Rules*, FCC 87–377 (adopted August 4, 1983) at para. 108.

[37] *Television Factbook, supra*, at 83-a.

[38] Sterling and Haight, *The Mass Media, supra*, at 60. Statistics for 1970 were not available.

[39] *See* "Arbitron's new ADI's, *Broadcasting* at 32 (October 17, 1983). Some of the other factors contributing to this growth, particularly that of UHF stations, were the enactment of All Channel Receiver Act, 47 U.S.C. 303(s) (1962), the detente tuning rules requiring all television receivers to have detente tuners, *see Report and Order in Docket 18433*, 21 FCC 2d 245 (1970), as well as the growth in cable systems as a result of the Commission's lifting of the "freeze" on cable carriage of broadcast signals in the *Cable Television Report and Order*, 36 FCC 2d 143 (1972).

TABLE II.—NUMBER OF TELEVISION STATIONS

	1950	1970	1983
Total	98	862	1,140
Commericial VHF	98	501	536
Commercial UHF		176	321
Educational VHF		80	112
Educational UHF		105	171

Sources: 1950 figures as of Jan. 1 from *Television Factbook*, Services Volume No. 40, 1970–71 Edition; 1970 figures as of Jan. 1 from *Television Factbook*, Services Volume No. 50, 1981–82 Edition; 1983 figures as of July 1983, from FCC Release No. 6468 (September 13, 1983).

36. A comparison of the mass media marketplace between 1970 and the present is also illustrative of significant change and growth. Approximately 180 of the commercial stations are independents serving 86 of the nation's 210 television markets, up from 43 markets in 1970.[40] These markets include 78 percent of all television households.[41] Over this period of time, independent television stations, virtually nonexistent in the 1950's, have become stronger players in the video marketplace and are generally profitable. The average home now receives 9.8 television signals, a 44 percent increase over 1970.[42] The networks attract about 80 percent of the total viewing audience, a noticeable decline from the 1970 figures.[43] Independent and educational stations receive about 17 percent of the total viewing audience, compared with 9 percent a decade earlier.[44] The remaining 3 percent of the television audience now views cable and pay channels which were not even available in 1950 and only limitedly available in 1970.[45]

37. The cable television industry of the 1980's has undergone a dramatic transformation from its early beginnings as solely a redistributor of broadcast signals to its new role as a provider of new, diverse nonbroadcast program and information services from national, regional, as well as local sources. Cable television now passes more than 52 million of the almost 84 million television households and of these close to 29 million homes subscribe to basic cable service, more than 5 times the number in 1970.[46] In 1969, only 1 percent of all systems had the capacity to carry more than 12 channels but the latest available data now indicate that 38 percent of all systems had channel capacities over 12 in 1981.[47] Aided by the launch of communications satellites[48] and the removal of several restrictions on the operation of earth stations, a wide variety of cable networks have come into existence and now provide a significant array of new and diverse program and information sources. Many of these new cable networks are highly specialized, offering news, sports, weather, health information, children's or cultural programming. For example, there are presently available several all-news channels (Cable News Network and Financial News Network), and a public affairs channel (C–SPAN), for satellite pick-up by cable systems. There are approximately 30 basic service networks supported either by advertisers or through basic subscriber fees. There are at least 10 pay cable networks, services virtually non-existent in 1970, that serve over 17 million homes.[49] In addition, at least 25 new cable networks have been announced. Cable television's rapid growth is also reflected in the industry's increasing revenues and income. For example, between 1977 and 1981, operating revenues tripled from $1.2 billion to $3.6 billion and operating income more than doubled from $500 million to $1.2 billion.

38. The print media stands in marked contrast to the continued proliferation of electronic media. Since 1950, there has been a decline in the number of daily newspapers from 1,772 to 1,712 in 1982. Indeed, between 1981 and 1982 alone there was a loss of 18 daily newspapers. As of November 1981, there were 1,534 cities with daily newspapers, but only 30 (or 2 percent) with more than one. Newspaper circulation now stands at 61,430,745, a decline of 1.1 percent from the 1970 figure. There has been, however, an increase in the total number of periodicals from 6,960 in 1950 to 10,688 in 1982.

39. The present period is also marked by the emergence of new technologies in the information distribution marketplace. Several are pay services. Subscription television broadcasting (STV) consists of a scrambled broadcast signal that is made available to those who pay for decoders. There are currently nineteen STV stations serving approximately 1 million subscribers.[50] Multipoint Distribution Service (MDS) is a common carrier service used primarily to provide subscription programming to consumers via microwave transmissions.[51] The first MDS service became available in 1974. There are approximately 530,000 subscribers currently served by MDS systems out of a potential subscriber base of over 15 million and the total of MDS pay television markets in operation has increased from 85 over a year ago to 103 as of June 30, 1983.[52]

40. The satellite master antenna system (SMATV), another participant in this evolving marketplace, is a service that is made available primarily to multiple dwelling units through the use of antenna systems (including satellite earth stations installed on buildings) that gather programming which is then fed to the building's occupants by cable. SMATV serves approximately 150,000 homes and is expected to expand rapidly. At present, it passes 500,000 homes but this figure is expected to double by 1984.[53]

41. Other, even newer, technologies just beginning to emerge as players in the information marketplace include low power television (LPTV). These stations, which are limited to 10 watts for VHF and 1,000 watts for UHF, were originally known as translators because they were only permitted to rebroadcast signals from full-service stations. They have principally served rural areas. In 1982 the FCC authorized these stations to originate programming.[54] Because they are, comparatively speaking, less expensive to operate than conventional broadcast stations, they are expected to serve areas with a limited number of television signals or communities which have been underserved in the past. The Commission has received over ten thousand applications for these stations. Thus far, approximately 356 applicants have been licensed or granted construction permits. Of the 206 stations

[40] Arbitron's *Television Markets and Rankings Guide, supra.*

[41] *See* n. 36 *supra*, at para. 112.

[42] *Id.*

[43] *Id.* and Nielsen Television Index.

[44] *Id.*

[45] *Id.*

[46] *Cablevision*, December 5, 1983, at 134.

[47] *Who Owns the Media, supra*, at 418.

[48] The first domestic communications satellite was launched in 1974. In 1975 there were 3 such satellites with 48 available transponders. In 1981, there were 8 communications satellites with 156 transponders.

[49] *Cablevision*, December 5, 1983, at 134.

[50] *See Broadcasting* at 36 (September 5, 1983), citing Paul Kagan Associates, Inc. data.

[51] Until recently, MDS operators were limited to one channel systems but, as a result of a recent Commission action, they are now allowed to operate multi-channel systems. *See Amendment of Parts 2, 21, 74 and 94 of the Commission's Rules and Regulations in regard to frequency allocation to the Instructional Television Fixed Service, the Multipoint Distribution Service, and the Private Operational Fixed Microwave Service*, 48 FR 33878 (July 26, 1983) (hereafter "*MDS Reallocation*"). As a result of this action, approximately 15,000 multi-channel MDS applications were submitted to the Commission by September 9, 1983, the filing deadline established in that proceeding.

[52] Paul Kagan Associates, Inc., *Census of MDS Pay TV 6/30/83* (August 24, 1983).

[53] Paul Kagan Associates, Inc., *The Pay TV Newsletter*, Census Issue (1983) at 1 and *Multichannel News* at 21 (May 23, 1983).

[54] *See Low Power Television Service, supra.*

presently in operation, 164 operate on VHF frequencies and 42 on UHF frequencies.

42. Videotex and teletext are another two of the more recent technological entrants into the mass media marketplace. These technologies incorporate aspects of both the electronic and print media by enabling television broadcast stations, cable systems, or telephone systems to transmit textual or graphic information for display on video sets. These systems can offer a wide range of information including news, weather, and consumer advice. One advantage of these systems is that they can be continuously updated. While teletext is a one-way system, videotex systems have two-way capabilities allowing the consumer to transact business with banks or stores and engage in electronic messaging. Videotex and teletext systems have been successfully tested and are expected to become more commonplace in the future. In a number of ways, there are similarities between videotex and teletext systems and traditional newspapers. These systems can provide the same information that newspapers presently provide directly to the public. They can do so, however, with the advantage of potential savings on the cost of paper, print, and delivery and with the added benefit of providing updated information more readily than the once-a-day newspaper.[55]

43. One further distribution technology on the verge of entering the mass media marketplace is the direct broadcast satellite service (DBS) recently authorized by the Commission.[56] These systems will be capable of transmitting entertainment, news and information services including teletext from high-powered satellites directly to inexpensive home receivers as well as to cable systems, conventional and low power television broadcast stations, and other land-based communications facilities. DBS provides an economical and efficient means of distributing information over wide areas, including remote places where other communications technologies have not proved viable.[57]

44. In summary, the rapid growth of existing technologies, particularly throughout the 1970's, as well as the development of new ones that are or will soon be available throughout the remainder of the 1980's suggests that a proliferation of programming and information sources presently exists and will be even further augmented in the future.[58] Although the above information is based on media outlets nationwide, nevertheless, even the less densely populated areas of the country appear to have access to a variety of information sources, particularly, the electronic media.[59]

45. This overview of the electronic and print mass media marketplace indicates the existence of a plethora of print, video, and voice outlets and, through such outlets, the availability of large amounts of information to the public through these outlets. It also suggests that continued imposition of fairness doctrine obligations may be inappropriate when significant technological developments contributing to dynamic growth in the electronic media and to continued convergence between the print and electronic media appear to be undercutting what might have been at one time legitimate distinctions between the print and electronic media. In sum, this analysis leads us to ask whether the original underlying premises of the doctrine, namely, the scarcity of broadcast outlets and, with it, the possibility that the public might be left uninformed on public issues, can any longer be legitimately applied to the broadcast media regardless of whether the appropriate marketplace examined is that consisting wholly of broadcast media or, more appropriately perhaps, that comprising both the print and electronic media. Under either approach, the query is the same: whether the scarcity rationale and the attendant right of the public to have suitable access to a diverse marketplace of ideas continue to be appropriate justification for singling out broadcast media for that peculiar set of obligations that collectively comprise the fairness doctrine.

B. Necessity of Fairness Doctrine in Achieving First Amendment Goals

46. As stated at the outset, the purpose of the fairness doctrine is the same as that of the First Amendment itself—"to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail * * *"[60] It is well established that, when regulations evince a governmental interest unrelated to the suppression of free expression, they must further an important or substantial governmental interest and, if, incidentally, they restrict First Amendment freedoms, they must be no greater than is essential to the furtherance of that interest.[61] Because the fairness doctrine is an exception to traditional First Amendment principles that bar government interference with the content of speech by the press, therefore, it must confer a benefit that cannot be achieved through the use of less drastic means. In view of the

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[55] The traditional print media are already utilizing electronic technology to enhance the efficiencies in the delivery process. For example, both *USA Today* and the *Wall Street Journal*, national daily newspapers, transmit their news by satellite from their national headquarters to local printing plants around the country for production and distribution.

[56] *See Direct Broadcast Satellite Service*, 90 FCC 2d 676 (1982), *Satellite Television Corporation*, 91 FCC 2d 953 (1982); and *CBS, Inc. et al.*, 92 FCC 2d 64 (1982).

[57] In addition, we note that video tapes and, to a less certain extent, video disk players are other new forms of visual product delivery that also compete with the older technologies. At present, they are primarily used to provide entertainment programming but, in the future, they might be more extensively used to further enhance the informational marketplace by allowing consumers the opportunity to view public affairs, documentary, and other types of information programming. For example, video tape recorders currently allow consumers to record news and public affairs programs aired when they are not at home thereby enabling the consumers to view programs and receive information they might otherwise miss or be available to them only at inconvenient times. This past year's sales of video cassette recorders were expected to reach approximately 3.6 million and, based on estimates made by Electronic Industries Association, it was anticipated that a total of 8.4 million recorders would be in use by the end of 1983. Paul Kagan Associates, Inc., *The Pay TV Newsletter* at 6 (July 12, 1983). Video disk players now are in 300,000 television households, and this number continues to grow as new titles become available. Although these technologies are not now heavily used to provide information services to the public, as their acceptance grows (as well as that of other potential information sources such as personal computer equipment and services), as too will the public's access to a increasingly divergent mix of viewpoints, ideas, and experiences. Thus, the appearance of these services on the informational marketplace horizon in the future may further tilt the balance toward relaxation of governmental controls over the electronic media.

[58] While it may be difficult to predict what the composition of the mass media marketplace will be in the future, it appears from the discussion above that there will be no scarcity of means for distributing information. The success of these individual technologies would apper to be dependent on consumer demand.

[59] *See, e.g., Print and Electronic Media: The Case for First Amendment Parity, National Telecommunications and Information Administration, Staff Report to the Chairman, Senate Committee on Commerce, Science, and Transportation*, 98th Cong., 1st Sess. (Com. print 1983) (hereinafter *"Print and Electronic Media"*); *Deregulation of Radio, Notice of Inquiry and Proposed Rule Making*, 73 FCC 2d 457, 484, 492 (1979); *Deregulation of Commercial Television Stations, Notice of Proposed Rule Making in MM Docket No. 83-670*, 48 FR 37239 (adopted June 29, 1983); and K. Gordon, J. Levy, and R. Preece, *FCC Policy on Cable Ownership*, FCC Office of Plans and Policy (November 1981), all of which contain data for sample markets. Moreover, even among the smallest markets, those ranked 191–200 on the basis of television households, a median of 2 television and 5.5 radio stations are available over-the-air. In addition, an average of 54 percent of all households, more than twice the national average, have cable in these markets. *Who Owns the Media, supra*, at 469–70.

[60] *Fairness Report, supra.*

[61] *Home Box Office* v. *FCC, supra*, at 46.

electronic and general mass media marketplace described above and further detailed *infra*, however, a serious question is raised whether the doctrine, and the intrusions into journalistic freedom which it represents, remain essential to further the unquestioned governmental interest in an informed electorate.

47. In this section we will explore the goals of the First Amendment that the fairness doctrine was designed to foster and look at whether the doctrine remains necessary to achieve those goals in view of: the number of broadcast outlets available (especially in contrast to print outlets); the new broadcast and non-broadcast delivery services which the Commission has authorized; and the convergence of the print and electronic media which calls into question the distinction between them in terms of their constitutional treatment.

48. The concept that the competition between ideas that is fostered by the First Amendment will necessarily result in the ultimate triumph of truth is well-enshrined in our political philosophy and in our jurisprudence. Various formulations have been utilized in describing this principle. Thomas Jefferson stated that, "* * * the people * * * may safely be trusted to hear everything true and false, and to form a correct judgment." Justice Holmes wrote that:

> The ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our constitution.[62]

49. Similarly, the Supreme Court has proclaimed that "the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public"[63] and other courts have proclaimed that the freedom of speech guaranteed by the First Amendment:

> Presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection.[64]

[62] *Abrams* v. *United States*, 250 U.S. 616, 630 (dissenting opinion by Holmes, J., joined in Brandeis, J.) (1919).

[63] *Associated Press* v. *United States*, 326 U.S. 1, 20 (1945). *See also, Curtis Publishing Co.* v. *Butts*, 388 U.S. 130, 148–150 (opinion of Harlan, J.) (1967); *New York Times Co.* v. *Sullivan*, 376 U.S 254, 270 (1964); *NAACP* v. *Button*, 371 U.S. 415 429 (1963); *Roth* v. *United States*, 354 U.S. 476, 484 (1957).

[64] *United States* v. *Associated Press*, 52 F. Supp. 263, 372 (L. Hand, C.J.) (S.D.N.Y., 1943), *aff'd* 326 U.S. 1 (1945). Judge Learned Hand added: "To many this is, and always will be, folly; but we have staked upon it our all." It is noteworthy that this and the *Red Lion* not only echoed this theory of the purpose of the First Amendment but, in addition, found in that amendment a "right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences."[65]

50. In sum, the fairness doctrine has traditionally been viewed as implementing the First Amendment in the broadcast area by assuring that opposing sides of controversial issues are aired so that the truth would emerge and so that the public will have suitable access to ideas and experiences. Both parts of the fairness doctrine have been considered necessary—the first part to assure the mere presence on the airwaves of speech concerning controversial issues[66] and the second part to assure that all sides were expressed with regard to such issues so that a variety of points of view could compete in the arena with truth being the ultimate victor.

51. Given these First Amendment goals that the fairnes doctrine was intended to foster, the question is whether the doctrine remains necessary to achieve those ends. It would appear that the present broadcasting system is performing a vital role in providing for "dissemination of information from diverse and antagonistic sources" *Associated Press* v. *United States, supra*, together with other mass media services and technologies and far beyond what was envisioned when Congress enacted the Communications Act or when, in 1949, initial fairness doctrine obligations were fashioned by this agency. As of July 30, 1983, there were 4723 AM radio stations, 4559 FM radio stations, 857 commercial television stations and 283 educational television stations licensed in the United States.[67] Thus, a total of approximately 10,422 broadcast outlets currently serve the American people.[68] Without addressing the question of "technological" scarcity, it appears clear that there is no actual scarcity of broadcast voices in the United States. This argument is particularly supported by a look at the print media at the time the Constitution was adopted. When First Amendment freedoms were guaranteed the print media, the situation was far different and the media outlets far more scarce. In 1790, there were 8 daily newspapers, 70 weekly newspapers, 10 semi-weekly newspapers and 3 tri-weekly newspapers being published in America.[69] It should be remembered that while the coverage of public issues by broadcast stations today is augmented by that provided by other media, the converse cannot be said with respect to the situation existing in 1790. We therefore pose the question whether continuation of governmental intrusion upon the journalistic rights of broadcasters is needed to assure diverse and antagonistic points of view.

52. Some may say, however, that such significant differences existed between the societies of 1790 and 1983 that any comparisons are fallacious. Accordingly, we believe it would be worthwhile to look at the question of whether the fairness doctrine is necessary to assure that broadcasting the First Amendment objectives outlined above when contrasted with the print media (which operate without such intrusions) in the 1980's. Over 10,000 broadcast stations currently serve the American public, compared with only 1,712 daily newspapers and 6,806 weekly newspapers published in the United States.[70] From these statistics it is clear that there are more broadcast stations on the air today than the combined total of daily and weekly newspapers being published. Moreover, there are almost as many broadcast outlets as there are periodicals currently being published.[71]

analogous principles cited in notes 62 and 63, *supra*, evolved primarily from print cases but have since been used as support to justify the regulation of broadcasters that would clearly be impermissible if imposed on the print medium.

[65] *Red Lion, supra*, at 390.

[66] "[S]peech concerning public affairs is more than self-expression; it is the essence of self-government." *Id.* citing *Garrison* v. *Louisiana*, 379 U.S. 64, 74–75 (1965). "[A] free press is a condition of a free society." *Associated Press* v. *US., supra.*

[67] *See* Tables I and II, paras. 34–35 *supra.*

[68] Contrast this with the 2,867 radio stations and only 98 television stations, all commercial VHF, that existed in 1950, the year following the release of the *Report on Editorializing*, formalizing the fairness doctrine and the obligations thereunder. Indeed, that period is characterized by the absence of any meaningful competition from other electronic media. At that time, there were no UHF television stations, educational television stations, very few auxiliary television and radio stations such as television translators or boosters, and the presence of only a limited number of cable systems.

[69] Lee, Alfred McClung, *The Daily Newspaper in America* (MacMillan, 1937), cited in Ernst, Morris L., *The First Freedom*, Exhibits A and I, McMillan, 1946.

[70] *See Statistical Abstract of the United States 1982–1983 at 561 (103rd ed. 1982)*, citing as source *Ayer Directory of Publications* (IMS Press annual ed.).

[71] Traditionally, the theory of scarcity as a justification for content regulation of the broadcast media has posited that different treatment could be accorded broadcasters because, "[u]nlike broadcasting, the written press includes a rich variety of outlets for expression and persuasion including journals, pamphlets, leaflets, and circular letters, which are available to those without technical skills or deep pockets." *Banzhaf* v. *FCC*, 405 F.2d 1082, 1100 (D.C. Cir. 1968), *cert. denied* 396 U.S. 842 (1969).

53. Therefore, even though technological considerations relating to the degree of electromagnetic radio spectrum assigned to broadcasting continue to constitute an entry barrier that precludes the possibility for each person to operate a broadcast station, nevertheless, it would appear that broadcast stations are not "scarce" in the commonly understood meaning of the word, at least as compared to the print media. Indeed, we note that the most significant barrier to entry in the broadcast field would appear to be financing or working capital, the very same entry barrier that exists in the newspaper publishing business or, for that matter, in most other businesses. Although some might argue that, with a relatively small sum of money, anyone could set up a printing press and be in the newspaper business,[72] nevertheless, when such factors as initial start-up costs, audience or circulation potential of the respective media, etc. are considered, it would appear that the costs of entry between the print and broadcast media are not that dissimilar as some might imagine. Moreover, because a broadcaster's initial start-up costs include the distribution system itself, generally a one-time expense, a broadcaster does not incur the distribution costs that a daily newspaper must underwrite, in terms of print, materials, and transportation costs, in the dissemination of its product on an every day basis.[73] Additionally, the freedom of transferability that exists in the newspaper publishing business is in large measure also present in broadcasting. Although on the one hand broadcasters must receive this agency's sanction before a sale or transfer of their property can be consummated, yet, on the other hand, they often do not have to contend with the union and management transition problems that so often accompany the sale of newspapers, especially in major cities.

54. We also note that there appears to be prevalent in our society today a diverse and rich mix of ideas and viewpoints on broadcasting stations which either resembles and parallels in a number of ways that found in the print media. Just as there is editorial diversity as between newspapers, there is, and will continue to be, editorial diversity as between different broadcasters. But should the print media or the broadcast media be considered mutually exclusive information sources? Individuals typically do not receive information from a single medium. Rather, they can be expected to consult a variety of sources in a wide array of media. Accordingly, we query not only whether a scarcity of information outlets exists but also whether it can be said that broadcast stations are not diverse when considered alone or in conjuction with other available media. Stated differently, is the fairness doctrine any more necessary to assure that the public will be exposed to varying points of view on public issues via the broadcast media than it is to assure such a result in the print media? Anything even approaching the intrusiveness of the fairness doctrine would not pass constitutional muster if applied to the print media. *See, e.g., Miami Herald Publishing Co.* v. *Tornillo*, 418 U.S. 241 (1974). Thus, we must ask whether such a doctrine remains appropriate to the broadcast media which appear more numerous and very diverse.

55. Additionally, we question whether it is equitable to place the broadcast media under the disadvantage of governmentally imposed journalistic obligations in view of the fact that the print media, with which it competes, is free of all such restraints. While newspapers and periodicals have the discretion to cover or not cover certain stories, i.e., controversial issues of public importance, the broadcasting element of the "press" is denied that discretion. Given that the print and broadcast media compete in the information distribution marketplace and in the business marketplace for consumers and advertising revenues, it may be inappropriate, indeed, unfair for the government to assume the role of handicapper of one media *vis-a-vis* another.[74]

56. As noted previously, the broadcasting industry appears to be diverse both in and of itself and in comparison to the print media. Additionally, the broadcast and other nonbroadcast electronic media, taken as an aggregate, have enhanced and will in the future further enhance the citizen's access to information to an extent previously unknown. For instance, this agency's inauguration of a new low power television service has the potential to bring new video services to large portions of the American public, including many who currently are unserved or underserved by broadcast outlets. In addition, our authorization of direct broadcast satellite service, the opening up for use of unoccupied and unapplied for Instructional Television Fixed Service frequencies for utilization by MDS operators, and the newly expanded potential for new FM radio outlets [75] will result in an even greater number of available sources of information and programming. Moreover, at present, cable television penetration reaches 37 percent of American television households and, by the end of this decade, is expected to reach some 62 percent of television households.[76] This Commission has additionally acted to enhance the information sources available to the public through the electronic media by permitting increased utilization of Subsidiary Communications Authorizations (SCA's) by both commercial and non-commercial radio licensees for providing informational, entertainment, and other services. Thus, our recently amended rules now allow non-commercial educational FM radio stations to use their SCA's for remunerative purposes including, especially, the delivery of various forms of information.[77] Similar steps have been taken to permit commercial FM broadcasters to utilize their SCA's for both broadcast and non-broadcast purposes.[78] Our action in that matter would permit FM broadcasters to engage in providing a variety of services to the public at large or to limited segments thereof. These include paging services, the distribution of inventory, price, and delivery information,

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[72] Although a limited amount of money may be all that is necessary to engage in pamphleteering or leafleteering, publishing enterprises of this sort can hardly be deemed the functional equivalent of owning or operating a major daily newspaper.

[73] On this point, one commentator has observed: [T]he physical resources that go into the production of the print media—newsprint, presses, distribution trucks, and so on—are scarce * * * once a message is printed it must be physically transported from the publisher to the readers to have any effect. Thus printed communications are as dependent upon channels of *transportation* as radio communications are dependent upon electromagnetic channels. Both kinds of channels are scarce, and for exactly the same reasons * * * Indeed, the rising price of energy and other raw materials make the distribution of printed matter more expensive and less accessible to the public than telecommunication, the price of which is rapidly falling.

Print and Electronic Media, supra, at 67 *quoting* M. Mueller, *Property Rights in Radio Communication: The Key to Reform of Telecommunications* at 11 (1982).

[74] In this regard, we note that several major newspapers have editorially questioned the need for the fairness doctrine. *See, e.g.*, "Fairness without Doctrine", *The Wall Street Journal*, August 30, 1983, p. 28 and "Fairness and Television", *The Washington Post*, September 21, 1981, p. A12.

[75] *See Modification of FM Broadcast Station Rules to Increase the Availability of Commercial FM Broadcast Assignments*, 48 FR 29486 (1983).

[76] *Deregulation of Commercial Television Stations, Notice of Proposed Rule Making in MM Docket No. 83-313, supra*, at par. 27 and n. 17.

[77] *Amendment of Section 73.593 of the Commission's Rules*, 48 FR 28608, *as corrected* 48 FR 29872 (1983).

[78] *Amendment of Parts 2 and 73 of the Commission's Rules Concerning Use of Subsidiary Communications Authorizations*, 48 FR 39697 (1983).

transportation dispatch, narrowcasting and various other sorts of informational and instructional uses.

57. Thus, the electronic media taken as a whole appear to have an enormous and important presence in the marketplace.[79] Given this electronic environment, we question whether governmental intervention remains necessary to assure that any segment or segments of the electronic media present "diverse and antagonistic" points of view or provide "suitable access to social, political, esthetic, moral and other ideas and experiences." Indeed, because our ability to obtain such diversity and access via the electronic media continues to expand in what appears to be an almost limitless fashion, we believe it important to pose these questions now.[80]

58. Further grounds for initiating this inquiry at this time are found in the fact that distinctions between the printed and electronic media are becoming increasingly blurred. As Douglas R. Watts, legislative counsel for the American Newspaper Publishers Association, recently wrote:

> Further, technological developments are allowing one medium to adopt and utilize the techniques, processes, and functions of another medium. For example, television stations are beginning to use the new technologies to acquire an important characteristic of the print media—that of providing a message at whatever time is convenient for the consumer. Conventional distictions between telephone networks and cable television, or between cable television and broadcasting, or between broadcasting and newspapers and magazines no longer have clear meaning. Technological development once created compartments of activity; now that same technological evolution is breaking down those barriers.[81]

Watts argues that this convergence of technologies for the delivery of information will obscure the differentiating characteristics of the various media and will call for new constitutional analyses and approaches. This also has serious implications respecting the question of whether the fairness doctrine can continue to be justified. The intrusions into journalistic discretion represented by that doctrine are based upon the peculiar characteristics of the broadcast media—because it is a "unique medium."[82] Yet, if broadcasting is converging with other media, including the print media, in its techniques, processes, functions and important characteristics, then the *raison d'etre* of, and, indeed, the legal underpinnings for, the fairness doctrine are called into question.

59. Examples of how this convergence is occurring can be seen all about us. Perhaps the most pertinent example of this "convergence" is teletext.[83] We recently amended our rules to allow broadcasters to provide teletext services and defined teletext as a "data system for the transmission ot textual and graphic information intended for display on viewing screens."[84] Although examples of the uses to which teletext may eventually be put are legion, the Commission has identified what will likely be the primary purposes to which it will be put, particularly at the outset. These incude news, weather reports, comparative shopping prices, entertainment schedules, closed captions for the hearing impaired, and business oriented information. This service represents a "unique blending of the print medium with radio technology"[85] and, in fact, may become an alternative method for the delivery of newspapers and other print media to consumers. Clearly, the trend described by Douglas Watts is taking place and the distinctions between the print and broadcast media which once were clear are no longer easily discernable.

60. Therefore, given the multiplicity of broadcast outlets (especially when compared with print outlets), the creation of new broadcast or broadcast like delivery services, and the convergence of the print and the electronic media, we ask whether the fairness doctrine is essential to or consistent with achieving the First Amendment goals outlined above. As Judge Bazelon noted in his dissenting opinion in *Brandywine-Main Line Radio, Inc.* v. *FCC*,[86] it may well be that "[t]oday, our fears of a broadcasting monopoly seem outdated."[87] If this observation is correct, then is it possible that our concern in assuring diversity in the marketplace of ideas through the fairness doctrine may no longer be appropriate? In short, absent a fairness doctrine, would there be coverage of controversial issues of public importance? Given the nature of the issues to which the doctrine pertains, it seems likely that issues of this nature would be covered by broadcasters especially in view of the fact that the absence of a similar doctrine applicable to the print media reveals no dearth of print coverage of controversial matters.[88] Absent a fairness doctrine would the coverage of such issues be balanced on each station? Comparison with the print media suggests that this might not necessarily be so; but even though there is no requirement that the print media be "balanced", journalistic standards assure at least some measure of fairness. Indeed, many newspaper publishers have taken great pains to offset public perceptions of newspaper bias through publication of op-ed pages to provide contrasting viewpoints and through designation of ombudsmen to

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[79] While it has been suggested that the enormous presence or "pervasiveness" of radio and television upon society is itself a factor which justifies limited regulation of the First Amendment rights of broadcasters, it appears that newspapwers, and the news media in general, throughout this country's history often have been deemed to have a "pervasive" effect or undue influence on society. Yet this element or factor by itself has never provided a basis for governmental interference with newspapers' role in society nor has it been considered to have a detrimental effect on the functioning and well being of our democratic processes. In any event, we note that a recent newspaper article reporting that two out of three Americans read a newspaper on any given day provides evidence that would seem to contradict the pervasiveness of broadcasting theory as well as "widespread fears that television and other electronic media are undermining the influence of the written word," *see* "Americans in Electronic Era Are Reading as Much as Ever," *New York Times*, September 8, 1983, p. A1. As indicated later in this document, we invite on the "pervasiveness" theory of regulation.

[80] While we organize that many of the electronic media services are in their infancy, the very possibility of these services becoming additional information sources in the future would appear to strengthen the case for reexamination of the doctrine now before these and other new media subject to electonic distribution become enveloped under the fairness doctrine's mantle. *See, e.g., Fairness Doctrine and Political Cablecasting Requirements for Cable Television Systems*, 48 F.R. 26472 (1983). Notwithstanding these additional factors, the electronic media currently in place already provide the diversity necessary to warrant re-examination of the fairness doctrine. The new services referred to above can only further enhance this diversity.

[81] Watts, Douglas R., "A Major Issue of the 1980's: New Communication Tools," in *The First Amendment Reconsidered: New Perspectives on the Meaning of Freedom of Speech and Press* at 181–182 (1982).

[82] *Red Lion, supra*, at 390; *also see, CBS* v. *DNC, supra*, at 117–118 (1973).

[83] Videotex is a related service which can be provided by cable systems or telephone companies but, because it has interactive (two-way) capability, it can offer wider range of informtion services. *See Fairness Doctrine and Political Cablecasting Requirements for Cable Television Systems (Notice of Proposed Rule Making), supra*, at para. 46.

[84] *Amendment of Parts 2, 73, and 76 of the Commission's Rules to Authorize the Transmission of Teletext by TV Stations*, 48 F.R. 27054 (1983).

[85] *Id.*

[86] 473 F.2d 17 (D.C. Cir. 1972).

[87] *Id.* at 75 (Bazelon, J. dissenting). "Congress moved under the spur of a widespread fear that in the absence of governmental control the public interest might be subordinated to monopolistic domination in the broadcasting field." *See also FCC* v. *Pottsville Broadcasting Co.*, 309 U.S. 134, 137 and *National Broadcasting Company* v. *United States*, 319 U.S. 190, 219.

[88] Even if some broadcasters did not cover such issues, the plethora of electronic and media outlets currently available to the average citizen would appear to ensure exposure to such issues thereby guaranteeing both information from diverse and antagonistic sources and "suitable access," the twin goals of the First Amendment and the fairness doctrine.

serve in mediating allegations of unfairness. But even if some imbalance were to result, we question whether it would necessarily be harmful. It is possible that while some stations would likely be biased toward one side of an issue, other stations would likely favor the other side. Moreover, as indicated before, we question whether the broadcast media should be considered without reference to other sources of information and ideas. Therefore, even if some broadcast stations were "unbalanced" in their coverage, opposing points of view would in all likelihood still be available to the citizen on other stations or from other media. In addition, we raise the question whether lack of balance in itself is necessarily destructive of First Amendment values. For example, imbalance can have the positive effect of forcing the individual to bring his or her attention to the issue involved and can result in stimulating the individual to analyze his or her pre-existing beliefs. Such reassessment could result in beliefs being either altered or strengthened. Indeed, as suggested in our 1949 *Report on Editorializing*, the absence of challenge to an individual's beliefs can also be deleterious. As John Stuart Mill explained, when ideas are:

> Received passively, not actively—when the mind is no longer compelled, in the same degree as at first, to exercise its vital powers on the questions which its belief presents to it, there is a progressive tendency to forget all of the belief except the formularies, or to give it a dull and torpid assent, as if accepting it on trust dispensed with the necessity of realizing it in consciousness, or testing it by personal experience, until it almost ceases to connect itself at all with the inner life of the human being.[89]

In light of these theories, we ask commenters not to limit their focus to the question of whether any imbalance may result without the fairness doctrine, but also to address whether such an imbalance is necessarily counterproductive to First Amendment aims and goals that underlie the fairness doctrine.

61. It has long been recognized that even without a change in circumstances the Commission may reevaluate its requirements and what it believes is in the public interest.[90] The case for reevaluating our requirements in the face of changes of the magnitude of those which have occurred in the electronic media since *Red Lion* would appear to be stronger still and, accordingly, we hereby invite comment on the appropriateness of the fairness doctrine in light of those changes.

C. Negative Attributes Associated with Fairness Doctrine

62. If, as the preceding section indicates, the fairness doctrine may not be necessary to attain the very same objectives underlying the First Amendment itself—to insure the free flow of information and contribute to a climate that promotes vigorous and spirited debate on public issues of the day—then such regulation may not only be an unnecessary exercise of governmental regulation but also, and perhaps more importantly, may impermissibly tread not only on the First Amendment rights of broadcasters but also on those of the public, the intended beneficiary of the doctrine. In the case of *Cantwell* v. *Connecticut*, 310 U.S. 298, 304 (1940), the Supreme Court stated:

> The power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom . . .

Similarly, in *NAACP* v. *Button*, *supra*, at 433, the Court stated:

> [B]ecause First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity.

Because the fairness doctrine entails various degrees of governmental supervision and oversight of broadcast program content, the very nature of such regulation can lead to the possibility of governmental intrusions into the programming of broadcasters that may "unduly infringe" their protected freedoms and deny them the "breathing space" necessary for the healthy exercise of these freedoms.

63. In this section, we explore these possibilities by assessing the negative aspects attributable to the doctrine's operation in practice in order to elicit comment on whether the doctrine operates more as a disincentive rather than incentive to broadcast coverage of controversial issues. Even if we were again to find at the conclusion of this proceeding that the fairness doctrine does achieve to some degree its underlying purposes, we would still have to assess whether these positive benefits outweigh the negative elements. To do otherwise would be to ignore unwisely "the dangers that beset us when we lose sight of the First Amendment itself, and march forth in blind pursuit of its 'values.' "[91]

64. We believe that the costs borne by broadcasters and the public as a whole under this doctrine include the need for some degree of governmental oversight over the content of broadcasts to assure balanced programming, and concomitantly, the possibility that the surveillance required may lead to excessive and unnecessary interference with important editorial and journalistic functions performed by broadcast licensees. In this regard, we note that, in addition to the First Amendment restraint on speech, we are also bound by the prohibition in Section 326 from censoring or otherwise interfering with freedom of speech on radio communication.[92] We are concerned that the existence of the above possibilities may in turn generate more pernicious and expensive outlays to the public and broadcasters under the First Amendment. In sum, we query whether they can have the unintended effect of inhibiting or "chilling" the exercise of speech by broadcasters. If governmental censorship (or even the possibility thereof) leads to licensee self-censorship, then the benefits of diversity sought to be achieved by government regulation might well be outweighed by the detrimental effect upon the public and, under such circumstances, to paraphrase the Court in *CBS* v. *DNC*, the interests of the public sought to be achieved by governmental regulatory power over broadcasters' speech would not appear to outweigh the private jounalistic interests of broadcasters.[93] Additionally, because "inhibition as well as prohibition against the exercise of First Amendment rights is a power denied to government,"[94] such regualtion which has the undesirable effect of chilling the exercise of speech would also appear to be constitutionally suspect.

65. We previously have recognized that "there exists within the framework of fairness doctrine administration and enforcement the potential for undue governmental interference in the processes of broadcast jounalism," 1974

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[89] J. S. Mill, *On Liberty* 286 (University of Chicago 1952).

[90] *Greater Boston TV Corp.* v. *FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970).

[91] *CBS* v. *DNC*, *supra*, at 145 (Stewart, J. concurring).

[92] Section 326 of the Act specifically forbids agency censorship by providing: Nothing in this Act shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication.

[93] 412 U.S. at 110.

[94] *Lamont* v. *Postmaster General*, 381 U.S. 301, 309 (1965) (Brennan, J. concurring). Although this case did not involve the broadcast medium, nevertheless, the applicability of that general principle to broadcasting finds support in the *Red Lion* case for the reasons discussed in para. 66, *infra*.

Fairness Report, supra. We nevertheless found "no credible evidence" that our policies had had an inhibiting effect on coverage of controversial issues by broadcast licensees. *Id.* at 8. Despite this provious finding, however, it is evident that enough questions still persist in this area to warrant revisiting the issue. Both case law and the continuing attention paid to these issues by academicians, legal scholars, legislators, and others, continue to cast suspicion on this finding. [95] Moreover, the fact that these effects may be difficult to assess and are not subject to precise quantitative measurements should not lead to conclusions that they are not significant or do not exist. On the contrary, it suggests that, in the administration of regulations that touch upon First Amendment interests, we should tread slowly and cautiously. Therefore, we believe it is appropriate to consider anew the question whether there are any significant negative attributes associated with the doctrine that might well outweigh the positive attributes intended by the doctrine.

66. In addressing this issue, we first turn to *Red Lion* for it was in that case that the Supreme Court squarely recognized the possibility that the fairness doctrine might have a negative effect on broadcast coverage of public issues. The court admitted that, if this occurred, it would indeed be a "serious matter" because the "purposes of the doctrine would be stifled," at 393. Although the Court concluded that this concern "was at best speculative," it cautioned that:

> [I]f experience with the administration of these doctrines indicates that they have the net effect of reducing rather than enhancing the volume and quality of coverage, there will be time enough to reconsider the constitutional implications.

Id. [96]

67. Five years later, the Court was presented with virtually the same set of issues but this time clothed in a newspaper, rather than a broadcast, context.[97] In *Miami Herald* the Court, in reviewing a right of reply statute not substantially dissimilar to the earlier reviewed personal attack and political editorializing regulations, reached a different conclusion than it had in *Red Lion*, finding that the statute plainly had a "chilling effect" on newspapers' right to publish. That the rule had a negative impact on the editorial freedom of the publisher was emphatically confirmed by the Court's following statement:

> Faced with the penalties that would accrue to any newspaper that published news or commentary arguably within the reach of the right of access statute, editors might well conclude that the safe course is to avoid controversy and that, under the operation of the Florida statute, political and electoral coverage would be blunted or reduced. Government enforced right of access inescapably "dampens the vigor and limits the variety of public debate."

Id. at 257.[98]

68. Because this later decision appears to suggest that regulation of this nature does have inhibitive effects, we question whether the two decisions are reconcilable on that point.[99] If a right of reply statute chills the speech of newspaper editors, then would the breadth of the obligations imposed under the general fairness doctrine not have at least as significant a chilling effect, especially in view of the Supreme Court's recognition that broadcasters are far more subect to the "finite technological limitations of time" than newspapers? [100] Although we recognize that "differences in the characteristics of news media justify differences in the First Amendment standards applied to them," *Red Lion, supra*, at 386, these differences do not appear to explain adequately why a government mandated right of reply chills the speech of newspapers but not of broadcasters. As in *Tornillo*, fairness imposes a contingent obligation on a broadcaster to print, albeit in electronic mode, that which "reason" tells him should not be published based upon the content of programs initially broadcast. Consequently, even though the general fairness doctrine does not require a right of access to specific persons or groups, the obligations it imposes would appear to be as burdensome as the right of reply statute in *Tornillo* that was struck down as unconstitutional.

69. Moreover, the administrative difficulties inherent in the application of the fairness doctrine both for the Commission in enforcing the doctrine and for broadcasters in attempting to achieve compliance would appear to be considerably broader and more complex than those applicable to the relatively simple application of a right of reply statute. As discussed below, the general fairness doctrine entails a myriad of different considerations and factors that can lead to significantly greater governmental interference into the marketplace of ideas. In addition, under the fairness doctrine, we are placed in the position of being the national arbiter of fairness, a role government assumes in no other area of communications or the press. This inevitably leads to indirect, if not in some instances, direct, governmental involvement in program content.

70. We do accord broadcasters considerable discretion in meeting their fairness doctrine obligations and will not overturn their judgments unless we conclude that their exercise of discretion was unreasonable.[101] Nevertheless, in order to make such determinations, we come perilously close to governmental intrusion into the significant editorial autonomy of broadcasters that borders on government censorship prohibited under Section 326. Indeed, because the governmental regime required under the fairness doctrine can result in a degree of governmental supervision over broadcast program content, it is difficult to imagine that such oversight does not in some measure have an inhibiting

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[95] Most recently, the Senate Commerce Committee hearings on S. 1917, the "Freedom of Expression Act of 1983," introduced by Senator Packwood, has rekindled debate on this subject. *See, e.g.*, Simmons, *The Fairness Doctrine and the Media* (1978) (hereafter "Simmons"); Bazelon, "FCC Regualtion of the Telecommunications Press," 1975 *Duke Law Journal* 213; *also see generally Hearings on Freedom of the Press Before the Subcommittee on Constitutional Rights of the Senate Committee of the Judiciary*, 92d Cong., 1st and 2d Sess. (1971–1972) as well as *Hearings on Freedom of Expression Before the Senate Committee on Commerce, Science, and Technology*, 94th Cong., 2d Sess. (1976).

[96] Similarly, the Court stated: [W]e need not approve every aspect of the fairness doctrine to decide these cases and we will not now pass upon the constitutionality of these regulations by envisioning the most extreme applications conceivable, *United States* v. *Sullivan*, 332 U.S. 689, 694 (1948), but will deal with those problems if and when they arise.

Id. at 396. These statements clearly suggest that the Court did not intend to rule out further visitation of these important questions if at some later date circumstances so warranted.

[97] *Miami Herald Publishing Co.* v. *Tornillo, supra.*

[98] Although the Court observed that a "responsible press is an undoubtedly desirable goal," nevertheless it concluded that "press responsibility is not mandated by the Constitution and like many other virtues cannot be legislated." *Id.* at 256.

[99] For example, we note the fact that the court below discussed and relied upon the *Red Lion* decision in its analysis upholding the Florida statute, *see Tornillo* v. *Miami Hearld Publishing Co.*, 287 So. 2d 78 (1973), yet the Supreme Court, in reversing that ruling, did not even mention the *Red Lion* decision in its opinion. One commentator has labelled the apparent reluctance of the Court to discuss, let alone cite, *Red Lion* a "*sub silentio* acknowledgment of inconsistency" between the two decisions. *See* Powe, "or of the [Broadcast] Press," 55 *Texas L. Rev.* 39, 43 (December 1973).

[100] *Tornillo, supra*, at 257.

[101] On the opposite side of the regulatory coin, some have suggested that the "significant discretion" allowed broadcasters renders the efficacy of the doctrine a nullity.

effect on broadcast coverage of controversial issues.

71. For example, among the many factors we are compelled to consider are whether the broadcaster was reasonable in concluding or not concluding that a controversial issue of public importance was represented, whether reasonable opportunities for contrasting viewpoints were given, and whether the program formats utilized and spokespersons chosen for the presentation of these contrasting views were reasonable. In addition, our assessment inevitably must take into account the amount of time devoted to the subject on both sides (the "stopwatch" aspect), the frequency and degree of audience exposure to these broadcasts (e.g., one minute editorials in prime time versus half hour discussion in an afternoon public affairs program), the timeliness of initial coverage and of opportunities for contrasting viewpoints (e.g., contrasting viewpoints are of no value if presented after the issue becomes moot), and whether the broadcaster intends to present additional programming on the subject and, if so, when it will be presented (the "stoptime" or elapsed time aspect).

72. These are same but not all of the factors we must weigh in order to determine the reasonableness of a licensee's performance under the doctrine. The process is one which necessarily draws the agency into what can result in a detailed scrutiny of the content of a broadcaster's overall programming. If a simple right of reply statute can be deemed to have a chilling effect on newspapers, it is not difficult to imagine the pernicious effects this doctrine might have on a licensee's choice between assuming a vigorous role in coverage of controversial issues or engaging in "play-it-safe" journalism.

73. The pitfalls inherent in the application of the doctrine by this agency, in the role it assumes as a governmental arbiter of fairness, and for licensees, in their efforts to engage in broadcast journalism, are perhaps most vividly illustrated in *National Broadcasting Co.* v. *FCC.* ("*Pensions*" case).[102] In that case, the D.C. Circuit reversed an initial determination by this agency that NBC's network presentation of the documentary "Pensions: The Broken Promise," raised a controversial issue of public information and required opportunity for contrasting viewpoints by those stations airing the program.[103] The Commission initially held that the program did not deal merely with some abuses in pension programs as contended by the broadcast licensee but raised a controversial issue of public importance by addressing the overall performance and proposals for regulation of the private pension system. Agency resolution of the case appeared to turn on the basic question of whether the documentary presented a controversial requiring the opportunity for presentation of contrasting viewpoints.[104]

74. The court, however, reversed the Commission's determination holding that the proper standard of review by this agency was similar to that of a court in reviewing agency action: The agency, like a court, was not to disturb the licensee's "editorial judgment" unless it was clearly unreasonable or in bad faith. The court stated:

> Investigative journalism is a portrayal of evils, and there may be a natural tendency to suspect that the evils shown are the rule rather than the exception. But the question is not the Commission's view of what was broadcast and what would have been reasonable if it were the Commission's role to determine what should be broadcast, but whether the licensee, who had this role, had been demonstrated to have maintained an approach that was an abuse rather than an exercise of its discretion.

Id. at 1133. Moreover, the Court's opinion, while noting that the documentary was highly acclaimed by the press and was considered a critical success,[105] expressed concern that governmental interference in the journalistic function performed by broadcasters could have an inhibiting effect on future broadcast endeavors into investigative reporting and journalism.[106]

75. The *Pensions* case therefore exemplifies the substantial administrative, legal, and financial expense that can be incurred by networks and broadcast licensees in their efforts to engage in that type of broadcast journalism intended to inform the public.[107] In addition, it illustrates the difficulties that can be encountered by a network or broadcast licensee if it decides to appeal rather than accede to decisions of fairness made by the Commission and its staff even though it is successful in the end.[108] These costs might be considered inevitable expenses in the course of doing business but here, where they are the result of efforts to contribute to diversity in the marketplace of ideas which the First Amendment sanctions in theory, we question whether they are tolerable in circumstances where the net overall effect in the future may well be a diminishing return of information and viewpoints to the public. Finally, we note that the *Pensions* case reflects the many difficulties that can arise from the fairness doctrine duties that are imposed upon broadcaster alone.[109]

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[102] 516 F. 2d 1101, *reversal vacated and rehearing en banc granted,* 56 F. 2d 1155, *rehearing en banc vacated,* 516 F. 2d 1156, *second reversal vacated as moot and remanded with direction to vacate initial order and dismiss complaint,* 516 F. 2d 1180 (D.C. Cir. 1974). Indeed, inferences as to these difficulties can also be drawn from the checkered history of the case itself at both the agency and judicial levels.

[103] *Accuracy in Media, Inc.,* 40 FCC 2d 958 (1973), *application for review denied,* 44 FCC 2d (1974).

[104] Other factors that usually complicate analysis of fairness disputes were not present in this case. For example, evidence adduced in the case indicated that no previous programming on the subject in question had been broadcast and that the network had no intention of presenting future programmming that contained contrasting viewpoints on the subject.

In a somewhat similar vein, we note that the difficulties encountered by the Small Business Administration in the administration of its "opinion molder" rule, 13 C.F.R. 120.2, which generally prohibits governmental financial assistance to business operations relating to the communication of ideas on the basis that government should refrain from subsidization of particular views or ideas, has led the agency to reconsider the rule because it appears to have had the opposite effect of entangling, rather than extricating, government in speech matters due to the need for agency determinations of eligibility.

[105] The court was also quick to point out that the program was less than successful commercially, running a poor third against its network competition and because the network was able to sell only a portion of the advertising time available on the program. 516 F. 2d at 1108.

[106] Although the court noted that "there are areas where the Commission's duty of surveillance is considerable," it added: But we are here concerned with the area of investigative journalism, where there is greatest need for self-restraint on the part of the Commission and *for keen awareness of the inhibiting dimension of impermissible intrusion of a government agency* 516 F. 2d at 1133 (emphasis added). Indeed, the court noted earlier in its opinion that the Commission itself had previously recognized "the value of investigative reporting and of [its] steadfast intention to do nothing to interfere with or inhibit it." *Id.* at 1123.

[107] As indicated in n., 102 *supra,* the fairness complaint which originated the dispute was eventually dismissed. In Simmons, *supra,* at 217, the author reports that, based upon information furnished by a network official, the network "Paid well over $100,000 in legal expenses and thousands of hours in personnel time fighting a fairness complaint that it eventually won."

[108] Both Simmons, at 124–125, and Geller, *The Fairness Doctrine in Broadcasting* at 40–43 (Rand Corp. 1973), provide examples of the economic losses that can be incurred by broadcast licenses in defending against fairness doctrine complaints.

[109] The anomaly of the fairness doctrine is that if controversial subject matter is initially portrayed verbally, by print, or by motion picture, fairness obligations would not attach and difficulties of the above described nature would be avoided. However, once any of these forms is transmitted via conventional broadcast service, the immunity accorded to these differnt forms of speech is lost and the contingent obligations of fairness are triggered as well as the possibility of difficulties such as those presented in the *Pensions* case.

76. It would appear that encounters of this sort can result in broadcast licensees becoming fearful of the risks that can arise in defense and justification of their broadcast coverage as being fair. It also appears that it can cause licensees to become less willing to engage in uninhibited discussion of public issues for fear of invoking a government sanction, including the possibility of denying license renewal.[110] Indeed, as a result of conflicts of this nature, broadcast licensees might "find it expedient to avoid controversial matters which might give rise to difficulties with the government" [111] and, consequently, might "steer far wider of the unlawful zone" marked by the parameters of potential fairness doctrine controversy.[112] Rather than being motivated to provide such programming, they may well choose to avoid coverage of controversial material that might place them within the grasp of the fairness doctrine for fear that "the slightest perceived transgression of the doctrine might trigger a demand for a resource-consuming response on their part." [113] If this occurs, the unintended result might be that "[t]imidity might well supplant curiosity as the operative journalistic ethic in radio and television coverage of public events." [114] In such circumstances, even though a broadcast licensee might be cognizant of the fact that it cannot escape fairness doctrine obligations completely by avoidance of all controversial issue programming, nevertheless the licensee might screen out that controversial programming most likely to give rise to a fairness doctrine controversy.[115] Accordingly, we are concerned with the possibility that, although a licensee might be in literal compliance with the doctrine by minimally satisfying the obligation to cover controversial issues, the broadcasters in an effort to avoid controversy would present the material in a manner characterized by a blandness that robs the presentation of vitality or vigor. In the long run, such self-censorship would result not only in diminishment of the "significant editorial discretion" conferred upon and intended to be exercised by broadcasters under the Act, but it would deprive the public of the sort of robust, wide-open, uninhibited discussion of public issues intended to be fostered under the doctrine. While we recognize that evidence of these kinds of behavior may be hard to demonstrate, we nevertheless seek public comment as to whether they could and do result from the doctrine's existence.

77. We are also mindful of the dangers of abuse that can arise when government involves itself in the regulation of speech. As noted by Judge Leventhal in the *Pensions* case,

> In general, the evils of communcations controlled by a nerve center of Government loom larger than the evils of editorial abuse by multiple licensees who are not only governed by the standards of their profession but aware that their interest lies in long-term confidence.[116]

We are particularly concerned with the possibility that the fairness doctrine might be used to coerce or inhibit boardcast speech for partisan political gain as well as with the possibility that abuses might occur as a result of governmental pressure to influence coverage of particular matters. Indeed, it is possible that the mere perception of such attempts on the part of broadcasters, whether real or imagined, can influence them to become more sensitive to the wishes of the prevailing political forces and less sensitive to the needs and interests of the public.

78. That this possibility of danger is not speculative can be gleaned from some of the legislative measures introduced into Congress to provide the electronic media with the same degree of parity under the First Amendment as the print media enjoy. For example, Senator Hruska, in remarks accompanying the introduction of a 1975 legislative proposal [117] cited a New York Times story which described attempts of a previous administration to effectuate less critical behavior of broadcast licensees toward its policies. In it, the following statement was attributed to an official within that administration:

> Our massive strategy was to use the fairness doctrine to challenge and harrass the right-wing broadcasters and hope that the challenges would be so costly to them that they would be inhibited, and decide it was too expensive to continue.

The official is alleged to have further stated that "over 1,700 free radio broadcasters" were granted to pro-administration spokesmen and *"even more important than the free radio time, however, was the effectiveness of this operation in inhibiting the activity of these right-wing broadcasts."* [118] Moreover, Senator Hruska emphasized in his remarks that these allegations were not confined to that particular administration but that "other examples of intimidation of the press by subsequent administrations relying on the 'fairness' approach" existed.[119] In addition, statements and information submitted in connection with other similar ligislative proposals mention these and other alleged instances of governmental or polilitical pressure exerted to diminish the exercise of speech rights of broadcasters.[120]

79. We readily concede that mere allegations of such activities, without more, do not rise to the level of placing "a pall of fear and timidity upon those who would give voice to public criticism," nor approach "an atmosphere in which First Amendment freedoms cannot survive." [120a] Nevertheless, these accounts do suggest that the possibility of such dangers are not so remote that they may be discounted entirely in our effort to create an environment in which First Amendment freedoms can flourish. Indeed as stated by the Supreme Court, these freedoms

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[110] As Judge Leventhal stated in the *Pensions* case: "The specter of renewal jeopardy for failure to comply fully with the fairness doctrine can have a serious inhibiting effect, as the Commission recognized . . ." 516 F. 2d at 1116.

[111] *See Fairness Reconsideration*, 58 FCC 2d at 708 n. 8 (dissenting statement of Commissioner Robinson). In that same statement, *d.* at 709, Commissioner Robinson observes that it is the broadcaster's perception of the risks involved that can lead to the "chill" on free speech and to a licensee's determination of "whether the marginal benefit of broadcasting matter bearing on a controversial public issue outweighs the possible battling with citizen groups, disgruntled viewers/listeners, and last, but not least, the FCC.

[112] *Speiser* v. *Randall*, 357 U.S. 513, 517 (1958).

[113] *American Security Council Education Foundation*, 607 F. 2d 438, 453 (D.C. Cir. 1979) (J. Skelly Wright, concurring).

[114] *Id.*

[115] This possibility is not remote for, as indicated by the court in the *American Security Council* case, "this obligation, however, is not extensive and is met by presenting a minimum of controversial subject matter." 607 F. 2d at 444 n. 16.

[116] 516 F. 2d at 1133.

[117] 121 Cong. Rec. 6458 (April 7, 1975).

[118] *Id.* (emphasis added).

[119] *Id.*

[120] *See, e.g.*, remarks of Senator William Proxmire relating to S. 22 ("The First Amendment Clarification Act of 1978"), 124 Cong. Rec. 16904, 16905 (June 8, 1978) ("I believe NBC executives should not have felt the hot breath of the FCC and its fairness doctrine on the backs of their necks. * * * I firmly believe that broadcast journalists would not be chilled into blandness and sameness if it were not for governmental controls as exercised through the FCC's fairness doctrine"); remarks of Congressman Robert Drinan relating to H.R. 7227 ("The First Amendment Implementation Act of 1975"), 121 Cong. Rec. 15897 (May 22, 1975). These dangers and their possiblity have been discussed elsewhere as well. *See, e.g.*, Bazelon, *supra*, as well as Bazelon, "The First Amendment and the 'New Media'—New directions in Telecommunications," 31 *Federal Communications Bar Journal* 201 (spring 1979); Simmons, *supra*, at 211–221; Friendly, *the Good Guys, Bad Guys, and the First Amendment* (Random House 1976).

[120a] *New York Times Co.* v. *Sullivan*, *supra* at 432.

"are protected not only against heavy-handed frontal interference." [121]

80. Accordingly, we invite comment on whether the dangers that appear to be ever present in the agency administration and enforcement of broadcasters' fairness—the possibility of excessive governmental intrusion into speech and of the chilling effects therefrom—are real and, if so, whether they are outweighed by the benfits that, theoretically at least, should accrue from the doctrine.

D. Constitutional Law Developments

81. In the following paragraphs we undertake as part of our inquiry and examination of the jurisprudential developments in the First Amendment area both generally and in the broadcast context to determine what bearing, if any, such developments might have on the continued application of our fairness doctrine policies. Because "the 'public interest' standard necessarily invites reference to First Amendment principles," *See CBS* v. *DNC, supra,* at 122, agency inquiry into this area is not only permissible but, indeed, may be clearly called for.

82. At the outset, we note that the very existence of government licensing and regulation of broadcast stations has some free speech implications. As former Commissioner Robinson has observed,

> no one would seriously contend today that the Commission is without constitutional power to license the use of radio frequencies, and, as part of such licensing scheme, to impose such technical restraints and limitations as are necessary to ensure a fair equitable, and efficient distribution and use of such frequencies. Minimum restraints through licensing are necessary in order that there be any effective radio communication, a fact made clear by the experience of the 1920's. To this extent the cliche that Commission regulation makes possible the exercise of free speech in radio communications is fair and accurate.[122]

However, the First Amendment implications that stem from a system of governmental licensing of the use of radio frequencies are considerably different and far less problematical than those that also involve government regulation of broadcast program content. As the Supreme Court stated in *CBS* v. *DNC, supra,* at 105, "the tightrope' aspects of Government regulation of the broadcast media," which were foreshadowed as early as the Congressional consideration of legislation leading up to the enactment of the Federal Radio Act of 1927, have constituted a difficult "problem [that] the Congress, the Commission, and the courts have struggled with ever since."

83. In the first case addressing the constitutionality of non-technical regulation of broadcasters by the FCC, *NBC* v. *United States, supra,* Justice Frankfurter sweepingly affirmed broad statutory and constitutional power in the FCC. He concluded:

> The [Chain Broadcasting] Regulations, even if valid in all other respects, must fall because they abridge, say the appellants, their right of free speech. If that be so it would follow that every person whose application for a license to operate a station is denied by the Commission is thereby denied his constitutional right of free speech. Freedom of utterance is abridged to many who wish to use the limited facilities of radio. Unlike other modes of expression, radio inherently is not available to all. That is its unique characteristic, and that is why, unlike other modes of expression, it is subject to government regulation. Because it cannot be used by all, some who wish to use it must be denied. But Congress did not authorize the Commission to choose among applicants upon the basis of their political, economic or social views, or upon any other capricious basis. If it did, or if the Commission by these Regulations proposed a choice among applicants upon some such basis, the issue before us would be wholly different. . . . The right of free speech does not include, however, the right to use the facilities of radio without a license. The licensing system established by Congress in the Communications Act of 1934 was a proper exercise of its power over commerce. The standard it provided for the licensing of stations was the "public interest, convenience, or necessity." Denial of a station license on that ground, if valid under the Act, is not a denial of free speech.

Id. at 226–27. That case reaffirmed the principle set forth in *Associated Press* v. *United States, supra,* that communications media as commercial enterprises are no less subject to general economic and social regulation merely because they are in the business of dissemination of news and opinion than other commercial enterprises. *See, e.g., Minneapolis Star* v. *Minnesota Comm. of Rev.,* 75 L. Ed 2d 295, 302 (1983); *Associated Press* v. *NLRB,* 301 U.S. 103, 131–32 (1937). Although the issue before the Court in *NBC* involved essentially socio-economic regulation, nevertheless, the sweeping language of Justice Frankfurter's opinion has been subsequently construed to sanction the direct regulation of programming including the personal attack and political editorializing rules later upheld by the Supreme Court in the *Red Lion* case. This ready acceptance of the idea that government could engage in regulation of broadcast programming may be a reflection in part of the First Amendment climate that existed at the beginning of federal regulation of broadcasting.[123]

84. During the birth and infancy of federal regulation of broadcasting, First Amendment jurisprudence and its theoretical underpinning were relatively undeveloped. The judicial climate that prevailed at the inception of broadcasting was sympathetic to the idea that the government could punish, inhibit, or regulate speech that lawmaking bodies or courts believed might injure public morals, mislead the public, cast a cloud over judicial proceedings, judges or other public officials, or endanger obedience to law or public safety.[124] It is noteworth that

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[121] *Bates* v. *Little Rock,* 361 U.S. 516, 523 (1960).

[122] Robinson, *The FCC and the First Amendment: Observations on 40 Years of Radio and Televison Regulation,* 52 Minn. L. Rev. 67, 86 (1967). *See also National Ass'n of Theatre Owners* v. *FCC,* 420 F.2d 194, 208 (D.C. Cir. 1969), *cert. denied,* 397 U.S. 922 (1970) (upholding against First Amendment challenge FCC regulations restricting subscription television stations from broadcasting certain kinds of programs); *Lafayette Radio Electronics Corp.* v. *United States,* 345 F.2d 278, 281 (2d Cir. 1965) (upholding against First Amendment challenge FCC regulations prohibiting the use of Citizens Band radio as a "hobby" or diversion.").

[123] For example, as Judge Bazelon observed in his dissenting opinion in *Brandywine-Main Line Radio, Inc.* v. *FCC,* 473 F. 2d 17, 71–72 (D.C. Cir. 1972), "at the turn of the century there were doubts about whether the First Amendment even applied to radio. After all, radio came into the world as a magic box analogized to the telegraph. . . Broadcasters themselves were viewed as entertainers rather than responsible journalist; certainly they were not 'newsmen'. The Commission felt justified in imposing upon these neophytes a series of obligations to insure that they would act 'responsibly' in the public interest." *See* also Bazelon, *FCC Regulation of the Telecommunications Press, supra,* at 219–20.

[124] For example, in 1877 the Supreme Court maintained in *Ex Parte Jackson,* 96 U.S. 727, that Congress could exclude from the mails indecent publications or pamphlets giving information as to where articles intended for immoral use could be procured. The Court proclaimed that it had "no doubt" of the constitutionality of the exclusion. *Id.* at 737. *See also Patterson* v. *Colorado,* 205 U.S. 454 (1907) (criticism of public officials could be punished if deemed contrary to the public welfare, even if allegations of wrongdoing were true); *Lewis Publishing Co.* v. *Morgan,* 229 U.S. 288 (1913) (a federal postal statute that conditioned second class postal privileges for newspapers on marking any editorial or other reading material for which payment had been made as "advertisement" was held not to be unconstitutional); *Toledo Newspaper Co.* v. *United States,* 247 U.S. 402 (1918) (newspapers lack any First Amendment shield against a summary conviction for criminal contempt for publication of articles denouncing legal arguments of litigants in a pending civil suit); and *Gitlow* v. *New York,* 268 U.S. 652 (1925) (First Amendment does not enjoin the punishment of speech urging the unlawful overthrow of organized government if a legislature has a reasonable basis for believing that such speech would endanger the public peace and safety).

many of the cases that were instrumental in creating this climate have been overruled in form or substance by Supreme Court decisions of the contemporary era.[125]

85. The historical evolution of First Amendment doctrine, along with the different approach the Supreme Court has demonstrated to First Amendment questions in other areas and with respect to other media, raise questions whether the sharply divergent First Amendment treatment applicable to broadcasting and, more specifically, the constitutional considerations we have previously relied upon to justify the fairness doctrine's regulation of broadcast programming under the public interest standard of the Communications Act, should be reexamined in order to ensure that our regulation is not being gradually eclipsed by the underlying import of more recent Supreme Court First Amendment cases. In this regard, in conjunction with Congress' and this agency's efforts "to achieve reasonable regulation compatible with the First Amendment rights of the public and licensees," the Supreme Court has cautioned against "freez[ing what is a] necessarily dynamic process into a constitutional holding." *CBS* v. *DNC, supra,* plurality opinion at 133. Accordingly, just as the technological and marketplace changes discussed earlier suggest that it may be more difficult to justify the fairness doctrine on policy grounds, we query whether developments in First Amendment jurisprudence continue to support or appear to be eroding the constitutional pillars upon which the fairness doctrine rests.

86. As indicated earlier, the Supreme Court's decision in *Miami Herald* is completely silent about the dramatically different First Amendment Scheme that *Red Lion* had approved for broadcasters even though the parallels with and distinctions from *Red Lion* were prominently addressed in the briefs on both sides. Moreover, the sharply different treatment accorded print and broadcast journalists by *Miami Herald* and *Red Lion* appears particularly difficult to reconcile with much of the language of *CBS* v. *DNC, supra,* in which the Court concluded that neither the First Amendment nor the Communications Act compels broadcasters to present paid editorial announcements. In that case, the Court stated that Sections 3(h) and 326 of the Communications Act evince Congress' intent to "permit private broadcasting to develop with the widest journalistic freedom consistent with its public obligation" by proscribing individuals' general right of access to the airwaves and by limiting government regulatory power over broadcasters' speech "only when the interests of the public are found to outweigh the private journalistic interests of the broadcasters." *Id.* at 110. Accordingly, the Act envisioned and established a scheme where private broadcast journalism would flourish and be only "broadly accountable to the public interest standards." *Id.* at 120. The Court refused to find that broadcast licensees' utilization of the airwaves constitutes governmental action necessitating nondiscriminatory access to all those who wish to press their views. To hold otherwise, according to the views expressed by the Chief Justice Burger and joined in by Justices Stewart and Rehnquist, would be antithetical to the scheme of private broadcast journalism. *Id.* at 120–121. Moreover, the Court, in specifically rejecting the notion "that every potential speaker is 'the best judge' of what the listening public ought to hear or indeed the best judge of the merits of his or her views," stated:

> All journalisitc tradition and experience is to the contrary. For better or worse, editing is what editors are for; and editing is selection and choice of material. That editors—newspapers or broadcast—can and do abuse this power is beyond doubt, but that is no reason to deny the discretion Congress provided. Calculated risks of abuse are taken in order to preserve higher values.[126]

87. The *CBS* v. *DNC* decision described the fairness doctrine as a regulatory measure which had evolved over the years and received statutory approval in 1959 and one which was designed to further both broadcasters' interests, by affording them wide discretion in implementing the doctrine's requirements, and the interest of the public by providing the public with reasonably balanced discussions on controversial public issues. *Id.* at 110–14. The Court recognized that "balancing the various First Amendment interests involved in the broadcast media and determining what best serves the public's right to be informed is a task of a great delicacy and difficulty." *Id.* at 102. Moreover, the Court observed that "the problems of regulation are rendered more difficult because the broadcast industry is dynamic in terms of technological change; solutions adequate a decade ago are not necessarily so now, and those acceptable today may well be outmoded 10 years hence." *Id.* In view of the foregoing, if the overall thrust of the *CBS* v. *DNC* decision appears to be that the First Amendment seriously circumscribes governmental interference with journalistic function performed by the press, whether electronic or print, and if, therefore, significant parallels exist between that decision and the later *Miami Herald* decision, we question whether any of the constitutional considerations that led the Court to affirm this agency's rejection of a right of access to broadcast paid political advertisement and later reject the right of reply statute applicable to the print medium would also be germane to the fairness doctrine particularly as that doctrine has the potential for significant intrusion into the editorial functions performed by broadcasters.

88. Even if *CBS* v. *DNC* and the later *Miami Herald* decision can be read as signalling some degree of retreat from the broad language of *Red Lion,* which sanctioned the degree of content regulation of speech occasioned by the fairness doctrine, and as undercutting government intrusion into the editorial role performed by the press, whether broadcast or print, except in the presence of a compelling substantial and government interest, we query whether the "unique" characteristics of broadcasting would nevertheless continue to justify the degree of regulation required by the fairness doctrine. In this regard, we note that the Court did state in the *CBS* v. *DNC* case that "the Commission is also entitled to take into account the reality that in a very real sense listeners and viewers constitute a 'captive audience.' " 412 U.S. at 128. This particular aspect of broadcasting, the Court noted, was recognized as early as 1924 and agency reliance on it as a factor in formulating broadcast regulation, the Court further noted, received judicial recognition in *Banzhaf* v. *FCC,* 405 F. 2d 1082 (D.C. Cir.

[125] For example, the Supreme Court in the landmark case of *New York Times Co.* v. *Sullivan, supra,* declared that newspapers are endowed with immunity from defamation suits by public officials or public figures for speech assailing their offical conduct absent proof that alleged statments contained false assertions of fact and were published with malice. This so-called "actual malice" rule was held to be necessary to vindicate the foremost purpose of the First Amendment: assuring "unfettered interchange of ideas for the bringing about of political and social change desired by the people." 376 U.S. at 269. In subsequent decisions, the Court has acknowledged that broadcasters promote this purpose as well, and the Court has thus extended the "actual malice" rule to them. *See e.g., Cox Broadcasting Corp.* v. *Cohn,* 420 U.S. 469 (1975) and *Rosenbloom* v. *Metromedia, Inc.,* 403 U.S. 29 (1971).

[126] 412 U.S. at 125–126. The Court added: The presence of these risks is nothing new; the authors of the Bill of Rights accepted the reality that these risks were evils for which there was no acceptable remedy other than a spirit of moderation and a sense of responsibility—and civility—on the part of those who exercise the guaranteed freedoms of expression.

1968), *cert. denied* 396 U.S. 842 (1969). In that case, Judge Bazelon, in upholding the Commission's ban on cigarette advertising, stated that:

> It is difficult to calculate the subliminal impact of this pervasive propaganda, which may be heard even if not listened to, but it may reasonably be thought greater than the impact of the written word.

405 F. 2d 1100–1101. Moreover, the "captive audience" or "pervasive impact" theory of law received further judicial acceptance in *FCC* v. *Pacifica Foundation*, 438 U.S. 726, 749 (1977), where the Supreme Court held that "because the broadcast media have established a uniquely pervasive presence in the lives of all Americans," an individual's right to be left alone outweighs a First Amendment right to present "[p]atently offensive, indecent material over the airwaves." Although the Court emphasized "the narrowness of our holding," nevertheless, its ruling in *Pacifica* does pose the question whether the "pervasiveness" theory in its peculiar application to broadcasting is a factor entitled to such constitutional weight that it might nevertheless still result in a permissible overriding of the editorial discretion of broadcast licensees wrought by government regulation.

89. We also raise the question of what impact the Supreme Court's most recent decision in *CBS, Inc.* v. *FCC*, 453 U.S. 367 (1981), should have on our analysis. *CBS, Inc.* v. *FCC* upheld as constitutionally valid a limited right of access to the broadcast media by individuals seeking Federal elective office. The case reaffirmed that the broadcasting industry is entitled under the First Amendment to exercise "the widest journalistic freedom consistent with its public [duties]," *quoting CBS* v. *DNC*, but emphasized, as did the *Red Lion* case, the right of the viewers and listeners "to receive suitable access to social, political, esthetic, moral, and other ideas and experiences . . . is crucial here." *Id.* at 395. The Court reiterated the "importance that candidates have the . . . opportunity to make their views known so that the electorate may intelligently evaluate the candidates' personal qualities and their positions on vital public issues before choosing among them on election day," 453 U.S. at 396, quoting *Buckley* v. *Valeo*, 424 U.S. 1, 52–53 (1974), and emphasized that the First Amendment "has its fullest and most urgent application precisely to the conduct of campaigns for political office." 453 U.S. at 396, *quoting Monitor Patriot Co.* v. *Roy*, 401 U.S. 265, 272 (1971). The Court concluded that that "Section 312(a)(7) represents an effort by Congress to assure that an important resource—the airwaves—will be used in the public interest." Id. at 397.

90. The *CBS* case suggests that the "scarce airwaves" rationale relied upon in *Red Lion* and traditionally set forth to justify program content regulation in general continues to be an appropriate basis for the differing treatment accorded broadcasting. Nevertheless, a question is still raised as to whether the fairness doctrine can be validly imposed if, in fact, there may not be any scarcity of voices and views available to the public via the airwaves. Although *Red Lion* and its progeny continue to rest in part on the inability of each member of the public to own and operate a broadcasting facility,[127] we query whether such a rationale can continue to be relied upon by us as a basis for imposition of fairness doctrine obligations if the public's constitutional right to a diversity of ideas and viewpoints from broadcast sources would not be endangered by the absence of such regulation and if the inability of the public to participate directly in our system of broadcasting rests equally as much on economic and other factors as on technological limitations. In the *CBS* case, the Supreme Court appears to have significantly relied on the principle recognized in First Amendment jurisprudence that access to political information is of extreme importance to the vital functioning of our democracy and, in recognition thereof, held that Congressional judgment was not misplaced in its desire to ensure the availability of such information through enactment of Section 312(a)(7) of the Act.[128] Accordingly, we query whether that particular factor was a critically important element and an important distinguishing factor in its decision to uphold the validity of the statute and whether it perhaps might set that decision apart from the question of the continued validity of the fairness doctrine.

91. We also invite comment on the question of to what extent First Amendment principles that undergird the fairness doctrine are consistent with developing First Amendment jurisprudence in other areas relating to speech and freedom of expression. For example, in 1975, the Court struck down as an unconstitutional abridgement of free speech a provision of the Federal Election Campaign Act of 1971 that limited expenditures by individuals or groups in support of candidates. *Buckley* v. *Valeo*, 424 U.S. 1 (1975). The Court rejected the argument that the provision served the government interest in "equalizing" individuals' and groups' ability to influence election outcomes: [129]

> The concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment, which was designed to "serve 'the widest possible dissimination of information from diverse and antagonistic sources,' " and " 'to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.' "

Id. at 48–49.[130] Although the Court dismissed the statute's supporters' reliance on *Red Lion* by setting out the scarcity argument, we question whether the Court's reliance on the proposition that the First Amendment protects eloquent and persuasive speech as well as unconvincing speech is an important factor we should carefully weigh in our analysis of the fairness doctrine and its implications for the exercise of First Amendment rights.[131]

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[127] As the Court in *Red Lion, supra*, at 388, stated: Where there are substantially more individuals who want to broadcast that there are frequencies to allocate, it is idle to posit an unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write, or publish.

[128] We note that, in general, the Court has indicated opposition to governmental attempts to impose restrictions on speech relating to governmental and public affairs as witnessed by such decisions as that in the *Miami Herald* case, *Mills* v. *Alabama*, 384 U.S. 214, 220 (1966) (state law prohibiting newspaper editorializing on election day conflicted with a "major purpose" of the First Amendment—"the free discussion of governmental affairs") *Garrison* v. *Louisiana*, 379 U.S. 64, 74–75 (1965) ([S]peech concerning public affairs is more than self-expression; it is the essence of self-government"); and *New York Times Co.* v. *Sullivan, supra*, at 74–75 ("[There exists] a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open").

[129] One commentator has noted that the *Red Lion* decision was "caught in its own contradiction of general First Amendment interpretation. To refute the notion that licensees' rights are not superior to non-licensees', the Court at one point relied on the doctrine of equality of First Amendment rights: '[a]s far as the First Amendment is concerned those who are licensed stand no better than those to whom licenses are refused.' The Court's recognition of that equality is obviously inconsistent with a theory that listeners' rights are paramount while licensees' rights are subordinated." Marks, *Broadcasting and Censorship: First Amendment Theory After Red Lion*, 38 Geo. Wash. L. Rev. 974, 989 (1970).

[130] *See also Consolidated Edison Co.* v. *Public Serv. Comm'n*, 447 U.S. 530 (1981).

[131] Moreover, consideration of such a factor may be more compelling if there is any validity to the argument frequently proffered that "scarcity has afforded a convenient pretext for refusing to face the inconsistency between our treatment of broadcasting and our treatment of other media."

Continued

92. Similarly, we also invite comment on what relevance, if any, the principle enunciated in *Associated Press, supra*,[132] and followed in more recent Supreme Court decisions,[133] which generally prohibits governmental action that compels persons to present views contrary to their own, might have in our examination of the fairness doctrine. The vitality of that principle was most firmly established in the Supreme Court's decision in *Abood* v. *Detroit Board of Education*, 431 U.S. 209 (1977), where the Court struck down a state statute that permitted the use of non-union members' fees for the publication of views contrary to those members' views and unrelated to the collective bargaining process. Although noting that one of the principles underlying *Buckley* "was that contributing to an organization for the purpose of spreading a political message is protected by the First Amendment," the Court nevertheless held that "[t]he fact that the appellants are compelled to make, rather than prohibited from making, contributions for political purposes works no less an infringement of their contribution rights." 431 U.S. at 234. And the Court added, " 'If there is any fixed star in our constitutional constellation it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.' " *Id.* at 235, *quoting West Virginia Board of Education* v. *Barnette*, 319 U.S. 624 642 (1943). Accordingly, to the extent that the fairness doctrine can be said to require broadcasters to present views with which they disagree in order to maintain "fairness" or "balance", we question whether such effects are not dissimilar from the effects of the statute found unconstitutional in the *Abood* case.[134]

93. In a similar vein, we note the Supreme Court's finding in *First National Bank of Boston* v. *Bellotti*, 435 U.S. 735 (1978), that a state statute designed to curb corporate expenditures advocating support or defeat of referendum proposals was unconstitutional. Freedom of speech, the Court held, is not dependent upon the identity of the speaker, nor can it be defeated on the basis of the speaker's persuasive presence. *Id.* at 777, 790–91. The Court stated:

> The people in our democracy are entrusted with the responsibility for judging and evaluating the relative merits of conflicting arguments. They may consider, in making their judgment, the source and credibility of the advocate. But if there be any danger that the people cannot evaluate the information and arguments advanced by appellants, it is a danger contemplated by the Framers of the First Amendment.

Id. at 791. This holidng in *Bellotti* is consistent with other recent decisions of the Court rejecting the "highly paternalistic approach" of statutes or regulation that invade First Amendment interests because listeners or readers may form beliefs and take actions that, in the legislator's or regulator's view, are neither wise nor socially desirable. *See e.g., Virginia State Board of Pharmacy* v. *Virginia Citizens Consumer Council*, 425 U.S. 748, 770 (1975); *Linmark Associates, Inc.* v. *Township of Willingboro*, 431 U.S. 85, 95–98 (1977). To the extent that it can be said that a fundamental purpose of the fairness doctrine is to protect radio listeners and television viewers from biased or partisan or unbalanced broadcasting, we query what relevance these decisions may have on that aspect of the doctrine.

94. In his concurring opinion in *CBS* v. *DNC*, Justice Stewart concluded that the freedom that the First Amendment guarantees is freedom "from the intrusive editorial thumb of government. . . . Those who wrote our First Amendment . . . believed that 'fairness' was far too fragile to be left for government bureaucracy to accomplish." 412 U.S. at 145–46. The changing nature of technology and the marketplace, along with the Supreme Court's evolving First Amendment jurisprudence, suggest that the constitutional imprimatur originally placed on the fairness doctrine by *Red Lion* may be fading. Moreover, although the *NBC-Red Lion* constitutional tradition of government power over broadcast program content is so firmly established that it might seem pointless to dispute it further, one commentator has stated that the scarcity rationale on which it is based

> is too seriously defective to permit acquiescence. It is ironic that the Court would sustain a major regulatory incursion on the liberty of the broadcast press just as the theory on which the doctrine rests has fallen into ruins. Although no one seriously questions that there is a role for government to play in the regulation of broadcasting, there seems to be no persuasive basis for carrying regulation of this medium to anything like the lengths suggested by [47 U.S.C.] § 312(a)(7), the fairness doctrine, or other content-based legal rules.

Polsby, *Candidate Access to the Air: The Uncertain Future of Broadcaster Discretion*, 1981 Sup. Ct. Rev. 223, 256.

95. In view of the fact that the Court in *Red Lion* did not foreclose the possibility that more experience with the fairness doctrine, constitutional developments, substantial growth in capacity for program transmission and further reflection might lead the Commission to reconsider whether the First Amendment goal might be better advanced and the public interest more completely vindicated without the degree of program content regulation epitomized by the fairness doctrine, we request that the comments in this proceeding address fully the constitutional considerations underlying the doctrine particularly in light of the related changes in technology and the marketplace and Supreme Court's treatment of First Amendment issues in other areas.

E. Agency Authority to Modify or Repeal the Fairness Doctrine

96. Finally, we invite comment on the threshold question of to what extent the Commission is empowered to repeal or substantially modify the fairness doctrine. Because we question whether continued application of the fairness doctrine serves the public interest by furthering First Amendment values, we believe it is incumbent upon us to consider our authority to reevaluate the future application of these policies in order to ensure that we remain faithful to congressional intent. Accordingly, we have undertaken an extensive examination of all of the relevant statutory enactments, including the Federal Radio Act of 1927, the Communications Act of 1934, and especially the 1959 amendments thereto.

Schenkkan, *Power in the Marketplace of Ideas: The Fairness Doctrine and the First Amendment*, 52 Texas L. Rev. 727, 750 (1974). In his view the Court's decisions in both *Red Lion* and *CBS* v. *DNC* make clear that "[s]carcity, it turns out, is not the problem that the fairness doctrine addresses, only an historical cause of the problem. The problem is licensee audience power. . . ." *Id.* at 744–45.

[132] That case held that government action relating to newspapers that "does not compel [the newspapers] to permit publication of anything which their 'reason' tells them should not be published" is not violative of their First Amendment rights. 326 U.S. at 20 n. 18.

[133] *See, e.g., Wooley* v. *Maynard*, 430 U.S. 705 (1977), where the Court declared that a state may not constitutionally require its citizens to bear automobile license plates that contain slogans contrary to their religions, moral or political beliefs. Citing *Tornillo*, the Court stated that the "right to freedom of thought protected by the First Amendment includes both the right to speak freely and the right to refrain from speaking at all." *Id.* at 714.

[134] In this regard, we also question whether the governmental role necessitated under the fairness doctrine, to the extent it may be viewed as requiring the Commission to set the bounds of "orthodoxy" relating to the discussion of controversial issues, is contrary to the principle enunciated in the *Barnette* case.

In the following paragraphs, we describe those circumstances and events which we believe are most germane to the question of whether Congress sought to impose by statute the fairness doctrine on broadcasters. Because it is by no means entirely free from doubt whether Congress intended to foreclose our discretion to administer the fairness doctrine either in whole or in part, we invite comment on the construction most reasonably deducible from the 1959 legislative amendments and the legislative history.

97. At the outset, we do not believe that any significant question exists that, prior to the 1959 amendments to Section 315, the fairness doctrine was not statutorily required by any express statutory provision or by the general public interest standard of the Communications Act. It has been generally conceded that, before those amendments, the fairness doctrine had evolved as an aspect of the Commission's discretionary authority to formulate policies consistent with the broad public interest. Indeed, many different authorities have recounted the various legislative efforts made to include language requiring fair treatment of public questions and how they were considered and rejected by Congress both prior to and subsequent to adoption of the Radio Act,[135] as well as when the Communications Act itself was enacted.[136] Thus, far from being a statutory requirement, these early expressions of legislative intent suggest that, prior to 1959, a serious question existed concerning whether the Commission possessed sufficient authority to enact any fairness-type obligations without express congressional authorization.[137]

98. For this reason, we believe that the appropriate focus for purposes of this inquiry turns on Congress' enactment of the *Act of September 14, 1959, supra,* which resulted in statutory amendment of section 315 of the Communications Act and, more specifically, inclusion of the statutory language at the end of that section which appears to reference the fairness doctrine. In undertaking this review, we note, at the outset, that the chief purpose of the 1959 amendments was to address, in an expedited fashion, a specific problem that was facing Congress at the time; namely, to correct an erroneous Commission interpretation of the equal opportunities requirement in section 315.[138] In its *Lar Daly* decision,[139] the Commission had ruled that the section 315 "equal opportunities" requirement should be applied to appearances of political condidates on newscasts. After the Commission's decision, however, Congress was warned by broadcasters that this novel interpretation could cause a virtual blackout of radio and television news covereage of political campaigns, including that of the upcoming national political conventions.[140] Determined to prevent such a result, Congress was forced to take swift action to provide legislative exemptions for news-type programming. Accordingly, Congress adopted legislation, remedial in nature, to amend section 315 for the express purpose of providing exemptions from the equal opportunities requirement for news casts, news interviews, news documentaries, and on-the-spot coverage of news events on broadcast stations.

99. At the end of the exemption language, Congress added a sentence that apparently references the second prong of the Commission's fairness doctrine. That sentence, which appears in the present version of the Act, reads as follows:

> Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of news casts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

47 U.S.C. 315(a). This proviso contains the statutory language that raises the question whether Congress meant to impose statutorily on broadcasters the fairness doctrine in its entirety, meant to ensure by the statutory language that the Commission would apply the doctrine to issues concerning candidates in news programs exempted from the reach of the equal opportunities requirements, or merely meant to acknowledge but not disturb the Commission's existing regulatory efforts in this area. In the paragraphs below, we shall explore each of these alternative interpretations.

100. One construction of the effect of the 1959 amendments which, in our estimation, appears reasonable based upon an *overall* analysis of the legislative history is that Congress did not intend to strip this agency of complete discretion in this area but rather, by referencing the fairness doctrine obligations, merely intended to ensure that the Commission would continue to apply the fairness doctrine in the political broadcasting realm to ensure that the underlying purposes of the equal opportunities requirements would not be defeated by abuse of the newly created news exemptions. In support thereof, we note that, on its face, the statutory language appears to relate only to a possible misconstruction of the newly enacted news exemptions set forth in the main body of the 1959 amendments to section 315. This less restrictive statutory construction not only appears to comport with the literal language of the proviso but support for this view can also be found in the legislative history.[141]

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[135] *See, e.g., Staff Study of the House Committee on Interstate and Foreign Commerce, Legislative History of the Fairness Doctrine,* 90th Cong., 2d Sess. (Comm. Print. 1968) (hereafter "*Staff Study*"); *see also* Simmons, *supra,* at 50–53 (1978); and *Red Lion, supra,* at 381–82 n. 11, describing the pre-1959 legislative history as "inconclusive" with regard to whether the public interest standard during that period was broad enough to encompass fairness doctrine obligations. Moreover, a finding that the public interest standard expressly required this one set of obligations would appear to be at odds with the fact that this standard was intended to be flexible and, accordingly, had not been construed previously to mandate any other particular obligation on the part of broadcasters. *See, e.g., United States* v. *Southwester Cable Co.* v. *United States,* 392 U.S. 157, 180 (1968) ("This Court has recognized that 'the administrative process [must] possess sufficient flexibility to adjust itself' to the 'dynamic aspects of radio transmission,' *FCC.* v. *Pottsville Broadcasting Co., supra,* at 138, and that it was precisely for that reason that Congress declined to 'stereotyp[e] the powers of the Commission to specific details . . . . *National Broadcasting Co.* v. *United States, supra,* at 219."); *Computer and Communications Industry Assoc.* v. *FCC,* 693 F. 2d 198 (D.C. Cir. 1982) ("In designing the Communications Act, Congress sought to endow the Commission with sufficiently elastic powers such that it could readily accommodate dynamic new developments in the field of communications" (footnote omitted)).

[136] *See Staff Study, supra,* at 9–20.

[137] *Id.* at 13, concluding that "[t]hese legislative events would appear to cast serious doubt on the proposition that the Fairness Doctrine, at least in substance, is a necessary corollary of the 'public interest' standard contained in the Radio Act, and carried forward into the 1934 Communications Act."

[138] *See, e.g., S. Rep. No. 562,* 86th Cong., 1st Sess. 8–9 (1959); *H.R. Rep. No. 802,* 86th Cong., 1st Sess. 2–4 (1959).

[139] 26 FCC 715 (1959).

[140] *See, e.g.,* 105 Cong. Rec. 14447 (Remarks of Senator Hartke).

[141] As the United States Court of Appeals for the District of Columbia Circuit recently cautioned: Construing a statutory term, however, requires more than a superficial and isolated examination of the statute's plain words. Ascertaining congressional intent requires us to examine the "context in which statutory words are set—the statute's purpose, structure, and history. . . ." (citations omitted).

Multi-State Communications, Inc. v. *FCC,* Case Nos. 83–1296 & 1325 (D.C. Cir. decided March 6, 1984), slip opinion at 6. In our estimation, this is especially the case here. *See also Viacom International Inc.* v. *FCC,* 672 F. 2d 1034, 1040 (2d Cir. 1982) ("While it is true that when clear and

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101. The legislative history, when viewed in the broader context of the fundamental objective of the 1959 amendments, does not suggest that Congress intended to focus its primary attention on the fairness doctrine. As indicated earlier, the legislative activity at the time was motivated by an equal time problem, not a fairness doctrine issue.[142] Congress was anxious to enact legislation as quickly as possible and, accordingly, concerted efforts were made to restrict the content of the amendments to the matter of immediate concern—the news exemptions—and to avoid forays into extraneous and sensitive programming issues that might delay the legislation by generating extensive controversy among the members.[143] Indeed, except for limited references to the "standard of fairness", there was very little discussion of the Commission's general fairness doctrine, or its legal and policy implications, in the hearings, the congressional debates or the legislative documents. These expressions of general concern about expediting the legislation by confining its scope, along with the absence of any significant discussion of fairness doctrine issues at the committee level, provide support for the view that an expansive interpretation of congressional intent is not warranted.

102. Moreover, both the original Senate and House bills (*i.e.*, as reported to the floor by committee) focused solely on providing news exemptions to the equal time provisions of section 315. Neither of these bills contained any language which suggested references to the fairness doctrine. The Senate Report did, however, contain some references to the Commission's existing policies in this area. In particular, the Senate Report, in an effort to address a concern that certain candidates could be favored as a result of the news exemptions, sought to clarify that the exemptions were not intended to

> diminish or affect in any way Federal Communications Commission policy or existing law which holds that a licensee's statutory obligation to serve the public interest is to include the broad encompassing duty of providing a fair cross section of opinion in the station's coverage of public affairs and matters of public controversy. This standard of fairness applies to political broadcasts not coming within the coverage of section 315 such as speeches by spokesmen for candidates as distinguished from the candidates themselves.

S. Rep. No. 562, at 13.

103. The Report further explained that its desire to clarify the import of the exemptions was largely in response to views expressed by the Department of Justice in a July 1, 1959, letter. Thus, the Report went on, "[i]nclusion of such language [i.e., the news exemptions] in any amendment to Section 315 *should not be construed as limiting the station's obligation to present conflicting views on public issues to the political situations covered in section 315 of the Act—those exempted via this legislation." Id.* at 13 (emphasis added).

104. Because the language finally adopted in the statute is substantially similar in content to that language emphasized above from the Senate Report, we believe that a close examination of its genesis may be especially relevant to an accurate understanding of the legislative intent behind the statute. The Department of Justice letter, which was the source of the Senate Report's language, was also appended to the Senate Report. That letter explained that

> *[i]n the area of newscasts treating political events,* the public interest, to our view, is best served, not by section 315's flat equal time stringencies, but by good-faith adherence to licensees' time-honored obligation of insuring fair and balanced presentation of programs where political or other controversial issues are treated (FCC Public Notice 6305, Oct. 1, 1958, p. 1) [3]
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> * * * * *
>
> [3] Should the Congress adopt the FCC proposal, care should be taken lest present requirements of fair treatment for public issues be weakened. Thus the FCC proposal specified that this proviso shall not exempt licensees who broadcast such news and special events from an objective presentation thereof in the public interest. However, under existing law, the Commission has held that a licensee's statutory obligation to serve the public interest includes the broad all-encompassing duty of providing a fair cross section of opinion in the station's coverage of public affairs and other matters of controversy. *See FCC Report on Editorializing by Broadcast Licensees,"* 1 Pike & Fisher R.R. (pt. III), p. 91:201, et seq.). *This general fairness standard is presently applicable to political broadcasting not coming within the coverage of section 315 (such as speeches by spokesmen for candidates), as contrasted with the candidates themselves,* [citations omitted] *It would automatically be applicable to any additional types of political programming which might be exempted from the coverage of section 315. Inclusion of such language in any amendment to section 315 should not be construed as limiting the station's obligations to present conflicting views on public issues to the particular political situations covered in section 315 of the act, or those exempted via this legislation.*

Id. at 19 (emphasis added).

105. The foregoing suggests that the purposes of the Justice Department and FCC recommendations were merely to ensure that the news exemptions did not affect existing Commission policies that had prevented evasion of the equal opportunities requirements when programming fell outside the literal terms of section 315.[144] As the Justice Department letter makes clear, the Commission's ability to enact such safeguards stemmed, not from section 315 itself, but from its broad authority to enact regulations under the general public interest standard.[145]

106. As pointed out previously, the statutory language ultimately included in section 315 is substantially similar to the language in the Senate Report described above, which, in turn, stemmed from the views expressed by the Justice Department. Therefore, it appears that the purpose of the statutory language may have been to address the same concerns that had prompted inclusion of this language in the Senate Report; that is, to guard against any

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unequivocal, the language of a statute is the best and most reliable index of its meaning, it is also true that the surest way to misinterpret a statute or a rule is to follow its literal language without reference to its purpose") (citations omitted).

[142] *See, e.g.,* Simmons, *supra,* at 50–51.

[143] *See e.g.,* 105 Cong. Rec. 16228 (Remarks of Representative Harris) ["Now it is my hope that we can give our attention to the purposes of this bill and to what is involved. I hope that we will not get too far afield into some of the things that can easily arise in the consideration of a sensitive problem like this"]; *see also* 105 Cong. Rec. 16241 (Remarks of Representative Harris). It is also evident that House members had sharply contrasting views on such programming issues generally. Compare, for example, the views of Representative May, 105 Cong. Rec. 16232, who believed the news exemptions would be a step in the right direction to repeal of Section 315, thereby according broadcasters the same First Amendment freedoms as enjoyed by the press, with those of Representative Coad, who offered an amendment that would impose an equal opportunities requirement for "representatives of any political or legislative philosophy." 105 Cong. Rec. 16245. In his view, the Commission could implement the provision by enacting rules of "fair play," but, under those rules, "the extraneous and nuisance groups would be eliminated. The un-American groups would be eliminated." *Id.* This proposal was voted down after Representative O'Brien remarked that legislation as to such matters would be too complex and controversial. *Id.* at 16246. In his view it was sufficient that the FCC and the industry be on notice to "beware of blatant departure from objectivity, because everyone in this House, regardless of party, feels that the worst calamity which could happen to this Nation would be a one-party broadcasting industry. . . ." *Id.*

[144] This might occur, for example, by the broadcast of speeches by spokesmen for candidates, which technically were not broadcast "uses" covered by Section 315.

[145] Indeed, the very fact that the Department of Justice, in speaking of the "time honored obligations," merely referred to the Commission's 1949 *Report on Editorializing* and "the Commission's holding" concerning the statutory public interest obligation suggests that the referenced public interest obligations were apparently regarded as stemming from the Commission's own interpretation of the public interest standard and not viewed as deriving from an express mandate of Congress.

possible misinterpretation that the legislation would allow broadcasters to evade the equal opportunities requirements by presenting biased news coverage of favored candidates.

107. In addition, the Conference Committee Report, which briefly describes the statutory language, also appears to be supportive, rather than contradictory, of the foregoing interpretation.[146] That Report, which contains only a brief discussion of the provision in question, explains that the statutory language is not "inconsistent" with the bill passed by the House (which did not contain any similar fairness-type proviso) but merely is a "restatement of the basic policy of the 'standard of fairness' which is imposed on broadcasters under the Communications Act of 1934."[147] The Conference Report's reference to the "standard of fairness" contained in the Statement by the House Managers, however, is the identical terminology used by the Commission in commenting upon an earlier House version of the bill and the problems that might arise if news exemptions were enacted. The context in which the term "standard of fairness" was used apparently stemmed from concerns relating to the equal opportunities requirements rather than concern that the fairness doctrine obligations apply beyond the realm of political broadcasts. In this regard, we note that the Commission had specifically recommended that, with enactment of the news exemptions, the "standard of fairness" imposed under section 315 should be supplanted by the less restrictive "fairness" standard.[148] According to the Commission, this approach would permit licensees a measure of judgment as to which candidates could participate in news programming within the exemptions, but would not permit broadcasters to engage in blatantly biased news coverage of particular candidates. More specifically, the Commission had stated:

[I]n reappraising the present standards of section 315 to determine whether those standards should be relaxed with respect to appearances on such programs, there are several factors which we feel Congress should take into consideration. Most obvious of these is the argument that in most cases, exposure of a candidate on radio or television can be extremely valuable to a candidate's prospects of success. Similarly, it has been argued that denial of equal opportunity in the use of a station after one's opponents have been exposed on such a station would place a candidate at a disadvantage.

* * * * *

Apparently in recognition of the value of broadcasting to political candidates, Congress determined in enacting section 18 of the Radio Act, the predecessor to section 315, that the *appropriate standard of fairness* was one which required a station to treat all candidates for the same office on equal terms. *This measure of fairness called for by the present standard of equal opportunities prevents a licensee from exercising its discretion in determining which candidates represent sufficiently important political views to merit the use of a broadcast station.* . . . Furthermore, over the years, in applying section 315 to new fact situations, the Commission has considered that the only way of carrying out the unconditional congressional mandate that all candidates for the same office shall be treated equally in terms of affording access to a station's facilities was by bringing under section 315 uses which, it has been argued, do not come within the intent of that section.

* * * * *

As we understand it, if H.R. 7985 were enacted, it would relax the present standards of section 315 to provide that irrespective of whether or not participation in such a program by one candidate enhanced his prospects of success, it would still be permissible to deny other candidates for that office the same opportunity in procuring exposure via radio or television. In other words, under the proposed standards, a station would not be required—as it must under the present wording of section 315(a)—to treat all candidates for the same office on the same terms when it came to appearances on programs of the type specified. Rather, *a licensee would be free to exercise its discretion regarding which candidates should be allowed to appear and participate in such programs. Thus, while a licensee could not, consistently with its statutory obligation to program in the public interest, limit itself to permitting the dissemination of only those selected political viewpoints it found unobjectionable, it would be free to exercise a measure of judgment as to which candidates could participate in programs of the type specified.*[149]

Since the FCC's recommendation had been included in the original House Report on the proposed legislation, it can reasonably be assumed that the House conferees were familiar with that recommendation. Thus, it appears that what the House conferees had in mind in their reference to the "standard of fairness" may have been the matters that had been earlier described by the Commission in its use of the identical language, namely, that the equal opportunities requirements not be subverted by creation of these new exemptions.[150]

108. This interpretation of the Conference Report language is also suggested by the earlier House Report. As noted earlier, the House version of the bill did not contain any fairness type language. The House Report did stress, however, that enactment of the news exemptions should nevertheless result in "substantial (as distinguished from absolute) equality of opportunity for qualified political candidates, with respect to appearances on radio and television . . .," *Report* at 4, and emphasized that "the Commission make every effort to protect candidates from manifestly unfair selective coverage." *Report* at 7. Again, this language in the House Report was apparently included in response to the FCC recommendation discussed above, which had reached a similar conclusion. In addition, we would note that the Conference Report's brief description of the statutory

[146] *H.R. Rep. No. 1069*, 86th Cong., 1st Sess. (1959). *But see* discussion *infra*, at ¶117.

[147] *Id.* at 5.

[148] *See H.R. Rep. No. 802, supra*, at 15.

[149] Also appended to the House Report was a Commission public notice which further explained the relationship between section 315 and "general public interest concepts of political broadcasts not falling within the provisions of section 315." This FCC public notice, which was also read into the Senate Record, 105 Cong. Rec. 14458, and was referred to in the Justice Department recommendation to the Senate, clarified that the issues relating to Section 315 discussed therein related: solely to obligations of broadcast licensees under section 315 of the Communications Act and is not intended to treat with the wholly separate question of the treatment by broadcast licensees in the public interest of political or other controversial programs or discussions not falling within the specific provisions of that section. With respect to the responsibilities of broadcast stations for insuring fair and balanced presentation of programs not coming within section 315, but relating to important public issues of a controversial nature including political broadcasts, licensees are referred to the Commission's Report, "Editorializing by Broadcast Licensees" (Vol. 1, Part 3 R.R. 91–201) and the cases cited therein. In this respect it is particularly important that licensees recognize that the special obligations imposed upon them by the provisions of section 315 of the Communications Act with respect to certain types of political broadcasts do not in any way limit the applicability of general public interest concepts of political broadcasts not falling within the provisions of section 315 of the Communications Act. On the contrary, in view of the obvious importance of such programming to our system of representative government is is clear that these precepts, as set forth in the Report referred to above, are of particular applicability to such programming.

Id. at 20–21. Therefore, it appears that virtually all of the documentation in support of both the Senate and House proposals focused exclusively on FCC interpretations of the general public standard as they related to political programming and the equal opportunities requirement in Section 315.

[150] We note that Representative Harris also strongly reiterated these same views on the House floor, observing that: Broadcasting facilities, and particularly television broadcasting facilities, are limited in number throughout the country and subject to Government licensing, and the limited facilities available play a vitally important role in our political life. For this reason, this has to be considered most carefully. Access of political candidates to these limited facilities should be governed by the rule of substantial equality of opportunity—and I repeat—should be governed by the rule of substantial equality of opportunity which is embodied in Section 315. 105 Cong. Rec. 16229 (emphasis added).

language as not being "inconsistent" with the House bill, also appears to comport with the view that the House conferees believed the statute merely restated the views previously expressed both in the House Report and the FCC recommendation relative to the broadcast of political matter.

109. The House and Senate debates, when read in their entirety, can also be viewed as generally supporting this interpretation. Although the debates contain virtually no mention of the actual paramenters of the fairness doctrine policy, the doctrine is obliquely referred to in several instances as "the standard of fairness" imposed by a broadcaster's obligation to operate in the public interest. In virtually all cases, however, the references to a "fairness standard" appear to have been made in response to the concerns expressed by those members who feared that enacting the news exemptions would allow broadcasters to present biased news coverage of candidates, thereby evading the equal opportunities requirement in Section 315 of the Act.[151] In every such instance, the fairness standard appears to be cited as the means by which the Commission could prevent such occurrences.

110. Indeed, we note that, in response to these concerns, the Senate had earlier adopted an amendment to the bill introduced by Senator Proxmire, which appeared to contain an affirmative statement of congressional intent to impose fairness type obligations on broadcasters.[152] Although Senator Proxmire may have intended his amendment to apply to a broader range of matters than those relating to political candidates and issues, it appears that what was foremost in the minds of most Senators during the debates was the applicability of the Proxmire amendment to political races and candidates. *See* 105 Cong. Rec. 14457. For example, Senator Hartke questioned

> Whether this can be a proper interpretation of section 315, when the amendment provides that all sides of the controversy shall be presented, and when section 315 itself does not go to all sides of a controversy, but has reference only to candidates?
>
> In my own mind, I do not think the amendment deals with the subject matter and in no way clarifies it. In my opinion, it serves only to confuse the issue even further . . . .

In response, Senator Proxmire assured questioners such as Senator Long that the intent of the amendment was merely to ensure that "news treatment by a television station should not be limited to one candidate when he was making news, as against another candidate who might also be making some news . . . having in mind . . . that at least there should be on the television station the burden and the duty of being fair in that connection." *Id.* at 14462. Proxmire also assured Senator Keating that the amendment was intended to be "a protection of substantial significance to a minor party candidate," *id.* at 14457, and Senator Javits that it was intended to protect Liberal Party candidates in New York. On the strength of this assertion, Senator Javits supported the bill, noting

> that the Liberal Party actually issues a statement of principles or precise policies upon specific pieces of proposed legislation. It represents a point of view or a side of a public issue. . . . I believe that is what the Senator from Wisconsin is trying to accomplish within a practical sense. This is experimental . . . and if we tried to be more specific we really would be lost. So I believe all of us would be wise to go along with the amendment of the Senator from Wisconsin.

Id. at 14458. Even though the language of the so-called Proxmire amendment was significantly modified by the Conference Committee (which proposed the existing statutory language),[153] it appears that the concerns which led to its adoption in the Senate may have been identical to those mentioned in the Senate Report; namely, to ensure fair new coverage of political candidates.

111. The vast majority of the debates which occurred when the Conference Report was submitted to the respective bodies of Congress also are consistent with a more limited interpretation of the statutory language. Although the conferees devoted significant attention to describing the statutory language at issue,[154] with one exception,[155] there was no meaningful or significant discussion of specific application of the standard of fairness other than in relation to political candidates.[156]

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[151] *See, e.g.*, 105 Cong. Rec. 14445, 14440 (Remarks of Senator Pastore); 105 Cong. Rec. 16227 (Remarks of Sen. Harris) [". . . broadcast licensees] would continue to remain subject to their present statutory obligation to operate in the public interest. Under this general, overall standard of licensee responsibility, the Commission requires a licensee to be fair in the presentation of opposing views on controversial public issues. This would mean that . . . a station still would not be free, under the proposed exemption of news programs, to present news regarding political candidates in a partisan manner."]

[152] *See* 105 Cong. Rec. 14462–3. As adopted by the Senate, the Proxmire amendment provided: but nothing in this sentence shall be construed as changing the basic intent of Congress with respect to the provisions of this Act, which recognizes that television and radio frequencies are in the public domain, that the license to operate in such frequencies requires operation in the public interest, and that in newscasts, news interviews, news documentaries, on-the-spot coverage of news events, all sides of public controversies shall be given as fair an opportunity to be heard as is practically possible.

[153] The *Staff Study, supra*, at 25–26, notes that there were significant differences between the Proxmire amendment and the language finally adopted by Congress, since the former referred to the "basic intent of Congress" whereas the latter referred only to "the obligations imposed upon them under this Act." In *Red Lion, supra*, the Court in dictum remarked upon this difference suggesting that the Proxmire amendment "constituted a positive statement of doctrine and was altered to the present merely approving language in the conference committee." 395 U.S. 383–84. The significance of this chaneg is unclear, but the Court's decision does suggest that the final amendments may have reflected only approval of the Commission's then-existing policies rather than constituting a mandate not to depart from those policies in the future. This additional ambiguity as to the legal effect of the Section 315 amendments, however, might appear to reinforce the view that the statutory language should not be broadly construed but should be read at most as encompassing only those matters upon which Congress had clearly focused during passage of the legislation.

[154] The rather substantial degree of attention given this part of the Section 315 amendments during the final debates is in marked contrast to the scant attention given to this language in the Conference Report. One possible explanation for this may be that the conferees sought to assuage the objections their fellow colleagues might have over the changes made to the respective bills to ensure that expeditious passage of the equal time exemptions would not be threatened. Therefore, in meeting these concerns, they may have attached more importance to the proviso's language than the Conference Committee report itself had accorded the language. Thus, for example, because the final legislation appeared to represent a retreat from the stronger language of the Proxmire amendment to the "merely approving" language ultimately enacted into law, Senators Scott and Pastore, in anticipating such concerns, explained that they had "insisted on" maintaining "the spirit" of the Proxmire amendment. Similarly, because the conferees had significantly expanded the scope of the news exemptions along lines recommended by the Senate rather than the House, Chairman Harris, in defense of the House conferees' action, indicated that the proviso's language was added in exchange for the expansion of the exemptions to provide additional safeguards against possible discriminatory news coverage candidates.

[155] That exception is found in the remarks of Senator Scott, 105 Cong. Rec. 17831. *See* para. 118, *infra*. Because no similar assertions regarding the broad scope of the legislation were made during the House debates on the final legislation, we have reservations whether these remarks should be construed as constituting persuasive evidence that Congress intended to mandate application of the Commission's fairness doctrine outside the political contexts that had preoccupied Congress prior to passage of this legislation.

[156] *Accord*, Staff Study, *supra*, at 26. *See* 105 Cong. Rec. 17829 (Remarks of Senator Engle) ("I propose to watch the administration of this act with great care, because I regard it as a matter of vital importance to the political situation in America that we have complete fairness, equality of treatment, and objective handling of the news and political candidates during periods of elections; *id.* at 17830 (Remarks of Senator Pastore) [(The provision) . . . "to be a continuing reminder to the Federal Communications Commission and to the broadcasters alike that we were not abandoning the philosophy that gave birth to section 315 . . ."]; *id.* at 17831 ["Section 315 was written into the law not to promote any one candidate . . . but . . . to give the public the advantage of a full, complete and exhaustive discussion, on a fair opportunity basis,

Continued

Moreover, Representative Harris cautioned during the House debates that guidance as to the meaning of the amendment should be derived chiefly from the Conference Report and not from any individual views and convictions expressed by the conferees.[157]

12. We further note that when the Commission's requirement of fairness was discussed, generally in connection with its application in a political context, some House and Senate members expressed their understanding that the Commission examined licensee compliance with such obligations only every three years when licenses were presented for renewal.[158] Indeed, Senator Moss expressed the belief that because an obligation of fairness could be tested only a renewal, the new statutory language was "virtually meaningless," and that the news exemptions had therefore resulted in a "backdoor repeal" of section 315.[159] Similarly, others expressed the opinion that the statutory language was little more than a "vague, general" requirement, or that it "was impossible to legislate fairness."[160] We query whether these statements are relevant to our inquiry into the Congressional intent in enacting the 1959 amendments.

113. The statutory interpretation that Congress intended to impose fairness doctrine obligations only in the political contexts that were the subject of the other section 315 amendments also appears to be in accord with the Supreme Court's decision in *Red Lion, supra*, at 382, where the Court, in upholding the personal attack and political editorializing rules, recognized that "the objectives of section 315 could readily be circumvented" by broadcasters banning all campaign appearances by candidates themselves while, instead, featuring the supporters of one candidate or slate of candidates to the exclusion of others. The Court observed that "the fairness doctrine as an aspect of the obligation to operate in the public interest rather than § 315" prohibits a broadcaster "from taking such a step" and, specifically stated that "[t]he legislative history reinforces this view of the effect of the 1959 amendment."[161]

114. The foregoing analysis of the legislative history suggests that we may indeed have the legal authority to substantially alter the fairness doctrine particularly with respect to its applicability to areas outside the political arena and, accordingly, we invite comment upon that authority. However, even assuming that we do have such administrative discretion, it would appear that, in exercising such discretion, we would still be required, at a minimum, to maintain adequate safeguards to ensure against the possibility of abuses in broadcast news coverage of political matters, e.g., by retention of the doctrine to political candidates and political issues in order to comport with section 315 of the Act. In this connection, in a presently pending rule making, we specifically requested comments "directed to the manner in which the Zapple doctrine might be applied to broadcasters if the political editorial rule is repealed."[162] Similarly, we invite comment on the most effective, but least restrictive, regulatory measures that would be required to ensure that Congressional intent is safeguarded consistent with the statutory analysis provided above.

115. By the same token, we are fully aware that support can be mustered for the opposite view that Congress did in fact intend to impose by statute general fairness doctrine obligations on broadcasters. Indeed, we have assumed, but without giving the matter extensive consideration, that our discretion was removed by enactment of the 1959 amendments. For example, in responding to an inquiry from Representative Harris, Chairman of the House Committee on Interstate and Foreign Commerce, concerning the Commission's practice of acting as promptly as possible on fairness complaints, we stated that "since 1959 the Communications Act imposes the specific obligation of fairness upon the broadcast licensee."[163] Similarly, the following year, in a public notice entitled "Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance", we observed that "Congress recognized this [fairness doctrine] policy in 1959" and we expressed the view that "Section 315 thus embodies both the 'equal opportunities' requirement and the fairness doctrine."[164] In our previous

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to all legally qualified candidates . . .]: 105 Cong. Rec. 17778 (Remarks of Rep. Harris) ["The great problem is that on the local level a broadcaster might set up panel discussions or news interviews . . . which constitute an effort to take advantage of some political candidates. That is not . . . permitted. Such program has to be . . . bona fide . . . and regularly scheduled. Then we went further than that to be sure that there was no advantage taken by broadcasting industry or any one else and reaffirmed the "standard of fairness" established under the Communications Act."]: *id.* at 17778–79:

Mr. Avery. * * * I wondered, while the gentleman was in the well * * * if he would not address himself to the proposition that the test of the standards of fairness still prevails in the basic act irrespective of any changes that we have made in section 315; and it applies not only to political candidates, but issues and editorializing by licensees as well.

Mr. Harris. The gentleman is eminently correct. He will remember as he was one of the conferees, that we discussed this particular item and everyone agreed that the standard of fairness must prevail, and applies to the programs which will be exempted from the equal-time requirement of Section 315.

[157] 105 Cong. Rec. 17781. In this connection, it is also pertinent to note the views of Chairman Harris, expressed barely four years after passage of the 1959 amendments, that the fairness doctrine is not an express statutory requirement. *See Letter to Honorable Oren Harris*, 40 FCC 582 (1963). Since Rep. Harris played an instrumental role in securing passage of the 1959 legislation, his views on this issue are particularly enlightening.

[158] *See e.g.*, 105 Cong. Rec. 14445, wherein Senator Pastore responded to the concern of Senator McCarthy that enactment of the exemptions could result in biased coverage of candidates, by stating that

It is the firm conviction of the Senator from Rhode Island that irrespective of Section 315, if an act of that kind were deliberate in an effort to discriminate to the disadvantage of the cause of one candidate, in comparison to the cause of another candidate, those doing the broadcasting would be subject to a complaint and a protest being made at the time they went before the Commission for the renewal of their license, because under the law this medium is considered to be in the public domain. That is the other safeguard there would be.

Mr. McCarthy. What would happen? That would take place 2 or 3 years afterwards.

Mr. Pastore. That is correct. That is positively correct.

As against that situation, I suppose the Senator would recognize that there are many legitimate broadcasts in which the element of discrimination or disadvantage to an opposing candidate is not the feature.

The situation the Senate has presented today is with respect to a newspaper, as compared to television or radio. I am not saying that this abuse could not happen. I am not making that argument at all. The fact remains that there is a calculated risk involved, and we must weigh it.

[159] 105 Cong. Rec. 17779.

[160] 105 Cong. Rec. 17781 (Remarks of Rep. Brown); 105 Cong. Rec. 16246 (Remarks of Rep. O'Brien) [. . . 1 million words in a bill would not force anyone to be fair. We are going to have unfairness in this field no matter what we write. . . .].

[161] 395 U.S. at 382–383.

[162] *Repeal or Modification of the Personal Attack and Political Editorial Rules (Notice of Proposed Rule Making in Gen. Docket No. 83–484, supra.* Under the Zapple doctrine, if spokespersons for or supporters of one political candidate purchase air time for the broadcast of a discussion of the candidate or campaign issues, the station licensee cannot refuse to sell time to spokespersons or supporters of another candidate. *See Nicholas Zapple*, 23 FCC 2d 707 (1970).

[163] *See Letter to Honorable Oren Harris, supra*, at 586. As described by the Commission, Chairman Harris' letter had stated that: with specific statutory exceptions such as in the political broadcast field and section 317, the authority and responsibility of the Commission with regard to programs "is limited to determining periodically whether or not the licensee on an overall basis has performed in the public interest." [Because] the fairness doctrine [is] not one these specific statutory exceptions, [it] should be applied periodically [i.e., at the time of renewal] and upon an overall basis.

Id. at 583.

[164] 29 Fed. Reg. 10415, 10416 (July 25, 1964).

notice of inquiry into the fairness doctrine commenced in 1971, we expressed a similar view stating that the "Commission cannot abandon the fairness doctrine" because "[t]he Communications Act is explicit in th[is] respect[]." [165]

116. We also recognize that, at first blush, this interpretation may seem to be the one most readily drawn from a reading of the statute and its legislative history notwithstanding the statutory analysis provided above. It can be argued, for example, that the very inclusion in the statute of language referencing the Commission's fairness doctrine is itself considerable evidence of Congressional intent to make fairness doctrine obligations statutorily binding. In addition, it can be argued that, even though neither the original Senate nor House bill contained any explicit reference to the fairness doctrine, as indicated earlier, nevertheless, the fact that the final bill passed by both Houses specifically included a modified version of the Proxmire amendment referencing the fairness doctrine can be viewed as evidencing a Congressional intent to bind broadcasters to the tenets of the fairness doctrine.[166]

117. We are also aware that the Conference Committee Report and, in particular, the express statement of the Conferees explaining the statutory language in question, can be construed as evincing Congress' intent to impose the specific obligation of fairness on broadcasters rather than the more limited interpretation suggested in the previous paragraphs. In this regard, the Conferees stated:

> The conferees feel that there is nothing in this language which is inconsistent with the House substitute. It is a restatement of the basic policy of the "standard of fairness" which is imposed on broadcasters under the Communications Act of 1934.[167]

118. We also note that at least one statement made during the final Senate debate on the bill provides evidence that the language ultimately enacted was interpreted by at least some legislators as applying to all broadcasts concerning issues and controversies. In particular, we refer to following comments by Senator Scott relating to the bill eventually passed both the House and Senate:

> * * * I am very much concerned that in this limited area of the airwaves if we in Congress attempt to restrict too closely the freedom of the press, which already is more limited in that area than in any other of the media * * * in my judgment, the time will come when the Supreme Court will strike down whatever we have done in an attempt to bail out the Federal Communications Commission for some future unfortunate decision. Therefore, I think we ought to be exceptionally carefully to provide as much freedom of expression on radio and television as we possibly can.
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> * * * * *
>
> If the decision were left to me alone * * * I should repeal section 315 entirely, but that is a minority point of view, and it arises entirely from my respect for the right of the people to be absolutely free in the expression of their point of view, subject only to protection of the criminal and the civil statutes against misuse and abuse of privileges.
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> * * * * *
>
> We have maintained very carefully the spirit of the Proxmire amendment, and I ought to point out what I do not think has yet been explained, that the phrase "To afford reasonable opportunity for the discussion of conflicting views on issues of public importance" does not refer merely to political discussions as such or to opposing views of political parties or of candidates. It is intended to encompass all legitimate areas of public importance which are controversial, and there are many, as we know, which pertain to medicine, to education, and to other areas than political discussion, and it is intended that no one point of view shall gain control over the airwaves to the exclusion of another legitimate point of view.
>
> * * * * *
>
> In other words, this amendment is designed to establish for future reference certain criteria as to equal time and a fair discussion of controvery * * * I believe that we have not in any sense dangerously or critically expanded the law. On the contrary, I think we have expanded the freedom of individuals and the freedom of this particular medium as contemplated in the first amendment to the Constitution.[168]

119. In addition, the Supreme Court's affirmance of the personal attack and political editorial rules in the *Red Lion* case can be viewed as adding weight to the view that Congress, by adding the proviso appearing at the end of section 315, intended to impose a statutory obligation of fairness on broadcasters. This view turns on the Court's references, in dicta, to the fairness doctrine as being "ratified", 395 U.S. at 382, and finding "specific recognition in statutory form," *id.* at 381. Similarly, the plurality opinion in *CBS* v. *DNC*, discussed more fully previously, states on two occasions that the 1959 amendments "give statutory approval" to the fairness doctrine, *id.* at 111 n. 8 and 114 n. 12, and Justice Stewart, in his concurring opinion in the case, notes that "[t]he basis for a fairness doctrine is statutory," *id.* at 142 n. 12.[169] For these reasons, we also invite comment on the interpretation that the 1959 amendment was intended to codify the second prong of the fairness doctrine as it applies to all controversial issues of public importance.

120. As indicated earlier, although support exists for the view that Congress *may* have intended to make the fairness doctrine a statutorily binding requirement on broadcasters, nevertheless, the legislative history does not evince a *clear* Congressional intent to foreclose our statutory discretion to modify or repeal general fairness doctrine obligations. What the legislative history does reveal very

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[165] *Study of Fairness Doctrine, Notice of Inquiry, supra*, at 26–27. As indicated previously, our position rested on the assumption that the statutory nature of the doctrine was a "given" and therefore never focused on the question. *See* n. 7 and accompanying text, *supra*. In recent proceedings, however, we have expressed considerably more reticence toward reliance upon that assumption. *See, e.g., Deregulation of Commercial Television Stations, supra*.

[166] This view arguably finds additional support in the following colloquy between Senators Douglas and Proxmire concerning the intended effect of the original Proxmire amendment:

> Mr. Douglas: As I see it, the wording of the amendment puts into the act the declaration which the committee itself made on page 13 of its report, but it reinforces that declaration by making it a part of the statute, and hence binding, whereas the report is merely of a persuasive nature but is not controlling.
>
> Mr. Proxmire: The Senator is exactly correct. The purpose is the same as expressed on page 13 of the committee report.

105 Cong. Rec. 14457. However, as noted in paragraph 102, the language from page 13 of the above-referenced report stemmed from concerns that broadcasters might favor certain candidates through the newly created exemptions.

[167] *See*, "Statement of the Managers on the Part of the House," *H.R. Rep. No. 1069*, 86th Cong., 1st Sess. 5 (1959).

[168] 105 Cong. Rec. 17831. As indicated earlier, however, Senator Scott's statement appears to be the only remarks made during the House and Senate debates that reflect a congressional intent to accord the statutory language in question an expansive meaning. Of interest here, we note that in 1971, Senator Scott introduced S. 956, the "Federal Election Reform Act of 1971" which, if enacted, would have, *inter alia*, unequivocally made the fairness doctrine a statutory requirement for broadcasters. That bill, however, was not enacted.

[169] However, the only unambiguous statement alluding to the effect of Section 315 appears not in *Red Lion* but in the dissent in *CBS* v. *DNC, supra*, at 385, by Justice Brennan with whom Justice Marshall (both of whom participated in the earlier *Red Lion* decision). Justice Brennan wrote:

> The Fairness Doctrine originated early in the history of broadcast regulation and,* rather than being set forth in any specific statutory provision, developed gradually in a long series of Commission rulings in particular cases.
>
> *the Fairness Doctrine was recognized and implicitly approved by Congress in the 1959 amendment to § 315 of the Communications Act.

Although there are a number of post *Red Lion* decisions that contain dicta concerning the effect of the 1959 amendments, they do not squarely address the question and, therefore, do not appear to be determinative of the question. *See, e.g., Larus & Bros. Co.* v. *FCC*, 447 F. 2d 876 (4th Cir. 1971); *Public Interest Research Group* v. *FCC*, 522 F. 2d 1060 (1st Cir. 1975); *but see Straus Communications, Inc.* v. *FCC*, 530 2d 1001 (D.C. Cir. 1976); *Office of Communication of the United Church of Christ* v. *FCC, supra*.

clearly is that Congress' principal concern was that the Commission continue to ensure that possible abuses in broadcast coverage of political campaigns do not occur. In this regard, we note that the *Staff Study, supra,* at 8, takes the similar position that Congress' intent at most was to make "the new language added to section 315(a) by the 1959 amendments, to apply to political matters, and especially to the treatment of candidates for public office on news programs." Just as that study does not specifically rule out other "alternative hypotheses", *id.*, similarly, we also do not wish to foreclose in this proceeding consideration of possible alternatives and solutions besides those described above. In particular, we seek comment on the possible interpretation that Congress did not intend to impose by statute any part of the fairness doctrine and its obligations. In this regard, it bears repeating what the Supreme Court said in *Red Lion, supra,* at 383–384, about the original Proxmire amendment:

> Rather than leave this approval solely in the legislative history, Senator Proxmire suggested an amendment to make it part of the Act. 105 Cong. Rec. 14457. This amendment, which Senator Pastore, a manager of the bill and a ranking member of the Senate Committee, considered "rather surplusage," 105 Cong. Rec. 14462, constituted a positive statement of doctrine and was altered to the present merely approving language in the conference committee.

Accordingly, we also seek views on the possibility that Congress may not have intended any statutory codification of the fairness doctrine at all.

IV. Conclusion

121. As observed earlier, the Supreme Court in *CBS* v. DNC, at 102, pointed out that "the broadcast industry is dynamic in terms of technological change," and, for this reason, "solutions adequate a decade ago are not necessarily so now and those acceptable today may well be outmoded 10 years hence." A preliminary analysis of the legal and policy underpinnings of the fairness doctrine and policy suggests that, while the imposition of these obligations on broadcasters may not have been an ill-conceived remedy for perceived First Amendment ills originally when the 1949 *Report on Editorializing* was adopted, continuance of these obligations now or in the future may be at odds not only with the very same First Amendment goals underlying their foundation but with other First Amendment principles in other areas of speech and expression. The mass media marketplace as presently constituted and as augmented in the future by entry of new and diverse program and information sources raises the question of the need for this doctrine in the broadcast area. In sum, questions exist over the need for continued governmental interference into the private journalistic discretion that the fairness doctrine occasions. For these reasons, we seek comment on the purposes, effects, relevancy and legality of continued imposition of the fairness doctrine including, but not limited to, the following questions:

(1) If a primary purpose of the fairness doctrine is, as pointed out in *Red Lion, supra,* at 390, to assure the public's access to diverse ideas, viewpoints, and experiences, is retention of the doctrine essential and desirable to achieving that end given the present mass media marketplace?

(2) In considering the primary purpose of the doctrine and the need for its retention, should we limit our focus to the broadcast media or should our examination include other electronic media such as cable television, multi-point distribution services, etc.? Should we consider information available from the print media as well?

(3) Should we be concerned that, without the fairness doctrine, broadcast licensee bias will result? If such occurs, is it necessarily inconsistent with the public interest? If the public has, in fact, access to diverse ideas, viewpoints, etc., would the availability of information sources, whether through broadcast media alone or through those and other nonbroadcast mass media as well, be sufficient to negate any possible ill-effects of individual broadcast licensee bias?

(4) Does the traditional basis for broadcast content regulation in general—that the airwaves are not available to all who wish to use them, i.e., the scarcity rationale—continue to be a justifiable basis for imposition of the fairness doctrine? What is the effect of the increasing decline in the number of the newspaper print media, i.e., daily newspapers, and expanding number of broadcast and nonbroadcast electronic media alike on this rationale?

(5) Is it appropriate to continue imposition of general fairness doctine obligations on broadcasters when other media, both electronic and print, are not hampered by such constraints in competing in the mass media marketplace?

(6) In view of the continuing convergence between traditional print media and electronic media through the development of such services as teletext, videotex, access to print media information through common carrier transmission facilities, cable facilities, personal home computers and in view of the traditional First Amendment freedoms accorded the print media, is retention of the fairness doctrine in the broadcast area constitutionally wise?

(7) Does the fairness doctrine contribute toward the First Amendment goal of encouraging "uninhibited, robust, and wide-open" debate on public issues, *New York Times* v. *Sullivan,* 376 U.S. 254, 270 (1964), or does it inhibit such exchange, i.e., what are the practical effects of administration of the doctrine on the public and on broadcast licensees?

(8) Is the Supreme Court's decision in *Miami Herald,* which held that a government mandated right of reply to newspaper editorials had an impermissible chilling effect on the exercise of a newspaper's editorial discretion, reconcilable with retention of general fairness doctrine obligations from the standpoint of the possible chilling effects of such obligations on broadcasters? From the standpoint of requiring broadcasters to present views "which their 'reason' tells them should not be published," *see Associated Press* v. *United States,* 326 U.S. 1, 20 n. 18?

(9) Because "the 'public interest' standard necessarily invites reference to First Amendment principles," *CBS* v. *DNC, supra* n. 13, is the fairness doctrine consistent with comtemporary First Amendment jurisprudence: which, for example, frowns generally upon government restricting First Amendment rights based upon the identity of the speaker, *see First National Bank* v. *Bellotti, supra?* which, in other areas, shows disfavor toward abridgement of First Amendment rights in order to enhance the First Amendment rights of others, *see Buckley* v. *Valeo, supra?* which disfavors government regulation of speech because such speech may be unduly persuasive or socially undesirable, *see Linmark Associates, Inc.* v. *Township of Willingboro, supra?*

(10) Is the fairness doctrine statutorily required under Section 315? under the general public interest standard of the Communications Act? If the fairness doctrine was codified, was it codified in its entirety or was only the second prong (balanced presentation) codified? If there is any limitation on the Commission's authority, is it solely related to remedying abuses arising from broadcast news coverage of political campaigns? arising from political news coverage in general?

(11) If the Commission does possess the statutory discretion to impose or not impose general fairness doctrine obligations on broadcast licensees, are there nevertheless public interest considerations that might militate against repeal or modification of the

doctrine? in favor of limited application of the doctrine, e.g., imposition of the *Zapple* doctrine, to ensure that the equal time provisions are not circumvented by broadcasters?

122. Authority for adoption of this notice of inquiry is contained in sections 4(i) and 403 of the Communications Act of 1934, as amended, and section 1.430 of the Commission's Rules and Regulations (47 CFR 1.430).

123. Pursuant to the applicable procedures set forth in § 1.415 of the Commission's Rules, interested persons may file comments on or before August 6, 1984 and reply comments on or before September 5, 1984. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file and provided that the fact of the Commission's reliance on such information is appropriately noted in final action taken in this proceeding.

124. In accordance with the provisions of § 1.419 of the Commission's Rules and Regulations, 47 CFR § 1.419, an original and 5 copies of all comments, reply comments, pleadings, briefs or other documents shall be furnished by the Commission. Members of the general public who wish to participate informally in the proceeding may submit one copy of their comments, specifying the docket number in the hearing. All filings in this proceeding will be available for public inspection by interested persons during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Separate Statement of Commissioner James H. Quello

Re: Section 73.1910 of the Commission's rules and regulations concerning the general fairness doctrine obligations of broadcast licensees, General Docket No. 84–282.

It is no secret that I have long advocated full First Amendment rights for the electronic media. I strongly endorse the thrust of this document which has many well-reasoned arguments and which should provoke thoughful comments. This Commission has an obligation to continually reexplore—for both its own benefit and for the benefit of Congress— any doctrine that precludes full exercise of journalistic rights by the electronic media. I think this is an extremely important initiative that the Commission has undertaken.

I would like to add that I shall be very interested in reviewing the comments concerning the Commission's statutory authority to revise the fairness doctrine. The Commission has long acquiesced in the view that the 1959 amendments to the Communications Act did effect a codification of the doctrine, and I believe that the burden of proof rests on those who seek to change this *status quo*. I trust that this issue will be addressed at length in the comments, and I look forward to examining the views of legal scholars on this issue.

[FR Doc. 84–12878 Filed 5–11–84; 8:45 am]
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Notices

Federal Register
Vol. 49, No. 94
Monday, May 14, 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.

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Subcommittee for Alcohol-Fuels Research; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, October 6, 1972, 86 Stat. 770–776), the United States Department of Agriculture announces the following closed meeting:

Name: Subcommittee for Alcohol-fuels Research of the Technical Advisory Committee for Science and Education Research Grants Program.

Date and time: June 7 and 8, 1984, Thursday—8:30 a.m. to 5:00 p.m., Friday—8:30 a.m. to 5:00 p.m.

Place: United States Department of Agriculture, Room 024, West Auditor's Building, 15th Street and Independence Avenue, Washington, D.C.

Type of meeting: Closed to the public.

Purpose of subcommittee: To provide advice and recommendation concerning support for research in the Alcohol-fuels Research Program.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of Section 10(d) of Pub. L. 92–463.

Contact person: Wayne K. Murphey, Forest Products Technologist, Manager, Alcohol-fuels Special Grants Program, United States Department of Agriculture, Room 115A, West Auditor's Building, Washington, D.C. 20251, Telephone (202) 447–2044.

John Patrick Jordan,
Administrator, Cooperative State Research Service.

[FR Doc. 84–12910 Filed 5–11–84; 8:45 am]
BILLING CODE 3410–22–M

Forest Service

Gypsy Moth Suppression and Eradication Projects; Record of Decision

Based on the environmental analysis, documented in the environmental impact statement, and a thorough review of all comments made at public meetings and comments received on the draft and final environmental impact statement, it is our decision to adopt Alternative 4. Alternative 4 provides for an integrated pest management (IPM) approach for gypsy moth suppression and eradication projects. The selected alternative is environmentally preferable to the others when physical, biological, economic, and social factors are weighed on balance.

The other alternatives considered and evaluated were:

1. No action;
2. Chemical insecticide treatment; and
3. Biological insecticide treatment.

On December 28, 1983, the draft EIS was filed with EPA. Notices were published on January 6, 1984 (49 FR 933), and on January 17, 1984 (49 FR 2001), announcing the availability and requesting comments on the draft EIS. Comments were accepted on the draft EIS through February 25, 1984.

All comments received pursuant to the notice of availability of the draft EIS were considered in the preparation of this final EIS. Further, on January 28, 1984, the United States District Court for the District of Oregon premanently enjoined any programs using aerial application of carbaryl in populated areas in Oregon (*Oregon Environmental Council* v. *Kunzman, et al.*). The court directed the defendants to fully consider all health risks of such spraying. In addition, several comments on the draft EIS indicated the need for further consideration of the human health effects associated with the use of insecticides or some type of worst case analysis associated with the proposed use of insecticides in gypsy moth eradication or suppression projects.

In response to these concerns, APHIS and the Forest Service have prepared a risk analysis, using worst case assumptions, which expanded upon the discussion in the draft EIS of the health risks associated with the use of acephate, carbaryl, diflubenzuron, and trichlorfon as used in gypsy moth suppression and eradication projects. This risk analysis was included in the final EIS and filed with the U.S. Environmental Protection Agency and made available to the public on March 16, 1984.

In order to provide further opportunity for public input before implementing any decision using assumptions and conclusions drawn from the risk analysis published in the final EIS, a 45-day public review and comment period was provided. A total of six comment letters were received during the review period which ended on May 7, 1984. Four of the comment letters stated that their concerns had been adequately addressed in the final EIS. One of these comment letters also supported adoption of Alternative 4 and further stated that the final EIS was complete and factual. The fifth comment letter responded that the final EIS, specifically the risk analysis, overestimated the human health risk from exposure to carbaryl and the carcinogenic potential of nitrosocarbaryl. The last comment letter was a receipt of notice letter.

The comment letters were reviewed in detail to determine if any concerns, issues, or data were presented that would alter or revise any of the assumptions or conclusions drawn from the risk analysis or influence the adoption of Alternative 4. No information was provided that would alter the selection of this Alternative for implementation in proposed cooperative gypsy moth suppression or eradication projects.

The decision to adopt Alternative 4 conforms with the Forest Service mission as defined in the Cooperative Forestry Assistance Act of 1978 (Pub. L. 95–313) to suppress or prevent pest population outbreaks by methods that will restore, maintain, and enhance the quality of the environment through cooperative efforts with Federal land managers, State Foresters, or equivalent State officials.

The decision also conforms with the Animal and Plant Health Inspection Service (APHIS) mission as outlined in

the Plant Quarantine Act of 1912 (7 U.S.C. 151–165 and 167), the Organic Act of 1944 (7 U.S.C. 147a), and the Federal Plant Protection Act of 1957 (7 U.S.C. 150aa—150jj). These authorities direct APHIS cooperative State regulatory programs to retard the artificial, long-range spread of the gypsy moth and to eradicate isolated infestations of the pest.

Implementation of an integrated pest management alternative in cooperative gypsy moth suppression and eradication projects provides adequate mitigation and monitoring measures to minimize environmental impacts of the techniques utilized, while maximizing established natural controls in the majority of areas affected by the insect.

Registered biological and chemical insecticides will be applied according to label directions. Appropriate public involvement, public notification, and utilization of mitigating measures for insecticide treatments will further reduce human exposure during periods of application.

The selected alternative will be carried out by the USDA Forest Service and the Animal and Plant Health Inspection Service through technical and financial assistance to cooperating State agencies. Decisions on Federal financial assistance will be made on the basis of site-specific environmental analyses made in compliance with the National Environmental Policy Act (NEPA) regulations, agency operating procedures, and other laws.

Dated: May 8, 1984.

F. Dale Robertson,

Associate Chief.

Dated: May 8, 1984.

James O. Lee, Jr.,

Acting Administrator.

[FR Doc. 84-12907 Filed 5-11-84; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-614-401]

Lamb Meat From New Zealand; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether lamb meat from New Zealand is being, or is likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are materially injuring, or are threatening to materially injury, a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before June 4, 1984, and we will make ours on or before September 25, 1984.

EFFECTIVE DATE: May 14, 1984.

FOR FURTHER INFORMATION CONTACT: Richard Rimlinger, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377–3965.

SUPPLEMENTARY INFORMATION:

The Petition

On April 18, 1984, we received a petition in proper form from counsel for the American Lamb Company, Chino, California, the Denver Lamb Company, Denver, Colorado, and the Iowa Lamb Corporation, Hawarden, Iowa, filed on behalf of the United States industry which is comprised of sheep ranchers, feed lot operators, and lamb meat packing and processing companies.

In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from New Zealand are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act), and that these imports are materially injuring, or are threatening to materially injure, a United States industry.

The allegation of sales at less than fair value is supported by comparing the U.S. price to the estimated foreign market value based on constructed value. The U.S. price is derived from price list quotes and the foreign market value is based on adjusted data published by the New Zealand Meat Producers Board.

Initiation of Investigation

Under section 732(c) of the Act, we must determine within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioners supporting the allegations. We have examined the petition on lamb meat, and we have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping investigation to determine whether lamb meat from New Zealand is being, or is likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by September 25, 1984.

Scope of Investigation

The merchandise covered by this investigation is lamb meat, currently classified under item number 106.30 of the *Tariff Schedules of the United States.*

Notification to ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information publicly either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by June 4, 1984, whether there is a reasonable indication that imports of lamb meat from New Zealand are materially injuring, or threatening to materially injure, a United States industry. If its determination is negative, the investigation will terminate, otherwise, it will proceed according to the statutory procedures.

Dated: May 8, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-12895 Filed 5-11-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-614-402]

Lamb Meat From New Zealand; Initiation of Countervailing Duty Investigation

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United

States Department of Commerce, we are initiating a countervailing duty investigation to determine whether producers or exporters in New Zealand of lamb meat, as described in the "Scope of Investigation" section of this notice receive benefits which constitute subsidies within the countervailing duty law. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are materially injuring, or are threatening to materially injure, a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before June 4, 1984, and we will make ours on or before July 12, 1984.

EFFECTIVE DATE: May 14, 1984.

FOR FURTHER INFORMATION CONTACT: Rick Herring, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230, telephone (202) 377-0187.

SUPPLEMENTARY INFORMATION:

The Petition

On April 18, 1984, we received a petition in proper form from counsel for the American Lamb Company, Chino, California, the Denver Lamb Company, Denver, Colorado, and the Iowa Lamb Corporation, Hawarden, Iowa, filed on behalf of the United States industry which is comprised of sheep ranchers, feed lot operators, and lamb meat packing and processing companies.

In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that producers or exporters in New Zealand of lamb meat receive subsidies within the meaning of section 771 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or are threatening to materially injure, a United States industry.

New Zealand is a "country under the Agreement" within the meaning of section 701(b) of the Act. Title VII of the Act, therefore, applies to this investigation and an injury determination is required.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioners supporting the allegations. We have examined the petition on lamb meat, and we have found that it meets the requirements of section 702(b) of the Act. Therefore, in accordance with section 720 of the Act, we are initiating a countervailing duty investigation to determine whether producers or exporters in New Zealand of lamb meat as described in the "Scope of Investigation" section of this notice receive subsidies. If our investigation proceeds normally, we will make our preliminary determination by July 12, 1984.

Scope of Investigation

The merchandise covered by this investigation is lamb meat, currently classified under item number 106.30 of the *Tariff Schedules of the United States.*

Allegations of Subsidies

The petition alleges that producers or exporters in New Zealand of lamb meat receive the following benefits that constitute subsidies:

- Minimum Price Guarantees for Exported Lamb Meat Under the Supplementary Minimum Prices Scheme (SMP) and Minimum Price Levels as Set by the Meat Export Prices Committee and Administered by the Meat Board.
- Loans and Loan Guarantees Provided to the Meat Export Development Company, the Sole Exporter of New Zealand Lamb Meat to the United States.
- Services Provided by the Meat Board.
- Government Grants for Meat Industry Hygiene.
- Income Tax Rebates Under the Export Performance Tax Incentive Scheme.
- Tax Credits for Export Market Development.
- Government Grants for Marketing Promotion Under the Exports Program Grants Scheme (EPGS).
- Loans Which Can be Converted to Grants Provided for Investment in Plants and Equipment Used to Increase Exports.
- Subsidies on Fertilizer Used by Farmers.
- Subsidies to Encourage the Application of Lime and Fertilizer.
- Subsidies on the Transport of Fertilizer.
- Subsidies Under the Noxious Plant Control Scheme to Assist Livestock.
- Suspension of Government Inspection Fees on Exported Meat.
- The Livestock Incentive Scheme Providing Benefits to Farmers that Increase the Number of Their Livestock.
- Preferential Land Development Loans Provided to Farmers by the Rural Banking and Finance Corporation.
- Special Methods to Value Livestock Inventory for Tax Purposes Under the Standard Value and Nil Value Program.

We will also investigate any other program found or uncovered during the course of this investigation that may confer a subsidy upon the production or exportation of New Zealand lamb meat.

We are not initiating on the following programs:

- Petitioners allege that the Meat Board contributes to the Lamb Promotion Coordinating Committee (LPCC) to support the consumption of lamb meat in the United States. The LPCC is comprised of representatives of the U.S. and New Zealand lamb industry. Their purpose is to promote the consumption of lamb meat in the U.S. without regard to the source of the lamb meat. Since there is no allegation that the program targets New Zealand lamb meat, the generic promotion does not constitute a subsidy to producers or exporters of lamb meat in New Zealand within the meaning of the countervailing duty law.
- Petitioners allege that deductions for capital expenditures used for the development of domestic farmlands provides a subsidy to producers of New Zealand lamb meat. This program is available to all farmers in New Zealand and, therefore, is not limited to "a specific enterprise or industry, or group of enterprises or industries" within New Zealand as specified in section 771(5)(B) of the Act. This allegation differs from the allegations regarding fertilizer subsidies to farmers and the preferential land development loans provided to farmers, on which we are initiating an investigation. Petitioners supplemented their petition to support their allegation that the fertilizer subsidies may in fact be utilized primarily to benefit livestock development. In the land development loan program priority is given to the development of pasture land for livestock grazing.

Notification to ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without

the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by June 4, 1984, whether there is a reasonable indication that imports of lamb meat from New Zealand are materially injuring, or threatening to materially injure, a United States industry. If its determination is negative, the investigation will terminate, otherwise, it will proceed according to the statutory procedures.

Dated: May 8, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-12894 Filed 5-11-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-357-001]

Leather Wearing Apparel From Argentina; Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of countervailing duty order.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on leather wearing apparel from Argentina. The review covers the period March 18, 1983 through June 30, 1983.

As a result of the review, the Department has preliminarily determined the total bounty or grant for the period to be 4.21 percent *ad valorem*. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 14, 1984.

FOR FURTHER INFORMATION CONTACT: Peggy Clarke or Lorenza Olivas, Office of Compliance, Room B-099, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 18, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 11480) the countervailing duty order on leather wearing apparel from Argentina and announced its intent to conduct an administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that review.

Scope of the Review

Imports covered by the review are shipments of Argentine leather wearing apparel. These products include leather coats and jackets for men, boys, women, girls and infants, and other leather apparel products including leather vests, pants, and shorts. Also included are outer leather shells and parts and pieces of leather wearing apparel. Such merchandise is currently classifiable under items 791.7620, 791.7640, and 791.7660 of the Tariff Schedules of the United States Annotated.

The review covers the period March 18, 1983 through June 30, 1983 and four programs: (1) The reembolso, a cash rebate of taxes; (2) an export tax on hides; (3) pre-export financing; and (4) incentives for exports from southern ports.

Analysis of Programs

The Government of Argentina provided an insufficient response to our questionnaire of July 15, 1983, nor was our follow-up request for information adequately answered. Therefore, we are using the best information otherwise available.

(1) Reembolso

The reembolso is a cash rebate of taxes, paid upon exportation of merchandise as a percentage of the f.o.b. invoice price. Although the Government of Argentina rebates upon exportation all indirect taxes borne by the exported product, the Tariff Act and the Commerce Regulations allow the rebate of only the following: (1) Indirect taxes borne by inputs that are physically incorporated in the exported product (*see* Annex 1.1 of part 355 of the Commerce Regulations) and (2) indirect taxes levied at the final stage (*see* Annex 1.2 of part 355 of the Commerce Regulations). If the tax rebate upon export exceeds the total amount of allowable indirect taxes described above, the Department considers the difference to be an overrebate of indirect taxes and therefore a subsidy.

On July 6, 1982, the reembolso rate was lowered to 5 percent for leather wearing apparel and to 0 percent for parts and pieces thereof. In its response, the Government of Argentina provided no study of the tax incidence on these products. Therefore, we are considering the full amount of the reembolso to be an overrebate.

According to statistics from the U.S. Bureau of the Census (IM 145s), 84.24 percent of the imports during the review period were of leather wearing apparel and 15.76 percent were of parts and pieces thereof. Based on this information, we calculated the benefit from this program to be 4.21 percent *ad valorem*.

(2) Export Tax on Hides

Resolution ME No. 1870 of October 28, 1980 established a 10 percent export tax on raw bovine hides. That level of tax remained in effect until July 7, 1982, when Resolution ME No. 8 raised the export tax to 25 percent. Exporters must pay the tax within 8 working days of the date of shipment to avoid a penalty.

Section 771(5) of the Tariff Act states that domestic subsidies are countervailable "if provided or required by government action to a specific enterprise or industry, or group of enterprises or industries." The Department does not believe that users of hides and leather comprise a group of industries within the meaning of section 771(5). Leather is used not only to produce apparel and accessories, but also for such items as furniture and automobile upholstery, oil seals, gaskets, book bindings, and sporting goods.

Moreover, even if we were to consider the users of leather to be a "specific group of enterprises or industries," we would still find the export tax not to be countervailable. The argument that such a tax is countervailable is based upon the assumption that the government has caused the Argentine price of the input to the leather apparel industry to drop through the use of the export tax (because less is exported, domestic supply increases and the per unit price falls). Actual prices, however, depend upon a complicated interaction of domestic and international supply and demand elasticities. Absent a showing of an actual reduction in the input price, we cannot conclude that the export tax has reduced the domestic price of hides.

(3) Preferential Preexport Financing

By law, exports of leather wearing apparel to the United States are ineligible for this program. Therefore, we find no benefit was received.

(4) Incentives for Exports From Southern Ports

By law, exports of leather wearing apparel are ineligible for this program. Therefore, we find no benefit was received.

Preliminary Results of the Review

As a result of our review, we preliminarily determine the total bounty or grant conferred to be 4.21 percent *ad valorem* for the period of review. Accordingly, the Department intends to instruct the Customs Service to assess

countervailing duties of 4.21 percent of the f.o.b. invoice price on any shipments entered, or withdrawn from warehouse, for consumption on or after March 18, 1983 and exported on or before June 30, 1983.

As provided by section 751(a)(1) of the Tariff Act, the Department intends to instruct the Customs Service to collect cash deposits of estimated countervailing duties of 4.21 percent of the entered value on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with seciton 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) amd § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: May 5, 1984.45

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 84-12889 Filed 5-11-84; 8:45 am]

BILLING CODE 3510-DS-M

Indiana University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made 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 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 82-00055R. Applicant: Indiana University, Bloomington, IN 47405. Instrument: Infrared Reflectography Equipment. Original notice of this resubmitted application was published in the **Federal Register** of December 23, 1981.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign article achieves ±1% distortion at the outer edge with the monitor screen and a bandwidth of at least 9 MHz thereby providing the highest possible resolution. The National Bureau of Standards advises in its memorandum dated February 3, 1983 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(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. 84-12891 Filed 5-11-84; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; Purdue University, et al.

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), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 p.m. in room 1523, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C.

Docket No. 84-174. Applicant: Purdue University, FREH Building, W. Lafayette, IN 47907. Instrument: Heating Specimen Holder, Model SHTH. Manufacturer: JEOL, Ltd., Japan. Intended use: The instruments are accessories to an existing electron microscope which is being used for research of the following: microsyntactic intergrowth, modulated (or multiperiodic) structures, interface structures and their effects on electrical characteristics, sulfide minerals, hot pressing and swelling behavior of nuclear fuels, amorphous and crystalline magnetic materials, and the study of pore size and cross linking in polymeric materials. Application received by Commissioner of Customs: April 12, 1984.

Docket No. 84-175. Applicant: Massachusetts General Hospital, Fruit Street, Boston, MA 02114. Instrument: Electron Microscope, Model JEM-1200 EX with Accessories. Manufacturer: JEOL, Japan. Intended use: Studies of biological material, including tissue and cell specimens and purified proteins from animals. The experiments to be conducted will include three-dimensional analysis of filamentous elements in stereo micrographs, antibody and gold labelling, flexibility studies on purified proteins. These studies will increase the understanding of how cells move, a process essential to life. The instruments will also be used to train potential research scientists in the courses: Hematology Elective #512 M.3 and Oncology Elective #519 M.3. Application received by Commissioner of Customs: April 12, 1984.

Docket No. 84-176. Applicant: St. Jude Hospital and Rehabilitation Center, 101 E. Valencia Mesa Drive, Fullerton, CA 92634. Instrument: (Used) Electron Microscope, Model EM 109 with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: Electron microscope analysis of tissues taken from patients during surgery for diagnosis. The diagnosis will then directly relate to the subsequent treatment of the patient as well as to prognostic information concerning the patient.

Studies of tissues taken from patients during surgery or as biopsy tissues. Application received by Commissioner of Customs: April 12, 1984.

Docket No. 84-177. Applicant: University of Rochester, School of Medicine and Dentistry, 601 Elmwood Avenue, Rochester, NY 14642. Instrument: Electron Microscope, Model EM 10 CA with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: Study of the connections (synaptic interactions) of new hormone-containing nerves in the brains of rats and mice. In general, work will be conducted on normal (non-treated) animals. Brain tissues will be processed by new methods which permit visualization of the hormones together with good preservation of the

tissue. The overall objective of this work is to understand the role of these nerve systems in functions of the brain. Application received by Commissioner of Customs: April 12, 1984.

Docket No. 84–178. Applicant: University of North Carolina, Chapel Hill, Chapel Hill, NC 27514. Instrument: Electron Microscope, Model EM 10 CA with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: A variety of structural studies corresponding to the diverse research needs of the users in the Department of Biology. The specific projects include:

(1) Determination of the mechanisms that regulate the assembly of spindle microtubules and move the chromosomes.

(2) Examination of the development of the prothoracicotropes by immunocytochemistry from egg to adult and the determination if one prothoracicotrope secretes big PTTH and the other small PTTH.

(3) Studies of the re-alignment of collage fibers.

(4) Determination of the mechanisms of tumorigenesis by a bacterium, *Agrobacterium tumefaciens.*

(5) Studies of the timing and mechanism of genetic recombination during meiosis.

Educational purposes—Teaching methods and techniques for high resolution imaging of biological molecules and cell structures. Application received by Commissioner of Customs: April 12, 1984.

(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. 84–12893 Filed 5–11–84; 8:45 am]

BILLING CODE 3510–DS–M

Temple University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made 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 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 83–234. Applicant: Temple University, Philadelphia, PA 19122. Instrument: Portable Video Camera and Recorder Set Up, Model HR2200 and Accessories. Manufacturer: Japanese Victor Corp. (JVC), Japan. Intended use: See notice at 48 FR 31648.

Comments: None received.

Decision: Denied. Because the article possesses no scientific value for the purposes for which it is intended, a prima facie case is not presented upon which to base a finding of scientific equivalency.

Reasons: Item 851.60 of the Tariff Schedules of the United States (TSUS) provides, *inter alia,* for duty-free treatment with respect to "Articles entered for the use of any nonprofit institution, whether public or private, established for educational or scientific purposes * * * If no instrument or apparatus of *equivalent scientific value for the purpose for which the instrument or apparatus is intended to be used* is being manufactured in the United States" (Emphasis supplied). The law provides that the Secretary of Commerce, whose authority has been delegated to this Office, is to determine "Whether an instrument or apparatus of equivalent scientific value to such (the foreign) article, for the purposes for which the instrument or apparatus is intended to be used, is being manufactured in the United States" (headnote 6(c), Schedule 8, Part 4, TSUS). In order to make the determination of scientific equivalency, it is clear that some scientific use for the foreign article, whether educational or research must be intended.

Although the applicant is an eligible educational institution and the foreign article falls within the tariff items eligible for duty-free consideration, the intended use of the instrument is not scientific and the applicant does not claim that it is.

Consequently, the Department cannot ascribe a scientific value to the article for the purposes for which it is to be used. The National Institutes of Health also advises in its memorandum dated September 15, 1983 that the applicant describes no use in scientific interchange.

In view of the intended use of the article and the above stated requirements of Pub. L. 89–651 (Item 851.60, TSUS), the Department cannot make the finding on scientific equivalency upon which duty-free entry must be conditioned. Therefore, pursuant to § 301.5(d)(1)(iii) of the regulations, the application is denied (see also application of German Educational Television Network, Ltd., Doc. No. 80–00298 published in 46 FR 38946 (July 30, 1981)).

(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. 84–12887 Filed 5–11–84; 8:45 am]

BILLING CODE 3510–DS–M

Texas A&M University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made 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 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No: 84–28. Applicant: Texas A&M University, College Station, TX 77843. Instrument: Isotope Mass Spectrometer, Model MAT 251 with Accessories. Manufacturer: Finnigan Corporation, West Germany. Intended Use: See notice at 49 FR 1782.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument (1) can handle small samples of gas (0.03 micro mol of CO_2; 1 micro liter in size) and (2) provides an external precision of ±0.01% and an internal precision of 0.008% with CO_2 samples down to 0.05 micro mol. The National Bureau of Standards advises in its memorandum dated Apri. 6, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(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. 84–12890 Filed 5–11–84; 8:45 am]

BILLING CODE 3510–DS–M

Applications for Duty-Free Entry of Scientific Instruments; Texas Tech University, et al.

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), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined 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.: 84–185. Applicant: Texas Tech University, Department of Industrial Engineering, P.O. Box 4130, Lubbock, TX 79409. Instrument: (Modified) Two Respiration Gas Meters, Model 59. Manufacturer: Gesellschaft fur Geratebau, West Germany. Intended use: The instruments will be used to measure ventilation volumes of miners while they perform various tasks such as roof bolting, shoveling, stoop walking, etc. Sampling of expired air is required to determine oxygen concentration in the expired air and consequently accurate evaluation of the energy expenditure. The objective of this research is to develop a simple procedure for identifying imminent danger in mines due to heat stress. Application received by Commissioner of Customs: April 12, 1984.

Docket No.: 84–187. Applicant: Virginia Polytechnic Institute & State University, Department of Materials Engineering, 201 Holden Hall, Blacksburg, VA 24061. Instrument: Electron Microscope, Model EM 420T with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended use: Studies of polymers, metals, and ceramics. Primary emphasis will be the study of surfaces as related to adhesional characteristics of polymers and their metal substrates. Microstructural characteristics of present and potential new tank track pad elastomers will also be studied with special attention to the nature of phase separation in multiphase polymers and blends. Studies of new structures produced by ion implantation in metals will also be performed along with determination of the mechanistic details involved in the diffusion of implanted species. Application received by Commissioner of Customs: April 18, 1984.

Docket No.: 84–189. Applicant: DHHS, Centers for Disease Control, Division of Vector-Borne Viral Diseases, P.O. Box 2087, Ft. Collins, CO 80522. Instrument: Electron Microscope, Model 410LS. Manufacturer: Philips Electronic Instruments, The Netherlands. Intended use: Studies of Arboviruses that are regarded as potentially infectious to man or domestic animals. The experiments to be conducted will be related to physicochemical, morphology, morphogenesis, genetic and immunological interrelationships of the Arbovirus group. Application received by Commissioner of Customs: April 18, 1984.

Docket No.: 84–190. Applicant: University of Colorado, Health Sciences Center, 4200 East Ninth Avenue, Denver, CO 80262. Instrument: Used Mass Spectrometer with Data System, Model 7070 EHF. Manufacturer: VG Micromass, Ltd., United Kingdom. Intended use: Biological studies which include:

(1) The structure elucidation of complex glycolipopolysaccharides isolated from the pathogenic bacteria *Mycobacterium leprae* and *M. kansaii*,

(2) Quantitative analysis of steroid conjugates in urine, plasma and salvia using stable isotopes as reference compounds,

(3) Verification of the biologically important compounds that are generated during laboratory synthesis,

(4) Investigation of amino acid sequence of tryptic peptides derived from phosphoproteins generated during mucin secretion in rat submandibular gland, and

(5) Structural analysis of leukotriene C_4/D_4 and phospholipid analysis.

Application received by Commissioner of Customs: April 18, 1984.

(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. 84–12688 Filed 5–11–84; 8:45 am]

BILLING CODE 3510–DS–M

University of Miami; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made 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 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 84–49. Applicant: University of Miami, Miami, FL 33149. Insturment: Oxygen Meter, Radiometers, Model #781b and Accessories. Manufacturer: Strathkelvin Instruments, Scotland. Intended use: See notice at 49 FR 3502.

Comments: None received.

Decision: Approved. No insturment of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides the necessary sensitivity and range, and the small size of its electrode tip minimizes required stirring of the test medium. The National Institutes of Health advises in its memorandum dated April 2, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(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. 84–12892 Filed 5–11–84; 8:45 am]

BILLING CODE 3510–DS–M

[A–609–037]

Canned Bartlett Pears From Australia; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Antidumping Finding.

SUMMARY: On February 28, 1984, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on canned Bartlett pears from Australia. The review covers the two known exporters of this merchandise to the United States and the period March 1, 1982 through February 28, 1983. There were no known shipments of this merchandise to the United States during

the period and there are no known unliquidated entries.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the peliminary results.

EFFECTIVE DATE: May 14, 1984.

FOR FURTHER INFORMATION CONTACT: Susan M. Crawford, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377–1130.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 7262) the preliminary results of its administrative review of the antidumping finding on canned Bartlett pears from Australia (38 FR 7566, March 23, 1973). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of canned Bartlett pears from Australia, currently classifiable under item 148.8600 of the Tariff Schedules of the United States Annotated.

The review covers the two known exporters of this merchandise to the United States, S.P.C. Limited and Ardmona Fruit Products, and the period March 1, 1982 through February 28, 1983.

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results. The Department received no written comments or requests for a hearing. Based on our analysis, the final results of our review are the same as those presented in the preliminary results. Since there have been no shipments since 1973, we determine to waive the requirement of cash deposits of estimated antidumping duties, as provided for in § 353.48(b) of the Commerce Regulations, on any shipment of Australian canned Barlett pears entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This waiver shall remain in effect until publication of the final results of the next administrative review. The Department intends to begin immediately the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information in the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

May 5, 1984.

[FR Doc. 84–12915 Filed 5–11–84; 8:45 am]

BILLING CODE 3510–DS–M

[A–122–050]

Racing Plates (Aluminum Horseshoes) From Canada; Preliminary Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of antidumping finding.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on racing plates (aluminum horseshoes) from Canada. The review covers the three known manufacturers and/or exporters of this merchandise to the United States and the period February 1, 1983 through January 31, 1984. The review indicates the existence of dumping margins for one firm during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value on its sales during the period. Where company-supplied information was inadequate or no infomation was received in response to our questionnaire, we used the best information available for assessment and estimated antidumping duties cash deposit purposes. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 14, 1984.

FOR FURTHER INFORMATION CONTACT: Linda L. Pasden or Susan M. Crawford, Office of Compliance, International Trade Administration, Department of Commerce, Washington, D.C. 20230, telephone: (202) 377–5255/1130.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 37679–80) the final results of its last administrative review of the antidumping finding on racing plates (aluminum horseshoes) from Canada (39 FR 54388, February 27, 1974) and announced its intent to conduct immediately its next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of racing plates (aluminum horseshoes) that are used on race horses, polo, jumping, hunting, and other performing horses, as differentiated from pleasure and work horses, are made of aluminum, may have cleats or caulks, and come in a variety of sizes. Racing plates are currently classifiable under item 652.4200 of the Tariff Schedules of the United States Annotated.

The review covers the three known manufacturers and/or exporters of Canadian racing plates to the United States and the period February 1, 1983 through January 31, 1984.

Canadian Racing Plate Co. Limited did not ship such Canadian racing plates to the United States during the period. The estimated antidumping duties cash deposit rate for that firm will be its most recent rate. Niagara Forge Inc. failed to respond to our questionnaire. For that non-responsive firm, we used the best information available to determine the assessment and estimated antidumping duties cash deposit rates. The best information available is the most recent rate for that firm.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the packed duty-paid price to unrelated purchasers in the United States with deductions, where applicable, for U.S. duty and brokerage fees. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed ex-factory price. We disallowed claimed adjustments for differences in advertising and credit costs because they were not adequately

quantified. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist for the period February 1, 1983 through January 31, 1984:

Manufacturer/exporter	Margin (percent)
Canadian Racing Plate Co. Ltd.	[1] 31.94
Equine Forgings Ltd.	0
Niagara Forge, Inc.	6.77

[1] No shipments during the period.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, dumping duties on all appropriate entries.

The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based upon the above margins shall be required on all shipments of Canadian racing plates for those firms. The Department shall not require a cash deposit of estimated antidumping duties for future entries from a new exporter not covered in this or prior reviews, whose first shipments of racing plates (aluminum horseshoes) occurred after January 31, 1984 and who is unrelated to any reviewed firm. These deposit requirements are effective for all shipments of Canadian racing plates entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

May 5, 1984.

[FR Doc. 84-12913 Filed 5-11-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-007]

Sheet Piling From Canada; Preliminary Results of Administrative Review of Suspension Agreement

AGENCY: International Trade Administration.

ACTION: Notice of preliminary results of administrative review of suspension agreement.

SUMMARY: The Department of Commerce has conducted an administrative review of the agreement to suspend the antidumping investigation on sheet piling from Canada. The review covers Acier Casteel, Inc., a manufacturer and exporter of this merchandise to the U.S., and the period September 15, 1982 through August 31, 1983. The review indicates a *de minimis* margin for the period.

As a result of the review, the Department has preliminarily determined that Acier Casteel has complied with the terms of the suspension agreement. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 14, 1984.

FOR FURTHER INFORMATION CONTACT: Ron Nichols or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-5255/3601.

SUPPLEMENTARY INFORMATION:

Background

On September 15, 1982, the Department of Commerce ("the Department") published in the Federal Register (47 FR 40683) a notice of suspension of the antidumping duty investigation on sheet piling from Canada and announced its intent to conduct an administrative review of the suspension agreement, as provided for in section 751 of the Tariff Act of 1930 ("the Tariff Act"). The Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of sheet piling of iron or steel, currently classifiable under items 609.9600 and 609.9800 of the Tariff Schedules of the United States Annotated.

The review covers Acier Casteel Inc., a manufacturer and exporter of Canadian sheet piling to the United States, and the period September 15, 1982 through August 31, 1983.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the f.o.b. price, including duty and brokerage fees, to unrelated purchasers in the United States with adjustments for distributor discounts, customs duties, and brokerage fees. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act. Home market price was based on the ex-factory price to unrelated purchasers with adjustments for distributor discounts and differences in the physical characteristics of the merchandise. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that a margin of 0.05 percent exists for Acier Casteel, Inc. for the period September 15, 1982 through August 31, 1983. Since the margin was less than 0.5 percent and, therefore, *de minimis* for purposes of compliance with the suspension agreement, we preliminarily determine that Castell has complied with the terms of the agreement.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and /or a hearing within 10 days of the date of publication. Any hearing , if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made within 5 days of the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: May 5, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-12916 Filed 5-11-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-104]

Strontium Nitrate From Italy; Preliminary Results of Administrative Review of Antidumping Duty Order and Tentative Determination To Revoke

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of antidumping duty order and tentative determination to revoke.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping duty order on strontium nitrate from Italy. The review covers the one known exporter of this merchandise to the United States and the period June 1, 1982 through May 31, 1983. The review indicates the existence of no dumping margins for the period.

As a result of the review, the Department has tentatively determined to revoke the order. Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: May 14, 1984.

FOR FURTHER INFORMATION CONTACT: Linda L. Pasden or Susan M. Crawford, Office of Compliance, International Trade Administration, Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-5255/1130.

SUPPLEMENTARY INFORMATION:

Background

On October 3, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 45140-1) the final results of its last administrative review of the antidumping duty order on strontium nitrate from Italy (46 FR 32864, June 25, 1981) and announced its intent to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of strontium nitrate, a chemical compound $Sr(No_3)_2$, currently classifiable under item 421.7400 of the Tariff Schedules of the United States Annotated.

The review covers the one known exporter of Italian strontium nitrate to the United States, Societa Bario e Derivati S.P.A. ("SABED"), and the period June 1, 1982 through May 31, 1983.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the ex-factory packed price with a deduction, where applicable, for a discount for "caked merchandise." No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used the price to purchasers in a third country (Switzerland), as defined in section 773 of the Tariff Act, because there were no sales of such or similar mechandise in the home market. Third-country price was based on the f.o.b. delivered price with adjustments, where applicable, for inland freight, insurance, customs fees, and differences in packing costs. No other adjustments were claimed or allowed.

Preliminary Results of the Review and Tentative Determination to Revoke

As a result of our comparison of United States price to foreign market value, we preliminarily determine that no dumping margins exist for the period June 1, 1982 through May 31, 1983.

The Department has concluded that all sales of Italian strontium nitrate manufactured and exported by SABED were made at not less than fair value for at least a two-year period. SABED has applied for revocation and, as provided in § 353.54(e) of the Commerce Regulations, SABED has agreed in writing to an immediate suspension of liquidation and reinstatement of the order if circumstances develop which indicate that Italian strontium nitrate manufactured and exported by SABED to the United States is being sold by SABED at less than fair value.

Therefore, we tentatively determine to revoke the order on strontium nitrate from Italy. If this revocation is made final, it will apply to all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made within 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall instruct the Customs Service not to assess dumping duties on all appropriate entries.

Further, the Department shall not require a cash deposit of estimated antidumping duties, as provided for in § 353.48(b) of the Commerce Regulations, on shipments of Italian strontium nitrate entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review, tentative determination to revoke, and notice are in accordance with sections 751 (a)(1) and (c) of the Tariff Act (19 U.S.C. 1675 (a)(1), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53 and 353.54).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

May 5, 1984.

[FR Doc. 84-12914 Filed 5-11-84; 8:45 am]

BILLING CODE 3510-25-M

[A-588-054]

Tapered Roller Bearings and Certain Components Thereof From Japan; Preliminary Results of Administrative Review of Antidumping Finding, Tentative Determination To Revoke in Part, and Intent To Revoke in Part

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of antidumping finding, tentative determination to revoke in part, and intent to revoke in part.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on tapered roller bearings and certain components thereof from Japan. The review covers 44 of the 52 known manufacturers and/or exporters of this merchandise to the United States currently covered by the finding and varying periods through July 31, 1981. The review indicates the existence of dumping margins for certain firms during particular periods.

As a result of the review the Department has preliminarily

determined to assess dumping duties equal to the calculated differences between United States price and foreign market value on each of their sales during the periods of review. Where company-supplied information was inadequate or no information was received, the Department used the best information available for assessment and estimated antidumping duties cash deposit purposes. The Department has tentatively determined to revoke the finding with respect to Fuji Heavy Industries, Ltd., Kawasaki Heavy Industries, Ltd., Nissan Motor Co., Ltd., Suzuki Motor Co., Ltd., and Yamaha Motor Co., Ltd., and intends to revoke the finding with respect to Honda Motor Co., Ltd. Interested parties are invited to comment on these preliminary results, tentative determination to revoke in part, and intent to revoke in part.

EFFECTIVE DATE: May 14, 1984.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger or Robert Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On March 9, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 8976) the final results of its first administrative review of the antidumping finding on tapered roller bearings and certain components thereof, 4 inches or less in outside diameter when assembled, from Japan (41 FR 34974–34975, August 18, 1976) and announced its intent to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review. In addition, in the context of its notice of preliminary results of review, published on September 1, 1981 (46 FR 43864), the Department published a tentative determination to revoke the finding with respect to Honda Motor Co., Ltd. The substantive provisions of the Antidumping Act of 1921 ("the 1921 Act") and the appropriate Customs Service regulations apply to all unliquidated entires made prior to January 1, 1980.

Scope of the Review

Imports covered by the review are shipments of tapered roller bearings, 4 inches or less in outside diameter when assembled, including inner race or cone assemblies and outer race or cups, exported to and sold in the United States either as a unit or separately. Such merchandise is currently classifiable under items 680.3932, 680.3934, and 680.3938k of the Tariff Schedules of the United States Annotated.

The review covers 44 of the 52 known manufacturers and/or exporters of Japanese tapered roller bearings and certain components thereof to the United States currently covered by the finding and varying periods through July 31, 1981.

Thirteen firms did not export Japanese tapered roller bearings and certain components thereof to the United States during the latest review period. The estimated antidumping duties cash deposit rates for those firms will be the most recent rate for each firm. Thirteen firms failed to respond to our questionnaire or provided inadequate responses to our questionnaire. For those non-responsive firms we used the best information available to determine the assessment and estimated antidumping duties cash deposit rates. The best information available is the most recent rate for each firm or the highest current rate for a responding firm with shipments during the relevant review period, whichever is higher.

The Department received information from one Japanese firm, Mitsubishi Corporation, that it has never exported Japanese tapered roller bearings and certain components thereof to the United States. The Department has decided not to include that firm in this section 751 review or in future reviews. This is not a proposal to revoke the findings with respect to that firm. Should that firm begin exporting the covered merchandise to the United States, we shall treat it as a new exporter.

United States Price

In calculating United States price the Department used purchase price or exporter's sales price ("ESP"), as defined in section 772 of the Tariff Act or section 203 and 204 of the 1921 Act, as appropriate.

Purchase price was based either on the f.o.b. packed price to an unrelated purchaser in the United States or to an unrelated Japanese trading company for export to the United States, as appropriate. Exporter's sales price was based on the packed, delivered price to the first unrelated purchaser in the United States. Where applicable, we made deductions for ocean freight, insurance, U.S. and foreign inland freight, U.S. duty, brokerage charges, the U.S. subsidiary's selling expenses in ESP calculations, commissions to unrelated parties, and terminal, wharfage and handling charges. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773(a) of the Tariff Act or section 205 of the 1921 Act, when sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. The Department used the price to unrelated purchasers in third countries, as defined in section 773(a)(1)(B) of the Tariff Act or section 205 of the 1921 Act, when there were insufficient quantities of such or similar merchandise sold in the home market. We made adjustments, where applicable, for inland freight, insurance, discounts, and differences in costs of credit, warranty, technical services, advertising, and packing. We made further adjustments, where applicable, for indirect selling expenses in order to offset commissions on U.S. sales paid to unrelated parties and certain indirect selling expenses to offset U.S. selling expenses for ESP calculations. We disallowed claims for certain indirect selling expenses to offset U.S. selling expenses because they were not properly quantified. No other adjustments were claimed or allowed.

Preliminary Results of the Review, Tentative Determination To Revoke in Part, and Intent To Revoke in Part

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Auto Dynamics Int'l of Japan	08/01/80–07/81	16.07
Caterpillar Mitsubishi Ltd.	08/01/80–07/31/81	16.07
Central Automotive	01/01/77–03/31/78	16.92
	04/01/78–07/31/80	16.07
	08/01/80–07/31/81	16.07
Daido Enterprising Co. (Mfg. by other than Maekawa)	08/01/80–07/31/81	2.7
Deer Island Industries, Ltd	08/01/80–07/31/81	[1] 9.8
Fuji Heavy Industries, Ltd	08/01/80–07/31/81	0
Hajime Industries, Ltd	08/01/80–07/31/81	[1] 13.70
Honda Motor Co., Ltd	08/01/80–09/01/81	0
Isuzu/C.Itoh	08/01/80–07/31/81	0
Kansamatsu-Gosho, Ltd	08/01/80–07/31/81	[1] 16.07
Kawasaki Heavy Industries, Ltd	08/01/80–07/31/81	0
Kobe Steel Co	08/01/80–07/31/81	[1] 16.07
Komatsu, Ltd	08/01/80–07/31/81	[1] 16.07
Kubota, Ltd	08/01/80–07/31/81	16.07
Maekawa Bearing Mfg. Co., Ltd	08/01/80–07/31/81	16.07
Maekawa Bearing Mfg. Co., Ltd./Daido Enterprising Co., Ltd	08/01/80–07/31/81	0.68
Maekawa Bearing Mfg. Co., Ltd./Taisei Sangyo Co., Ltd. (a.k.a. Taisei Industries)	08/01/80–07/31/81	0.03

Manufacturer/exporter	Time period	Margin (percent)
Maekawa Bearing Co., Ltd	08/01/80-07/31/81	18.07
Maekawa Bearing Co., Ltd./Schneider Engineering, Ltd	08/01/80-07/31/81	18.07
Marubeni Corp	08/01/80-07/31/81	[1] 18.07
MC International, Inc	08/01/80-07/31/81	[1] 18.07
Mitsubishi Motor Corp	06/01/74-03/31/79	16.92
	04/01/79-12/31/79	5.59
	01/01/80-12/31/80	.04
	01/01/81-07/31/81	.03
Nachi Fujikoshi Corp	08/01/80-07/31/81	[1] 18.07
Naniwa Kogyo Co., Ltd	08/01/80-07/31/81	18.07
Nichimen Co	08/01/80-07/31/81	[1] 18.07
Niigata Converter Co., Ltd	08/01/80-07/31/81	[1] 0
Nissan Motor Co., Ltd	08/01/80-07/31/81	0
Nissho-Iwai Co., Ltd	08/01/80-07/31/81	[1] 16.92
Suga Machine Tool, Ltd	08/01/80-07/31/81	18.07
Sumitomo Corp. (formerly Sumitomo Shoji Kaisha)	08/01/80-07/31/81	0
Sumitomo Yale Co., Ltd	08/01/80-07/01/81	18.07
Suzuki Motor Co., Ltd	08/01/80-07/31/81	0
Taiyo Shokai Co., Ltd	08/01/80-07/31/81	18.07
Toyo Kogyo Co., Ltd	08/01/80-07/31/81	0
Toyo Kogyo/C. Itoh	08/01/80-07/31/81	0
Toyosha Co., Ltd	08/01/80-07/31/81	0
Toyota Motor Sales Co., Ltd	01/01/77-03/31/79	0.04
	08/01/80-07/31/81	18.07
United Trading Co., Ltd	08/01/80-07/31/81	9.8
Yamaho Motor Co., Ltd	08/01/80-07/31/81	0

[1] No shipments during period.

Third/country reseller (country)	Time period	Margin (percent)
American Motors Canada (Canada)	08/01/80-07/31/81	0
Federal Mogul Canada, Ltd. (Canada)	08/01/80-07/31/81	0
Flanders Enterprises Ltd. (Hong Kong)	08/01/80-07/31/81	18.07
John Deere Welland Works (Canada)	08/01/80-07/31/81	[1] 18.07
Nachi Canada, Ltd. (Canada)	08/01/80-07/31/81	[1] 18.07
Superior Bearing Industrial Supplies, Ltd. (Canada)	08/01/80-07/31/81	18.07

[1] No shipments during period.

As a result of our review we intend to revoke the finding on tapered roller bearings and certain components thereof from Japan with respect to Honda Motor Co., Ltd. Honda made all sales at not less than fair value during the period up to September 1, 1981, the date of our tentative determination to revoke with respect to Honda. As provided for in § 353.54(e) of the Commerce Regulations, Honda has agreed in writing to an immediate suspension of liquidation and reinstatement in the finding if circumstances develop which indicate that tapered roller bearings and certain components thereof exported by Honda and thereafter imported into the United States are being sold by it at less than fair value. If the finding is revoked with respect to Honda, the revocation will apply to tapered roller bearings and certain components thereof exported by Honda and entered, or withdrawn from warehouse, for consumption on or after September 1, 1981.

The Department has concluded that all sales by Fuji Heavy Industries, Ltd., Kawasaki Heavy Industries, Ltd., Nissan Motor Co., Ltd., Suzuki Motor Co., Ltd., and Yamaha Motor Co., Ltd. to the United States were made at not less than fair value for a two year period. As provided for in § 353.54(e) of the Commerce Regulations, the firms have agreed in writing to an immediate suspension of liquidation and reinstatement in the finding if circumstances develop which indicate that Japanese tapered roller bearings and components thereof exported by those firms and thereafter imported into the United States are being sold by them at less than fair value.

Therefore, we tentatively determine to revoke the finding on tapered roller bearings and certain components thereof from Japan with respect to Fuji Heavy Industries, Ltd., Suzuki Motor Co., Ltd., Yamaha Motor Co., Ltd., Nissan Motor Co., Ltd., and Kawasaki Heavy Industries, Ltd. If this partial revocation is made final it will apply to all unliquidated entries of this merchandise exported by those firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Interested parties may submit written comments on these preliminary results, tentative determination to revoke in part, and intent to revoke in part within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made within 5 days of the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, dumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the most recent of the above margins shall be required for those firms. Because the most recent margins for Maekawa Bearing Mfg. Co., Ltd./Taisei Sangyo Co., Ltd. and Mitsubishi Motor Corporation are less than 0.50 percent and therefore *de minimis* for cash deposit purposes, the Department shall waive the deposit requirement for future entries of this merchandise from those firms. For any future shipments of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after July 31, 1981, and who is unrelated to any reviewed firm, a cash deposit of 18.07 percent shall be required. These deposit requirements and waivers are effective for all shipments of Japanese tapered roller bearings and certain components thereof, 4 inches or less in outside diameter when assembled, entered or withdrawn from warehouse for consumption on or after the date of publication of the final results of this administrative review.

This administrative review, tentative determination to revoke in part, intent to revoke in part, and notice are in accordance with sections 751 (a)(1) and (c) of the Tariff Act (19 U.S.C. 1675 (a)(1), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53 and 353.54).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

May 7, 1984.

[FR Doc. 84-12912 Filed 5-11-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-461-008]

Titanium Sponge From the U.S.S.R.; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce

ACTION: Notice of final results of administrative review of antidumping inding.

SUMMARY: On December 23, 1983, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on titanium sponge from the U.S.S.R. The review covers the one known exporter of this merchandise to the United States and the period August 1, 1981 through July 31, 1982.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results. At the request of three domestic producers, we held a public hearing on February 15, 1984. As a result of our analysis of the comments received, the final results of review are unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: May 14, 1984.

FOR FURTHER INFORMATION CONTACT:
G. Leon McNeill or John R. Kugleman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377–3601.

SUPPLEMENTARY INFORMATION:

Background

On December 24, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 56816) the preliminary results of its administrative review of the antidumping finding on titanium sponge from the U.S.S.R. (33 FR 12138, August 28, 1968). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of titanium sponge, currently classiffiable under item 629.1420 of the Tariff Schedules of the United States Annotated.

Titanium sponge is chielfy used for aerospace vehicles, specifically in the construction of compressor blades and wheels, stator blades, rotors, and other parts in aircraft gas turbine engines.

The review covers the one known exporter of Soviet titanium sponge to the United States, Techsnabexport, and the period August 1, 1981 through July 31, 1982.

Analysis of Comments Received

We geve interested parties an opportunity to present oral or written comments on the preliminary results. At the request of three domestic producers, we held a public hearing on February 15, 1984.

Comment 1

Two of the domestic producers, RMI Company & Timet, contended that, since the Department has at its disposal adequate information on Japanese prices and costs, that information should be used as the basis for determining foreign market value.

Department's Position

In determining foreign market value in this case we agree that we should consider the information submitted in the antidumping petition filed against Japanese titanium sponge. However, the issue is moot for this review period since we have now concluded that there were no shipments during the period of review. The shipment referred to in the Census import statistics was reexported and, therefore, never entered the commerce of the United States. It is our practice in a no-shipment situation to base the rate for cash deposit purposes on the margin on the last known shipments, which in this case was zero. For the next administrative review covering the period August 1, 1982 through July 31, 1983, we intend to examine the suggested information, as well as any other information submitted with regard to Japanese prices and costs, consistent with section 777(b) of the Tariff Act of 1930.

Comment 2

RMI and Timet contended that, if there were no Soviet titanium sponge imports during the review period, the Department should not continue to use the zero dumping margin from its last review for cash deposit purposes. The Department should consolidate the current review with the next review and use the dumping margins found on sales in that review period to establish the cash deposit rate.

Department's Position

In many cases the Department has consolidated administrative reviews. However, it is inappropriate to delay further this review of a period of no shipments, but we will expedite our next review.

Comment 3

Timet argued that, since the Department is asking Japanese producers to submit cost of production and sales information for purposes of the antidumping investigation on Japanese titanium sponge, the Department should delay its final results in the section 751 review until it obtains and verifies the Japanese information. The Department should compare Soviet titanium sponge prices to the U.S. to the actual verified Japanese data.

Department's Position

We have no reason to delay our final results, inasmuch as there were no shipments during the review period.

Comment 4

Timet asserted that several large shipments of Soviet titanium sponge are being warehoused in the United States, but have not been entered for consumption. The Department should establish a cash deposit rate and apply it to these transactions upon their entry for consumption into U.S. commerce.

Department's Position

We will cover in future reviews any Soviet titanium sponge eventually entered for consumption.

Final Results of the Review

Based on our analysis of the comments received, the final results of our review are the same as those presented in the preliminary results of review, and we determine that no dumping margins exist for the period August 1, 1981 through July 31, 1982.

The Department shall not require a cash deposit of estimated antidumping duties, as provided for in § 353.48(b) of the Commerce Regulations, on shipments of Soviet titanium sponge entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information during the next administrative review. The Department intends to begin immediately and to expedite the next administrative review. The period of review will be August 1, 1982 through July 31, 1983, and the Department will consider available information in its possession on Japanese titanium sponge prices or costs.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Alan F. Holmer,
Deputy Assistant Secretary for Import Administration.
May 7, 1984.

[FR Doc. 84-12917 Filed 5-11-84; 8:45 am]
BILLING CODE 3510-DS-M

[Case No. 642]

Dr. Etang Chen, et al.; Export Privileges

In the matter of Dr. Etang Chen, Individually and doing business as Eaton and Kings Corporation, aka ENK Corporation, 167 Oak Street, Westwood, Massachusetts 02090; FAVAG S.A. Monruz 34, CH–2000 Neuchatel 8, Switzerland; P.A. Randin, Purchasing Manager FAVAG S.A. Monruz 34 CH–2000 Neuchatel 8, Switzerland; Joseph Lousky, Individually and doing business as Eler Engineering S.A., 59 Mozart Avenue, 75016 Paris, France; Eler Engineering S.A., aka Eler S.A., P.O. Box 209, CH–1401 Yverdon, Switzerland and CH–1040 Echallens, Switzerland; Order amending temporary denial of export privileges.

By order of March 11, 1983 (48 Fr 11479, March 18, 1983) (the "Order"), FAVAG S.A. was temporarily denied, pursuant to Section 388.19 of the Export

Administration Regulations (currently codified at 15 CFR Parts 368–399 (1983)), all privileges of participating in any manner or capacity in the export of U.S.-origin commodities or technical data.

Favag, S.A., referred to in the Order FAVAG S.A., has moved to vacate the Order with respect to it. The Department of Commerce (the "Department") and Favag, S.A. together have now stipulated, based on certain representations contained in their stipulation, that the Order as applied to Favag, S.A. should be vacated.

In view of the stipulation filed by the Department and Favag, S.A., I find that vacating the Order as applied to Favag, S.A. is warranted, and that vacating it will not jeopardize the purpose of the Order.

Accordingly, it is hereby ordered that, effective immediately, the Order of March 11, 1983 is amended by deleting, from the respondents named therein: FAVAG S.A., Monruz 34, CH–2000 Neuchatel 8, Switzerland.

A copy of the Amendment of the Order shall be served upon Favag, S.A., upon each of the respondents whose names remain in the Order, and upon the related party named in Paragraph III of the Order; and a copy of this Amendment shall be published in the **Federal Register.**

Dated: May 8, 1984, 4:10 pm edt.

Thomas W. Hoya,

Hearing Commissioner.

[FR Doc. 84–12918 Filed 5–11–84; 8:45 am]

BILLING CODE 3510-DT-M

National Bureau of Standards

International Laboratory Accreditation Conference (ILAC) 1984; Meeting

AGENCY: National Bureau of Standards, Commerce.

ACTION: Invitation to participate in ILAC 84 Conference and Announcement of Public Meeting.

SUMMARY: The Eighth International Laboratory Accreditation Conference (ILAC) will be held in London, England, October 22–26, 1984. ILAC is an informal organization of approximately 42 nations and 12 international organizations whose overall purpose and objective is to promote: (1) The development of national programs for accrediting testing laboratories; (2) the employment of harmonized accreditation criteria; and (3) the development of bilateral or multilateral arrangements which would encourage importers to accept the results of tests and data made by laboratories that have been accredited under a laboratory accreditation program in exporting nations.

Annual conferences in support of ILAC's stated purpose have been held since 1977, to develop information about laboratory accreditation systems, to provide a forum for discussing differences among such systems, to describe basic principles and criteria for operating such systems, and to develop bilateral or other arrangements which would establish mutual recognition of such systems or of test reports issued by laboratories accredited under such systems. These bilateral arrangements are intended to minimize technical barriers to trade.

The United States Delegation is chaired by the Director of the Office of Product Standards Policy. Anyone interested in attending this meeting in London as a member of the U.S. Delegation, using his or her own financial resources, for registration fees, hotel accommodations, food, and travel expenses, is invited to submit a request by June 30, 1984, to Dr. Stanley Warshaw, Director, Office of Product Standards Policy, National Bureau of Standards, TECH B154, Washington, DC 20234. Such persons should have a background in standards development, laboratory accreditation, product testing or product certification activities.

Notice is also given that the U.S. Delegation will hold an open pre-conference meeting at 10:00 a.m. on Tuesday, September 25, 1984, in Room #B111 of the Technology Building at the National Bureau of Standards, Gaithersburg, Maryland to prepare for the conference. The meeting attendees and delegates will: (1) Review ILAC Task Force and Committee reports; (2) consider the position that the U.S. Delegation should take in response to those reports; (3) prepare any proposed resolution for introduction at ILAC 84; and (4) consider any additional matters of interest. The pre-conference meeting will be chaired by Dr. Warshaw.

Anyone wishing to attend this meeting, which is open to the public, or provide information on proposals for consideration by the delegation, should notify Mr. John W. Locke, National Bureau of Standards, TECH B141, Washington, DC 20234, telephone: 301–921–3431, by August 31, 1984.

Dated: May 9, 1984.

Raymond G. Kammer,

Deputy Director, National Bureau of Standards.

[FR Doc. 84–12846 Filed 5–11–84; 8:45 am]

BILLING CODE 3510-CN-M

National Bureau of Standards' Visiting Committee; Meeting

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the National Bureau of Standards' Visiting Committee will meet on Monday, June 4, 1984, from 8:30 a.m. to 5:15 p.m., and Tuesday, June 5, 1984, from 8:30 a.m. to 11:30 p.m. in Lecture Room B, Administration Building, National Bureau of Standards, Gaithersburg, Maryland, and from 2:00 p.m. to 3:00 p.m. in Room 5854, Department of Commerce, Washington, D.C.

The NBS Visiting Committee is composed of five members prominent in the fields of science and technology and appointed by the Scretary of Commerce.

The purpose of the meeting is to review the efficiency of the Bureau's scientific work and the condition of its equipment in order to assist the Committee in reporting to the Secretary of Commerce as required by law.

The public is invited to attend, and the Chairman will entertain comments or questions at an appropriate time during the meeting. Any person wishing to attend the meeting should inform Mrs. Carolyn Goodfellow, Office of Research and Technology Applications, National Bureau of Standards, Washington, D.C. 20234, telephone (301) 921–2226.

Dated: May 8, 1984.

Raymond G. Kammer,

Deputy Director.

[FR Doc. 84–12844 Filed 5–11–84; 8:45 am]

BILLING CODE 3510-13-M

National Voluntary Laboratory Accreditation Program

AGENCY: National Bureau of Standards, Commerce.

ACTION: Announcement of laboratory accreditation actions for April 1984.

SUMMARY: The laboratories named below have been reaccredited under the National Voluntary Laboratory Accreditation Program (NVLAP).

Concrete Lap

A/H Flood Engineering, Hillside, IL.

West Virginia Dept. of Highways, Charleston, WV.

Accreditation for Additional Test Methods: The following laboratory, which was previously accredited for acoustical testing services (Acoustics LAP), has been accredited for additional test methods as shown.

Acoustics LAP

Jim Walter Research Corp., Attn. Alan P. Conroy, 10301 9th Street North, St. Petersburg, FL 33702, phone (813) 576–4171.

NVLAP code	Designation	Short title
08/P06	ASTM E90–81	Airborne Sound Transmission Loss of Building Partitions.
08/P02	ASTM C384–77 (81).	Impedance and Absorption of Acoustical Materials.

Voluntary Termination

The laboratory listed below has voluntarily terminated its accreditation.

Concrete LAP

Arizona Sand and Rock, Phoenix, AZ.

FOR FURTHER INFORMATION CONTACT: Mr. John W. Locke, Manager, Laboratory Accreditation, TECH B141, National Bureau of Standards, Washington, D.C. 20234, (301) 921–3431.

Dated: May 9, 1984.

Raymond G. Kammer,

Deputy Director, National Bureau of Standards.

[FR Doc. 84–12843 Filed 5–11–84; 8:45 am]

BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

Deep Seabed Mining; Notice of Proposal To Issue Exploration Licenses and of Public Hearing

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of proposal to issue exploration licenses to the Kennecott Consortium subject to terms, conditions, and restrictions (TCRs), of a public hearing on the proposal, and of the availability of a draft environmental impact statement thereon.

SUMMARY: On June 25, 1982, the National Oceanic and Atmospheric Administration (NOAA) published a notice, at 47 FR 25583, that it had received two applications from the Kennecott Consortium (KCON), 1515 Mineral Square, Salt Lake City, Utah 84147 for licenses to conduct deep seabed mining exploration activities in the Northeastern Equatorial Pacific Ocean within the seabed area generally known as the Clarion-Clipperton Fracture Zone. On September 16, 1983, October 13, 1983, and January 11, 1984, KCON filed amendments to its applications. NOAA certified the KCON applications on April 23, 1984, as an intermediate step between receipt of the applications and issuance of the exploration licenses.

NOAA now proposes to issue to KCON two deep seabed mining exploration licenses subject to terms, conditions, and restrictions (TCRs).

NOAA has prepared and will circulate for comment a draft environmental impact statement (DEIS) on issuing the licenses, including the proposed TCRs. NOAA will hold a public hearing on the license issuance proposal, TCRs, and the DEIS at 9:00 a.m. on July 3, 1984 in Room B100, 2001 Wisconsin Ave., NW., Washington, D.C.

Subject to 15 CFR 970.902, which excludes confidential information from public disclosure, interested persons will be permitted to examine the amended applications, the TCRs and the DEIS when it is available for review and comment, and to provide comments thereon, by (later of 60 days from publication or July 13, 1984).

FOR FURTHER INFORMATION CONTACT: John W. Padan or Laurence J. Aurbach, Ocean Minerals and Energy Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, Suite 105, Page 1 Building, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235, (202) 653–8257.

Dated: May 9, 1984.

Paul M. Wolff,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 84–12852 Filed 5–11–84; 8:45 am]

BILLING CODE 3510–12–M

Deep Seabed Mining; Notice of Proposal To Issue an Exploration License and of Public Hearing

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of proposal to issue an exploration license to Ocean Management, Inc. subject to terms, conditions, and restrictions (TCRs), of a public hearing on the proposal, and of the availability of a draft environmental impact statement thereon.

SUMMARY: On June 25, 1982, the National Oceanic and Atmospheric Administration (NOAA) published a notice, at 47 FR 27583, that it had received four applications from Ocean Management, Inc. (OMI), One New York Plaza, New York, New York 10004 for licenses to conduct deep seabed mining exploration activities in the Northeastern Equatorial Pacific Ocean within the seabed area generally known as the Clarion-Clipperton Fracture Zone. On September 19, 1983 and December 22, 1983, OMI filed amendments to its applications consolidating them into one application. NOAA certified the OMI application on April 23, 1984, as an intermediate step between receipt of the application and issuance of the exploration license.

NOAA now proposes to issue to OMI a deep seabed mining exploration license subject to terms, conditions, and restrictions (TCRs).

NOAA has prepared and will circulate for comment a draft environmental impact statement (DEIS) on issuing the license, including the proposed TCRs. NOAA will hold a public hearing on the license issuance proposal, TCRs, and the DEIS at 9:00 a.m. on July 3, 1984 in Room B100, 2001 Wisconsin Ave., NW., Washington, D.C.

Subject to 15 CFR 970.902, which excludes confidential information from public disclosure, interested persons will be permitted to examine the amended application, the TCRs and the DEIS when it is available for review and comment, and to provide comments thereon, by (later of 60 days from publication or July 13, 1984).

FOR FURTHER INFORMATION CONTACT: John W. Padan or Laurence J. Aurbach, Ocean Minerals and Energy Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, Suite 105, Page 1 Building, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235, (202) 653–8257.

Dated: May 9, 1984.

Paul M. Wolff,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 84–12853 Filed 5–11–84; 8:45 am]

BILLING CODE 3510–12–M

Deep Seabed Mining, Notice of Proposal To Issue an Exploration License and of Public Hearing

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of proposal to issue an exploration license to Ocean Minerals Company subject to terms, conditions, and restrictions (TCRs), of a public hearing on the proposal, and of the availability of a draft environmental impact statement thereon.

SUMMARY: On June 25, 1982, the National Oceanic and Atmospheric Administration (NOAA) published a notice, at 47 FR 27583, that it had received two applications from Ocean Minerals Company (OMCO), 465 N. Bernardo Avenue, Mountain View, California 94043, for licenses to conduct

deep seabed mining exploration activities in the Northeastern Equatorial Pacific Ocean within the seabed area generally known as the Clarion-Clipperton Fracture Zone. On August 15, 1983, September 14, 1983, and January 11, 1984, OMCO filed amendments to its applications consolidating them into one application. NOAA certified the OMCO application on April 23, 1984, as an intermediate step between receipt of the application and issuance of the exploration license.

NOAA now proposes to issue to OMCO a deep seabed mining exploration license subject to terms, conditions, and restrictions (TCRs).

NOAA has prepared and will circulate for comment a draft environmental impact statement (DEIS) on issuing the license, including the proposed TCRs. NOAA will hold a public hearing on the license issuance proposal, TCRs, and the DEIS at 9:00 a.m. on July 3, 1984 in Room B100, 2001 Wisconsin Ave., NW., Washington, D.C.

Subject to 15 CFR 970.902, which excludes confidential information from public disclosure, interested persons will be permitted to examine the amended application, the TCRs and the DEIS when it is available for review and comment, and to provide comments thereon, by (later of 60 days from publication or July 13, 1984).

FOR FURTHER INFORMATION CONTACT:
John W. Padan or Laurence J. Aurbach, Ocean Minerals and Energy Divisions, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, Suite 105, Page 1 Building, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235, (202) 653–8257.

Dated: May 9, 1984.

Paul M. Wolff,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 84–12854 Filed 5–11–84; 8:45 am]

BILLING CODE 3510–12–M

Deep Seabead Mining; Notice of Proposal To Issue an Exploration License and of Public Hearing

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of proposal to issue an exploration license to Ocean Mining Associates subject to terms, conditions, and restrictions (TCRs), of a public hearing on the proposal, and of the availability of a draft environmental impact statement thereon.

SUMMARY: On June 25, 1982, the National Oceanic and Atmospheric Administration (NOAA) published a notice, at 47 FR 27583, that it had received two applications from Ocean Mining Associates (OMA), Box 2, Gloucester Point, Virginia 23062, for licenses to conduct deep seabed mining exploration activities in the Northeastern Equatorial Pacific Ocean within the seabed area generally known as the Clarion-Clipperton Fracture Zone. On October 15, 1982, September 12, 1983, November 10, 1983, and January 20, 1984, OMA filed amendments to its applications consolidating them into one application. NOAA certified the OMA application on April 23, 1984, as an intermediate step between receipt of the application and issuance of the exploration license.

NOAA now proposes to issue to OMA a deep seabed mining exploration license subject to terms, conditions, and restrictions (TCRs).

NOAA has prepared and will circulate for comment a draft environmental impact statement (DEIS) on issuing the license, including the proposed TCRs. NOAA will hold a public hearing on the license issuance proposal. TCRs, and the DEIS at 9:00 a.m. on July 3, 1984 in Room B100, 2001 Wisconsin Ave., NW., Washington, D.C.

Subject to 15 CFR 970.902, which excludes confidential information from public disclosure, interested persons will be permitted to examine the amended application, the TCRs and the DEIS when it is available for review and comment, and to provide comments thereon, by (later of 60 days from publication or July 13, 1984).

FOR FURTHER INFORMATION CONTACT:
John W. Padan or Laurence J. Aurbach, Ocean Minerals and Energy Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, Suite 105, Page 1 Building, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235, (202) 653–8257.

Dated: May 9, 1984.

Paul M. Wolff,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 84–12855 Filed 5–11–84; 8:45 am]

BILLING CODE 3510–12–M

Intent To Prepare Draft Environmental Impact Statements and Management Plans for the Proposed Waquoit Bay and Weeks Bay National Estuarine Sanctuaries and the Proposed Site Additions to the North Carolina and Puerto Rico National Estuarine Sanctuary Systems

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice.

SUMMARY: Section 315 of the Coastal Zone Management Act of 1972, as amended, authorizes the Secretary of Commerce to provide, on a matching basis, grants to coastal states for the purposes of acquiring, developing and operating estuarine areas as natural field laboratories. Such areas, when established as national estuarine sanctuaries, are intended to: (1) Provide opportunities for long-term estuarine research, education and interpretation; (2) provide a more informed basis for making coastal management decisions; and (3) enhance public awareness and understanding of the estuarine environment. Following site selection processes conducted by the States of Alabama and North Carolina and the Commonwealths of Puerto Rico and Massachusetts, areas were recommended to NOAA for designation as national estuarine sanctuaries. It is now NOAA's intention to prepare draft environmental impact statements and complementary management plans for each of these sites with the assistance of the respective State and Commonwealth governments. The views and comments received during this phase will aid NOAA in determining: (1) The purposes and objectives for sanctuary management; (2) the scope and content of the management plans; and (3) the alternatives to the proposed action, including the degree to which the alternatives may affect the natural and human environments.

FOR FURTHER INFORMATION CONTACT:
Dr. Nancy Foster, Chief, Sanctuary Programs Division, Office of Ocean and Coastal Resource Management, NOAA, 3300 Whitehaven Street, NW., Washington, D.C. 20235 (202) 634–4236.

SUPPLEMENTARY INFORMATION:

Waquoit Bay National Estuarine Sanctuary

Waquoit Bay, located in the towns of Falmouth and Mashpee on Cape Cod, Massachusetts, is adjacent to Nantucket Sound on the south side of Cape Cod. This estuarine embayment, which connects a series of tidal ponds, represents the last remaining large unaltered estuary on the south shore of Cape Cod. High water quality and high species diversity, particularly finfish, characterize this estuarine system. Cape Cod is an area of transition between the Acadian and Virginian biogeographic regions. Waquoit Bay is located within the most northerly subregion of the

Virginian biogeographic classification in southern New England (Cape Code to Sandy Hook). The biota is primarily temperate with some boreal representatives. The area is characterized by a high species diversity due to the intermingling of cold water species from the Gulf of Maine and warm water species from the mid-Atlantic.

In 1979 the Commonwealth of Massachusetts designated Waquoit Bay as an Area of Critical Environmental Concern (ACEC) in accordance with Massachusetts General Laws Chapter 21(A) Section (2)(7). This ACEC designation followed an extensive public participation process during which major management issues for the area were addressed. In 1981 the staff of the Massachusetts Coastal Zone Management Office conducted an evaluation of material concerning estuaries within the Commonwealth's coastal area. The goal of this effort was to identify a representative estuary of appropriate characteristics and sufficient quality for nomination as a national estuarine sanctuary. On the basis of the data collected during the Massachusetts Estuarine Research Program (begun in 1963) and discussions with representatives from the academic community, State agencies, Federal agencies, private organizations and the public, the Secretary of the Massachusetts Executive Office of Environmental Affairs submitted to NOAA a proposal to establish Waquoit Bay as a national estuarine sanctuary. In September 1981 NOAA awarded, and the State matched, Federal financial assistance for further evaluation of the site, the collection of information necessary for management plan and draft environmental impact statement preparation, and preliminary acquisition activities.

Weeks Bay National Estuarine Sanctuary

The proposed Weeks Bay National Estuarine Sanctuary is a shallow 1,718-acre embayment found along the southeast shoreline of Mobile Bay, Albama. Representative of the National Estuarine Sanctuary Program's Louisianian biogeographic region, the bay (which lies just north of the Bon Secour National Wildlife Refuge) serves as a receiving basin for the Fish and Magnolia Rivers. The area immediately surroundign the bay consists of low-lying coastal wetlands and bogs characterized by four distinct types of plant communities: (1) Salt and brackish water marsh dominated by black needlerush (*Juncus roemerianus*) and giant cordgrass (*Spartina cynosuroides*); (2) pine savannah; (3) bay forest and adjacent mesic woodlands; and (4) freshwater marsh dominated by species of cattails and bulrush (*Typha* and *Scirpus*, respectively), the arrow leaf (*Sagittaria falcata*), and reedgrass (*Phragmites communis*). Within the bay also can be found approximately 42.3 acres of submerged aquatic vegetation such as wild celery (*Vallisneria americana*), wigeon grass (*Ruppia maritima*), species of pondweed (*Potamogeton* sp.), bog moss (*Mayaca* sp.) And marestail (*Myriophyllum* spp.) Both the wetlands and submerged aquatics play an important role in the nurture and life cycles of many marine organisms including several commercially and recreationally valuable species of fish and crustaceans. The fresh and brackish water marshes in Weeks Bay also provide habitat for over one hundred species of amphibians and reptiles including the American alligator (*Alligator mississippiensis*). The need to protect these values, and the proximity of the site to the metropolitan Mobile area and rapidly developing eastern shore of upper Mobile Bay and Gulf Shores resort area to the south, initially caused the State of Alabama to evalute the feasibility and desirability of establishing the area as a national estuarine sanctuary.

Following a site selection process conducted in 1982 by the Coastal Area Board, the Coastal Area Advisory Committee recommended and the State of Alabama submitted to NOAA a proposal to establish Weeks Bay as a national estuarine sanctuary. Subsequently, NOAA awarded preacquisition funds to: (1) Prepare a preliminary management plan; (2) conduct the necessary public meetings on the proposal; (3) initiate an assessment of the impacts associated with the proposed action; and (4) secure the required appraisals for lands Alabama seeks to acquire for inclusion within the proposed sanctuary. The State has consulted with NOAA in the preparation of a preliminary draft of a management plan and an environmental assessment and submitted the necessary appraisals to the Federal agency for acquiring certain private landholdings.

North Carolina National Estuarine Sanctuary System—Masonboro Island Component

Masonboro Island, located in Hanover County, North Carolina, is bounded by the Atlantic Ocean to the east, the Intracoastal Waterway to the west, Masonboro Inlet to the north, and Carolina Beach Inlet to the south. The proposed Masonboro Island component of the North Carolina Natural Estuarine Sanctuary System is a barrier island complex composed of uplands, salt marsh, and shallow sound areas. The topography of the island is gently sloping to nearly flat, a narrow upland width, and primarily unstable dunes. Masonboro Island represents a highly diverse estuarine complex located in the Carolinian biogeographic region.

Following a site selection process conducted in 1980, the Office of Coastal Management, North Carolina Department of Natural Resources and Community Development, determined, and NOAA concurred, that a multi-site system was necessary to adequately represent the diversity of North Carolina's coastal estuaries. Four sites were identified as representative and suitable for estuarine research and education: Carrot Island (Rachel Carson component): Zeke's Island: Currituck Banks: and Masonboro Island. In September 1982 and September 1983, NOAA awarded, and the State matched, Federal financial assistance for initial operations, development of a draft sanctuary mangement plan, and for acquisition and development of the Carrot Island, Zeke's Island, and Currituck Banks components of the North Carolina National Estaurine Sanctuary System. A final draft sanctuary management plan was developed in September 1983 for these components of the North Carolina National Estuarine Sanctuary System by the State's Office of Coastal Management.

Puerto Rico National Estauraine Sanctuary System—Humacao

The Humacao site of the Puerto Rico National Estuarine Sanctuary System, located on the east coast of Puerto Rico, northeast of the city of Humacao, is representative of the Caribbean subregion of the West Indian biogeographic region. The area lies at the base of the foothills and slopes gently seaward. The estuarine nature of this system is directed by freshwater input from rainfall and runoff and saltwater intrusion from the mouths of the Anton Ruiz River, Cano Boca Prieta and Frontier Creek. The coastal embayments located at this site are shallow and well-mixed except in the dry season. Plant communities associated with these rivers and embayments include: (1) Coastal forested swamps dominated by *Pterocarpus* and red and white mangroves; (2) emergent herbaceous wetland communities existing in permanently or seasonally flooded areas surrounding the embayments; and (3)

shoreland associations of trees and shrubs. The forested swamps in combination with the open waters of the embayments and the surrounding vegetation provide the best waterfowl habitat on the island. In addition, many commercially and recreationally important species of aquatic macrofauna inhabit the brackish water embayments.

The Commonwealth of Puerto Rico began the site selection process in 1975 by identifying potential sites and evaluating their ecological attributes and suitability for research and education programs. In 1981 the Commonwealth and NOAA identified three sites as potential candidates. Later that year, the Commonwealth was granted funds on a matching basis for acquisition of the Jobos Bay site. A final management plan for this site was developed in July 1983.

Dated: May 9, 1984.

(Federal Domestic Assistance Catalog Number 11.420 Estuarine Sanctuary Program)

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 84-12937 Filed 5-11-84; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board 1984 Summer Study Panel on Space-Based Radar; Advisory Committee Meeting

The Defense Science Board 1984 Summer Study Panel on Space-Based Radar will meet in closed session on June 7, 1984, June 18–19, 1984 and July 9–10, 1984, in the Pentagon, Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived need of the Department of Defense.

At the meetings on Juny 7, June 18–19, and July 9–10, 1984, the panel will initiate a program and plans to determine operational utility, affordability, and availability of technology for a space-based radar/infrared system and, based on findings, to develop programmatic recommendations.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. I (1976)), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. § 553b(c)(1) (1976) and that, accordingly, this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

May 9, 1984.

[FR Doc. 84-12822 Filed 5-11-84; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Proposed Chester-Monds Islands Dredged Material Disposal Area, Gibbstown, N.J.; Withdrawal of Intent To Prepare a Draft Environmental Impact Statement (DEIS); Operation and Maintenance of the Delaware River, Philadelphia to the Sea

ACTION: Withdrawal of the intent to prepare a draft Environmental Impact Statement for the proposed Chester-Monds Islands Dredged Material Disposal Area as cited in FR Volume 46, No. 143, Monday, July 27, 1981, page 38400.

1. *Summary:* The near-term proposal to develop Chester-Monds Island for dredged material disposal has been absorbed into a continuing study of larger geographical scope and longer-range disposal area capacity needs. Data gathered during the preparation of the Delaware River Dredged Material Disposal Study indicate that alternatives other than use of the Chester-Monds Island site are more feasible at this time based on engineering and environmental criteria. Therefore, a DEIS for the Chester-Monds site will not be developed.

2. *Questions about the action can be answered by:* Mr. Roy. E. Denmark, Jr., (215) 597–4833, Chief, Environmental Resources Branch, U.S. Army Corps of Engineers, Philadelphia District, Custom House, 2d & Chestnut Streets, Philadelphia, PA 19106.

Ralph V. Locurcio,

Lieutenant Colonel, Corps of Engineers, Commander.

[FR Doc. 84-12828 Filed 5-11-84; 8:45 am]

BILLING CODE 3710-GR-M

DEPARTMENT OF EDUCATION

National Board of the Fund for the Improvement of Postsecondary Education; Meeting

AGENCY: Department of Education.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATE: June 7, 1984 at 5:00 p.m. through June 9, 1984 at 2:00 p.m.

ADDRESS: Hilton Inn Columbia, 5485 Twin Knolls Road, Columbia, Maryland.

FOR FURTHER INFORMATION CONTACT: Sven Groennings, Director, Fund for the Improvement of Postsecondary Education, 7th and D Streets, SW., Washington, D.C. 20202, (202–245–8091).

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education is established under Section 1001 of the Higher Education Amendments of 1980, Title X (20 U.S.C. 1135a–1). The National Board of the Fund is established to "advise the Secretary and the Director of the Fund for the Improvement of Postsecondary Education * * * on the selection of projects under consideration for support by the Fund in its competitions."

The meeting of the National Board is closed to the public. The meeting is for the sole purpose of reviewing and evaluating grant applications submitted to the Fund under the Comprehensive Program.

The meeting of the National Board of the Fund will be closed to the public from 5:00 p.m., June 7 until the conclusion of the agenda, approximately 2:00 p.m., June 9 for review, discussion or consideration of proposals submitted to the Fund for grant awards. The meeting will be closed under the authority of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix I) and under subsections (4) and (6) of 5 U.S.C. 552b(c) (Pub. L. 94–409). Discussions of the applications and the qualifications of proposed staff will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for the Improvement of Postsecondary Education, Room 3100, Regional Office Building, 7th and D

Streets, SW., Washington, D.C. 20202 from the hours of 8:00 a.m. to 4:30 p.m.

Dated: April 24, 1984.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 84-12856 Filed 5-11-84; 8:45 am]

BILLING CODE 4000-01-M

National Center for Research in Vocational Education Advisory Council; Meeting

AGENCY: National Center for Research in Vocational Education Advisory Council, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Center for Research in Vocational Education Advisory Council. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: June 11, 1984.

ADDRESS: The National Center for Research in Vocational Education, Ohio State University, 1960 Kenny Road, Columbus, Ohio 43210.

FOR FURTHER INFORMATION CONTACT: Dr. Howard F. Hjelm, Director, Division of Innovation and Development, 400 Maryland Avenue, SW., Rm. 5044, ROB 3, Washington, D.C. 20202, (202) 245-2278.

SUPPLEMENTARY INFORMATION: The National Center for Research in Vocational Education Advisory Council is established under section 171 of the Vocational Education Act of 1963 as amended by the Education Amendments of 1976 (Pub. L. 94-482) (20 U.S.C. 2401). The primary purpose of the Council is to advise the National Center Director on the operation of the National Center and the Secretary on regional centers. In addition to advising the Director, the Council, at the request of the Secretary, may be consulted on current issues in vocational education as they affect the National Center. Meetings held at the request of the Secretary are conducted in accordance with the Federal Advisory Committee Act (FACA).

That portion of the meeting of the Council under FACA is open to the public on June 11, 1984 from 1:00 p.m. to 4:30 p.m. The proposed agenda includes:

1:00-2:00—Recommendations for the Improvement of Vocational Education

2:00-3:00—Interim Review of the *Education for Tomorrow's Jobs* Seminar Recommendations

3:00-4:00—Recommendations for the Third Year of NCRVE's Contract

4:00-4:30—Other

This meeting will be held in conjunction with a regular meeting of the Council to advise the Center Director.

Records are kept of all Council proceedings and are available for public inspection at the office of Glenn Boerrigter, Program Improvement Systems Branch, 400 Maryland Avenue, SW., Rm. 5018, ROB 3, Washington, D.C. 20202; telephone: (202) 245-2617.

Robert M. Worthington,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 84-12904 Filed 5-11-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

[File No.: ALX-1]

Final Action on Extension of the Deadline by Which the Alumax Pacific Corp. Would Have Declared Its Intent To Place Load on the Bonneville Power Administration

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of final action.

SUMMARY: Alumax Pacific Corporation (Alumax) had an industrial power sales contract with BPA for Alumax's proposed aluminum reduction plant near Umatilla, Oregon. The contract required Alumax to tell BPA by October 1, 1983, whether it would take power from BPA. Alumax requested an extension of this deadline to October 1, 1985. BPA granted an interim extension to Alumax to January 31, 1984, while considering the matter.

Following public comment, BPA decided not to grant Alumax an extension beyond February 21, 1984. Alumax did not give BPA a startup commitment notice by the deadline and their contract with BPA is now terminated.

Responsible Official: Thomas M. Noguchi, Director, Division of Customer Service.

DATES: Termination of the Alumax-BPA power sales contract became effective February 22, 1984.

ADDRESSES: Address questions on this matter to Ms. Donna Geiger, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. Geiger, Public Involvement Manager, at the above address, 503-230-3478. Oregon callers outside of Portland may use 800-452-8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800-547-6048. Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503-230-4551

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

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

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3860

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509-662-4377, extension 379

Mr. Richard D. Casad, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206-442-4130

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-525-5500, extension 701

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

Mr. Frederic D. Rettenmund, Boise District Manager, Owyhee Plaza Suite 245, 1109 Main Street, Boise, Idaho 83707, 208-334-9138.

SUPPLEMENTARY INFORMATION: Alumax held an industrial power sales contract with BPA, terminating on July 1, 2001, for power for their proposed aluminum reduction plant near Umatilla, Oregon. That contract required Alumax to commit itself by October 1, 1983, to receive power under the contract. On July 25, 1983, Alumax asked BPA to delay the October 1, 1983, deadline to October 1, 1985. On August 18, 1983, BPA requested public comment on this matter (48 FR 37510). Commenters from the Umatilla, Oregon, area generally supported extending the deadline. Commenters from other areas expressed reservations or opposed extension of the deadline. Many commenters recommended that BPA further analyze the impacts of an extension on future Northwest power resource needs and BPA rates.

Agreeing that further time was needed to analyze the situation, BPA granted Alumax an interim extension to January 31, 1984. On October 3, 1983, BPA sought public comment on a proposed course of action (48 FR 45148). Following the public comment period, and as a result of BPA's load/resource planning needs, rates certainty, and the public comments received, BPA declined to give Alumax any further extension of the commitment deadline.

By telegram of January 31, 1984, and letter of February 7, 1984, BPA informed Alumax that it would not grant a long term extension of the date Alumax could give a commitment notice to receive power from BPA at Umatilla. Alumax was given until 2400 hours, on February 21, 1984, to commit to take power from BPA. pursuant to a February 21, 1984, letter, Alumax declined to give BPA the requisite notice, thus terminating the BPA/Alumax power sales contract.

Issued in Portland, Oregon, on April 30, 1984.

Peter T. Johnson,

Administrator.

[FR Doc. 84-12906 Filed 5-11-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. RP79-12, CP80-367, CI80-311—CI80-320]

El Paso Natural Gas Co. et al.; Filing of Report

May 8, 1984.

Take notice that on May 1, 1984, El Paso Natural Gas Company (El Paso) tendered for filing a Report of Account 101-338, Unsuccessful Exploration and Development Costs, in compliance with the Stipulation and Agreement in the above-captioned dockets, approved by the Federal Energy Regulatory Commission (Commission) on August 28, 1981.

El Paso states that it submits this report in accordance with Article V of the Stipulation and Agreement and will submit further similar annual reports in compliance with that article.

El Paso has served copies of this filing upon all parties to the captioned proceedings, its jurisdictional customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before May 15, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-12896 Filed 5-11-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-15-000]

MIGC, Inc.; Motion To Place Rates Into Effect

May 8, 1984.

Take notice that on April 30, 1984, MIGC, Inc. (MIGC), in accordance with section 4(e) of the Natural Gas Act (15 U.S.C. 717c(e)) and Rule 212 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure (18 CFR 385.212), tendered for filing a motion to place into effect as of May 1, 1984, the rate changes proposed in Docket No. RP84-15-000 as reflected on the Twenty-Ninth Revised Sheet No. 32, First Revised Sheet No. 102 and First Revised Sheet No. 140 to MIGC's Gas Tariff, Original Volume No. 1.

On October 27, 1983, MIGC filed revised tariff sheets reflecting a general rate increase. These revised tariff sheets [1] were accepted, subject to refund, with an effective date of May 1, 1984, by Commission order of November 29, 1983. (25 FERC ¶ 61,309).

On March 16, 1984, MIGC filed its semi-annual PGA rate change in Docket No. TA84-2-47-000. The Commission's order of April 30, 1984, accepted, subject to refund, with an effective date of May 1, 1984, MIGC's Twenty-Ninth Revised Sheet No. 32, which reflected the rate changes proposed in both Docket Nos. TA84-2-47-000 and RP84-15-000. MIGC states that since the Commission has accepted its Twenty-Ninth Revised Sheet No. 32 which reflects the rate increase proposed in Docket No. RP84-15-000, it does not need to tender a superseding Revised Tariff Sheet No. 32.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before May 15, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-12897 Filed 5-11-84; 8:45 am]

BILLING CODE 6717-01-M

[1] Twenty-Eight Revised Sheet No. 32, First Revised Sheet No. 102 and First Revised Sheet No. 140.

[Docket No. CI84-403-000]

Samedan Oil Corp., et al.; Application

May 9, 1984.

Take notice that on May 7, 1984, Samedan Oil Corporation (Applicant), P.O. Box 909, Ardmore, Oklahoma 73401, filed in Docket No. CI84-403-000, an application under § 157.23 et seq. to construct and operate a 12 mile, 16-inch diameter gathering line originating on a platform on West Delta Block 18, Offshore Louisiana to a termination point onshore in Section 43, Township 20 south, Range 28 east in Plaquemines Parish, Louisiana at the inlet side of certain separation and stabilization facilities. Applicant proposes to gather and transport gas/liquids produced from West Delta Block 18 through the gathering facility. Applicant has requested a shortened notice procedure under § 1.19 of the regulations.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 22, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a

motion to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-12898 Filed 5-11-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP79-28-004]

Stingray Pipeline Co.; Change in Tariff

May 8, 1984.

Take notice that on April 30, 1984, Stingray Pipeline Company (Stingray) tendered for filing Twelfth Revised Sheet No. 4 to its FERC Gas Tariff, Original Volume No. 1. An effective date of May 1, 1984 was proposed.

Stingray submits that this traiff sheet effects a rate reduction to reflect a reduction in its rate base in compliance with a Stipulation and Agreement dated August 5, 1983, filed with and approved by the Commission October 4, 1983, in Docket No. RP79-28-000 (Offshore Construction Costs of Offshore Pipelines).

Stingray states that copies of its filing have been served on all customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before May 15, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-12899 Filed 5-11-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-320-000]

Transcontinental Gas Pipe Line Corp.; Request Under Blanket Authorization

May 9, 1984.

Take notice that on March 27, 1984, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP84-320-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Transco proposes to construct and operate certain pipeline and appurtenant facilities under the authorization issued in Docket No. CP82-426-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Transco proposes to construct and operate 20.11 miles of 12-inch pipeline extending from Sohio Petroleum Company's (Sohio) production platform in Mississippi Canyon (MC) Block 20 to an existing point of interconnection with the Cognac Line of Transco and others in South Pass (SP) Block 53, and to install a meter and regulator station on the Sohio platform, all in offshore Louisiana. It is stated that the facilities would be utilized to connect the MC20 reserves to Transco. Such reserves are estimated to be 36,532,000 Mcf proven and 54,892,000 Mcf proven and probable.

The estimated cost of the facilities is $12,841,800, which would be financed initially through short-term, loans and available cash, with permanent financing undertaken as part of an overall long-term financing program at a later date.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-12900 Filed 5-11-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-390-000]

United Gas Pipe Line Co.; Request Under Blanket Authorization

May 8, 1984.

Take notice that on May 4, 1984, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP84-390-000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that United proposes to transport natural gas on behalf of Georgia-Pacific Corporation (Georgia-Pacific), under the authorization issued in Docket No. CP82-430-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Pursuant to an agreement dated February 23, 1984, as amended May 2, 1984, United proposes the transportation of natural gas purchased by Georgia-Pacific from Exchange Oil & Gas Corporation (Exchange), an affiliate of Georgia-Pacific, from production in the Ridge Field, Lafayette Parish, Louisiana. United states that all transportation under the agreement is conditioned upon the availability of capacity sufficient to provide service without detriment or disadvantage to United's existing customers dependent upon its general system supply. It is asserted that the volumes of gas to be transported are 6,500 Mcf on a peak day, 6,500 Mcf on an average day, and 2,372,500 Mcf annually.

It is explained that of the transportation volume 48 percent is subject to a purchase price equal to the current maximum lawful price under section 102 of the Natural Gas Policy Act of 1978 and the remaining 52 percent is subject to a price of $2.8414 per million Btu. United submits that the transportation path is from United's facilities in the Ridge Field to the outlet side of United's meter station located at Georgia-Pacific's Port Hudson plant. United states that 47 percent of the gas consumed at the plant is for process use, 51 percent for boiler fuel, and 2 percent for space heating. It is asserted that the transportation volumes would be consumed in the same end uses and in the same relative percentages.

It is asserted that the rate to be charged by United for transportation service is United's generally effective transportation rate for its Southern Zone less any amount included in such rate for gas consumed in the operation of United's pipeline system. It is further asserted that the presently effective rate for transportation service to Georgia-Pacific is 26.41 cents per Mcf.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed

activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-12901 Filed 5-11-84; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures; Amtel, Inc.

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures and Solicitation of Comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding a total of $1,250,000 (plus accrued interest) in consent order funds to members of the public. The funds are being held in escrow pursuant to a Consent Order involving Amtel, Inc.

DATE AND ADDRESS: Comments must be filed June 13, 1984, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to Case Number HEF-0027.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a Consent Order entered into by Amtel, Inc. which settled possible pricing violations with respect to the firm's sales of motor gasoline and No. 2 fuel oil, during the period November 1, 1973 through May 3, 1979. These sales were made by Amtel's subsidiaries, South Central Oil Company, Hauck Trading Company (later changed to Ambur Oil and Trading Company, Inc.), and Hauck Oil Company (later changed to Premier Automotive, Inc.).

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute funds remitted by Amtel, Inc. and being held in escrow pursuant to the settlement. The DOE has tentatively decided that the funds should be distributed in a refund proceeding which would be carried out in two stages in the manner utilized with respect to other consent order funds.

All identified large jobber customers of Amtel whose addresses are known will be served with copies of this proposed decision as will parties who have previously made claims in the Amtel Consent Order proceeding. Copies will also be provided to the Independent Gasoline Marketers Council, the National Oil Jobbers Council, the Service Station Dealers of America, the Society of Independent Gasoline Marketers of America, and the Texas Oil Marketers Association.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in these proceedings will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: May 4, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

Name of Petitioner: Amtel, Inc.
Date of Filing: October 13, 1983.
Case Number: HEF-0027.

In accordance with the Department of Energy (DOE) procedural regulations, 10 CFR Part 205, Subpart V, on October 13, 1983, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) in connection with a Consent Order entered into with Amtel, Inc. (Amtel). The petition requests that the OHA formulate and implement procedures for the distribution of the funds received pursuant to the Amtel Consent Order.

Amtel is a "reseller-retailer" of refined petroleum products as that term was defined in 6 CFR 150.352 and 10 CFR 212.31. The firm was therefore subject to the Mandatory Petroleum Price Regulations set forth in 10 CFR Part 212, Subpart F. An ERA audit of Amtel's operations revealed possible pricing violations by three of Amtel's subsidiaries, South Central Oil Company (South Central), Hauck Oil Company (Hauck Oil), and Hauck Trading Company (Hauck Trading), in sales of motor gasoline and No. 2 fuel oil during the following periods: (i) March 29, 1974 through May 3, 1979 (South Central), (ii) November 1973 through November 1977 (Hauck Oil), and (iii) April 1974 through May 1978 (Hauck Trading). (*1*) In order to settle all claims and disputes between Amtel and the DOE regarding the legality of the prices charged by Amtel and its subsidiaries in sales of motor gasoline and No. 2 fuel oil during the above-mentioned periods, Amtel and the DOE entered into a Consent Order, effective February 7, 1980, in which Amtel agreed to pay $1,250,000 to the DOE. This payment was deposited in an escrow account for ultimate distribution to parties who may have been injured by the alleged overcharges. This Proposed Decision concerns the distribution of that consent order fund.

I. Jurisdiction and Authority to Fashion Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by the OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process is intended to be used in situations where the DOE is unable readily to identify either the persons or firms who may have been injured as a result of alleged or adjudicated violations or to ascertain the amount of each person's injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶82,597 (1981) (*Vickers*).

II. Proposed Refund Procedures

We have considered the ERA petition to implement a Subpart V proceeding and have determined that it is appropriate to establish a refund proceeding with respect to the Amtel

consent order fund. Amtel is a Rhode Island corporation which, through its subsidiaries, controlled a large and complex petroleum marketing operation in Texas and surrounding states. It is evident from the ERA audit workpapers that South Central, Amtel's largest petroleum-related subsidiary, sold motor gasoline and No. 2 fuel oil from 74 terminals to over 30 jobbers and some 370 retail stations, and to various other customers from an additional four bulk plants. The ERA estimates that South Central sold approximately 220 million gallons of product each year. Hauck Oil, a somewhat smaller operation, also supplied many customers with motor gasoline and No. 2 fuel oil. From the audit material available to us, it appears that Hauck Oil supplied at least 50 retail stations, many jobbers, and hundreds of commercial and residential heating oil customers. The ERA estimates that Hauck Oil sold 20 million gallons of product each year. Finally, the ERA audit papers indicate that Hauck Trading was apparently organized for the purpose of handling large transactions for Hauck Oil.

The ERA audit of Amtel was conducted on a sample basis with respect to both the length of the audit period and the number of distribution locations audited. Thus, while the ERA workpapers identify over 660 Amtel customers, it is likely that there exists many more as yet unidentified customers who may have an interest in the consent order fund.

From the ERA audit workpapers with respect to South Central, it appears that overcharges were alleged to exist primarily at the retail, as opposed to the jobber, level of distribution. The ERA estimated that South Central potentially overcharged retail dealers $3.8 million and jobbers $387,000.

Based upon our experience with Subpart V cases, we believe that the distribution of refunds in the present case should take place in two stages. The first stage will attempt to refund moneys to identifiable purchasers of Amtel motor gasoline and No. 2 fuel oil who may have been injured by Amtel's pricing practices during the consent order period and who file claims for a portion of the consent order fund. After meritorious claims are paid in the first stage, second-stage refund procedures may become necessary to distribute any remaining funds. *See generally Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*) (refund procedures established for first stage applicants, second stage refund procedures tentatively proposed).

A. Refunds to Identifiable Purchasers

We propose that the Amtel consent order funds be distributed to claimants who satisfactorily demonstrate that they were adversely affected by Amtel's alleged pricing practices. From our examination of the Amtel audit records, we believe that the claimants in this proceeding will fall into the following categories: (1) Resellers (including retailers) of motor gasoline and No. 2 fuel oil, and (2) firms, individuals, and organizations that were consumers (end-users) of Amtel motor gasoline and No. 2 fuel oil. The product purchased by these claimants will have been purchased either directly from an Amtel subsidiary, or from other firms in a chain of distribution leading back to an Amtel firm.

Resellers generally will be required to establish that they absorbed the alleged overcharges. To make this showing, they will have to demonstrate that, at the time they purchased product from Amtel, market conditions would not permit them to increase their prices to pass through the additional costs associated with the possible overcharges. In addition, resellers will be required to show that they maintained "banks" of unrecovered costs in order to demonstrate that they did not subsequently recover those costs by increasing their prices. *See Office of Enforcement*, 10 DOE ¶ 85,029 at 88,125 (1982) (*Ada*). However, as in many prior special refund cases, resellers will not be required to demonstrate injury if their refund claim is based on average monthly purchases of less than 50,000 gallons. *Id.* at 88,122.(2)

The 50,000 gallon per month threshold figure represents an appropriate balance between two competing considerations. *Office of Special Counsel, Economic Regulatory Administration: In the Matter of Charter Company*, 10 DOE ¶ 85,039 (1982). While we are concerned that the expense of preparing an application for refund not be grossly disproportionate to the potential refund to be claimed and thus deter many small claimants from filing, we believe that it would be improper and conceivably contrary to the purposes of this proceeding to pay out large sums of money without a showing of injury. The 50,000 gallon per month threshold figure is high enough not to deter low-volume customers, many of whom may not have the resources, and indeed the records, to substantiate that they were in fact injured by Amtel's pricing practices, and low enough so that larger customers, who generally have more sophisticated accounting resources and record systems, will have to make a showing that an injury did in fact occur. *See generally, Sid Richardson*, 10 DOE ¶ 85,056 at 88,278–79 (1983).

If resellers made only spot purchases from Amtel, however, we propose that they should be presumed to have suffered no injury. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers at 85,396–7. We believe the same reasoning holds true in the present case. Accordingly, in order to overcome the rebuttable presumption that they were not injured, spot purchasers should submit additional evidence to establish that they were unable to recover the increased prices they paid to Amtel. *See Amoco* at 88,200.

Customers who were consumers (end-users) of Amtel motor gasoline and No. 2 fuel oil should not have to make a showing of injury in order to qualify for a refund. *See Standard Oil Co. (Indiana)/Union Camp Corp.*, 11 DOE ¶ 85,007 (1983); *Standard Oil Co. (Indiana) /Elgin, Joliet*, and *Eastern Railway*, 11 DOE ¶ 85,105 (1983) (end-users of various refined petroleum products granted refunds solely on the basis of documented purchase volumes). Therefore, in this proceeding, we propose that consumers need only document the specific quantities of Amtel product they purchased during the consent order period.

With respect to applicants who demonstrate that they are entitled to refunds, we propose to utilize a volumetric method of allocating refunds. Under this method, a volumetric refund amount is calculated by dividing the consent order amount by the total volume of those products covered by the Consent Order that were sold by the firm during the consent order period. After weighing and balancing a number of factors, we believe that the attribution of injury by this method to each gallon of refined products sold by Amtel is the best available general method of distributing the refund money. This method recognizes that the computation of specific overcharges in individual transactions would be impossible to establish and contrary to the purpose of the Consent Order—viz., to resolve the DOE enforcement proceeding against Amtel by means of a negotiated settlement. (3) Since the volumetric method places all applicants

on an equal footing and is relatively easy to administer, we have concluded in prior Decisions that it is equitable, efficient and the best available general method of distributing refund moneys. *Amoco* at 88,198–99. In the present case, based on the information available to us at this time, the volumetric refund amount will be $.001014 per gallon ($1,250,000 divided by 1,232,387,710 gallons sold by Amtel). Successful claimants will receive refunds based on their eligible purchase volumes multiplied by the volumetric refund amount. As in previous cases, we will establish a minimum refund amount of $15.00 for first-stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweight the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

Detailed procedures for filing applications for refunds will be provided in a final Decision and Order. Before disposing of any of the funds received as a result of the Consent Order involved in this proceeding, we intend to publicize widely the distribution process to solicit comments on the proposed refund procedures and to provide an opportunity for any affected party to file a claim. In addition to publishing this Proposed Decision in the **Federal Register**, copies of the Proposed Decision will be sent to all firms which have filed claims in the Amtel consent order proceeding and to large jobbers identified in ERA audit workpapers. Copies of the Proposed Decision will also be provided to the Independent Gasoline Marketers Council, the National Oil Jobbers Council, the Service Station Dealers of America, the Society of Independent Gasoline Marketers of America and the Texas Oil Marketers Association. These organizations should be helpful in advising potential claimants of this proceeding.

B. Distribution of the Remainder of the Consent Order Funds

In the event that money remains after all first stage claims have been disposed of, undistributed funds could be distributed in various ways in a second stage of this proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed. We encourage the submission by interested parties of proposals containing alternative distribution schemes.

It Is Therefore Ordered That:

The $1,250,000 refund amount supplied by Amtel, Inc. pursuant to the Consent Order entered into with the Department of Energy on February 7, 1980, will be distributed in accordance with the foregoing Decision.

Footnotes

(*1*) Amtel purchased South Central on March 29, 1974 and sold it on May 3, 1979. Amtel purchased Hauck Oil on January 1, 1973. Amtel changed Hauck Oil's name to Premier Automotive, Inc. in July 1976 and discontinued the Hauck Oil/Premier Automotive operations in November 1977. Hauck Trading was formed from Hauck Oil in April 1974. In April 1975, Amtel changed Hauck Trading's name to Ambur Oil and Trading Company, Inc. The Ambur Oil operations were sold by Amtel in May 1978.

(*2*) Resellers whose average monthly purchases during the period for which a refund is claimed exceed 50,000 gallons, but who cannot establish that they did not pass through the price increases, or who limit their claims to the threshold amount, will be eligible for a refund for purchases up to the 50,000 gallons per month threshold without being required to demonstrate injury. *See Vickers* at 85,396; *see also Ada* at 88,122.

(*3*) The volumetric factor is based upon the consent order amount rather than the projected overcharge amount. *National Helium Corp./Farmland Industries, Inc.*, 11 DOE ¶ 85,257 at 88,469 (1984). The DOE never determined as a matter of law that Amtel had committed any violations of the DOE price regulations. Additionally, the audit of Amtel was not comprehensive and was never completed by the ERA. Finally, the period covered by the consent order is long, the amount of product sold by Amtel is relatively large and there are a large number of potentially affected customers. Accordingly, it would not be appropriate to approve refunds to Amtel customers based upon alleged overcharge amounts.

[FR Doc. 84-12905 Filed 5-11-84; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 2585-5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget for review. The ICR describes the nature of the solicitation and the expected impact, and, where appropriate, includes the actual data collection instrument. The following ICRs are available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: David Bowers, Office of Standards and Regulations, Information Management Section (PM–223), U.S. Environmental Protection. Agency, 401 M Street, SW, Washington, D.C. 20460, telephone (202) 382–2742 or FTS 382–2742.

SUPPLEMENTARY INFORMATION:

Research and Development Programs

- *Title:* Fuel Additive Manufacturer Notification (EPA No. 0309).

Abstract: Manufacturers must notify EPA of their intent to produce additives for vehicluar fuels; notification must also include certain descriptive and analytical informaiton. The Agency uses the information to determine if the additive has any harmful effect on vehicle emission controls or human health.

Respondents: Manufacturers of additives for vehicular fuels.

- *Title:* Fuel Manufacturer Notification for Motor Vehicle Fuel (EPA No. 0314).

Abstract: The Clean Air Act requires manufacturers of fuels for vehicles to notify EPA of any additive their fuel(s) contain and to include certain descriptive and analytical information. The Agency uses the information to determine if the additive has any harmful effect on vehicle emission controls or human health.

Respondents: Manufacturers of vehicular fuels.

Toxics Programs

- *Title:* Preliminary Assessment Information—Manufacturers Reporting (EPA No. 0586).

Abstract: EPA requires manufacturers and processors to submit data on production, use, and exposure for certain chemicals. The Agency will use this information to support future test rule actions and chemical assessments.

Respondents: Chemical manufacturers and processors.

- *Title:* Amendment to Premanufacture Notification Rules—Significant New Use Rules Recordkeeping Requirements (EPA No. 0574).

Abstract: The Agency is amending the information requirements for the Premanufacture Notification Rule by requiring limited recordkeeping by certain chemical manufacturers and processors in some significant new-use rules (SNURs). EPA uses the information in these records for monitoring compliance with the standard.

Respondents: Certain chemical manufacturers and processors.

• *Title:* State Plans to Issue Experimental Use Permits at the State Level (EPA No. 0594).

Abstract: EPA requires States desiring to issue Experimental Use Permits to submit their plans for EPA approval as well as an annual report. EPA will use this information to ensure that the program complies with the Federal Insecticide, Fungicide and Rodenticide Act.

Respondents: State governments.

• *Title:* National Human Adipose Tissue Survey (EPA No. 0939).

Abstract: EPA collects and analyzes samples of human adipose tissue from cooperating pathologists throughout the continental United States. This information will help the Agency estimate the prevalence of pesticides and toxic substances in, and level of exposure of, people to pesticides and toxic substances in this country.

Respondents: Pathologists and medical examiners.

• *Title:* Section 24(c) Special Local Needs Registration (EPA No. 0595).

Abstract: The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) permits States to register additional uses of federally registered pesticides (formulated for distribution and use within the State) to meet a special local need, such as an existing or imminent pesticide problem. EPA reviews information from the States to ensure conformance with FIFRA.

Respondents: State governments.

• *Title:* Final Section 8(a) Rule on Chlorinated Terphenyl (EPA No. 1171).

Abstract: EPA requires current and prospective manufacturers and importers of chlorinated terphenyl to submit a one-time report to EPA. This information allows the Agency to monitor the production and use of the chemical.

Respondents: Chemical manufacturers and importers.

• *Title:* Final Section 8(a) Rule for Chlorinated Napthalenes (EPA No. 1173).

Abstract: EPA requires current and prospective manufacturers and importers of chlorinated napthalenes to submit a one-time report to EPA. The information in this report allows EPA to monitor the production and use of this chemical.

Respondents: Chemical manufacturers and importers.

• *Title:* TSCA Section 4 Test Rules (EPA No. 1139).

Abstract: EPA requires that manufacturers or processors of certain chemicals (subject to Section 4 of the Toxic Substances Control Act) perform specified testing or apply for an exemption from that testing. EPA will review the information to determine whether the subject chemicals are likely to present an unreasonable risk to human health or the environment.

Respondents: Chemical manufacturers or processors.

• *Title:* Collection of Emergency Economic and Regulatory Support Data (EPA No. 1170).

Abstract: This information collection request allows EPA to obtain information from chemical manufacturers on the regulatory impacts of potential Toxic Substances policies or actions on a short time frame.

Respondents: Chemical manufacturers.

Agency PRA Clearance Requests Completed by OMB

EPA N. 0596, Application and Summary Report for an Emergency Exemption for Pesticides, was approved 24 April 1984 (OMB No. 2070–0032).

Comments on all parts of this notice should be sent to:

David Bower (PM–223), U.S. Environmental Protection Agency, Office of Standards and Regulations, 401 M Street, SW., Washington, D.C. 20460, and

Rick Otis, Carlos Tellez, or Wayne Leiss, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, D.C. 20503

Dated: May 4, 1984.

Daniel J. Fiorino,

Acting Director, Regulation and Information Management Division.

[FR Doc. 84–2817 Filed 5–11–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

May 7, 1984.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

Copies of the submission are available from Richard D. Goodfriend, Agency Clearance Officer, (202) 632–7513. Persons wishing to comment on this information collection should contact Martin Wagner, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

Title: Application for New Broadcast Station License

Form No.: FCC 302

Action: Extension

Respondents: Applicants for new commercial AM, FM or TV broadcast station license

Estimated Annual Burden: 789 Respondents; 295,086 Hours.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84–12878 Filed 5–11–84; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067–0009 (Test).

Title: Disaster Assistance Registration Form (Test).

Abstract: This form is to be treated and if successful will replace 4 forms currently in use with a substantial decrease in total number of burden hours. The information collected is required to facilitate the delivery of disaster assistance to respondents.

Type of Respondents: Individuals or Households.

Number of Respondents: 2,000.

Burden Hours: 1,500.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 287–9906, 500 C Street, SW., Washington, D.C. 20472.

Comments should be directed to Ken Allen, Desk Officer or FEMA, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: May 7, 1984.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 84–12848 Filed 5–11–84; 8:45 am]

BILLING CODE 6718–01–M

[FEMA-703-DR]

Mississippi; Amendment to Notice of Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the Notice of a major disaster for the State of Mississippi (FEMA-703-DR), dated April 26, 1984, and related determinations.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0501.

Notice: The notice of a major disaster for the State of Mississippi dated April 26, 1984, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 26, 1984:

District 3 of Panola County and District 2 of Union County as adjacent areas for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dated: May 8, 1984.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84-12849 Filed 5-11-84; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

[Independent Ocean Freight Forwarder License No. 2057]

Astro Maritime Agency, Inc.; Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.15(d) of Federal Maritime Commission General Order 4 further provides that a license shall be automatically revoked for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of Astro Maritime Agency, Inc., was cancelled effective April 25, 1984.

By letter dated March 26, 1984, Astro Maritime agency, Inc., was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 2057 would be automatically revoked unless a valid surety bond was filed with the Commission.

Astro Maritime Agency, Inc., has failed to furnish a valid bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), section 9.09(f) dated September 27, 1983;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 2057 be and is hereby revoked effective April 25, 1984.

It is ordered, that Independent Ocean Freight Forwarder License No. 2057 issued to Astro Maritime Agency, Inc., be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Astro Maritime Agency, Inc.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 84-12939 Filed 5-11-84; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 1116]

Hanebrink Co., Inc.—Koeller Struss Co.; Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.15(d) of Federal Maritime Commission General Order 4 further provides that a license shall be automatically revoked for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of Hanebrink Co., Inc.—Koeller Struss Co., 34 Worthington Drive, St. Louis, MO 63043 was cancelled effective May 4, 1984.

By letter dated April 4, 1984, Hanebrink Co., Inc.—Koeller Struss Co. was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 1116 would be automatically revoked unless a valid surety bond was filed with the Commission.

Hanebrink Co., Inc.—Koeller Struss Co. has failed to furnish a valid bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), section 9.09(f) dated September 27, 1983;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 1116 be and is hereby revoked effective May 4, 1984.

It is ordered, that Independent Ocean Freight Forwarder License No. 1116 issued to Hanebrink Co, Inc.—Koeller Struss Co., be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Hanebrink Co., Inc.—Koeller Struss Co.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 84-12940 Filed 5-11-84; 8:45 am]

BILLING CODE 6730-01-M

Independent Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916 (75 Stat. 522 and 46 U.S.C. 841(c)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573.

Bernice Elenor Wilkinson d.b.a. Wilkinson Forwarding, 326 East Mariposa Street, Phoenix, AZ 85012.

Mitsui Air International, Inc., 345 East Second Street, Los Angeles, CA 90012. Officers: Kiyoshi Fujioka, President/Director, Hajime Nomura, Executive Vice President, Takio Fukawa, Vice President.

By the Federal Maritime Commission.

Dated: May 9, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-12938 Filed 5-11-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Amoskeag Bank Shares, Inc., 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 June 4, 1984.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President), 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Amoskeag Bank Shares, Inc.*, Manchester, New Hampshire; to acquire 100 percent of the voting shares or assets of Bank Meridian, N.A., Hampton, New Hampshire.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Bay Lake Bancorp, Inc.*, Kewaunee, Wisconsin; to become a bank holding company by acquiring 80 percent of the voting shares of Union State Bank, Kewaunee, Wisconsin.

2. *Community Banks, Inc.*, Middleton, Wisconsin; to acquire 80 percent of the voting shares or assets of Brooklyn State Bank, Brooklyn, Wisconsin. Comments on this application must be received not later than June 6, 1984.

3. *Merchants Republic Corp.*, Terre Haute, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of The Merchants National Bank of Terre Haute, Terre Haute, Indiana.

4. *M. G. Bancorporation, Inc.*, Chicago, Illinois; to acquire 51 percent of the voting shares of Worth Bancorp, Inc., Chicago, Illinois, thereby indirectly acquiring Worth Bank and Trust, Chicago, Illinois.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *CSB Bancorp., Inc.*, Coffeyville, Kansas; to become a bank holding company by acquiring 88.17 percent of the voting shares of Coffeyville State Bank, Coffeyville, Kansas.

2. *Fourth Financial Corporation*, Wichita, Kansas; to acquire at least 24 percent of the voting shares of Olathe Bancshares, Inc., Wichita, Kansas, the proposed parent of Patrons Bancorporation, Inc., Olathe, Kansas, a bank holding company which controls Patrons Bank & Trust Co., Olathe, Kansas.

3. *Olathe Bancshares, Inc.*, Wichita, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Patrons Bancorporation, Inc., Olathe, Kansas, thereby indirectly acquiring Patrons Bank & Trust Co., Olathe, Kansas.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *Amarillo Western Bancshares, Inc.*, Amarillo, Texas; to acquire 100 percent of the voting shares or assets of City National Bank, Amarillo, Texas, a *de novo* bank.

2. *Community Capital Corp.*, Houston, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Community National Bank, Friendswood, Texas.

Board of Governors of the Federal Reserve System, May 8, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-12818 Filed 5-11-84; 8:45 am]

BILLING CODE 6210-0-M

Findlay Bankshares, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (49 FR 749) 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 acquire or control voting securities or assets of a company engaged 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 throughout 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 each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than June 4, 1984.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Findlay Bankshares, Inc.*, Findlay, Illinois; to continue to engage in general insurance sold in a community that has a population not exceeding 5,000.

2. *Findlay Bankshares, Inc.*, Findlay, Illinois; to continue to engage in discount brokerage activities regarding securities. These activities will be conducted in the state of Illinois.

Board of Governors of the Federal Reserve System, May 8, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-12821 Filed 5-11-84; 8:45 am]

BILLING CODE 6210-01-M

Heartland Bancorp, 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 throughout 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 June 1, 1984.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Heartland Bancorp, Inc.*, El Paso, Illinois; to engage *de novo* in the sale of credit life and accident and health insurance directly related to extensions of credit made by its subsidiaries. These activities would be conducted in the State of Illinois.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Liberty National Corporation*, Oklahoma City, Oklahoma; to engage *de novo* through its subsidiary, Liberty Mortgage Company, Oklahoma City, Oklahoma, in originating and servicing loans secured by real estate; servicing loans and other extensions of credit for any person; and providing life insurance that is directly related to an extension of credit or provision of financial services by its subsidiaries.

C. **Fedreral Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *New City Bancorp*, Orange, California; to engage *de novo* through its subsidiary, New City Leasing, Orange, California, to expand the activities of its existing subsidiary, New City Leasing, to now include engaging in any insurance activity engaged in by a bank holding company (or subsidiary) having total assets of $50,000,000 or less. These activities will be conducted in the state of California.

Board of Governors of the Federal Reserve System, May 8, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-12820 Filed 5-11-84; 8:45 am]

BILLING CODE 6210-01-M

RIHT Financial Corp.; Application To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(3) 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 engage *de novo* through a national bank subsidiary in deposit-taking, including the taking of demand deposits, and other activities specified below. The proposed subsidiary will not engage in commercial lending transactions as defined in Regulation Y. The Board has determined by order that such activities are closely related to banking. *U.S. Trust Company* (Press Release of March 23, 1984). Although the Board is publishing notice of this application, under established Board policy the record of the application will not be regarded as complete and the Board will not act on the application unless and until a preliminary charter for the proposed national bank subsidiary has been submitted to the Board.

The 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.

Comments regarding the application must be received at the Federal Reserve Bank or the offices of the Board of Governors not later than June 4, 1984.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *RIHT Financial Corporation*, Providence, Rhode Island; to engage through a national bank subsidiary, Hospital Trust of Florida, N.A., Palm Beach, Florida, in making personal loans; deposit taking activities; and offering credit-related insurance. These activities would be performed in southern Florida.

Board of Governors of the Federal Reserve System, May 8, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-12819 Filed 5-11-84; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

GSA Advisory Board; Meeting

Notice previously published in the **Federal Register** regarding the May 15, 1984 Meeting of the GSA Advisory Board is hereby amended to announce that that portion of the agenda relating to the disposition of the Chet Holifield Federal Building shall be closed to the public. This action is being taken consistent with the provisions of 5 U.S.C. Section 552b(C)(4) and 5 U.S.C. 552b(C)(9)(B).

The remainder of the meeting shall be open to the public as previously announced.

Questions regarding this meeting should be directed to Mr. James Dean on (202) 566-0382.

Dated: May 7, 1984.

Thomas J. Simon,

Director, Office of Program Initiatives.

[FR Doc. 84-13097 Filed 5-11-84; 9:16 am]

BILLING CODE 6820-26-M

[GSA Bulletin FPMR A-40, Supp. 9]

Federal Travel Regulations

AGENCY: Office of Federal Supply and Services, General Services Administration (GSA).

ACTION: Notice of Changes to Federal Travel Regulations.

SUMMARY: GSA has issued GSA Bulletin FPMR A-40, Supplement 9, transmitting changed pages to amend the Federal Travel Regulations (FTR), FPMR 101-7, to (1) incorporate the provisions of OMB Bulletin No. 82-11 dated April 19, 1982, entitled "Strengthening Travel Authorization Policies and Procedures to Eliminate Wasteful Spending on Travel," (2) and procedures for agencies and travelers regarding control of unused passenger transportation tickets and services, denied boarding compensation, and promotional materials received by the traveler

incident to official travel, and (3) and additional guidelines for preparing and processing travel reimbursement claims as recommended in General Accounting Audit Report (Increased Productivity in Processing Travel Claims Can Cut Administrative Costs Significantly (AFMD–81–18)).

EFFECTIVE DATE: The provisions of attachment A to this supplement are effective for travel performed on or after June 1, 1984.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Jones or Mrs. Rose Ann Grossman, Travel Regulations Branch (703–557–1253).

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

Explanation of Changes

1. Paragraph 1–1.3c is amended to add definition of the term "United States".

2. Paragraph 1–1.4 is revised and paragraph 1–1.5 is added to incorporate the guidelines for approving official travel and issuing travel authorizations contained in OMB Bulletin No. 82–11 dated April 19, 1982.

3. Paragraph 1–1.6 is added to require a statement or notice of the traveler's accountability for negotiable transportation documents and to highlight certain other instructions or information required by other regulation provisions which should be given to travelers at the time the travel is authorized.

4. Paragraph 1–3.4b(1)(a) is revised to be compatible with the provisions for mandatory use of contract air fares between selected city-pairs; and paragraph 1–3.4b(2) is revised to clarify that an agency's administrative determination is required before purchase of reduced fare tickets for group or charter arrangements available from travel agents and to allow a one-time exception for infrequent travelers. (GAO decision 59 Comp. Gen. 433 and B–201777, May 6, 1981.)

5. Paragraph 1–3.5 is revised to require a traveler's accountability statement on the travel voucher and to emphasize certain existing administrative requirements related to agencies' and travelers' responsibilities for the control of and accountability for unused passenger transportation documents and refunds. Paragraph 1–3.5b–1 is added to distinguish airline payments to employees who voluntarily give up reserved airline seats from payments for denied boarding compensation which are due the Government.

6. Paragraph 1–10.2b is revised for clarity and to conform with the changes explained in 4 above.

7. Paragraph 1–10.3a is revised to strengthen the provisions governing approval of travel advances to conform with additional guidelines issued in OMB Bulletin No. 82–11.

8. Paragraph 1–11.4 is revised to specify certain administrative requirements for processing of travel vouchers.

9. Paragraph 1–11.5 is amended by adding subparagraph g to require that a "Purpose of Travel Statement" be attached to or entered on the travel voucher or other reimbursement form to conform with new guidelines issued in OMB Bulletin No. 82–11.

10. Paragraph 1–11.5c(1) is revised to reflect the new requirement in 1–3.5 that a statement be placed on the travel voucher that all unused passenger transportation tickets, etc., have been accounted for and attached to the voucher. Traveler is required to initial statement.

11. Paragraph 1–11.6b(25) is amended to correct an erroneous reference.

12. Appendix 1–B is added to provide uniform purpose(s) of travel categories.

13. Other minor and/or editorial changes have been made which are not published in this notice but will be included in the changed pages of the FTR. Accordingly, the Federal Travel Regulations are amended as follows:

Chapter 1. Travel Allowances

Part 1. Applicability and General Rules

1. Authority: (Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c)).

2. Paragraph 1–1.3c is amended by adding new subparagraph 1–1.3c(2–1) to read as follows:

c. *Definitions.*

(1) * * *

(2) * * *

(2–1) *United States.* When used in a geographical sense, "United States" means the 50 States and the District of Columbia except as provided in 1–3.6b(1)(c). These terms may be used interchangeably herein.

* * * * *

3. Paragraph 1–1.4 is revised and paragraphs 1–1.5 and 1–1.6 are added to read as follows:

1–1.4. *Authorization of travel.*

a. *Travel policy.* It is the policy of the Government that agencies shall authorize only that travel which is necessary to accomplish the purposes of the Government effectively and economically.

b. *Agency responsibilities.*

(1) Except as otherwise provided by law, all travel shall be either authorized or approved by the head of the agency or by an official to whom such authority has been delegated. Ordinarily, a travel authorization shall be issued before the incurrence of the expenses. Agencies shall prescribe procedures for travel situations where it is not practical or possible to issue a written authorization in advance.

(2) Agency heads shall communicate the Government's travel policy (see a, above) to all travel authorizing officials at all levels within their respective agencies and establish controls to ensure that only travel that is essential to the purposes of the Government and for accomplishment of the agency's mission is authorized or approved.

(3) Travel authorizing officials shall authorize or approve only that travel necessary to accomplish the agency mission in the most effective and economical manner. Authorizing officials should be aware of travel plans, including plans to take annual leave in conjunction with travel, and shall ensure appropriate consideration of the need for the travel, the use of travel substitutes (i.e., mail, telconferencing, etc.) and the most cost effective routing and means of accomplishing travel. Each employee's travel shall be authorized separately under specific guidelines provided in 1–1.5.

1–1.5. *Guidelines for issuing travel authorizations.* The travel policies and practices of each agency shall reflect, but not be limited to, the guidelines stated herein.

a. *Types and use of travel authorizations.* General or blanket travel authorizations for entire agencies or groups of employees shall not be used. To ensure adequate managerial and supervisory attention to the need for all travel, each employee's travel shall be authorized separately under one of the following types of travel authorization:

(1) *Unlimited open authorization.* This type of authorization allows an employee to travel for any purpose

without further authorization. Unlimited open authorizations shall be issued only for department or agency heads, their deputies, or other principal agency officials as the agency head or deputy may designate, and managers of major subunits where no supervisor is present.

(2) *Limited open authorization.* This type of authorization allows an employee to travel without further authorization under certain specificed conditions (i.e., travel to specific geographical area(s), for specific purpose(s), subject to trip cost ceilings, or for specific periods of time. Limited open authorizations may be provided for employees whose duties require frequent repetitive travel. Such authorizations, however, should be reviewed and revalidated at least quarterly and should include realistic limitations on purpose(s), geographic area(s), number of trip(s), trip duration, and costs.

(3) *Trip-by-trip authorization.* This type of authorization allows an individual or group of individuals to take one or more specific trips and shall include the specific purpose, intinerary, and estimated costs. Travel not covered in an unlimited or limited open authorization (see (1) and (2), above) shall be separately authorized on a trip-by-trip basis.

b. *Levels of approval and requirements for special purpose travel.* Due to the relatively high costs associated with certain kinds of travel, such travel shall be authorized only on a trip-by-trip basis and reviewed at a level of authority sifficient to provide policy approval. The types of travel covered by this requirement are indicated in (1) thru (3), below. Authorization of travel of purposes other than those listed in (1) thru (3), below, should be delegated to the lowest management level which has responsiblity for both program accomplishment and obligation or commitment of funds.

(1) *Conferences, meetings, and training sessions.* Travel for conference and meeting attendance and training sessions shall be authorized on a trip-by-trip basis. When authorizing travel for conference and meeting attendance, the approving official shall ensure that the number of attendees from the agency is necessary and justified. In addition, the need for conferences and meeting for which total travel and per diem estimates exceed $5,000 shall be certified by a level of authority sufficient to provide policy approval as designated by the head of the agency scheduling the conference or meeting.

(2) *Foreign travel.* Overseas and foreign travel for all employees shall be authorzied on a trip-by-trip basis and authorized at as high an administrative level of authority as practical to provide policy approval. However, those employees whose duties require repetitive overseas and foreign travel or emergency overseas and foreign travel without advance notification may be issued limited or unlimited open authorizations, as appropirate, within the criteria of 1–1.5a (1) and (2), above. In addition, U.S. Government representatives and attendees at international intergovernmental conferences must be accredited by the State Department.

(3) *Change of official station/relocation.* Travel and related entitlements for a change of official station or relocation determined to be in the interest of the Government, as provided in Chapter 2 of these regulations, shall be authorized on a move-by-move basis (trip-by-trip authorization). This also includes new appointees covered under 2–1.2 and 2–1.5f(1) when issued authorizations for travel to their first duty station.

(c) *Purpose(s) of travel.* Each travel authorization and the associated travel voucher(s) (see 1–11.5g) shall specify clearly the purpose(s) of the travel. For uniformity in establishing travel purposes on authorizations, agencies should use travel purpose categories that conform to the extent possible to those listed in appendix 1–B.

d. *Cost estimates.* Travel authorizations shall include estimates of the cost of the travel. Both unlimited and limited open authorizations shall also include an estimate of the travel costs to be incurred over the period covered by the authorization. Agencies shall use these estimates to obligate the funds necessary to carry out that particular travel in order to improve travel budgetary controls. (For advance of funds for the estimated costs of travel, see 1–10.3.)

1–1.6 *Instruction/guidelines for travelers.*

a. *Traveler's potential liability notice.* Travels are accountable for all transportation tickets, Government Transportation Requests (GTR's), or other transportation procurement documents received by them in connection with their official travel. Agencies shall provide written instructions to the traveler at the time an authorization is issued advising of agency administrative procedures for the control of and accountability for passenger transportation documents. If trips are canceled or itineraries changed after tickets (or GTR's) are issued to the traveler, the traveler is liable for the vlaue of the tickets issued until all ticket coupons have been used for official travel purposes or all unused tickets or coupons are properly accounted for on the travel voucher. (See also 1–11.5c(1)). A statement to this effect shall be incorporated on the travel authorization, or issued as a "Notice to Traveler" and attached to the ticket or GTR when issued to the traveler. (See 1–3.5 for further provisions regarding unused passenger transportation documents.)

b. *Promotional materials received in conjunction with official travel from common carriers, rental car companies, or other commercial sources.* Employees are obligated to account for any gift, gratuity, or benefit received from private sources incident to the performance of official business (Comp. Gen. Decision B–199656, July 15, 1981). All promotional materials (e.g., bonus flights, reduced-fare coupons, cash, merchandise, gifts, credits toward future free or reduced costs of services or goods, etc.) received by employees in conjunction with official travel or incident to the purchase of a ticket for official travel, or other services such as car rental, are due the Government and may not be retained by the employee. When an employee receives promotional material from any commercial source incident to official travel, the employee shall accept the material on behalf of the Federal Government and relinquish it to an appropriately designated agency official. The governing regulations regarding agency disposition of promotional material received by Federal employees are prescribed by the Administrator of General Services in 41 CFR 101–25.103–2.

c. *Denied boarding compensation.* Travelers shall be instructed to turn into the agency any cash or other payments received from carriers for failure to provide confirmed reserved space as provided in 1–3.5.

d. *Billing information for ticket exchanges.* When a traveler exchanges a ticket for one of lesser value, the carrier should issue a receipt or a ticket refund application and is required to make refund directly to the appropriate agency billing office. To facilitate this refund procedure, agencies shall provide travelers with a "bill charges to" address by attaching a copy of the GTR or some other document containing this information to either the ticket or travel authorization as provided in 41 CFR 101–41.210–1. (See also 1–3.5c.)

e. *Use of travel agencies.* The services of a tavel agent may be used to obtain passenger transportation services within, from or between the United States and its possessions only under the conditions specified in 1–3.4b(2), or

when the travel agent is providing services to the Government under a contractual arrangement with the General Services Administration or other agency approved by the General Accounting Office.

4. Paragraph 1–3.4b(1)(a) and 1–3.4b(2) are revised to read as follows:

1–3.4. *Special fares.*

a. *Reserved.*

b. *Reduced rates.*

(1) *Use of special lower fares.* (a) Through-fares, special fares, commutation fares, excursion fares, and reduced-rate round trip fares shall be used for official travel when it can be determined before the start of a trip that this type of service is practical and economical to the Government. Round trip tickets for special lower fares which are restricted or have specific eligibility requirements shall be secured only when, on the basis of the journey as planned, it is known or can be reasonably anticipated that these tickets will be used. The use of special lower fares under these provisions does not take precedence over the mandatory use of contract air fares between selected city-pairs as prescribed in (b), below.

* * * * *

(2) *Reduced group or charter fares offered by travel agents.* (a) Reduced fares for group or charter arrangements available only through travel agents may be used by individuals or a group of employees provided an administrative determination has been made by the agency on a case-by-case basis before the travel that use of the reduced group or charter fares will result in a monetary savings to the Government and will not interfere with the conduct of official business. In such instances, if payment for transportation cannot be made to a carrier with a Government transportation request but must be made to the travel agent, the traveler shall pay for the transportation from his/her own funds or from a travel advance (see 1–10.2b(2) and 1–10.3) and shall obtain a receipt for the cost of the transportation necessary in the performance of official business which shall accompany his/her voucher along with a copy of the required administrative determination. Reimbursement shall not exceed the cost of accommodations authorized under 1–3.3.

(b) The infrequent traveler, unaware of the general prohibition against the use of travel agents (4 CFR 52.3), who inadvertently purchases transportation with personal funds from a travel agent without the required advance administrative approval, may be granted an exception to the preclusive provisions on a one-time basis and may be paid for the travel costs not to exceed the cost which would have been properly chargeable to the Government if the transportation service had been purchased directly from the carrier. In such cases, the traveler will be advised that recurrence of such use of travel agents will result in denial of reimbursement unless it can be demonstrated that the traveler had no alternative.

* * * * *

5. Paragraph 1–3.5 is revised to read as follows:

1–3.5. *Unused, downgraded, canceled, or oversold transportation services.*

a. *Unused or downgraded, tickets or canceled reservations.* Travelers are required to follow the guidelines in (1) and (2), below, in connection with unsued passenger transportation services and accommodations:

(1) When a traveler knows that reservations for transportation and/or accommodations will not be used, he/she must cancel the reservations, either personally or through the appropriate office handling agency travel arrangements, within the time limits specified by the carrier. Similarly, where the transportation furnished is different or of a lesser value than that authorized on the ticket or where a journey is terminated short of the destination specified on the transportation request, the Government is due a refund. The traveler shall report these facts to the appropriate agency office under procedures prescribed by the agency concerned. All adjustments in connection with unfurnished or unused passenger transportation must be promptly reported to prevent losses to the Government. Failure of travelers to follow these procedures may subject them to liability for any resulting losses.

(2) As provided in 41 CFR 101–41.209–2, travelers are not authorized to receive refunds, credits, or any other negotiable documents from carriers for unfurnished services or unused tickets (or portions thereof) issued in exchange for a Government transportation request. Instead, the traveler should request a receipt or ticket refund application or other written acknowledgement of fare adjustment from the carrier and furnish the carrier a "bill charges to" address. All unused tickets (including portions thereof), coupons, exchange orders, refund receipts or applications, notices of fare adjustments, etc., and the factual information relating to the unused passenger transportation must be attached to or entered on the travel voucher. In any case where itineraries are changed or trips are canceled after tickets have been issued to the traveler, a statement shall be entered on the travel voucher, and initialed by the traveler, that all tickets have been either used for official purposes or all unused tickets, or portions, thereof, have been properly accounted for and attached to the voucher. (See also 1–1.6a and 1–11.5c(1).)

b. *Oversold reserved accommodations (denied boarding).* Tariff provisions of certain scheduled air carriers require the payment of liquidated damages in certain situations if the carrier fails to provide confirmed reserved space. When payment of liquidated damages results from travel on official business, these penalty payments are due the Government and not the traveler. Any traveler who has been denied confirmed reserved space shall ensure that the carrier shows the "Treasurer of the United States" as payee on the compensation check and shall forward the payment to the appropriate agency official. (See 41 CFR 101–41.209–4.) These payments shall be deposited by the agency in accordance with Department of Treasury requirements and credited to miscellaneous receipt account 1699 "Miscellaneous Dividends and Earnings Not Otherwise Classified." (See also 1–1.6 and 41 CFR 101–25.103–2.)

b–1. *Voluntary vacating of reserved airline accommodations.* Airlines are required to ask for volunteers to give up their reserved seats before the airline denies boarding to any passenger with a reservation. Airlines are free to determine the amount to be paid to the volunteer. Employees who voluntarily give up their seats may retain these payments only under the following conditions. Employees should not voluntarily give up their seats if it will interfere with the performance of official duties. If an employee voluntarily gives up his/her reserved seat, and, as a result, incurs additional travel expenses beyond those which he/she would have normally incurred, these additional expenses must be offset against the payment received by the employee. If the employee's travel is delayed during official duty hours, the employee would be charged annual leave for the additional hours (see 59 Comp. Gen 203). Airline payments to volunteers are distinguishable from denied boarding compensation (payments) under b, above, wherein penalty payments are due the Government.

c. *Agency responsibilities.* Each agency shall prescribe procedures for use by travelers when submitting documentation and statements relating to unused or downgraded passenger transportation services. Included in

these procedures will be instructions for submitting payments received from carriers for denied confirmed reserved space. Agencies shall also provide the traveler with a "bill charges to" address by attaching a copy of the GTR, or some other document containing this information, to either the travel authorization or the ticket to facilitate the carrier refund procedures as required by 41 CFR 101–41.210–1. Necessary administrative arrangements shall be established for an appropriate review of travel vouchers and attached documentation in order to identify any unused tickets, coupons, etc., or other evidence of refund due the Government. Thse documents must be identified and processed under the unused ticket refund procedures prescribed in 41 CFR 101–41.210 in a timely manner to prevent losses to the Government. (*See* a, above, for required traveler's statement intended to highlight and facilitate control of unused tickets.)

Note.—General Services Administration (GSA) publication, "How To Prepare And Process U.S. Government Transportation Requests," provides specific instructions for agencies and travelers regarding unused transportation services. Federal agencies may obtain copies of this publication by requisition from the GSA by using national stock number 7610–01–038–1389, or from the GSA, Office of Transportation Audits (BWCP), Washington, D.C. 20405.

6. Paragraph 1–10.2b is revised to read as follows:

1–10.2. *Procurement of common carrier transportation.*

b. *Cash payments for procurement of common carrier transportation.* The use of cash to procure passenger transportation is authorized under the following conditions:

(1) The procedures for the use of cash to procure passenger transportation services are prescribed by the Administrator of General Services in 41 CFR 101–41.203–2, as follows:

(a) Travelers shall use cash to procure all passenger transportation services costing $10 or less, excluding Federal transportation tax, and to pay excess baggage charges costing $15 or less for each leg of a trip, unless special circumstances justify the use of a GTR.

(b) Agencies may, by appropriate regulations, require a traveler to use cash to procure passenger transportation services from, to or between points in the United States and its possessions or the trust territories when the cost is over $10 but does not exceed $100, excluding Federal transportation tax, for each trip as authorized on the official travel authorization (see note below).

Note.—The National Railroad Passenger Corporation (Amtrak) will not accept a GTR for travel under $100. Amtrak will accept personal checks or major credit cards provided proper identification is shown when purchasing a ticket.

(c) Except as noted in (2), below, a GTR must be used to procure passenger transportation services costing in excess of $100, excluding Federal transportation tax, unless otherwise exempted in writing as provided in 41 CFR 101–41.203.2.

(d) Receipts, passenger coupons, or other appropriate evidence shall be required to support claims for reimbursement of cash payments for passenger transportation services in all cases except for use of local transit systems. (See 1–11.5c(3) for voucher requirements.)

(2) As an exception to the rule in (1)(c), above, cash payment of official transportation expenses, without regard to the $100 limitation, is authorized under the following conditions:

(a) Cash payments in excess of $100 may be authorized by the agency for individual employees or a group of employees to secure reduced group or excursion fares available only through travel agents under certain conditions as provided in 1–3.4b(2). Cash payment may be made through use of a travel advance (see 1–10.3) or through use of personal funds (cash, check, or personal credit card). A copy of the administrative determination required under 1–3.4b(2) shall accompany the travel voucher.

(b) Cash payment of passenger transportation services in excess of $100 is authorized when a participating agency or its employees use a charge card issued by a contractor under contract with the General Services Administration for official travel. Use of charge or credit cards held by the employee for personal use and issued by any other credit card company is not authorized under this exception. (See specific regulations governing the Government's charge card program.)

7. Paragraph 1–10.3a is revised as follows:

1–10.3. *Advance of funds.*

a. *Authority.* The head of each agency or his/her designated representative may advance through proper disbursing officers to any person entitled to per diem, mileage allowance, or subsistence expenses, or for the procurement of transportation by group or charter under 1–3.4b, any sums as may be deemed advisable considering the character and probable duration of the travel to be performed or the cost of the transportation to be paid for by the employee. However, the amount of the advance shall not exceed the minimum estimated expenses that the employee is expected to incur prior to reimbursement. As a general rule, advances shall be held to a minimum and allowed only when circumstances indicate that an advance is warranted and only in conjunction with a travel authorization. These provisions apply to advances issued for trip-by-trip authorizations as well as to permanent advances issued in conjunction with open travel authorizations. The need for a permanent advance and the amount of the advance shall be reviewed and justified when the corresponding open travel authorization is reviewed and justified. (See 1–1.5 a and d.)

* * * * *

8. Paragraph 1–11.4 is revised to read as follows:

1–11.4 *Submission and review of travel vouchers.*

a. *Agency administrative procedures.* Agencies are authorized to prescribe the administrative procedures for travelers to follow in submitting travel vouchers under the guidelines published in this Part 11. Number of copies required will be as directed by the agency. The time of submission will be as directed by the agency but should be within 5 working days after completion of the trip or period of travel, or every 30 days if the employee is in a continuous travel status. Only the original of the voucher is required to be signed by the traveler. Travel voucher forms may be typed when prepared by clerical personnel from information provided by the traveler. However, typing of travel voucher forms is not required and should not be done when travelers prepare legible, handwritten vouchers. Handwritten vouchers must be prepared in ink.

b. *Supervisory/administrative review.* The purpose of the supervisory review of the completed travel voucher is primarily to confirm that the travel for which expenses are being claimed was performed as authorized. This review should not be a detailed audit for accuracy and shall not duplicate the functions of the voucher examiners and certifying officers in the payment centers/finance offices. (See c, below.) The supervisory review should be at a level that is fully knowledgeable of the employee's activities. One level of supervisory review is generally considered sufficient. Administrative approval of the voucher shall be in accordance with 1–11.6.

c. *Payment center/finance office functions and responsibilities.* The responsibility of the voucher examiner is to ensure that the voucher is properly

prepared according to pertinent regulations and agency procedures before it is certified for payment. The voucher examiner reviews the claim (1) to ascertain accuracy of the amounts claimed, (2) to determine whether the types of expenses being claimed are authorized and allowable expenses, and (3) to ensure that required receipts, statements, justifications, etc. are attached to the voucher in support of the claimed expenses. The voucher examiner also will examine the supporting documents for unused passenger tickets and transportation refund applications and initiate the refund process according to agency procedures and 41 CFR 101–41.209 and 210. (See 1–3.5.) The certifying officer assumes ultimate responsibility for these actions when certifying a voucher for payment. The accounting responsibilities pertaining to payment of travel claims shall be in accordance with procedures prescribed by the General Accounting Office in the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies, Title 7, Fiscal Procedures.

9. Paragraph 1–11.5 is amended by revising paragraph 1–11.5c(1) and by adding subparagraph g to read as follows:

1–11.5. *Preparation of voucher.*

* * * * *

c. * * *

(1) *Transportation requests, unused tickets.* The travel voucher must show, in the space provided for such information, the serial numbers of the transportation request(s) issued, with: dates of travel, the points of departure and destination, classes of service used, name of transportation company, and the value of the transportation secured. Any differences in the actual travel performed as opposed to that shown on the GTR shall also be shown. When itineraries are changed or trips canceled after tickets have been issued to the traveler, a statement shall be entered on the voucher and initialed by the traveler that tickets have been either used for official travel or all unused tickets, or portions thereof, have been properly accounted for and attached to the voucher. (See 1–3.5a.)

* * * * *

g. *Purpose of travel statement.* The purpose(s) of travel shall be stated on the travel voucher form for each trip for which reimbursement is being claimed. If travel is performed for several different purposes such as travel authorized under an unlimited open authorization or a limited open authorization, the purpose of travel for each trip must be stated on the reimbursement claim. The purpose of travel statement should be consistent with the purpose(s) stated on the corresponding travel authorization. (See 1–1.5 and appendix 1–B.)

10. Paragraph 1–11.6b(25) is amended to read as follows:

1–11.6 *Administrative approvals.*

* * * * *

b. * * *

(1) through (24) * * *

(25) *Waiver of itemization for local telephone calls; local metropolitan streetcar, bus, and subway fares; and parking meter fees (1–11.5a(1)).*

11. Appendix 1–B is added to read as follows:

Travel Purpose Categories

In order to establish uniformity in the way that travel purposes are identified on the travel authorization (see 1–1.4b), agencies shall adopt travel purpose categories that conform to the extent possible with the following guidelines. (Reference OMB Bulletin No. 82–11, dated April 19, 1982.)

1. *Site visit*—Travel to a particular site in order to personally perform operational or managerial activities (e.g., to oversee program activities, grant operations, or management activities for internal control purposes; carry out an audit, inspection, or repair activity; conduct negotiations; provide instructions; or provide technical assistance).

2. *Information meeting*—Travel to attend a meeting to discuss general agency operations, review status reports or discuss topics of general interest. If a site visit was conducted as part of the same trip, consider the entire trip to be for the purpose of a site visit.

3. *Training attendance*—Travel to receive training.

4. *Speech or presentation*—Travel to make a speech or a presentation, deliver a paper, or otherwise take part in a formal program other than a training course.

5. *Conference attendance*—Travel to attend a conference, convention, seminar or symposium for purposes of observation or education only, with no formal role in the proceedings.

6. *Relocation*—Travel performed in conjunction with a transfer from one official duty station to another (same as a permanent change of station or PCS move). This includes new appointees when they are authorized relocation allowances for reporting to first duty station.

7. *Entitlement travel*—Travel entitlements for which an employee (or dependent) may be eligible while serving at a duty station outside the conterminous United States; e.g., tour renewal agreement travel for the purpose of taking leave between tours of duty; educational travel, etc. (This type of travel is normally perfomred in conjunction with a travel entitlement resulting from a change of station assignment or renewal of a tour of duty at duty stations located outside the conterminous United States.)

8. *Special mission travel*—Travel to carry out a special agency mission; e.g., move noncombat military unit; provide security to a person or a shipment (such as a diplomatic pouch); move witnesses from residence to other locations; travel by Federal beneficiaries and other nonemployees.

9. *Other travel*—All travel performed for reasons (purposes) which are not shown in one of the other eight categories listed above. Even though stated as "other travel," travel authorization and voucher should also detail specific purpose.

Dated: February 29, 1984.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 84–12832 Filed 5–11–84; 8:45 am]

BILLING CODE 8820–AM–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions and Delegations of Authority

Part A (Office of the Secretary), Chapter AD (Office of the Regional Director) as last amended at 47 FR 39616, September 8, 1982; and Part H (Public Health Service), Chapter HD (Public Health Service Regional Offices) as last amended at 44 FR 21711, April 11, 1979, are amended. These changes reflect the transfer of regional facilities, engineering and construction responsibilities from the Office of the Secretary, Office of the Regional Director, to the Public Health Service Regional Offices, Office of the Regional Health Administrator.

1. Part A, Chapter AD (Office of the Regional Director) section AD.20 (Functions) Subsection D. (Regional Administrative Support Center (AD(I–X)L)) is amended by deleting the word "engineering" from the first paragraph and substituting a new paragraph 6 to read as follows:

Manages the space program for the Regional Office, and the acquisition of field office space for all OPDIVs except SSA and PHS. Oversees regional compliance with Occupational Safety and Health Act. Develops and maintains the regional emergency operating center for use in natural disasters and war caused emergencies.

2. Part H, Chapter HD (Public Health Service Regional Offices) section HD.20 (Functions) is amended by adding a new item 20 to read as follows:

and (20) administers regional facilities, engineering and construction activities.

Effective date: May 14, 1984.

Margaret M. Heckler,

Secretary.

[FR Doc. 84–12301 Filed 5–11–84; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

[Docket No. 83M-0004]

St. Jude Medical® Cardiac Valve; Hearing Before Advisory Committee on Petition for Reconsideration of Premarket Approval; Request for Nominations

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it intends to hold a hearing before an advisory committee to be formed to consider a petition for reconsideration of the agency's approval of the St. Jude Medical® Cardiac Valve. The advisory committee will consist of three persons, qualified by training and experience to evaluate the petition, and will be appointed by the Commissioner of Food and Drugs. Qualified individuals who are interested in being appointed by the Commissioner to serve on the advisory committee should contact Timothy C. Sottek (address below) or may be nominated by any interested person.

DATE: Written nominations by June 13, 1984; the date, time, and place of the advisory committee hearing will be announced later.

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

FOR FURTHER INFORMATION CONTACT: Timothy C. Sottek, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: In an order dated December 17, 1982, the Associate Director for Device Evaluation of the Center for Devices and Radiological Health (formerly National Center for Devices and Radiological Health) approved a premarket approval application (PMA) (Docket No. 83M-0004) for the St. Jude Medical® Cardiac Valve sponsored by St. Jude Medical, Inc. (SJM), St Paul, MN 55112. The St. Jude Medical® Cardiac Valve is intended for surgical replacement of diseased, damaged, or malfunctioning heart valves. In the **Federal Register** of March 1, 1983 (48 FR 8595), FDA announced its approval of the PMA. In the March 1, 1983 notice, FDA also announced that, under section 520(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(h)), a summary of the safety and effectiveness data upon which the agency based its approval of the device was available to the public. Further, in accordance with section 515(d) of the act (21 U.S.C. 360e(d)), FDA provided an opportunity for interested persons to seek review of the approval.

Previously, on May 5, 1982, Daniel J. Fiduccia had filed a citizen petition (Docket No. 82P-0152/CP) requesting that FDA refuse to approve the then pending PMA for the St. Jude Medical® Cardiac Valve. As grounds for this requested action, the petitioner alleged that SJM had failed to submit in the PMA all information as required by section 519 of the act (21 U.S.C. 360i), and that SJM had submitted false and misleading material contrary to section 301(q)(2) of the act (21 U.S.C. 331(q)(2)). According to the petitioner, these violations were illustrated by SJM's handling and reporting of a St. Jude Medical® Cardiac Valve implantation in the petitioner's father. In addition, the petitioner set forth information that he believed demonstrated that SJM may have commercialized the subject device, in violation of 21 CFR 812.7(b), and had failed to obtain the informed consent of subjects during the time the sponsor was conducting clinical investigations with the device.

In a supplement to this citizen petition, filed January 19, 1983, the petitioner further requested that, if FDA approved the PMA for the St. Jude Medical® Cardiac Valve, use of the device should be limited by the terms of the approval and/or that certain warnings regarding "increased risks of valve malfunction in certain circumstances" be required by FDA.

By letter dated February 22, 1983, FDA denied the citizen petition, including the supplement to the petition. FDA advised the petitioner that the agency had reviewed the subject PMA, had concluded that SJM had provided in the PMA sufficient valid scientific evidence for FDA to find that there is reasonable assurance that the St. Jude Medical® Cardiac Valve is safe and effective under its recommended conditions of use, and that other applicable statutory requirements had been met, and, therefore, by order of December 17, 1982, the agency had approved the application. FDA also advised the petitioner that the agency believed that SJM had furnished all required information and did not submit false and misleading reports in either the firm's applications for premarket approval or for an earlier investigational device exemption. FDA further stated that, based upon the agency's review of these applications, which included most of the information contained in the citizen petition, FDA had concluded that the data presented in SJM's PMA were reliable. Finally, FDA stated that the FDA-approved labeling and physician's manual for the St. Jude Medical® Cardiac Valve contained all restrictions and warnings that FDA believed to be medically and scientifically appropriate for the device, and that there was insufficient evidence to support the action requested in the petitioner's supplement to his citizen petition. For all of these reasons, FDA denied the petition and the supplement.

The citizen petition (Docket No. 82P-0152/CP), the supplement (Docket No. 82P-0152/A Supp.), and FDA's response are hereby incorporated by reference into the docket for this proceeding (Docket No. 83M-0004).

On March 31, 1983, the petitioner filed a petition for reconsideration of FDA's action in which he requested that FDA's approval of the SJM PMA be reviewed by an advisory committee. Under section 515(g)(2)(A) of the act, any interested person may request administrative review, by an independent advisory committee of experts, of an order approving the marketing of a medical device.

Accordingly, pursuant to section 515(g)(2)(A) of the act, the Commissioner is granting the request for administrative review by establishing an advisory committee under section 515(g)(2)(B) of the act to submit to the agency a report and recommendation with respect to FDA's decision to approve the PMA. The following issues will be reviewed by the advisory committee:

1. Whether, based upon the petition for reconsideration, valuated together with the evidence contained in the SJM PMA, there is a lack of showing of reasonable assurance that the St. Jude Medical® Cardiac Valve is safe and effective under the conditions of use prescribed, recommended, or suggested in the device's labeling and, therefore, whether FDA should initiate a proceeding to withdraw approval of this PMA pursuant to section 515(e)(1)(B) of the act. In conducting this review, the advisory committee is to determine whether the complications and complication rates attributable to the St. Jude Medical® Cardiac Valve are acceptable and the committee may, if it believes it to be medically or scientifically relevant to this determination, evaluate: (a) Whether such complications could have been caused by sticking of the valve leaflets; and (b) whether there is a correlation between various aspects of a St. Jude Medical® Cardiac Valve recipient's cardiac anatomy or condition (e.g., enlarged heart, hypertrophied ventricle, dilated atrium, atrial fibrillation, rapid pulse, low blood pressure) and any St.

Jude Medical® Cardiac Valve dysfunction.

2. Whether, based upon its review of the data contained in the SJM PMA, the information contained in the petition for reconsideration, and consideration of the issue presented in paragraph 1 above, the advisory committee believes that any revision of the labeling (e.g., Physician's Manual) for the St. Jude Medical® Cardiac Valve is medically or scientifically appropriate.

The advisory committee meeting, public participation, and other activities will be governed by the Federal Advisory Committee Act (Pub. L. 92–463) and FDA's regulations in 21 CFR Part 14 governing its public advisory committees. A summary of the safety and effectiveness information submitted to the advisory committee will be made available to the public pursuant to section 520(h)(2) of the act. The advisory committee will consist of three experts, qualified by training and experience to evaluate the petition, and appointed by the Commissioner. Advisory committee members will be selected from among authorities knowledgeable in some or all of the following fields: clinical and administrative medicine, pathology, engineering, and biological and physical sciences.

Because this is a public hearing, it is subject to FDA's guideline concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings. This guideline was published in the **Federal Register** of April 13, 1984 (49 FR 14723). These procedures are primarily intended to expedite media access to FDA public proceedings, including hearings before a public advisory committee conducted pursuant to Part 14 of the agency's regulations. Under this guideline, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including the presentation of participants in this proceeding. Accordingly all interested persons are directed to the guideline, as well as the **Federal Register** notice annoucing issuance of the guideline, for a more complete explanation of the guideline's effect on this hearing.

Individuals who are interested in being appointed by the Commissioner to serve on the advisory committee should contact Timothy C. Sottek (address above) or may be nominated by any interested person. Nominations are required to be in writing and submitted to the Docket Management Branch (address above) by June 13, 1984.

Any interested person may nominate one or more qualified persons for membership. A complete curriculum vitae of the nominee shall be included with the nomination. Nominations shall state that the nominee is aware of the nomination, is willing to serve as a member of the committee, and appears to have no conflict of interest. FDA will ask potential candidates to provide detailed information concerning financial holdings, consultancies, and research grants or contracts to permit evaluation of possible sources of conflict of interest.

All documents filed in this matter are filed under Docket No. 83M–0004 and are available for public review in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Additional information about this proceeding will be published in a future **Federal Register** notice, including announcement of the date, time, and place of the advisory committee meeting.

Dated: May 3, 1984.

Mark Novitch,

Deputy Commissioner of Food and Drugs.

[FR Doc. 84-12713 Filed 5-11-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket Nos. 83V-0144 et al.]

Availability of Approved Variances for Laser Light Shows

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that variances from the performance standard for laser products have been approved by the Center for Devices and Radiological Health (CDRH) for six organizations that manufacture and produce laser light shows, laser light show projectors, or both. The projector provides a laser light display to produce a variety of special lighting effects. The principal use of these products is to provide entertainment to general audiences.

DATE: The effective dates and termination dates of the variances are listed in the table below under "Supplementary Information."

ADDRESS: The application and all correspondence on the various applications have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Summers, 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 § 1010.4 (21 CFR 1010.4), each of the six organizations listed in the table below has been granted a variance from § 1040.11(c) (21 CFR 1040.11(c)) of the performance standard for laser products.

Each variance permits the listed manufacturer to introduce into commerce a demonstration laser product, assembled and produced by the manufacturer, which is its particular variety of laser light show, laser light show projector, or both. Each involves levels of accessible laser radiation in excess of class II levels but not exceeding those required to perform the intended function of the product. Suitable means of radiation protection are provided by constraints on the physical and optical design, by warnings in the user manual and on the product, and by procedures for personnel who will operate the products. So that each product may show evidence of the variance approved for the manufacturer of that product, each product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the docket number, and the effective date of the variance as specified in the table below. By letter to each manufacturer, the Deputy Director of CDRH approved the requested variances.

Docket No.	Manufacturing organization	Demonstration laser product	Effective and termination date
83V-0144 (amendment)	Stone Mountain Memorial Association, P.O. Box 778, Stone Mountain, Ga. 30036.	Laser light shows incorporating laser media model LM argon and krypton projectors and the model LMS argon projector.	Feb. 16, 1984; May 31, 1985.
83V-0338	Lime Light (Lansdown Investors of New York Inc.), 47 West 20th Street, New York, N.Y. 10011.	Lime Light Laser Light Shows and the incorporated model 5.50 (550 Series) laser projection system.	Feb. 24, 1984; Feb. 24, 1986.
83V-0412	Western Michigan University, Dalton Center, Kalamazoo, Mich. 49008.	INNOVA 90K Laser Light Shows and the class IV ion laser projection systems and display devices assembled and produced by Western Michigan University.	Jan. 26, 1984; Jan. 26, 1986.

Docket No.	Manufacturing organization	Demonstration laser product	Effective and termination date
84V-0033	Lone Star Laser Shows, Inc., 7563 South Freeway (Hwy. 288), Houston, Tex. 77021.	Lone Star Laser Shows, Inc., model 2020 laser projector and shows incorporating the Lone Star 2020 projector and Laser Media Series Projectors.	Feb. 22, 1984; Feb. 22, 1986.
84V-0034	T.E.M. Systems, 2187 Lanark Street, Apartment 19, Canoga Park, Calif. 91304.	T.E.M. Systems Laser Light Show and the class IV Beam Projector model I ion laser projector incorporated in this light show..	Mar. 6, 1984; Mar. 6, 1986.
84V-0059	Laser Productions Limited, P.O. Box 95873, Seattle, Wash. 98145.	Laser Light Shows assembled and produced by Laser Productions Limited incorporating one or more of the following certified projectors: models L.S.D. C-3, A Priori L.C.P., L.C. 440, and L.T. Mark II..	Feb. 22, 1984; Feb. 22, 1986.

In accordance with § 1010.4, the application and all correspondence (including the written notice of approval) on the various applications have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 8, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-12817 Filed 5-11-84; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committee.

Meetings: The following advisory committee meetings are announced:

Blood Products Advisory Committee

Date, time, and place. June 6, 8:30 a.m., Conference Rm. 6, 6th Floor, Bldg. 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., open committee discussion, 9:30 a.m. to 5 p.m.; Mary Ann Tourault, Center for Drugs and Biologics (formerly National Center for Drugs and Biologics) (HFN-830), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-496-5241.

General function of the committee. The committee reviews and evaluates available data on the safety, effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should inform the contact person.

Open committee discussion. The committee will discuss FDA's March 24, 1983 memorandum to blood banks and plasma collection centers outlining steps to decrease the risk of transmitting Acquired Immunodeficiency Syndrome (AIDS) and the disposition of plasma derivatives containing plasma from donors who subsequently were discovered to have developed AIDS or AIDS' symptoms. Copies of the March 24, 1983 memorandum are available from Mary Ann Tourault (address above).

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. June 19, 20, and 21, 9 a.m., Auditorium, Lister Hill Center, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, June 19, 9 a.m. to 10 a.m.; open committee discussion, June 19, 10 a.m. to 5 p.m.; June 20 and 21, 9 a.m. to 5 p.m.; Joan C. Standaert, Center for Drugs and Biologics (formerly National Center for Drugs and Biologics) (HFN-110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4730.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in cardiovascular and renal disease.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should notify the contact person.

Open committee discussion. The committee will discuss: Tuesday, June 19, morning session, Amiodarone Tablets (new drug application (NDA) 18-972), Ives Laboratories, Inc., for use as an antiarrhythmic agent, afternoon session, Enalapril Tablets (NDA 18-998), Merck Sharp & Dohme, for use as an antihypertensive agent; Wednesday, June 20, morning session, Tambocor Tablets (NDA 18-830), Riker Laboratories, Inc., for use as an antiarrhythmic, afternoon session, Atenupres Tablets (NDA 18-955), Merrell Dow Pharmaceuticals, Inc., for use as an antihypertensive agent and Mexitil (NDA 18-873), Boehringer Ingelheim, Ltd., for use as an antiarrhythmic agent; Thursday, June 21, morning session, Asprin OTC Trac #201-1, petition by Sterling Drug, Inc., for use in patients with a recent myocardial infarction.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings. This guideline was

published in the Federal Register of April 13, 1984 (49 FR 14723). These procedures are primarily intended to expedite media access to FDA's public proceedings, including hearings before a public advisory committee conducted pursuant to Part 14 of the agency's regulations. Under this guideline, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including the presentation of participants at a public hearing. Accordingly, all interested persons are directed to the guideline, as well as the Federal Register notice announcing issuance of the guideline, for a more complete explanation of the guideline's effect on public hearings.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from 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.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: May 8, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–12816 Filed 5–11–84; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

Aging Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Aging Review Committee, National Institute on Aging, on June 19, 20, 21, and 22, 1984, in Building 31, Conference Room 4, National Institutes of Health, Bethesda, Maryland.

The meeting will be open to the public from 7:30 p.m. to 10.30 p.m. on June 19, for introductory remarks. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 20, from 9:00 a.m. to adjournment on June 22, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, NIA, Building 31, Room 2C05, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–5898, will provide summaries of meetings and rosters of Committee members as well as substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: May 7, 1984.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 84–12867 Filed 5–11–84; 8:45 am]

BILLING CODE 4140–01–M

Biomedical Library Review Committee and the Subcommittee for the Review of Medical Library Resource Improvement Grant Applications; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biomedical Library Review Committee on June 20–21, 1984, convening each day at 8:30 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland, to adjournment on June 21, and the meeting of the Subcommittee for the Review of Medical Library Resource Improvement Grant Applications on June 19 from 2:00 p.m. to 5:00 p.m. in the 5th-Floor Conference Room of the Lister Hill Center Building.

The meeting on June 20 will be open to the public from 8:30 to 11:00 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and section 10(d) of Pub. L. 92–463, the regular meeting and the subcommittee meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications as follows: The regular meeting on June 20 from 11:00 a.m. to 5:00 p.m., and on June 21, from 8:30 a.m. to adjournment; and the subcommittee meeting on June 19 from 2:00 p.m. to 5:00 p.m. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Executive Secretary of the Committee, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20209, telephone number: 301–496–4191, will provide summaries of the meeting, rosters of the commmitee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health)

Dated: May 7, 1984.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 84–12866 Filed 5–11–84; 8:45 am]

BILLING CODE 4140–01–M

Cancer Clinical Investigation Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Clinical Investigation Review Committee, National Cancer Institute, June 25–26, 1984, Building 31C, Conference Room 6, National Institutes of Health, Bethesda, Maryland 20205. This meeting will be open to the public on June 25, from 8:30 a.m. to 9:00 a.m. and from 1:30 p.m. to 3:00 p.m., to review administrative details and for a mini-symposium on "Microcomputers in Clinical Research." Attendance by the public will be limited to space available.

In accordance with provisions set forth in Sections 552b(c)(4) and

552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 25, from approximately 9:00 a.m. to 12:30 p.m. and from approximately 3:00 p.m. to recess, and on June 26, from 8:30 a.m. to adjournment, for the review, discussion, and evaluation of individual cooperative agreement applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Richard K. Hsieh, Executive Secretary, Cancer Clinical Investigation Review Committee, National Cancer Institute, Westwood Building, Room 819, National Institutes of Health, Bethesda, Maryland 20205 (301/496–7481) will furnish substantive program information.

Dated: May 7, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 84–12868 Filed 5–11–84; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of meetings of the review committees of the National Institute of Child Health and Human Development for June 1984.

These meetings will be open to the public to discuss items relative to committee activities including announcements by the Director, Associate Director for Scientific Review, and executive secretaries, for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6) Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, these meetings will be closed to the public for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Majorie Neff, Committee Management Officer, NICHD, Landow Building, Room 6C08, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of committee members.

Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each committee.

Name of committee: Population Research Committee.

Executive secretary: Dr. Dinesh Sharma, Room 6C03, Landow Building, Telephone: 301, 496–1696.

Date of meeting: June 21–22, 1984.

Place of meeting: Landow Building, Conference Room A.

Open: June 21, 1984, 9:00 a.m.–10:00 a.m.

Closed: June 21, 1984, 10:00 a.m.–5:00 p.m., June 22, 1984, 9:00 a.m.–adjournment.

Name of committee: Maternal and Child Health Research Committee.

Executive secretary: Dr. Jane Showacre, Room 6C03, Landow Building, Telephone: 301, 496–1696.

Date of meeting: June 26–27, 1984.

Place of meeting: Landow Building, Conference Room A.

Open: June 26, 1984, 9:00 a.m.–10:00 a.m.

Closed: June 26, 1984, 10:00 a.m.–5:00 p.m., June 27, 1984, 9:00 a.m.–adjournment.

Name of committee: Mental Retardation Research Committee.

Executive secretary: Dr. Stanley Slater, Room 6C03, Landow Building, Telephone: 301, 496–1696.

Date of meeting: June 28–29, 1984.

Place of meeting: Landow Building, Conference Room A.

Open: June 28, 1984, 9:00 a.m.–10:00 a.m.

Closed: June 28, 1984, 10:00 a.m.–5:00 p.m., June 29, 1984, 9:00 a.m.–adjournment.

(Catalog of Federal Domestic Assistance Program No. 13.864, Population Research and No. 13.865, Research for Mothers and Children, National Institutes of Health)

Dated: May 7, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 84–12873 Filed 5–11–84; 8:45 am]

BILLING CODE 4140–01–M

General Clinical Research Centers Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the General Clinical Research Centers (GCRC) Committee, Division of Research Resources (DRR), June 20–22, 1984, Conference Room 9, Building 31, 9000 Rockville Pike, Bethesda, MD.

The meeting will be open to the public on June 21, 1984, from 9:00 a.m. to approximately 12:00 noon during which time there will be comments by the Director, DRR; an update on the GCRC Program; and reports on the Clinical Associate Physician Program, the diffusion of the CLINFO System, possible new technologies for GCRCs, and clinical research data management. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public June 20, 1984, from 7:00 p.m. until recess, on June 21, 1984, from approximately 12:00 p.m.to recess, and on June 22, 1984, from 8:30 a.m. to adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personnel information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, Bldg. 31, Rm. 5B–10, National Institutes of Health, Bethesda, Maryland 20205, (301) 496–5545, will provide summaries of the meeting and rosters of the Committee members. Dr. Ephraim Y. Levin, Executive Secretary of the General Clinical Research Centers Review Committee, Bldg. 31, Room 5B51, National Institutes of Health, Bethesda, Maryland 20205, (301) 496–6595, will furnish program information.

(Catalog of Federal Domestic Assistance Program No. 13.333, Clinical Research, National Institutes of Health)

Dated: May 7, 1984.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 84–12872 Filed 5–11–84; 8:45 am]

BILLING CODE 4140–01–M

National Advisory Research Resources Council; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Research Resources Council, Division of Research Resources (DRR), June 4–5, 1984, Conference Room 10, Building 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205.

The meeting will be open to the public from 9:00 a.m. on June 4, to approximately 4:45 p.m. for opening remarks by the Director, DRR; consideration of the minutes of the

previous meeting and of future meeting dates; a discussion and update of the Report of the Director, DRR; a report on meeting of the NIH Director's Advisory Committee; a discussion on technology assessment; an overview of the budget; individual program work group sessions as follows: Animal Resources Program Work Group, Conf. Rm. 10; Biomedical Research Support Program Work Group, Rm. 9A51; Biotechnology Resources Program Work Group, Rm. 8A28; General Clinical Research Centers Program Work Group, Rm. 5B03; Minority Biomedical Research Support Program Work Group, Rm. 2A52. The meeting will then reconvene, in open session, in Conference Room 10, for the following reports: A report on the Biomedical Research Support evaluation and Minority High School Apprenticeship Program, the Minority Biomedical Research Support Program new initiatives, the Council Planning and Agenda Subcommittee, and program work group reports for discussion by the Council, and new business. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6) Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from approximately 4:45 p.m., to recess on June 4, and from 8:30 a.m. to adjournment on June 5, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, Room 5B10, Building 31, National Institutes of Health, Bethesda, Maryland 20205, (301) 496–5545, will provide summaries of the meeting and rosters of the Council members. Dr. James F. O'Donnell, Deputy Director, Division of Research Resources, Room 5B03, Building 31, National Institutes of Health, Bethesda, Maryland 20205, (301) 496–6023, will furnish substantive program information and will receive any comments pertaining to this announcement.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, Laboratory Animal Sciences and Primate Research; 13.333, Clinical Research; 13.337, Biomedical Research Support; 13.371, Biotechnology Resources; 13.375, Minority Biomedical Research Support, National Institutes of Health)

Dated: May 7, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 84–12869 Filed 5–11–84; 8:45 am]

BILLING CODE 4140–01–M

Safety and Occupational Health Study Section; Meeting

Pursuant to Pub. L. 92–463, a meeting of the Safety and Occupational Health Study Section, National Institute for Occupational Safety and Health, in conjunction with the Division of Research Grants, will be held on June 20–22, 1984, at the Colonial Manor Motel, 11410 Rockville Pike, Rockville, Maryland 20852.

This meeting will be open to the public on June 20 from approximately 8:30 a.m. to 10:00 a.m., to discuss program policies and issues. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 522b(c)(6), Title 5, U.S. Code, and Section 10(d) of Pub. L. 92–463, the meeting of the Study Section will be closed to the public from 10:00 a.m. June 20 until adjournment on June 22 for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Grants Inquiries Office, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20205, telephone (301) 496–7441, will furnish summaries of the meetings and rosters of committee members.

Dr. John Beisler, Executive Secretary of the Study Section, Westwood Building, Room 3A10, National Institutes of Health, Bethesda, Maryland 20205, telephone (301) 496–6723, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.262, Occupational Safety and Health Research Grants, National Institutes of Health, HHS)

Dated: May 7, 1984.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 84–12865 Filed 5–11–84; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Office of the Assistant Secretary for Health; National Center for Health Services Research; Assessment of Medical Technology

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), National Center for Health Services Research (NCHSR) announces that it is conducting an assessment of the safety, clinical effectiveness, appropriateness, and use of percutaneous transluminal angioplasty (PTA) in the treatment of arteriovenous fistulas and obstructive lesions of the aortic arch vessels (carotid, vertebral and subclavian). OHTA has already completed assessments of PTA for treatment of stenotic lesions of the renal, iliac, femoral and popliteal arteries. Moreover, an assessment has previously been conducted concerning the use of PTA in a single coronary artery.

For the purpose of this announcement, PTA is a nonoperative method of restoring blood flow through segmentally obstructed arteries. It involves the passage of a balloon-tipped catheter to the site of the arterial narrowing and inflation of the balloon to reduce the obstruction. This technique is always done in conjunction with angiography of the vessel to be treated. The safety and clinical effectiveness of PTA differs significantly with the vessels involved.

The PHS assessment will consist of a synthesis of information obtained from appropriate organizations in the private sector, from PHS agencies, and from other Departments and agencies throughout the Federal Government. PHS assessments are based on the most current clinical and scientific knowledge concerning the safety, clinical effectiveness and acceptability of a technology. Based on this assessment, a PHS report as well as a recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. Any person or group wishing to provide OHTA with information to this assessment should do so in writing no later than July 30, 1984 or within 90 days from the date of publication of this notice.

The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published, controlled clinical trials and other well-designed clinical studies. Information related to the characterization of the patient population most likely to benefit,

the clinical acceptability, and the effectiveness of this technology is also being sought. Proprietary information is not being requested, but any published information may be submitted.

Written material should be submitted to: National Center for Health Services Research, Office of Health Technology Assessment, Park Building, Room 3–10, 5600 Fishers Lane, Rockville, Maryland 20857.

Further information is available at the above address or by telephone (301) 443–4990.

Dated: May 3, 1984.

Enrique D. Carter, M.D.,

Director, Office of Health Technology Assessment, National Center for Health Services Research.

[FR Doc. 84–12906 Filed 5–11–84; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

National Park Service

Upper Delaware Citizens Advisory Council; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: May 25, 1984.

ADDRESS: Town of Tusten, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent, Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, N.Y. 12764–0159, (717) 729–7135.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95–625, 16 U.S.C. 1274 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation of a management plan and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will include the reinstallation of members of the Advisory Council, discussion of revision of the guidelines and discussion of revision of the river management plan.

The meeting will be open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Council c/o Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, N.Y. 12764–0159. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Upper Delaware National Scenic and Recreational River, River Road, 1¾ miles north of Narrowsburg, N.Y., Damascus Township, Pennsylvania.

Dated: May 8, 1984.

James W. Colman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 84–12825 Filed 5–11–84; 8:45 am]

BILLING CODE 4310–70–M

Intention to Negotiate Concession Contract; Samaritan Health Service

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Samaritan Health Service d.b.a. Grand Canyon Clinic, authorizing it to continue to provide outpatient medical clinic facilities and services; sales of drugs, medicines, medical appliances, and supplies for the public at the South Rim of Grand Canyon National Park for a period of ten (10) years from January 1, 1985, through December 31, 1994.

This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act, and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expires by limitation of time on December 31, 1984, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new contract. This provision, in effect, grants Samaritan Health Service d.b.a. Grand Canyon Clinic the opportunity to meet the terms and conditions of any other proposal submitted in response to this notice which the Secretary may consider better than the proposal submitted by Samaritan Health Service d.b.a. Grand Canyon Clinic. If Samaritan Health Service d.b.a. Grand Canyon Clinic amends its proposal, and the amended proposal is substantially equal to the better offer, then the proposed new contract will be negotiated with Samaritan Health Service d.b.a. Grand Canyon Clinic.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand-delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Western Regional Office, National Park Service, 450 Golden Gate Avenue, San Francisco, California 94102, for information as to the requirements of the proposed contract.

Dated: May 2, 1984.

Levi E. Lopez,

Acting Regional Director, Western Region.

[FR Doc. 84–12919 Filed 5–11–84; 8:45 am]

BILLING CODE 4310–70–M

Intention To Extend Concession Contract

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to extent a concession contract with White Sands Concessions, Inc., authorizing it to provide Food, General Merchandising, and Recreational Equipment Rental for the public at White Sands National Monument for a period of 1 year from October 1, 1984, through September 30, 1985.

This contract extension has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on September 30, 1984, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the extension of the contract.

If additional information regarding the contract extension is desired, please contact the Superintendent, White Sands National Monument, P.O. Box 458, Alamogordo, New Mexico, 88310, or call 505–437–1058.

Dated: May 4, 1984.

Donald A. Dayton,

Acting Regional Director, Southwest Region.

[FR Doc. 84-12920 Filed 5-11-84; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 751-TA-8]

Acrylic Sheet From Japan; Determination To Postpone Administrative Deadline

AGENCY: U.S. Internaional Trade Commission.

ACTION: Waiver of time limit and postponement of the administrative deadline in this investigation for 45 days.

SUMMARY: This action postpones the administrative deadline in this investigation under section 751(b) of the Tariff Act of 1930, 19 U.S.C. 1675(b), for 45 days to determine whether an industry in the United States would not be threatened with material injury, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, if the antidumping finding concerning acrylic sheet from Japan were revoked, or modified with respect to transparent sheet containing lead or lead components in such proportion as to render the material opaque to x-ray or gamma ray radiation. The investigation was instituted on January 25, 1984. The notice which set the deadline for the Commission's determination as May 30, 1984, was published in the Federal Register on February 1, 1984 (49 FR 4045). The Commission has waived this time limit and postponed the administrative deadline for 45 days to allow investigation of late developments concerning the issue of whether the establishment of an industry would be materially retarded.

SUPPLEMENTARY INFORMATION: On May 1, 1981, a new U.S. patent, U.S. Letters Patent No. 4,429,094 (issued January 31, 1981) was brought to the Commission's attention. The Commission had no opportunity to investigate whether any U.S. interests had negotiated licensing arrangements to produce material covered by the claims of the patent. This information is essential to an informed determination in the investigation.

Section 751(b) of the Tariff Act of 1930, 19 U.S.C. 1675(b), does not provide for a statutory deadline. The Commission's rule and notice of investigation provide the only deadlines in this matter. All review investigations conducted under 19 CFR 207.45 shall be completed within 120 days as set forth in Subpart C of the rules. 19 CFR 207.45(b). The Commission has the authority to waive its own rules when in its judgment there is good and sufficient reason. 19 CFR 201.4(b).

Thus, the Commission hereby waives its 120 day limitation and postpones the administrative deadline for 45 days.

Written Submissions

The Commission will reopen the record of this investigation for comments by any interested persons for a period of 25 days beginning on the date of the publication of this notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Hannelore V.M. Hasl, Office of General Counsel, 202-523-0375.

By order of the Commission.

Issued: May 9, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-12903 Filed 5-11-84; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30427]

Norfolk and Western Railway Co.; Control and Merger Exemption; Fairport, Painesville and Eastern Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from prior approval under 49 U.S.C. 11343-11345 the acquisition by Norfolk and Western Railway Company (NW) of control of the Fairport, Painesville and Eastern Railway Company (FP&E), and merger of FP&E into NW, subject to standard labor protective conditions.

DATES: This exemption shall be effective on June 13, 1984. Petitions to reopen must be filed by June 4, 1984. Petitions to stay must be filed by May 24, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30427 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423

(2) Petitioner's representative: Angelica D. Lloyd, 204 South Jefferson Street, Roanoke, VA 24042.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: May 7, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne,

Secretary.

[FR Doc. 84-12850 Filed 5-11-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Mandatory Safety Standards; Modification; Summary of Decisions Granting in Whole or in Part, Portland-Monson Slate Co., et al.

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under Section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety standard to a mine if the Secretary determines either or both the following: That an alternate method exists at the petitioner's mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard to the petitioner's mine will result in a diminution of safety to the affected miners.

Summaries of petitions received by the Secretary appear periodically in the **Federal Register.** Final decisions on these petitions are based upon the petitioner's statement, comments and information submitted by interested persons and a field investigation of the conditions at the petitioner's mine. The Secretary has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances the decisions are conditioned upon the petitioner's compliance with stipulations stated in the decision.

FOR FURTHER INFORMATION CONTACT: The petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations and Variances, MSHA, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Dated: May 2, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

AFFIRMATIVE DECISIONS ON PETITIONS FOR MODIFICATION

Docket No.	FR Notice	Petitioner	Regulations Affected	Summary of Findings
M-78-54-M	43 FR 56292	Portland-Monson Slate Co	30 CFR 57.11-50	Construction of a refuge chamber with specific conditions in lieu of constructing a second shaft opening to the surface considered acceptable alternate method. Granted with conditions.
M-81-23-M	46 FR 30599	Cobb Resources Corp	30 CFR 57.4-43	Location of the mine shop/ maintenance building with 100 feet of mine openings designated escape ways in exhaust air with specified safeguards considered acceptable alternate method. Granted with conditions.
M-82-22-M	47 FR 24481	Homestake Mining Co	30 CFR 57.19-56	Use of remote-controlled hoists to move employees and supplies from one level to another with specified safeguards considered acceptable alternate method. Granted with conditions.
M-83-10-M	48 FR 32411	Greer Limestone Co	30 CFR 57.6-220	Petitioner's proposal to transport fuel and nitrate for blasting use underground in a bulk truck with specified safeguards considered acceptable alternate method. Granted with conditions.
M-83-14-C	48 FR 15349	D & D Coal Co	30 CFR 75.902	Petitioner's proposal to deenergize and lock out all low-voltage, three-phase circuits, lock out the pumps from the surface, and post a warning sign at the mine's entry while personnel are underground considered acceptable alternate method. Granted with conditions.
M-83-19-C	48 FR 15350	North River energy Co	30 CFR 75.503	Petitioner's proposal that the trailing cable for the shuttle cars and the roof bolter be 750 feet in length instead of the maximum allowable length or 550 feet considered acceptable alternate method. Granted with conditions.
M-83-24-C	48 FR 22826	Olga Coal Co	30 CFR 49.6	Petitioner's proposal to maintain the appropriate equipment for one mine rescue team and provide a second equipped team by agreement with a nearby coal company which is within two hours ground travel time considered acceptable alternate method. Granted with conditions.
M-83-33-C	48 FR 37742	Deep Rock Coal Co., Inc	30 CFR 75.301	Proposed airflow reduction, which would maintain a safe and healthful atmosphere considered acceptable alternate method. Granted.
M-83-36-C	48 FR 37743	K & K Coal Co., Inc	30 CFR 75.902	Petitioner's proposal to deenergize and lock out all low-voltage, three-phase circuits, lock out the pumps from the surface, and post a warning sign at the mine's entry while personnel are underground considered acceptable alternate method. Granted with conditions.
M-83-51-C	48 FR 38350	Estep Coal Corp	30 CFR 75.1710	Use of cabs or canopies in specified low mining heights would result in a diminution of safety. Granted in part with conditions.
M-83-53-C	48 FR 38352	Price River Coal Co	30 CFR 75.305	Petitioner's proposal to establish and maintain air measurement stations at specified locations considered acceptable alternate method. Granted with conditions.
M-83-55-C	48 FR 37741	Barnes & Tucker Co	30 CFR 75.1100-2(e)(2).	Providing two portable fire extinguishers or one extinguisher having at least twice the minimum capacity at each temporary electrical installation considered acceptable alternate method. Granted.
M-83-58-C	48 FR 37742	Consolidation Coal Co	30 CFR 75.305	Petitioner's proposal to establish two checkpoints in the 30 Mains and take air measurements in the affected aircourses considered acceptable alternate method. Granted with conditions.
M-83-67-C	48 FR 31924	Grundy Mining Co	30 CFR 75.902	Installation of a bare (non-insulated) conductor as a safety ground conductor with specific safeguards considered acceptable alternate method. Granted with specific conditions.
M-83-70-C	48 FR 43422	Kitt Energy Corp	30 CFR 75.1100-2(b)	Petitioner's proposal to maintain a dry waterline during the winter months considered acceptable alternate method. Granted with specific conditions.
M-83-71-C	48 FR 33945	Consolidation Coal Co	30 CFR 75.305	Petitioner's proposal to establish a specific checkpoint and record the results of the air measurements considered acceptable alternate method. Granted with conditions.
M-83-72-C	48 FR 45323	Eastern Coal Corp	30 CFR 75.1710	Use of cabs or canopies in specified low mining heights would result in a diminution of safety. Granted with conditions.
M-83-73-C	48 FR 43422	Mears Coal Co	30 CFR 75.1100-2(e)(2).	Providing two portable fire extinguishers or one extinguisher having at least twice the minimum capacity at each temporary electrical installation considered acceptable alternate method. Granted.
M-83-74-C	48 FR 38353	U.S. Steel Mining Company, Inc	30 CFR 75.1103	Petitioner's proposal to install a fire detection system with specific requirements considered acceptable alternate method. Granted with conditions.
M-83-75-C	48 FR 38350	B. and B. Coal Co	30 CFR 75.301	Proposed airflow reduction, which would maintain a safe and healthful atomsphere considered acceptable alternate method. Granted.
M-83-81-C	48 FR 45325	Rapoca Energy Co	30 CFR 77.214(a)	Petitioner's proposal to cover a set of mine openings with the shell of the refuse fill with specified safeguards considered acceptable alternate method. Granted with conditions.
M-83-83-C	48 FR 38352	Pyro Mining Co	30 CFR 75.1710	Use of cabs or canopies on specific electric face equipment in low mining heights would result in a diminution of safety. Granted with conditions.
M-83-86-C	48 FR 45323	Consolidation Coal Co	30 CFR 75.1105	Petitioner's proposal to encolse the rectifier in a fireproof structure equipped with an automatic fire suppression device activated by heat sensors considered acceptable alternate method. Granted with conditions.
M-83-89-C	48 FR 45324	Maple Meadow Mining Co	30 CFR 75.305	Proposal to establish air monitoring stations at specified locations considered acceptable alternate method. Granted with conditions.
M-83-90-C	48 FR 45324	Emery Mining Corp	30 CFR 75.305	Petitioner's proposal to establish and maintain air measuring stations at specific locations considered acceptable alternate method. Granted with conditions.
M-83-94-C	48 FR 50974	Turris Coal Co	30 CFR 75.312	Use of tempering panel to condition intake air temperature and humidity and installatio of a remote monitoring system with specified conditions considered acceptable alternate method. Granted with conditions.
M-83-96-C	48 FR 50973	Turris Coal Co	30 CFR 75.305	Use of tempering panel to conditions intake air temperature and humidity and installation of a remote monitoring system with specified conditions considered acceptable alternate method. Granted with conditions.
M-83-105-C	48 FR 48877	Inland Steel Coal Co	30 CFR 75.503	Use of metal locking devices consisting of a fabricated metal bracket and a metal locking screw considered acceptable alternate method in lieu of the use of padlocks to secure battery plugs to machine-mounted battery receptacles on premissible, mobile, battery-powered machines. Granted with conditions.
M-83-110-C	48 FR 48880	Emerald Mines Corp	30 CFR 75.503	Use of spring-loaded locking device in lieu of a locked padlock to secure caps in place on battery operated scoops and tractors considered acceptable alternate method. Granted with specific conditions for three years.

[FR Doc. 84-12807 Filed 5-11-84; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 84-45]

NASA Advisory Council, Space Systems and Technology Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Informal Advisory Subcommittee on Computer Science and Applications.

DATE AND TIME: May 29, 1984, 1:00 a.m. to 5:30 p.m.; May 30, 1984, 8:30 a.m. to 5:30 p.m.

ADDRESS: Lyndon B. Johnson Space Center, Building 1, Room 820, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald L. Larsen, Code RTC, National Aeronautics and Space Administration, Washington, D.C. 20546 (202/453-2767).

SUPPLEMENTARY INFORMATION: The Informal Advisory Subcommittee on Computer Science and Applications was established to review and make recommendations on NASA research and technology programs and plans in aerospace computing, including concurrent processing, reliable computing, software engineering, data systems, artificial intelligence, and high performance scientific computational facilities. The Subcommittee is composed of eight members and chaired by Professor Raj Reddy of Carnegie-Mellon University. The meeting will be open to the public up to the seating capacity of the room (approximately 35 persons including the Subcommittee members and participants).

Type of meeting: Open.

Agenda

May 29, 1984

1:00—Opening Remarks
1:30—Overview of Space Station Data Systems and Software Technology
5:30—Adjourn

May 30, 1984

8:30—Current Status of Ada and Software Technology for Adaptable, Reliable Systems (STARS) Programs
10:45—Subcommittee Discussions and Recommendations
5:30—Adjourn

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

[FR Doc. 84-12813 Filed 5-11-84; 8:45 am]

BILLING CODE 7510-01-M

[Notice 84-46]

NASA Advisory Council (NAC), Space and Earth Science Advisory Committee (SESAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space and Earth Science Advisory Committee.

DATES AND TIME: May 30, 1984, 8:30 a.m. to 5:30 p.m.; May 31, 1984, 8:30 a.m. to 5:30 p.m.; and June 1, 1984, 8:30 a.m. to 12 noon.

ADDRESS: National Aeronautics and Space Administration, Room 226A, 600 Independence Avenue SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey D. Rosendhal, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1410).

SUPPLEMENTARY INFORMATION: The NAC Space and Earth Science Advisory Committee consults with and advises the Council as a whole and NASA on plans for, work in progress on, and accomplishments of NASA's Space and Earth Science programs. The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including Committee members and other participants). Topics under discussion at this meeting will include status reports on the Space Station Science Task Force and the Earth System Science Committee (ESSC); the FY 1985 Budget in Congress; Explorer Program and Spacelab Payload Program Status and Planning; and the FY 1986 New Start Candidates and Budget.

Type of meeting: Open.

AGENDA

May 30, 1984

8:30 a.m.—Introduction, Logistics, Announcements
8:45 a.m.—Status Reports: Space Station Science Task Force, ESSC Activities, and FY 1985 Budget in Congress
9:30 a.m.—Research and Analysis Program Study/Working Group Recommendations and General Discussion
1 p.m.—Explorer Program Status and Planning
2:15 p.m.—Spacelab Payload Program Status and Planning
3:30 p.m.—Long Range Planning/FY 1986 Budget Prospects and Issues
5:30 p.m.—Adjourn

May 31, 1984

8:30 a.m.—Status of FY 1986 New Start Candidates
9:30 a.m.—FY 1986 Program and Budget Issues from The Perspective of the Division Directors: Earth Science, Solar System Exploration and Astrophysics
1:30 p.m.—General Discussion of Long Range Planning and FY 1986 Budget Issues
3:30 p.m.—Formulation of Preliminary Recommendations/Drafting of Committee Position Papers
5:30 p.m.—Adjourn

June 1, 1984

8:30 a.m.—Discussion of Committee Recommendatiosn
10:30 a.m.—Future Committee Activities and Plans for Next Meeting
12 noon—Adjourn

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division; Office of Management.

[FR Doc. 84-12814 Filed 5-11-84; 8:45 am]

BILLING CODE 7910-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Engineering; Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Engineering.

Date and time: May 30-31, 1984, 9:00 a.m.-5:00 p.m., May 30, 9:00 a.m.-3:00 p.m., May 31.

Place: National Science Foundation, 1800 G Street, NW., Room 540, Washington, D.C. 20550.

Type of meeting: Open.

Contact person: Mrs. Mary Poats, Executive Secretary, Advisory Committee for Engineering, National Science Foundation, Room 537, Washington, D.C. 20550, (202) 357-9571.

Summary minutes: Mrs. Mary Poast at the above address.

Purpose of advisory committee meeting: To provide advice, recommendations, and counsel on major goals and policies pertaining to Engineering programs and activities.

Summarized agenda: Discussions on the FY 1984 Budget Initiatives on Advanced Computing, Biotechnology, Manufacturing Engineering, and Construction Engineering and Building Research; FY 1985 Engineering Budget Status; Engineering Research Centers; and Reports from Division Committee Chairmen.

Dated: May 9, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84-12934 Filed 5-11-84; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee on River Bend Station Unit 1; Meeting

The ACRS Subcommittee on River Bend Station Unit 1 will hold a meeting on June 7 and 8, 1984, at the Oak Manor Motor Hotel, 8181 Airline Highway, Baton Rouge, LA. The Subcommittee will discuss the application of Gulf State Utilities Company for license to operate River Bend Station Unit 1.

In accordance with the procedures outlined in the **Federal Register** on September 28, 1983 (48 FR 44291), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Cognizant Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Thursday, June 7, 1984—1:00 p.m. until the conclusion of business Friday, June 8, 1984—8:30 a.m. until the conclusion of business

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Gulf States Utilities Company, NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepared telephone call to the cognizant Designated Federal Official, Mr. Gary Quittschreiber (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EDT.

Dated: May 9, 1984.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 84-12921 Filed 5-11-84; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Class-9 Accidents; Meeting

The ACRS Subcommittee on Class-9 Accidents will hold a meeting on May 31, 1984, Room 1046, at 1717 H Street, NW, Washington, D.C.

In accordance with the procedures outlined in the **Federal Register** on September 28, 1983 (48 FR 44291), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Thursday, May 31, 1984—8:30 a.m. until 3:00 p.m.

The Subcommittee will discuss the latest revision of NUREG-1070, "NRC Policy on Future Reactor Designs: Decision on Severe Accident Issues in Nuclear Power Plant Regulation."

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Alan B. Wang (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EDT.

Dated: May 9, 1984.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 84-12922 Filed 5-11-84; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Committee Activities; Meeting

The ACRS Subcommittee on Committee Activities will hold a meeting on May 30, 1984, Room 1046, 1717 H Street, NW, Washington, D.C

In accordance with the procedures outlined in the **Federal Register** on September 28, 1983 (48 FR 44291), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee and its Staff. Persons desiring to make oral statements should notify the cognizant Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting will be as follows:

Wednesday, May 30, 1984—8:30 a.m. until the conclusion of business.

The Subcommittee members will exchange views regarding the future scope and direction of Committee activities.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Morton W. Libarkin (telephone 202/634-3265) between 8:15 a.m. and 5:00 p.m., EDT.

Dated: May 9, 1984.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 84-12923 Filed 5-11-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-289; License No. DPR-50; EA 83-140]

GPU Nuclear Corporation (Three Mile Island Nuclear Station, Unit 1); Order Imposing a Civil Monetary Penalty

I

GPU Nuclear Corporation, Parsippany, New Jersey 07054 (the "licensee") is the holder of License No. DPR-50 (the "license") issued by the Nuclear Regulatory Commission (the "Commission") which authorizes the licensee to operate the Three Mile Island Nuclear Station, Unit 1, in Dauphin County, Pennsylvania, in accordance with conditions specified therein. The license was issued to Metropolitan Edison Company on April 19, 1974, and transferred to GPU Nuclear Corporation on September 23, 1981.

II

Inspections of the licensee's activities under the license were conducted between August 24 and October 3, 1983. As a result of these inspections, it appears that the licensee had not conducted its activities in full compliance with NRC regulations and the conditions of its license. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated February 29, 1983. The Notice states the nature of the violations, the provisions of the Nuclear Regulatory Commission requirements which the licensee had violated, and the amount of civil penalty proposed for each violation. An answer date March 30, 1984 to the Notice of Violation and Proposed Imposition of Civil Penalty was received from the licensee.

III

Upon consideration of the answers received and the statements of fact, explanation, and argument for remission or mitigation of the proposed civil penalty contained therein, as set forth in the Appendix to this Order, the Director of the Office of Inspection and Enforcement has determined that the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96-295), and 10 CFR 2.205, it is hereby ordered that:

The licensee pay the civil penalty in the amount of Forty Thousand Dollars ($40,000) within thirty days of the date of this Order, by check, draft or money order, payable to the Treasurer of the United States and mailed to the Director of the Office of Inspection and Enforcement.

V

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement, USNRC, Washinton, D.C. 20555. A copy of the hearing request shall also be sent to the Executive Legal Director, USNRC, Washington, D.C. 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. If the licensee fails to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings; if payment has not been made by that time, the matter may be referred to the Attorney General for collection. In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee violated NRC requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty; and

(b) Whether, on the basis of such violations, this Order should be sustained.

Dated at Bethesda, Maryland, this 7th day of May 1984.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

Appendix—Evaluation and Conclusion

The violations described in Section A of the NRC Notice of Violation and Proposed Imposition of Civil Penalty are restated. The licensee's response to the Notice is summarized, and NRC's evaluation and conclusion regarding the licensee's response are presented. The licensee's response was provided in a letter dated March 30, 1984 H. D. Hukill, Director, TMI-1, to the Director, Office of Inspection and Enforcement. The NRC staff evaluation and conclusion are based on the March 30, 1984 letter, and information provided during an enforcement conference held with the licensee by the Regional Administrator on November 8, 1983, and a meeting with the licensee by the Director, Office of Inspection and Enforcement and the Regional Administrator on March 5, 1984.

Restatement of Violations

1. Technical Specification 3.6.1 requires that containment integrity be maintained when reactor coolant (RC) pressure is 300 psig or greater, RC temperature is 200°F or greater, and nuclear fuel is in the core. Technical Specification 1.7 defines containment integrity and specifies as one of its conditions that all nonautomatic containment isolation valves are closed as required by the "Containment Integrity Checklist" attached to the operating procedure "Containment Integrity and Access Limits."

Operating Procedure (OP) 1101-3 Revision 27, August 18, 1983 (Temporary Change Notice No. 1-83-0158, dated August 24, 1983), Containment Integrity and Access Limits, Enclosure 1, Reactor Building (Containment Integrity Checklist, requires for containment integrity, in part, that nonautomatic containment isolation valve IA-V20, Instrument Air Isolation Valve, be closed (paragraph 18.2) and nonautomatic containment isolation valve FS-V405, Fire Service Test Connection/Drain Isolation Valve, be closed and capped (paragraph 17.1).

Contrary to the above, with RC pressure greater than 300 psig, with RC temperature greater than 200°F, and with nuclear fuel in the core:

a. Nonautomatic containment isolation valve IA-V20 was not closed between August 27, 1983 and September 20, 1983; and,

b. Nonautomatic containment isolation valve FS-V405 was neither closed nor capped between August 27, 1983 and September 16, 1983.

2. Technical Specification 6.8.1 requires, in part, that written procedures important to safety shall be established, implemented, and maintained.

Contrary to the above, on four occasions, written procedures important to safety were not properly implemented, as evidenced by the following:

a. Operating Procedure (OP) 1104-43, Revision 19, February 11, 1983, Nuclear Plant Sampling, paragraph 3.2.2.12.c and Enclosure 1, require, in part, that the Makeup Tank Liquid Sample Flush Valve (CA-V95), be closed after a makeup tank liquid sample is collected.

However, between August 20 and 29, 1983, CA-V95 was open with no makeup tank liquid sample being collected.

b. Operating Procedure 1104–43, Revision 19, dated February 11, 1983, Nuclear Plant Sampling, paragraph 3.2.2.15.g and Enclosure 1, require, in part, that Makeup Tank Gas Sample Return Isolation Valve (CA–V47) and Makeup Tank Gas Sample Bomb Bypass Valve, (CA–V48) be closed after a makeup tank gas space sample is collected.

However, on August 27, 1983, Valves CA–V47 and CA–V48 were open with no makeup tank gas space sample being collected.

c. Emergency Plan Implementing Procedure (EPIP) 1004.15, Temporary Change Notice No. 1–83–0201, dated September 30, 1983, Post Accident In-Plant Sampling, paragraph 5–1–7 and Attachment 4, require that Reactor Coolant Letdown Sample Valve (CA–V16) be closed prior to implementing the procedure for obtaining a Reactor Coolant System (RCS) sample.

However, on September 30, 1983, the procedure for obtaining an RCS sample was implemented, but valve CA–V16 was not closed.

d. Administrative Procedure (AP) 1002, Revision 27, dated August 1, 1983, Rules for the Protection of Employes Working on Electrical and Mechanical Apparatus, paragraph D.1.1 and Enclosure 1, requiries, in part, that for apparatus to be taken out of service, an application from operations personnel must be completed to assure technical specification operability requirements are met.

However, on August 23, 1983, the Condenser Off Gas System Radiation Effluent Monitor, RM–A5, a monitor required by the technical specifications to be operable, was taken out of service for approximately 30–40 minutes by closing the sample pump inlet isolation valve VA–V17 without the required application from operations personnel being completed.

3. 10 CFR 50.54(q) requires the licensee to follow and maintain in effect emergency plans which meet the standards of 10 CFR 50.47(b) and the requirements of 10 CFR Part 50, Appendix E.

Technical Specification 6.8.1 requires written procedures be established, implemented and maintained covering, among other things, emergency plan implementation.

Emergency Plan Implementing Procedure Procedure 1004.1, Revision 9, August 22, 1983, Unusual Event, paragraphs 1.0 and 3.4.1b define a condition that shall be regarded as an Unusual Event at TMI–1 with respect to exceeding the technical specification primary system leakrate. Paragraph 3.4.1b lists the indications of this initiating condition, in part, as confirmed (procedurally indicated) unidentified reactor coolant leakrate greater than 1 gallon per minute (gpm). Further, paragraph 3.3.1 considers plant conditions which may indicate a potential degradation of the level of safety of the plant to be regarded as an Unusual Event.

Contrary to the above, on September 22, 1983, as of 6:00 PM, a plant condition of a confirmed (procedurally indicated) unidentified primary system leakrate in excess of 1.0 gpm (calculated as 1.2 gpm) was not classified as an Unusual Event.

4. Technical Specification 6.8.1 requires, in part, that procedures important to safety shall be implemented covering Emergency Plan Implementation and Administrative Procedures.

Administrative Procedure (AP) 1001A, Revision 4, dated June 14, 1983, Procedure Review and Approval, paragraphs 3.3 and 3.4 require, in part, that the control and approval process for revision/changes to procedures is by use of Procedure Change Request (PCR) form (Figure 1001A–1) or a Temporary Change Notice (TCN) form (Figure 1001A–2). Administrative Procedure 1001G, Revision 4, dated October 13, 1982, Procedure Utilization, paragraph 3.3.10, states, in part, that Special Temporary Procedures (STP) are subject to the same level of control and approval as their permanent counterparts.

Contrary to the above, on August 29, 1983, STP No. 83–115, dated August 27, 1983, Injection of Radioactive Tracer Gas into the RCS, was revised/changed in that certain valves to be checked in a prerequisite valve lineup were added to this list and ths revision was made without the use of a PCR or TCN. The revision/change consisted of adding certain flow path isolation or boundary isolation valves to prevent inadvertent release of radioactive material.

5. 10 CFR 50.54(q) requires the licensee to follows and maintain in effect emergency plans which meet the standards of 10 CFR 50.47(b) and the requirements of 10 CFR Part 50, Appendix E.

Technical Specification 6.8.1 requires written procedures be established, implemented and maintained covering, among other things, emergency plan implementation.

Emergency Procedure 1202–12, Revision 14, dated May 18, 1983, Excessive Radiation Levels, paragraph 2.3.a.1.e and Enclosure II, require that a Planned/Unplanned Release Report be initiated by the shift supervisor when an atmospheric monitor reaches the alert setpoint.

Administrative Procedure 1044, Revision 12, June 30, 1983, Event Review and Reporting Requirements, paragraph 3.2.2.a.8, and 10 CFR 50.72, require notification of the NRC within one hour upon occurrence of any accidential, unplanned or uncontrolled radioactive release.

Contrary to the above, a Planned/Unplanned Release Report for an uncontrolled release of krypton-85 was not initiated by the shift supervisor after the fuel handling building atmosphere monitor RM–A4 reached the high alarm setpoint (higher than Alert) and plant effluent atmospheric monitor RM–A8 reached the Alert setpoint between 4:55 PM and 4:45 PM on August 29, 1983. In addition, the NRC was not notified until approximately 8:56 PM, August 29, 1983 of the release.

Collectively, these violations have been categorized as a Severity Level III problem (Supplement I). Civil Penalty—$40,000.

Summary of Licensee's Response

The licensee admits that the violations occurred as described in the Notice. The licensee attributed the cause of the majority of violations to personnel error. The licensee questions the appropriateness of categorizing the violations in the aggregate as a Severity Level III problem. The licensee contends that while the revised enforcement policy allows aggregation of violations to focus on an underlying problem or programmatic deficiency, the licensee maintains that these problems are considered isolated cases and not indicative of a programmatic problem.

Notwithstanding NRC acceptance or rejection of the licensee's request that classifying the violation in the aggregate at Severity Level III is inappropriate, the licensee requests withdrawal of the entire proposed civil penalty of $40,000 because (1) the majority of errors were discovered by the licensee, (2) appropriate corrective actions were taken by the licensee upon identification of the violations, including appropriate disciplinary action to prevent recurrences of personnel errors, (3) the violations were not individually significant and occurred during a two month period during which several nonroutine, complex operations were accomplished, and many challenging operations were being performed, and (4) the revised NRC enforcement policy says violations are "considered" rather than "usually imposed" for Severity Level III violations or problems.

NRC Evaluation and Conclusion

Since the majority of the violations were attributed primarily to one underlying cause, namely, failure to follow procedures, it is appropriate to classify the violations in the aggregate at Severity Level III to place emphasis on the underlying cause of the violations.

The staff recognizes that the majority of the violations were identified by the licensee, and when considering the status of the plant, the violations individually were of low safety significance. However, the staff is concerned over the large number of violations that occurred within a relatively short period of time and that the licensee has not yet achieved the exemplary conduct of operations it has indicated it intends to achieve. In addition, if a significant number of failures to follow procedures has occurred during power operation, the potential consequences could have been significantly different. Therefore, the staff has determined that the civil penalty should not be mitigated or withdrawn in this case and recommends that the civil penalty be imposed.

[FR Doc. 84-12924 Filed 5-11-84; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-29]

Yankee Atomic Electric Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed no Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-3 issued to Yankee Atomic Electric Company (the licensee), for operation of the Yankee Nuclear Power Station located in Franklin County, Massachusetts.

The amendment would modify the Technical Specifications (TS) for Yankee to reflect modifications made during the current refueling outage in accordance with the licensee's application for amendment dated April 17, 1984.

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 made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed amendment would revise the Technical Specifications (TS) to: (1) Change the capacity of the pressurizer code safety valves, reflecting the installation of new safety valves; (2) delete four snubbers from the TS that were removed as a result of the safety valve replacement; (3) incorporate operability, surveillance and trip setpoint requirements for the recently installed degraded voltage protection system; (4) update the containment isolation value listings to reflect removal of the low pressure surge tank (LPST) from the containment boundary, installation of hydrogen recombiner taps and relocation of the outside Main Coolant System Leakage Air Particulate Monitor (MCSLAPM) to inside containment; and (5) incorporate operability and surveillance requirements for the previously installed reactor collant systems (RCS) vents.

In response to NUREG-0737, Item II.D.1, Relief and Safety Valve Test Requirements, the licensee committed to replacing the pressurizer code safety valves. Replacement valves have been installed whose design is traceble to those valves recently tested by the PWR Industry Safety and Relief valve test program. The relief capacity of the replacement valves was calculated using the current code for calculating safety valve flow rate. The licensee proposes in Item (1) a change of the BASES section of the TS to reflect the increased relief capacity of the replacement valves.

Based on the above, the staff finds that changing the BASES to reflect the new relief valves capacities will not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of standards for making a no significant hazards determination by providing certain examples (April 6, 1983, 48 FR 14870). Example (vi) illustrates proposed actions which would not involve a significant hazards consideration in that the actions involve 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. Item (2) is encompassed by this example. The replacement of the two pressurizer code safety valves to meet the requirements of NUREG-0737, Item II.D.1, will eliminate the need for the four pressurizer safety valve snubbers. The removal of the snubbers is based on a reanalysis of the piping loads. Therefore, the removal of the snubbers will not significantly increase the probability or consequences of a previously-analyzed accident.

Example (ii) of 48 FR 14870 lists actions involving no significant hazards considerations that include changes that constitute an additional limitation, restriction, or control not presently included in the TS, such as a more stringent surveillance requirement. The changes proposed by the application that are encompassed by this example are: Item (3) which incorporates operability, surveillance and trip set point requirements for the recently installed and previously approved degraded voltage protection system; and Item (5) which incorporates operability and surveillance requirements for the previously modified and approved RCS vents. These proposed changes would constitute additional limitations, restrictions or controls not presently included in the Technical Specifications.

The licensee proposes in Item (4) Table 3.6-1 (Containment Isolation Valves) of the Technical Specifications to reflect changes in the Containment Isolation System being made during the current refueling outage. As a result of the Systematic Evaluation Program (SEP), the licensee committed to isolating the LPST, which is outside of Containment, from the Containment boundary. The proposed change revises the containment valve listing to reflect the modifications made to the penetrations associated with the LPST. The containment isolation list was also revised to reflect the hydrogen recombiner taps that were installed to meet the requirements of 10 CFR 50.44(c)(3)(iii). Additionally, the outside Main Coolant System Leakage Air Particulate Monitor (MCSLAPM) has been replaced with a new monitor located inside containment. The solenoid valves on the former inlet and outlet lines have been replaced with manually-operated, locked close valves

for containment isolation. The containment isolation valve list has been revised to reflect the change in valve nomenclature and valve type.

Based on the above, the staff finds the changes to Table 3.6–1 will not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any previously evaluated; or (3) involve a significant reduction in a margin of safety.

Based on the above discussions, the staff proposes to conclude that the requested action would involve a no significant hazards consideration determination.

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 June 13, 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 interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

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 aspects of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If 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, 1717 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 Dennis M. Crutchfield: 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 Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02107.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Bethesda, Maryland, this 82th day of May 1984.

For the Nuclear Regulatory Commision.

Dennis M. Crutchfield,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 84-12925 Filed 5-11-84; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Federal Procurement Data System Evaluation; Solicitation of Views

AGENCY: Office of Management and Budget, Office of Federal Procurement Policy.

ACTION: Request for public comments in connection with an evaluation of the Federal Procurement Data System (FPDS).

SUMMARY: The Office of Federal Procurement Policy Act, Pub. L. 93-400, requires that the functions of the Administrator for Federal Procurement Policy shall include * * *

* * * Collecting, developing, and disseminating procurement data which takes into account the needs of the Congress, the Executive Branch, and the private sector.

This statutory requirement was implemented in 1978 with the establishment of the Federal Procurement Data System (FPDS) which is operated by the General Services Administration. Five and one-half years have passed since the inception of the FPDS. The data elements collected by the FPDS have been changed several times since 1978 in response to policy and legislation. A number of additional changes have been proposed.

Data System changes are disruptive and costly to the Federal Agencies' automated data collection systems. Therefore, an interagency committee has been organized to do a comprehensive analysis of the current FPDS and recommend changes which will 1) make the data system more responsive to user needs and 2) ensure a system design that is economic, efficient and capable of meeting the procurement data needs of the Government in the foreseeable future.

FOR FURTHER INFORMATION CONTACT: Anyone wishing to comment on the content, structure, and reporting capability of the FPDS may obtain additional information on the current FPDS by writing or calling the Federal Procurement Data Center, 4040 Fairfax Drive, Suite 900, Arlington, VA 22203, phone 703-235-1326.

DATE: Comments must be received on or before June 8, 1984.

ADDRESS: Comments should be submitted to Mr. W. Maraist, Office of Federal Procurement Policy, Office of Management and Budget, 726 Jackson Place, NW., Washington, D.C. 20503 (phone 202-395-3300).

Dated: May 1, 1984.

LeRoy J. Haugh,

Associate Administrator for Policy Development.

[FR Doc. 84-12598 Filed 5-11-84; 8:45 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[500-1]

Carmel Bancorporation; Order of Suspension of Trading

It appears to the Commission there is a lack of adequate and accurate information available to the public relating to the financial condition of a Carmel Bancorporation subsidiary in Carmel-by-the-Sea, California, resulting from potential problem loans and over-extensions of credit. Therefore, the Commission is of the opinion that the public interest and the protection of investors requires a summary suspension of trading in the securities of Carmel Bancorporation.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in Carmel Bancorporation on a national securities exchange or otherwise is suspended, for the period from 11:15 a.m. on May 4, 1984 through midnight on May 13, 1984.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-12841 Filed 5-11-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-20925; File No. SR-NYSE-84-17]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc., Relating to the Position and Exercise Limits for Broad Index Options

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 April 23, 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 provides that the Exchange's position and exercise limits on broad index options shall not be greater than 80,000 contracts on the same side of the market.

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 and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulation Organization's Statement of the Purpose of, and Statutory Basis for, The Proposed Rule Change

(1) *Purpose*—At present, the Exchange's position and exercise limits on broad index options are based on the dollar value of the contracts. This basis can be burdensome. An increase in the index value can require the lowering of the limits. In fact, a reduction of limits can bring about the anomalous situation of a position in an option that had previously complied with Rule 704 exceeding the new limit. Similar problems arise in relation to exercises. Although Rules 704 and 705 include provisions that prevent these problems from affecting investors unfairly, the remedial provisions are themselves quite technical. (Rules 704.30 and 705.40.)

The proposed rule change converts the basis for setting exercise and position limits to a fixed number of contracts. It thereby provides a simpler basis for setting limits.

The proposal, in setting the limit at 80,000, also increases it. The NYA has in recent weeks fluctuated around 90. Therefore, the present $300 million ceiling currently permits limits of approximately 33,000 contracts. ($300,000,000 − (100 × $90).)

The Exchange's contract limit is comparable to the limit proposed in a recent filing by the Chicago Board Options Exchange, Inc. ("CBOE"). In that filing, the CBOE set its proposed ceiling for position and exercise limits

on its S&P 100 Index option at 50,000 contracts. The value of the NYA Index is approximately three-fifths that of the S&P 100 Index. Therefore, the contract limits, when re-expressed in terms of the value of the contracts, are about the same.

In its orginal filing on broad index options (SR–NYSE–82–2), the Exchange concluded preliminarily that the reasons usually marshalled in support of position and exercise limits do not apply to broad index options. The Exchange observed that, for example, the deliverable supply for a cash-settled option is inexhaustable and that, therefore, no possibility of a corner exists. A year's experience in the trading of broad index options has supported the Exchange's initial conclusion.

The Exchange notes that it views the proposal not only as a rationalizing of position and exercise limits for broad index options, but also as a first step toward their elimination.

(2) *Statutory Basis*—The proposed rule change provides a simpler basis for setting position and exercise limits for broad index options and raises the ceiling on such limits. Therefore, 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 facilitate transactions in securities and remove impediments to and perfect the mechanism of a free and open market.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

(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: May 3, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–12842 Filed 5–11–84; 8:45 am]

BILLING CODE 8010–01–M

Cincinnati Stock Exchange; Self-Regulatory Organizations; Application for Unlisted Trading Privileges and of Opportunity for Hearing

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(C) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the common stock of: Prentice-Hall, Inc., Common Stock, $.33⅓ Par Value (File No. 7–7413).

This security is registered on one or more other national securities exchange and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 29, 1984 written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–12840 Filed 5–11–84; 8:45 am]

BILLING CODE 8010–01–M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272–2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549

New

Attorney Supplement to SF 171
No. 270–277

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for clearance the Commission's Attorney Supplement to Standard Form 171.

Submit comments to OMB Desk Officer: Ms. Kathy Lewin (202) 395–7231. Office of Information and Regulation Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Dated: May 4, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–12932 Filed 5–11–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 13932; 812–5672]

The Chase Manhattan Bank of Canada; Filing of Application for an Order Pursuant to Section 6(c) of the Act Exempting Applicant From All Provisions of the Act

May 8, 1984.

Notice is hereby given that The Chase Manhattan Bank of Canada ("Applicant"), P.O. Box 301, 3605 Commerce Court West, Toronto, Ontario, Canada M5L 1G1, filed an

application on October 12, 1983, and an amendment thereto on April 20, 1984, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") for an order of the Commission exempting Applicant and, in connection with any public offering of Applicant's debt securities in the United States, any underwriter for Applicant from all provisions of the Act. 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. Such persons are also referred to the Act for the complete text of those provisions thereof, including Section 6(c) of the Act, which are relevant to a consideration of the application.

Applicant states that it is a Canadian banking corporation constituted and licensed under the Bank Act of Canada ("Bank Act"). Applicant further states that it is a wholly-owned subsidiary of Chase Manhattan Overseas Banking Corporation, which, in turn, is a wholly-owned subsidiary of The Chase Manhattan Bank, N.A. ("Chase"), a national banking association organized and existing under the laws of the United States, which, in turn, is a wholly-owned subsidiary of The Chase Manhattan Corporation ("CMC"), a Delaware corporation and a bank holding company registered under the Bank Holding Company Act of 1956.

Applicant states that it provides a wide range of commercial banking services similar to those carried on by non-U.S. branches of Chase. Applicant states that these present and planned activities include commercial lending; deposit-taking; investing in commercial paper, bank instruments and governmental obligations; equipment leasing; and foreign exchange trading. As of December 31, 1983, Applicant had total consolidated assets of approximately $489,000,000 (at the rate of exchange prevailing on December 31, 1983), of which approximately 77% consisted of loans and leases, approximately 12% of investments in securities and placements with banks, and the remainder of miscellaneous assets.

Applicant represents that is extensively regulated under Canadian banking laws. As a Canadian bank chartered under the Bank Act, it is required to compile and publish annual consolidated statements of assets and liabilities, income, appropriations for contingencies and changes in shareholders' equity, together with a report of Applicant's auditors thereon, and to file specified statements with the Minister of Finance and the Bank of Canada. The Bank Act also governs matters such as reserve and liquidity requirements. Applicant further represents that the Inspector General of Banks is permitted to examine Applicant as often as it is deemed necessary or expedient, and in no event less than once a year. Applicant is also said to be indirectly subject to regulation under United States laws that directly affect its corporate parents.

Applicant proposes to make public offerings of its debts securities in the United States. Such debt securities may be guaranteed by Chase or CMC. Initially, Applicant proposes to offer U.S. dollar-denominated short term notes in the United States commercial paper market. Applicant will not make pubic offering of its equity securities in the United States without a further order of the Commission.

Applicant represents that it will appoint an agent, which may be Chase, for service of process in the City and State of New York for any actions arising our of the sale of its securities in the United States. Applicant represents that it will expressly accept the jurisdiction of any state or federal court in the City and State of New York in any such action. Applicant represents that such appointment of an authorized agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the securities have been paid. Applicant represents that any future offerings of its securities in the United States will be made only pursuant to an applicable exemption from registration under the 1933 Act, and any such offering will be made on the basis of disclosure documents appropriate and customary for such registration or exemption and in any event at least as comprehensive as those used in offerings of similar securities in the United States by United States issuers. Applicant undertakes to ensure that such disclosure documents will be provided to each offeree who has indicated an interest in purchasing such securities prior to any sale of such securities to such offeree, except that in the case of an offering made pursuant to a registration statement under the 1933 Act, such disclosure document will be provided to such persons and in such manner as may be required by the 1933 Act.

It is represented that any debt securities of Applicant offered or sold in the United States will have received one of the three highest investment grades from at least one nationally known recognized statistical rating organization which will be certified as having been obtained by Applicant's special counsel in the United States; provided, however, that no such rating shall be required to be obtained if in the opinion of United States counsel for the Applicant, such counsel having taken into account the doctrine of integration for the purpose thereof, an exemption from registration is available with respect to such issue under Section 4(2) of the 1933 Act; and provided further, however, that no such rating shall be required to be obtained with respect to debt securities of the Applicant other than securities to be issued and sold pursuant to Section 3(a)(3) of the 1933 Act, which are unconditionally guaranteed by CMC or Chase so long as CMC at the time of the offering (a) has been subject to the requirements of Section 12 of the Securities Exchange Act of 1934 and has filed all material required to be filed pursuant to Sections 13 and 14 for a period of a least thirty-six calendar months immediately preceding the offering; and (b) has at least one class of debt security outstanding which is rated in one of the three highest investment grades by at least one nationally known recognized statistical rating organization.

In respect of any securities to be issued and sold in the United States without registration pursuant to Section 3(a)(3) of the 1933 Act, Applicant, in addition to making the undertakings set forth above, represents that such securities will be sold in minimum denominations of $100,000, will mature not more then nine months from date of issuance and will not be payable on demand or include any provision for extension, renewal or automatic "roll-over" at the option of either holders or the Applicant. Applicant further represents that such securities will not be advertised or offered for sale to the general public and will have received one of the three highest investment grades from at least one nationally recognized statistical rating organization. Also, such securities will rank *pari passu* among themselves and equally with all other unsecured indebtedness of Applicant (except indebtedness to Canada or any province thereof, to the extent such indebtness is preferred by operation of law), including deposit liabilities, and ahead of its share capital. Applicant will not offer any such security unless either (i) it shall

have received an opinion of its United States legal counsel to the effect that, under the circumstances of the proposed offering, such security will be entitled to the appropriate exemption provided by the appropriate section of the 1933 Act, or (ii) the staff of the Commission shall have stated in writing that it would not recommend enforcement action to the Commission in the circumstances. Applicant will ensure that each offeree of such securities will receive, prior to any sale of securities to such offeree, a memorandum describing the business of Applicant and containing Applicant's most recent publicly available annual financial statements (including a balance sheet and income statement) audited in accordance with Canadian accounting principles applicable to Canadian banks and the most recent publicly available unaudited semi-annual financial statements. Such memorandum will describe the significant accounting principles applicable to Canadian banks and will also be at least as comprehensive as those customarily used in offering commercial paper in the United States and will be updated promply to reflect material changes in the Applicant's business and financial condition.

Applicant consents to any order granting the relief requested pursuant to Section 6(c) of the Act being expressly conditioned upon Applicant's compliance with the foregoing undertakings.

Notice is further given that any interested person wishing to request to hearing on the application may, not later than June 1, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his 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 Applicant 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. 84-12929 Filed 5-11-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13929; 812-5756]

Golder, Thoma & Cressey et al.; Application

May 7, 1984.

In the matter of Golder, Thoma & Cressey, Suite 630, 120 South LaSalle Street, Chicago, Illinois 60603; Baker, Fentress & Co. Suite 3510, 200 West Madison Street, Chicago, Illinois 60606; Application for an order pursuant to section 6(c) of the act for an exemption from section 2(a)(3)(D) of the act.

Notice is hereby given that Golder, Thoma & Cressey, an Illinois limited partnership (the "General Partner"), and Baker, Fentress & Company, a closed-end management investment company registered under the Investment Company Act of 1940 ("Act") (collectively, "Applicants"), filed an application on January 25, 1984, and an amendment thereto on March 30, 1984, for an order of the Commission pursuant to Section 6(c) of the Act granting an exemption from the provisions of Section 2(a)(3)(D) of the Act in connection with the proposed purchase by Baker, Fentress & Company of a limited partnership interest of less than five percent in the Golder, Thoma, Cressey Fund II, an Illinois limited partnership (the "Fund"). 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. Such persons are also referred to the Act for the complete text of the provisions therein referred to herein and in the application.

Applicants represent that the Fund has been formed for the purpose of investing in private equities of small to medium-sized companies, leveraged acquisitions and traditional venture capital situations. The General Partner serves as the Fund's general partner and is itself a partnership with three general partners, all of whom have substantial investment experience. Applicants state that the Fund has been formed as a limited partnership primarily to avoid the double taxation incident to operation in a corporate form.

Applicants represent that an aggregate of up to $100 million of limited partnership interests in the Fund are being offered to sophisticated investors. It is anticipated that the minimum participation for each investor will be $2 million, but the General Partner reserves the right to accept smaller participations. Applicants represent that the management of the Fund is vested exclusively in the General Partner, and the General Partner has full control over the business and affairs of the Fund. Applicants state that the Limited Partners may not take part in the control of the Fund's business and have no power to bind the Fund. The Limited Partners are not personally liable for any obligations of the Fund and have no obligation to make contributions to the Fund in excess of their respective commitments.

Applicants state that as of December 31, 1983, Baker, Fentress & Company had total investments of $338 million with $219 million invested in unaffiliated issuers, $60 million invested in controlled affiliates (the "Controlled Affiliates"), $32 million invested in non-controlled affiliates and $27 million invested in short-term obligations and bankers' acceptances.

Applicants state that Section 2(a)(3) of the Act could be read so as to provide that each Limited Partner of the Fund, including the registered investment company, is an affiliated person of each other Limited Partner as well as the General Partner. Applicants further state that, in the absence of exemptive relief, the General Partner, the Limited Partners and the numerous affiliated persons of the General Partner and the Limited Partners would therefore have to scrutinize each co-participant in every future transaction, regardless of its nature, in an attempt to assure that there is no violation of Section 17(d) of the Act or the rules and regulations thereunder. It is asserted that a comparable problem exists for affilated transactions under Section 17(a) of the Act.

Applicants represent that the problems described above are particularly acute given Baker, Fentress & Company's ownership in the Controlled Affiliates. Applicants state that the Controlled Affiliates are active operating companies with diverse business interests and, as a result, it is not inconceivable that they could from time to time have transactions with the Fund's partners or the affiliated persons thereof who have equally diverse business interests. Applicants claim that while certain of these transactions could be exempt from the prohibitions of Section 17(a) of the Act and Rule 17d-1 by reason of Rules 17a-6 and 17d-1(d)(5) under the Act, the statutory and regulatory burden for assuring that the persons referred to in such exemptive rules are not participating in the transactions is upon the Fund's partners and their respective affiliated person. Applicants assert that it is neither possible nor fair to impose this burden on the Fund's partners as an incidence of merely permitting Baker, Fentress & Company to make a limited co-investment in the Fund for the benefit of such Company's stockholders.

Applicants note that the relief sought relates solely to the term "co-partner" appearing in Section 2(a)(3)(D) of the Act. Furthermore, Baker, Fentress & Company states that it recognizes that any transactions involving affiliated persons of Baker, Fentress & Company or affiliated persons of such persons (other than Fund partners solely by reason of their status as such), on the one hand, and Baker, Fentress & Company or its controlled companies, on the other hand, will continue to be subject to the limitations contained in Section 17 (a) and (d) of the Act and the rules and regulations thereunder notwithstanding issuance of the requested order.

Applicants submit that the requested exemption is consistent with the purposes fairly intended by the policy and provisions of the Act. In support of their exemptive request, Applicants note that a comparable investment by a registered investment company in an enterprise organized in a corporate form as opposed to a limited partnership form would not lead to the restrictions on subsequent transactions by the co-investors of the registered investment company. Applicants further submit that none of the abuses intended to be remedied by the passage of the Act are inherent in the facts of the present situation.

Finally, Applicants represent that because the monitoring and operational problems associated with treating the General Partner and the other Limited Partners as affiliated persons of Baker, Fentress & Company are so severe, the Fund has determined that it will not accept an investment from Baker, Fentress & Company unless relief from the results described above is granted. Applicants state that if investment companies such as Baker, Fentress & Company were to be effectively precluded from investing in venture capital funds (which are normally formed as limited partnerships) such as the Fund the effect would be to deprive such investment companies of participation in attractive investment opportunities available to other members of the public and to deprive such funds of a significant source of capital.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than June 1, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his 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 addresses 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. 84-12931 Filed 5-11-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20815; File No. SR-MSRB-84-8]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board

April 3, 1984.

The Municipal Securities Rulemaking Board ("MSRB") on March 16, 1984, submitted copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), and Rule 19b-4 thereunder to amend the procedures under MSRB Rule G-12(g) for reclamation of inter-dealer deliveries of municipal securities.

The proposed rule change would revise Rule G-12(g) to describe the procedures and effects of a reclamation in greater detail. (In general, a reclamation is a return of securities received by a party because improper securities were delivered or delivery was in some other sense incomplete.) The rule change makes clear that (1) a reclamation is accomplished by the recipient returning securities previously delivered, while a demand for reclamation involves a request for return form the original delivering party; (2) that only those securities on which a delivery problem exists need be returned to accomplish a reclamation; (3) that settlement of a reclamation shall be accomplished by substituting securities in "good delivery" form for those received on the reclamation or by return of the money previously paid at the time of the delivery being reclaimed, and (4) that reclamation reopens a "fail to deliver" on the reclaimed transaction which may be subsequently completed by a delivery of securities in "good delivery" form or by completion of a close-out procedure.

The proposed rule change also makes several revisions to the existing rules for reclamation of securities reported to be lost, stolen, fraudulent, or counterfeit. The proposed rule change allows dealers to reclaim a portion of securities reported to be lost, stolen, counterfeit, or fraudulent without waiting to reclaim all such securities at once. The dealer would be required to provide at the time of reclamation some evidence of the report it received that the securities have been lost, stolen, fraudulent, counterfeit, and to provide evidence that the incident of loss or theft had occurred prior to the date of the delivery being reclaimed.

The MSRB has proposed this rule change to provide in Rule G-12(g) additional guidance concerning reclamations, in part codifying Board interpretative positions. The proposed rule change also modifies the Rule's application to lost, stolen, fraudulent, or counterfeit securities. The changes are intended to clarify reclamation procedures and strengthen protections against traffic in lost, stolen, fraudulent or counterfeit securities. The proposed rule changes have been adopted by the MSRB under Section 15B(a)(C) of the Act.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written comments concerning the submission within 21 days from the date of publication in the **Federal Register.** Persons submitting written comments should file six copies with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Comments should refer to File No. SR-MSRB-84-8.

Copies of the submission and all related items, other then those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be avialable for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available at the principal office of the MSRB.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-12927 Filed 5-11-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20856; File No. SR-MSRB-84-5]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board

April 13, 1984.

The Municipal Securities Rulemaking Board ("MSRB") on March 19, 1984, submitted copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to amend Rules G-35 and A-16 relating to arbitration.

The proposed rule change would amend the MSRB's arbitration code, contained in Rule G-35, and its arbitration fees and deposits, contained in Rule A-16, to conform to recent amendments to the uniform arbitration code developed by the Securities Industry Conference on Arbitration. This uniform code is followed by the various self-regulatory organizations.

The proposed rule change would (1) extend the time limitations on arbitration of claims to allow arbitration of claims over six years old if a court with jurisdiction over the claim has directed that the claim be resolved by arbitration; (2) increase the dollar limit on customer small claims arbitration from $2,500 to $5,000; (3) restructure the fees and deposits for arbitration, lowering the fee and deposits for claims under $2,500 while generally raising fees for claims over $10,000; (4) allow arbitrators discretion to bar the presentation by a respondent of facts or defenses that were not disclosed to the claimant prior to the hearing; (5) allow arbitrators to consolidate arbitrations where there are multiple claimants; (6) specify the rights of parties to peremptorily challenge appointments of arbitrators to the panel and provide unlimited challenges for cause; and (7) allow arbitrators to assess costs in a dispute that was settled or withdrawn subsequent to the first hearing. The proposed rule change is adopted by the MSRB pursuant to Sections 15B(b)(2)(C) and 15B(b)(2)(D) of the Act.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written comments concerning the submission within 21 days from the date of publication in the **Federal Register.** Persons submitting written comments should file six copies with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Comments should refer to File No. SR-MSRB-84-5.

Copies of the submission and all related items, 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, 450 Fifth Street NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available at the principal office of the MSRB.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-12928 Filed 5-11-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20939; File No. SR-NSCC-84-8]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the National Securities Clearing Corporation

May, 8, 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 April 12, 1984, the National Securities Clearing Corporation ("NSCC") 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 proposal changes NSCC's trade data input and comparison procedures by authorizing NSCC to "convert" trade data, if necessary. The NSCC states in its filing that this will enable NSCC to accommodate a New York Stock Exchange ("NYSE") pilot program designed to reduce information that executing brokers must record at the point of the trade.[1]

NSCC believes that this proposal is consistent with Section 17A of the Act, in that it promotes prompt and accurate clearance and settlement of securities transactions, and fosters cooperation and coordination with other persons engaged in the comparison, clearance and settlement of securities transactions. Specifically, the proposal enables NSCC to accommodate NYSE's pilot project, which is designed to reduce both the time needed to record trades and the opportunities for error in the recordation process.[2] In addition, NSCC states that the conversion would not affect the remainder of NSCC's comparison, clearance and settlement operations.

The foregoing change has become effective, pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after 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, D.C. 20549. Reference should be made to File No. SR-NSCC-84-8.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule 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

[1] Under current NYSE procedures, at the time a trade is executed, both executing brokers must record the *contra* executing broker's badge number and also the name of the NYSE member through whom the trade will be cleared. In NYSE's pilot program, several brokers will be given alpha badge identifiers, instead of their current numeric ones, and only this information will be recorded (along with price, number of shares, time of execution, and other required data). No record of the clearing member must be made. Instead, each broker's back office will convert the alpha symbol into an identification of the executing broker and also a new identification number for the member through whom the trade will be cleared (the "clearing member pilot number"). When the trade data is submitted to NSCC, NSCC will convert the clearing member pilot number into its present clearing member number. NSCC's conversion of new symbols into the present ones would be accomplished automatically, by computer, prior to comparison of trade data.

[2] The NYSE, in conversations with Commission staff, represented that the pilot program should benefit NYSE members in several ways. First, executing brokers will only have to capture and alpha symbol for the *contra* brokers participating in the pilot program. No numeric identification of the *contra* broker, or any identification of the clearing member, must be made. Second, despite the abbreviated record made by executing brokers, auditable records for these transactions will be preserved. Each clearing member pilot number implicitly identifies the executing broker, and therefore NSCC will continue to be able to determine the parties to any trade based on the new data submitted.

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, 450 Fifth Street NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-12930 Filed 5-11-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-20932; File No. SR-PHILADEP 84-3]

Self-Regulatory Organizations; Proposed Rule Change by Philadelphia Depository Trust Company; Relating to Membership Application and Requirements and Participants Qualifications

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 April 16, 1984, Philadelphia Depository Trust Company 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

Philadelphia Depository Trust Company (PHILADEP) proposes to amend its current Rules 2 and 3 relating to Membership Application and Requirements and Participants Qualifications.

The proposed revisions to Rule 2 are basically format changes. Section 1 has been revised to relocate certain qualifications standards to Rule 3. Sections 2, 3, and 4 are renumbered 4, 5, and 6, respectively. The revised Section 4 specifies the liability of a participant to PHILADEP for the participant's customers, and defines more clearly what these liabilities are. Revised Section 6 sets forth the terms for the receipt and delivery of notice for purposes of all PHILADEP rules, and clarifies the question as to when notice is deemed to be received.

The current Rule 3 has been retained in Section 1 of new Rule 3 with one modification which would make this provision subject to the by-laws and rules of the clearing agency. Section 2, dealing with character, is somewhat broader and more definite than former Rule 2 from which it is drawn and specifies corporate powers available in dealing with applicants subject to statutory disqualifications. One new requirement is that an Applicant or Participant disclose whether any of its principals were previously associated with a business involved in a bankruptcy or similar event.

Section 3 of Rule 3 sets forth financial standards for broker-dealer Applicants and Participants, which include the maintenance of the minimum net capital requirement set forth in Rule 15c3-1 under the Securities Exchange Act of 1934, if applicable, or the minimum net capital requirement of the Philadelphia Stock Exchange, if applicable, or of the Applicant's or Participant's designated self-regulatory organization.

Applicants and Participants must file copies of their most recent annual, monthly, and quarterly financial and operational reports under Securities Exchange Act Rule 17a-5. In addition, an Applicant must demonstrate at least four consecutive months of profitable business operations immediately preceding the filing of its application. PHILADEP may waive this requirement if one or more principals of the Applicant has a previously established business history as an associated person of a current floor member organization of the Philadelphia Stock Exchange.

Section 3 of Rule 3 also establishes financial standards for bank applicants and particpants. These include a minimum of $10 million in capital, or if a trust company, such capital as PHILADEP may determine in light of the scope and nature of the trust company's business, its projected or actual volume of transactions, and the degree of potential exposure presented by it. Other requirements are that the bank must be insured by the FSLIC or the FDIC or be a member of the Federal Reserve System, and a bank applicant shall not have operated at a loss at the end of its most recent fiscal quarter. The rule also establishes a financial reporting requirement for banks.

Section 4 of proposed Rule 3 ses forth minimum personnel and operations standards for broker-dealer and bank applicants and participants. The applicant or participant must designate a supervisory person in charge of all matters relating to PHILADEP, have adequate and tested facilities to fufill current and anticipated commitments and operational requirements, and be familiar with the operations, by-laws, and rules of PHILADEP.

Section 6 (Section 5 is reserved) of proposed Rule 3 requires that, in order to conclude an application, an applicant's representative must meet with the staff of PHILADEP for the purpose of verifying answers on an application, discussing any questions or concerns the staff may have, and establishing communications with the applicant.

Section 7 incorporates a provision of old Rule 2 which requires PHILADEP to apply the qualification standards on a nondiscriminatory basis; and Section 8 requires PHILADEP to approve or disapprove an application in writing, stating reasons for disapproval, and refers to the applicant's right of appeal under Rue 21.

In conjunction with these changes, Rule 4, Section 7 must be changed in its reference to the method of giving written notice. The reference will now be to Rule 2, Section 6.

The text of the proposed rule change is attached to the filing as Exhibit A.

II. Self-Regulatory Organization's Statement of 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. 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 Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to set forth guidelines to be used by the PHILADEP staff and Admissions Committee in evaluating prospective members. It also provides for these standards of character, financial condition, operational capability, and personnel to be applied as continuance standards for current PHILADEP participants as well as entrance standards for applicants. The proposed rule change also sets forth standards applicable to bank applicants and participants.

Section 17A(b)(4)(B) of the Securities Exchange Act of 1934 states that a registered clearing agency may deny participation to, or condition the participation of, any person that does not meet standards of financial

responsibility, operational capability, experience, and competence as prescribed by the clearing agency's rules.

This section further states that the clearing agency may examine and verify the qualifications of an applicant to be a participant. Section 17A(b)(3)(F) states that a clearing agency's rules may not be designed to permit unfair discrimination in the admission of participants.

The Commission staff has commented on these provisions from time to time,[1] stating that a clearing agency may discriminate, provided that such discrimination is based on appropriate qualification standards and is not unfair. In addition, a clearing agency may impose such additional or higher standards as it deems necessary to protect the clearing agency and its participants from unreasonable risks. The staff has added that participants such as bank participants utilizing similar services to those offered to non-bank participants should be required to comply with internal financial and operational rules such as clearing fund deposits and mark-to-market payments.

B. Self-Regulatory Organization's Statement on Burden on Competition

PHILADEP does not perceive any burden on competition as a result of the proposed rule change, the provisions of which follow statutory standards for regulation.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change

Comments on the proposed rule change have not been solicited or received.

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.

[1] See generally, *e.g., Securities Exchange Act Release No. 16900* (June 17, 1980).

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 5th 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 5th Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal offices of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 4, 1984.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 4, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-12933 Filed 5-11-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-20933; File No. SR-SCCP 84-3]

Self-Regulatory Organizations; Proposed Rule Change by Stock Clearing Corporation of Philadelphia; Relating to Membership Application and Requirements and Participants Qualifications

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 April 16, 1984, Stock Clearing Corporation of Philadelphia 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-Regultory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Stock Clearing Corporation of Philadelphia (SCCP) proposes to amend its current Rules 2 and 3 relating to Membership Application and Requirements and Participants Qualifications.

The proposed revisions to Rule 2 are basically format changes. Section 1 has been revised to relocate certain qualification standards to Rule 3. Sections 2 and 3 are renumbered 4 and 5, respectively. The revised Section 4 specifies the liability of a participant to SCCP for the participant's customers, and defines more clearly what these liabilities are. Revised Section 5 sets forth the terms for the receipt and delivery of notice for purposes of all SCCP rules, and clarifies the question as to when notice is deemed to be received.

The current Rule has been retained in Section 1 of new Rule 3 with one modification which would make this provision subject to the by-laws and rules of the clearing agency. Section 2, dealing with character, is somewhat broader and more definite than former Rule 2 from which it is drawn and specifies corporate powers available in dealing with applicants subject to statutory disqualifications. One new requirement is that an Applicant or Participant disclose whether any of its principals were previously associated with a business involved in a bankruptcy or similar event.

Section 3 of Rule 3 sets forth financial standards for broker-dealer Applicants and Participants, which include the maintenance of the minimum net capital requirement set forth in Rule 15c-1 under the Securities Exchange Act of 1934, if applicable, or the minimum net capital requirement of the Philadelphia Stock Exchange, if applicable, or of the Applicant's or Participant's designated self-regulatory organization. Applicants and Participants must file copies of their most recent annual, monthly, and quarterly financial and operational reports under Securities Exchange Act Rule 17a-5. In addition, an Applicant must demonstrate at least four consecutive months of profitable business operations immediately preceding the filing of its application. SCCP may waive this requirement if one or more principals of the Applicant has a previously establish business history as an associated person of a current floor member organization of the Philadelphiia Stock Exchange.

Section 3 of Rule 3 also establishes financial standards for bank applicants and participants. These include a minimum of $10 million in capital, or if a trust company, such capital as SCCP may determine in light of the scope and nature of the trust company's business, its projected or actual volume of transactions, and the degree of potential

exposure presented by it. Other requirements are that the bank must be insured by the FSLIC or the FDIC or be a member of the Federal Reserve System, and a bank applicant shall not have operated at a loss at the end of its most recent fiscal quarter. The rule also establishes a financial reporting requirement for banks.

Section 4 of proposed Rule 3 sets forth minimum personnel and operations standards for broker-dealer and bank applicants and participants. The applicant or participant must designate a supervisory person in charge of all matters relating to SCCP, have adequate and tested facilities to fulfill current and anticipated commitments and operational requirements, and be familiar with the operations, by-laws, and rules of SCCP.

Section 6 (Section 5 is reserved) of proposed Rule 3 requires that, in order to conclude an application, an applicant's representative must meet with the staff of SCCP for the purpose of verifying answers on an application, discussing any questions or concerns the staff may have, and establishing communications with the applicant.

Section 7 incorporates a provision of old Rule 2 which requires SCCP to apply the qualification standards on a nondiscriminatory basis; and Section 8 requires SCCP to approve or disapprove an application in writing, stating reasons for disapproval, and refers to the applicant's right of appeal under Rule 24.

In conjunction with these changes, Rule 4, Section 7 must be changed in its reference to the method of giving written notice. The reference will now be to Rule 2, Section 5.

The text of the proposed rule change is attached to the filing as Exhibit A.

II. Self-Regulatory Organization's Statement of, 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. 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 Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to set forth guidelines to be used by the SCCP staff and Admissions Committee in evaluating prospective members. It also provides for these standards of character, financial condition, operational capability, and personnel to be applied as continuance standards for current SCCP participants as well as entrance standards for applicants. The proposed rule change also sets forth standards applicable to bank applicants and participants.

Section 17A(b)(4)(B) of the Securities Exchange Act of 1934 states that a registered clearing agency may deny participation to, or condition the participation of, any person that does not meet standards of financial responsibility, operational capability, experience, and competence as prescribed by the clearing agency's rules.

This section further states that the clearing agency may examine and verify the qualifications of an applicant to be a participant. Section 17A(b)(3)(F) states that a clearing agency's rules may not be designed to permit unfair discrimination in the admission of participants.

The Commission staff has commented on these provisions from time to time,[1] stating that a clearing agency may discriminate, provided that such discrimination is based on appropriate qualification standards and is not unfair. In addition, a clearing agency may impose such additional or higher standards as it deems necessary to protect the clearing agency and its participants from unreasonable risks. The staff has added that participants such as bank participants utilizing similar services to those offered to non-bank participants should be required to comply with internal financial and operational rules such as clearing funds deposits and mark-to-market payments.

B. Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not perceive any burden on competition as a result of the proposed rule change, the provisions of which follow statutory standards for regulation.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change

Comments on the proposed rule change have not been solicited or received.

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 5th 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 5th Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal offices of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 4, 1984.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 4, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-12926 Filed 5-11-84; 8:45 am]

BILLING CODE 8010-01-M

[1] See generally, *e.g., Securities Exchange Act Release No. 16900 (June 17, 1980).*

SMALL BUSINESS ADMINISTRATION

Region I Advisory Council Meeting; Public Meeting

The Small Business Administration, Region I Advisory Council, located in the geographical area of Concord, N.H., will hold a public meeting at 9:30 p.m., on Wednesday, June 13, 1984, in the Concord National Bank Board Room, Concord National Bank, 43 N. Main and Warren Streets, Concord, New Hampshire, to discuss such matters as may be presented by members, staff of the Small Business Administration, or other present.

For further information, write or call William Phillips, District Director, U.S. Small Business Administration, 55 Pleasant Street, Concord, New Hampshire 03301, (603) 224–4041.

Dated: May 7, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84–12942 Filed 5–11–84; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Accident Data Collection and Analysis Activities; Meeting and Inquiry

AGENCY: National Highway Traffic Safety Administration (NHTSA), Transportation.

ACTION: Notice of public meeting, announcement of Federal accident data collection and analysis activities, and request for comments.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, research and enforcement programs, and at which NHTSA's accident data collection and analysis activities will be discussed. The agency seeks both written and oral comments on the use of Federal accident data systems. The agency has chosen to combine the quarterly public meeting with a planned technical meeting on Federal accident data activities to gain additional technical information on data collection and analysis as well as to reduce the costs which would be incurred if separate meetings were held.

DATES: Questions for the meeting relating to the agency's rulemaking, research, and enforcement programs, and submissions relating to accident data collection and analysis must be submitted in writing by June 15, 1984. The agency also seeks suggestions for future technical meetings. If sufficient time is available, questions received after the June 15 date may be answered at the meeting. The individual group or company submitting a question does not have to be present for the question to be answered. A consolidated list of the questions submitted by June 15 and the issues to be discussed will be mailed to interested persons on or before July 5, and will be available at the meeting. A transcript of the meeting will be taken, copies of which will be available from the Docket Section. Requests to make a formal presentation at the accident data collection and analysis portion of the public meeting should be received on or before June 15. The public meeting will be held on July 11, 1984, beginning at 10:30 a.m.

ADDRESSES: Questions for the July 11 meeting relating to the agency's rulemaking, research, and enforcement programs should be submitted to Barry Felrice, Associate Administrator for Rulemaking, Room 5401, 400 Seventh Street, SW., Washington, D.C. 20590. The public meeting will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan. Requests for participation in the accident data portion of the public meeting should be directed to the "Information Contact" specified below.

FOR FURTHER INFORMATION CONTACT: J. F. Delahanty, NRD–30, National Center for Statistics and Analysis, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202–426–1470).

SUPPLEMENTARY INFORMATION: On July 11, 1984, NHTSA will hold a meeting to answer questions from the public and industry regarding the agency's rulemaking, research, and enforcement programs. The meeting will begin at 10:30 a.m., and will be held at EPA's laboratory facility in Ann Arbor, Michigan. The purpose of the meeting is to focus on those phases of these NHTSA activities which are technical, interpretative or procedural in nature.

At the close of the usual question and answer session a brief discussion of accident data collection and analysis activities will be held. Immediately thereafter, (or on the following day, depending on available time), the agency will conduct a technical meeting at which presentations will be made regarding the accident data program. Several agency officials involved in the program will make presentations, and industry representatives and other interested individuals are invited to make similar technical presentations. Depending on the number of participants desiring to make presentations, the meeting may be carried over to July 12.

Presentations are especially encouraged addressing the use of the National Accident Sampling System (NASS) and Fatal Accident Reporting System (FARS) data banks or the use of State and private data banks in association with NASS and FARS.

I. Background

NHTSA's National Center for Statistics and Analysis (NCSA) develops, maintains, and operates a comprehensive accident data collection and analysis program to support motor vehicle and highway safety activities. NCSA provides the quantitative and statistical information needed for making sound decisions, setting priorities, allocating resources, and establishing effective and relevant highway safety programs. Its major accident data collection activities include the operation of the Fatal Accident Reporting System (FARS), the National Accident Sampling System (NASS), and a number of special interest accident investigations.

A. Fatal Accident Reporting System (FARS) 1984–1986

FARS is a census of all fatal motor vehicle accidents in the U.S. obtained from the 50 States, D.C. and Puerto Rico. Under contract to NHTSA, FARS data are collected by State employees who gather, translate and transmit the data to NHTSA. Data are gathered from the States' own source documents including police accident reports, vehicle registration and driver licensing files, and official medical records.

The system contains descriptions in a standard format, of each fatal accident reported. The format allows coding of approximately 90 different data elements to characterize each accident and the vehicles and persons involved in it. Some data elements are modified slightly each year to reflect changing user needs, vehicle designs, and areas of highway safety emphasis.

The system now contains data on over 300,000 fatal accidents. The data are available for each year since 1975 on computer tapes which can be purchased and processed on the user's own computer system.

B. National Accident Sampling System (NASS)

NASS was implemented in order to obtain data on non-fatal accidents so that in combination with FARS the magnitude and character of traffic accidents could be defined. NASS is now operating with 50 field accident investigation teams in 27 States with four quality control zone centers and now collects data on over 11,000 accidents annually.

NASS gathers data on a probability sample of all police-reported accidents in the U.S. Each such accident that occurs within a NASS team's area has a chance of being included in the sample. This design makes it possible to compute not only national estimates but also probable errors associated with those estimates. In addition to the State data sources used in FARS, the NASS

investigators conduct vehicle and scene inspections, interview occupants and other witnesses, and analyze hospital and other medical reports.

The system contains descriptions of over 250 data elements which characterize the environmental factors, crashworthiness performance, and accident avoidance aspects of the crash. NASS was put in operation in 1979 and the data file now contains over 20,000 cases. Data are available on computer tapes for 1979 through 1982 and the 1983 file should be available in a few months.

C. Special Interest Accident Investigations

NHTSA also conducts accident investigations of special interest such as accidents involving air bag equipped automobiles, serious school bus accidents, or accidents in which defects are suspected of being contributing factors. One ongoing program involves investigations of crashes in which serious head and neck injuries occurred in the Washington, D.C., area. This study will be discussed at the meeting.

II. Papers To Be Presented

The following papers will be presented by the NHTSA staff:

Topic: NCSA Overview

This presentation will cover the current role of the National Center for Statistics and Analysis (NCSA), contributions of the Center, including the National Crash Severity Study (NCSS), the Pedestrian Injury Causation Study (PICS), and the motorcycle study. It will identify the primary users of data, types of data sought, the one-time data searches which are available to all users and periodic reports such a the NASS and FARS annual reports, monthly reports on the change in fatality rates, and various topical reports.

Topic: Use of Current Data Bases

A number of examples will be presented which illustrates NHTSA's use of data from the FARS, NASS and State data banks, suggestions on how the data could be useful to others, and a brief discussion on how to access the system.

Topic: New NCSA Data Collection Programs—NASS 1985 and Washington Hospital Center Study

NASS will be changing in 1985 to provide for the data needs in the latter part of the decade. Accident avoidance information on vehicle and pedestrian accidents will be added plus improvements in the quality and level of detail in several areas including intrusion, steering column performance, and rollover.

In the Washington Hospital Center Study, NHTSA and a major Washington, D.C., trauma treatment facility are conducing a clinical study on head and neck injuries in auto accidents. Head and neck injuries are probably the most debilitiating of accident injuries due to the frequent, permanent loss of cognitive processes or mobility. This study will follow people who suffer severe head and neck injuries from an investigation of their accident through medical and rehabilitation care to re-integration into society.

Issued on May 8, 1984.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 84-12837 Filed 5-11-84; 8:45 am]

BILLING CODE 4910-59-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 94
Monday, May 14, 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).

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1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, May 16, 1984.

LOCATION: Third Floor Hearing Room, 1111—18th Street, NW., Washington, D.C.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Export Policy, CPSA and FHSA

The Commission will consider issues related to possible changes to the Commission's export policy under the Consumer Product Safety Act and Federal Hazardous Substances Act.

2. Voluntary Standards Policy

The Commission will consider a proposal to amend the CPSC policy regarding Commission involvement in voluntary standards activities, (16 CFR, Part 1032).

3. Residential Swimming Pool Hazard: Status Report

The staff will brief the Commission on issues related to the risk of drowning to children under five years of age in residential pools and spas.

For a recorded message containing the latest agenda information, call: 301—492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave. Bethesda, Md. 20207 301—492–6800.

Sheldon D. Butts,
Deputy Secretary.
May 9, 1984.
[FR Doc. 84-12935 Filed 5-9-84; 4:37 pm]
BILLING CODE 6355-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, May 17, 1984.

LOCATION: Third Floor Hearing Room, 1111–18th Street, NW., Washington, D.C.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Butyl Nitrite: Interagency Activity Update, Petition HP 82–1

The staff will brief the Commission on interagency activities on butyl nitrites and staff recommendations concerning Petition HP 82–1.

STATUS: Closed to the Public.

2. Compliance Status Report

The staff will brief the Commission on a Compliance Status Report.

3. Enforcement Matter OS #4999

The Commission will consider Enforcement Matter OS #4999.

For a recorded message containing the latest agenda information, call: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Avenue, Bethesda, Md. 20207—301–492–6800.

Sheldon D. Butts,
Deputy Secretary.
May 9, 1984.
[FR Doc. 84-12936 Filed 5-9-84; 4:37 pm]
BILLING CODE 6355-01-M

3

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
May 9, 1984.

TIME AND DATE: 9:30 a.m., Wednesday, May 16, 1984.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. Secretary of Labor, MSHA and United Mine Workers of America v. Consolidation Coal Company, Docket No. WEVA 82–209–R, and WEVA 82–245.

TIME AND DATE: Following oral argument.

STATUS: Closed (Pursuant to 5 U.S.C. § 552b(c)(10)).

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the above mentioned Docket.

It was determined by a majority vote of Commissioners that this portion of the meeting be closed.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653–5629.

Jean H. Ellen,
Agenda Clerk.
[FR Doc. 84-13013 Filed 5-10-84; 2:21 pm]
BILLING CODE 6735-01-M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Friday, May 18, 1984.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnell actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: May 10, 1984.
William W. Wiles,
Secretary of the Board.
[FR Doc. 84-13051 Filed 5-10-84; 3:33 pm]
BILLING CODE 6210-01-M

5

NEIGHBORHOOD REINVESTMENT CORPORATION

Sixth Annual Meeting.

TIME AND DATE: 2:00 p.m., May 16, 1984.

PLACE: Neighborhood Reinvestment Corporation, 1850 K Street, NW., Suite 400, Washington, D.C. 20006.

STATUS: Open Meeting.

CONTACT PERSON FOR MORE INFORMATION: Timothy McCarthy, Associate Director, Communications, 202–653–2705.

AGENDA:

I. Call to Order and Remarks of the Chairman
II. Approval of Minutes, February 15, 1984
III. Executive Director's Activity Report
IV. Budget Committee Report
V. Treasurer's Report
VI. Appointment of Audit Committee
VII. Election of Officers

VIII. Appointment of Assistant Secretary, Appointment of Assistant Treasurer

Carol J. McCabe,

Secretary.

No. 32, May 9, 1984.

[FR Doc. 84-12470 Filed 5-10-84; 11:08 am]

BILLING CODE 0000-00-M

6

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of Directors.

TIME AND DATE: 9 a.m. (closed portion). 10:30 a.m. (open portion), Tuesday, May 22, 1984.

PLACE: Offices of the Corporation, seventh floor Board Room, 1129 20th Street NW., Washington, D.C.

STATUS: The first part of the meeting from 9 a.m. to 10:30 a.m. will be closed to the public. The open portion of the meeting will start at 10:30 a.m.

MATTERS TO BE CONSIDERED: (Closed to the public 9 a.m. to 10:30 a.m.)

1. Finance Project in African Country.
2. Insurance Project in East Asian Country.
3. Insurance Project in East Asian Country.
4. Insurance Project in East Asian Country.
5. Insurance Project in Latin American Country.
6. Insurance Project in Latin American Country.
7. Determination of Countries and Areas Qualifying as Developing Countries and Areas for OPIC Programs.
8. Claims Report.
9. Information Report: Finance.
10. Information Reports: General.
11. China Projects Report.

FURTHER MATTERS TO BE CONSIDERED: (Open to the public 10 a.m.)

1. Approval of the Minutes of the Previous Meeting.
2. Confirmation of Scheduled Board Meetings.
3. Financial Statements for the Six Months ended March 31, 1984.
4. Information Reports.

CONTACT PERSON FOR INFORMATION: Information with regard to this meeting may be obtained from the Secretary of the Corporation at (202) 653-2925.

Elizabeth A. Burton,

OPIC Corporate Secretary.

May 9, 1984.

[FR Doc. 84-12963 Filed 5-10-84; 11:22 am]

BILLING CODE 3210-01-M

7

POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting.

At its meeting on May 7, 1984, the Board of Governors of the United States Postal Service unanimously voted to close to public observation its meeting, scheduled for June 4, 1984, in San Francisco, California. The meeting will involve: (1) A discussion of possible strategies in anticipated collective bargaining negotiations, pursuant to chapter 12 of title 39 United States Code, involving parties to the 1981 National Agreements, between the Postal Service and four labor organizations representing certain postal employees, which are scheduled to expire in July 1984; and (2) a discussion on the financing area of emphasis in the Postal Service's Strategic Business Plan.

The meeting is expected to be attended by the following persons: Governors Babcock, Camp, McKean, Peters, Ryan, Sullivan, Voss and Waldman; Postmaster General Bolger; Deputy Postmaster General Finch; Secretary of the Board Harris; Acting General Counsel Hughes; Senior Assistant Postmasters General Coughlin and Morris; Assistant Postmaster General Cummings; and Counsel to the Governors Califano.

As to the first of these agenda items, the Board is of the opinion that public access to any discussion of possible strategies that Postal Service management may decide to adopt, or the positions it may decide to assert, in any collective bargaining sessions that may take place would be likely to frustrate action to carry out those strategies or assert those positions successfully. In making this determination, the Board is aware that the effectiveness of the collective bargaining process in labor-management relations has traditionally depended on the ability of the parties to prepare strategies and formulate positions without prematurely disclosing them to the opposite party. The public has a particular interest in the integrity of this process as it relates to the Postal Service, since the outcome of the negotiations between the Postal Service and the various postal unions, and consequently the cost, quality and efficiency of postal operations, may be adversely affected if the process is altered.

Accordingly, the Board of Governors has determined that, pursuant to section 552b(c)(3) of title 5, United States Code, and § 7.3(c) of Title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)], because it is likely to disclose information prepared for use in connection with the negotiation of collective bargaining agreements unde chapter 12 of title 39, United States Code, which is specifically exempted from disclosure by section 410(c)(3) of title 39, United States Code. The Board has determined further that, pursuant to section 552b(c)(9)(B) of title 5, United States Code, and § 7.3(i) of Title 39, Code of Federal Regulations the discussion is exempt because it is likely to disclose information the premature disclosure of which is likely to frustrate significantly proposed Postal Service action. Finally, the Board of Governors has determined that the public has an interest in maintaining the integrity of the collective bargaining process and that the public interest does not require that the Board's discussion of its possible collective bargaining strategies and positions be open to the public.

As to the second agenda item, the Board is of the opinion that public access to the discussion would be likely to disclose information that could become involved in future rate or classification litigation.

Accordingly, the Board of Governors has determined that, pursuant to section 552b(c)(3) of title 5, United States Code, and § 7.3(c) of Title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)], because it is likely to disclose information in connection with proceedings under chapter 36 of title 39 (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of title 39, United States Code. The Board also determined that pursuant to section 552b(c)(10) of title 5, United States Code, and § 7.3(j) of Title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern the participation of the Postal Service in a civil proceeding or the litigation of a particular case involving a determination on the record after opportunity for a hearing. The Board has determined further that pursuant to section 552b(c)(9)(B) of title 5, United States Code, and § 7.3(i) of Title 39, Code of Federal Regulations, the discussion is exempt because it is likely to disclose information the premature disclosure of which is likely to frustrate significantly proposed Postal Service action. The Board further determined that the public interest does not require the Board's discussion of this matter be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and § 7.6(a) of Title 39, Code of Federal

Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting to be closed may properly be closed to public observation, pursuant to sections 552b (c)(3), (9)(B) and (10) of title 5 and sections 410(c) (3) and (4) of title 39, United States Code, and § 7.3 (c), (i) and (j) of Title 39, Code of Federal Regulations.

David F. Harris,

Secretary.

[FR Doc. 84-13014 Filed 5-10-84; 2:29 pm]

BILLING CODE 7710-12-M

federal register

Monday
May 14, 1984

Part II

Department of the Interior

Minerals Management Service

Outer Continental Shelf; North Atlantic Proposed Oil and Gas Lease Sale No. 82; Notice

Billing Code: 4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf
North Atlantic
Proposed Oil and Gas Lease Sale No. 82

Pursuant to section 19 of the Outer Continental Shelf Lands Act, as amended, the Secretary of the Interior provides the affected States the opportunity to review the proposed Notice. The following is a proposed Notice for Sale 82--North Atlantic. This Notice is hereby published as a matter of information to the public.

Director, Minerals Management Service

William D. Bettenberg

MAY 7 1984

Approved:

Assistant Secretary for Land and Minerals Management

Garrey Carruthers

5/8/84
Date

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf, North Atlantic
Oil and Gas Lease Sale No. 82

1. Authority. This Notice is published pursuant to the Outer Continental Shelf Lands Act of 1953 (43 U.S.C. 1331-1343), as amended (92 Stat. 629), and the regulations issued thereunder (30 CFR Part 256).

2. Filing of Bids. Sealed bids will be received by the Regional Manager, Atlantic Outer Continental Shelf (OCS) Region, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180. Bids may be delivered, either by mail or in person, to the above address until the Bid Submission Deadline, at 4:30 p.m., e.s.t., _____. Bids will not be accepted on _____, the day of Bid Opening. Bids received by the Regional Manager later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified unless written modification is received by the Regional Manager prior to 4:30 p.m., e.s.t., _____. Bids may not be withdrawn unless written withdrawal is received by the Regional Manager prior to 9:00 a.m., e.s.t., _____. Bid Opening Time will be 10:00 a.m., e.s.t., _____ at (sale site in the Vienna, Virginia, area to be announced). All bids must be submitted and will be considered in accordance with applicable regulations, including 30 CFR Part 256. The list of restricted joint bidders which applies to this sale appeared in the Federal Register at 49 FR 12767 on March 30, 1984.

3. Method of Bidding. Tract numbers will not be used. A separate bid in a sealed envelope, labeled "Sealed Bid for Oil and Gas Lease Sale No. 82; (map number; map name (if applicable), and block number(s)), not to be opened until 10:00 a.m., e.s.t., _____," must be submitted for each block or prescribed bidding unit bid upon. For example, a label would read as follows: "Sealed Bid for Oil and Gas Lease Sale No. 82, NK 19-5, Block 788, not to be opened until 10:00 a.m., e.s.t. _____." For those blocks which must be bid upon together as a bidding unit (see Paragraph 12), it is recommended that all numbers of blocks comprising the bidding unit appear in the label on the sealed envelope. A suggested bid form appears in 30 CFR Part 256, Appendix A. In addition, the total amount bid must be in whole dollar amounts (no cents). Bidders must submit with each bid one-fifth of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U. S. Department of the Interior--Minerals Management Service. No bid for less than all of the unleased portions of a block or bidding unit

as described in paragraph 12 will be considered. Bidders are advised to use the description "All the Unleased Federal Portion" for those blocks having only aliquot portions currently available for leasing. Partnerships also must submit or have on file in the Atlantic Regional Office, a list of signatories authorized to bind the partnership. All documents must be executed in conformance with signatory authorizations on file. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places after the decimal point, e.g., 50.12345 percent. Other documents may be required of bidders under 30 CFR 256.46. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. Bidding Systems. All bids submitted at this sale must provide for a cash bonus of $371 or more per hectare or fraction thereof. All leases resulting from this sale will provide for a yearly rental payment of $8 per hectare or fraction thereof. All leases awarded will provide for a minimum royalty of $8 per hectare or fraction thereof. The following systems will be utilized:

(a) Bonus Bidding with a 16-2/3 Percent Royalty. Bids on the following blocks must be submitted on a cash bonus basis with a fixed royalty of 16-2/3 percent.

NK 19-6

816-823	900-914	945-958	969-971	988-1002
859-869	926-927			

NK 20-4

881	926-927	969-971		

NK 19-8

40	83-84	126-127	168-169	

NK 19-9

19-34	240-255	459-475	634-646	850-863
64-78	284-299	502-519	678-689	893-907
109-122	327-343	546-558	721-733	937-950
154-166	371-387	561	765-776	981-993
195-210	415-431	590-602	808-819	

NK 19-10

474-478	647-660	782-792	864-866	919-920
516-524	692-704	820-822	872-880	923-924
560-568	737-748	827-836	911	967-968
604-612	776-777			

NK 19-11

381-382	621-632	753-764	815-821	929-942
425-426	665-676	768	841-852	973-978
469-470	709-720	770-777	854-856	981-984
513-514	725-733	797-808	859-860	
557	736-737	811-812	885-900	

NK 19-12

14-24	102-110	191-196	447-449	532-533
58-67	147-153	236-240	491-492	

(b) Bonus Bidding with a 12½ Percent Royalty. Bids on the remaining blocks in this sale must be submitted on a cash bonus basis with a fixed royalty of 12½ percent.

5. Equal Opportunity. Each bidder must have submitted by the Bid Submission Deadline, stated in paragraph 2, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form 1140-8 (June 1982) and the Affirmative Action Representation Form, Form 1140-7 (June 1982). See paragraph 14, "Information to Lessees."

6. Bid Opening. Bid opening will begin at the Bid Opening Time, stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on the day of Bid Opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. Deposit of Payment. Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid will be deposited by the Government in an interest bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. Withdrawal of Blocks. The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

9. Acceptance, Rejection, or Return of Bids. The United States reserves the right to reject any and all bids. In any case, no bid will be accepted and no lease for any block or bidding unit will be awarded to any bidder unless:

(a) the bidder has complied with all requirements of this Notice and applicable regulations;

(b) the bid is the highest valid bid; and

(c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of $371 or more per hectare or fraction thereof. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, or other applicable regulations, may be returned to the person submitting that bid by the Regional Manager and not considered for acceptance.

10. Successful Bidders. Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease, pay the balance of the cash bonus bid together with the first year's annual rental, as specified below and satisfy the bonding requirements of 30 CFR 256, Subpart I.

For this lease sale, the Minerals Management Service will implement procedures for the electronic funds transfer (EFT) payment of four-fifths of the cash bonus bid and the first year's annual rental for each lease issued. Successful bidders are required to submit the balance of the bonus and the first year's annual rental payment by EFT utilizing the Federal Reserve Communications System and the Treasury Financial Communications System, payable to the U.S. Department of the Interior--Minerals Management Service. The Regional Manager will provide more detailed instructions on making the EFT payments when bidders are qualified to submit bids at the sale. Bidders are referred to 30 CFR 218.155 (49 FR 8602, March 8, 1984).

11. Official Protraction Diagrams. Blocks or bidding units offered for lease may be located on the following Official Protraction Diagrams which may be purchased for $2.00 each from the Atlantic OCS Regional Office at the address stated in paragraph 2 of this Notice:

NK 19-5	(Approved May 27, 1982)
NK 19-6	(Approved May 27, 1982)
NK 20-4	(Approved May 27, 1982)
NK 19-8	Chatham (Approved April 18, 1979)
NK 19-9	(Approved March 20, 1975)
NK 20-7	Fundian Rise (Approved May 27, 1982)
NK 19-10	Block Island Shelf (Approved August 22, 1983)
NK 19-11	(Approved October 31, 1974)
NK 19-12	(Approved April 29, 1975)
NJ 19-1	Block Canyon (Approved June 22, 1977)
NJ 19-2	Veatch Canyon (Approved January 25, 1979)
NJ 19-3	(Approved May 21, 1980)

12. Description of the Areas Offered for Bids. Certain blocks included in this proposed Notice of Sale are located within an area of disputed jurisdiction between the United States and Canada. All blocks within the disputed area are listed in subparagraph (d). All other blocks in the sale, which are not subject to the dispute, are listed in subparagraph (a). The dispute involves the precise location of the maritime boundary in the Gulf of Maine area. The United States and Canada have submitted the dispute to the International Court of Justice (ICJ). The final oral stages of the proceedings are now underway and a judgment is expected this year. If the ICJ rules before a final Notice of Sale is issued, then MMS intends to include in the final Notice of Sale those blocks in subparagraph (d) that are within the United States jurisdiction. On the other hand, if the ICJ has not established the maritime boundary by that time, then MMS intends to split Sale 82 into two parts. In that event, MMS would offer the undisputed blocks in Part I of the sale. Later, after the ICJ has ruled, MMS would offer those blocks in subparagraph (d) that are within United States jurisdiction in Part II of the sale. The timing of Part II of the sale would be subject to further notice.

Note: All blocks contain 2,304 hectares, unless otherwise indicated on the lists which appear as items (b), (c), (e), (f), (g), and (h) of this paragraph.

(a) The following is a listing of all blocks in Part I of this lease sale:

NK 19-5

788	874-876	918-920	962-964	1005-1008
830-832				

NK 19-6

705-706	793-794	881-882	925	969
749-750	837-838			

NK 19-8 Chatham

37-40	80-84	124-127	168-169	

NK 19-10 Block Island Shelf

474-478	647-660	782-792	872-880	962-968
516-524	692-704	820-822	908-911	996-1001
560-568	737-748	827-836	917-924	1006-1008
604-612	776-777	864-866	952-956	1010-1012

NK 19-11

381-382	665-676	780-786	841-852	929-945
425-426	709-720	788	854-867	947-955
469-470	725-741	797-808	869-876	957-964
513-514	744	811-823	885-911	973-989
557	753-764	825-830	913-920	991-1008
621-632	768-778	832		

NK 19-12

445-457	579-591	705-706	793-794	969-986
489	619-621	708-710	796-798	
491-502	623-626	712-724	800-813	
530-533	628-635	749-750	837-857	
535-546	664-665	752-754	881-900	
575-577	667-680	756-769	925-943	

NJ 19-1 Block Canyon

29-34	161-168	337-348	557-572	777-792
40-44	175-176	381-393	601-616	821-836
73-79	205-214	425-438	645-660	865-880
85-88	220	469-482	689-704	920-924
117-124	249-258	513-527	733-748	967-968
131-132	293-303			

NJ 19-2 Veatch Canyon

1-37	133-169	355-384	662-677	882-885
45-52	177-213	486-511	706-719	926-928
54-81	221-256	530-551	750-760	970-971
89-96	266-300	574-592	794-804	
98-125	310-340	618-636	838-846	

NJ 19-3

1-15	45-59	89-101	133-139	177

(b) The following partial blocks in Part I of this lease sale must be bid on individually:

NK 19-10 Block Island Shelf

Block	Description	Hectares
917	NE¼; N½NW¼; E½SE¼.	1152.00
921	N½; N½SW¼; SW¼SW¼.	1584.00
922	N½; SE¼.	1728.00

NK 19-11

Block	Description	Hectares	Block	Description	Hectares
734	N½; SW¼; N½SE¼.	2016.00	947	E½; NW¼; N½SW¼; SE¼SW¼.	2160.00
735	N½; N½S½.	1728.00			
741	W½W½; SE¼SW¼.	720.00	955	NW¼NE¼; S½NE¼; W½; SE¼.	2160.00
744	E½; E½W½.	1728.00			
781	N½; SE¼.	1728.00	989	SW¼NE¼; W½; SE¼.	1872.00
788	E½; E½NW¼.	1440.00			
825	E½; E½SW¼.	1440.00			
869	E½; E½W½.	1728.00			
913	E½; E½W½.	1728.00			

NK 19-12

Block	Description	Hectares	Block	Description	Hectares
445	SW¼NW¼; W½SW¼.	432.00	665	W½NE¼; W½; W½SE¼; SE¼SE¼.	1872.00
446	NE¼; E½NW¼; NE¼SW¼; SE¼.	1584.00	794	S½NE¼; NW¼NE¼; NW¼; S½.	2160.00
530	NE¼; N½NW¼; SE¼NW¼; N½SE¼.	1296.00			
533	W½NE¼; SE¼NE¼; W½; N½SE¼.	1872.00			
579	E½; E½W½.	1728.00			
623	E½; E½W½.	1728.00			

NJ 19-1 Block Canyon

Block	Description	Hectares
212	W½.	1152.00
213	E½E½.	576.00

NJ 19-2 Veatch Canyon

Block	Description	Hectares	Block	Description	Hectares
19	SE¼NW¼; W½NW¼; SW¼.	1008.00	96	W½E½; W½.	1728.00
54	E½; E½W½.	1728.00	98	E½; E½NW¼; NE¼SW¼.	1584.00
63	W½NE¼; W½; SE¼.	2016.00			

(c) The following blocks in Part I of this lease sale, as grouped into bidding units, must be bid on together:

NK 19-10 Block Island Shelf

Block	Description	Block Hectares	Bidding Unit Hectares
965	W½W½.	576.00	
966	E½E½.	576.00	
1010	E½E½.	576.00	1728.00

NK 19-11

Block	Description	Block Hectares	Bidding Unit Hectares
769	N½N½; SW¼NW¼.	720.00	
813	W½SW¼; SE¼SW¼.	432.00	
857	W½.	1152.00	2304.00

NK 19-11

Block	Description	Block Hectares	Bidding Unit Hectares
778	W½.	1152.00	
780	N½NE¼; SE¼NE¼.	432.00	1584.00

NK 19-11

Block	Description	Block Hectares	Bidding Unit Hectares
785	W½NE¼; W½; SE¼.	2016.00	
786	SW¼SW¼.	144.00	2160.00

NK 19-11

Block	Description	Block Hectares	Bidding Unit Hectares
814	E½; N½NW¼; SE¼NW¼; NE¼SW¼.	1728.00	
858	E½E½.	576.00	2304.00

NK 19-11

Block	Description	Block Hectares	Bidding Unit Hectares
822	SW¼NE¼; W½; W½SE¼; SE¼SE¼.	1728.00	
823	SW¼SW¼.	144.00	1872.00

NK 19-11

Block	Description	Block Hectares	Bidding Unit Hectares
830	SW¼NE¼; W½; W½SE¼; SE¼SE¼.	1728.00	
875	SW¼NW¼; W½SW¼; SE¼SW¼.	576.00	2304.00

NK 19-11

Block	Description	Block Hectares	Bidding Unit Hectares
867	NE¼NW¼; W½W½.	720.00	
911	W½; SW¼SE¼.	1296.00	2016.00

NK 19-11

Block	Description	Block Hectares	Bidding Unit Hectares
901	W½.	1152.00	
945	W½.	1152.00	2304.00

NK 19-11

Block	Description	Block Hectares	Bidding Unit Hectares
902	E½NE¼.	288.00	
991	E½E½; NW¼NE¼.	720.00	1008.00

NK 19-11

Block	Description	Block Hectares	Bidding Unit Hectares
979	W½NE¼; W½.	1440.00	
980	E½E½.	576.00	2016.00

NK 19-12

Block	Description	Block Hectares	Bidding Unit Hectares
450	N½NW¼; SW¼NW¼; W½SW¼.	720.00	
451	NE¼; N½NW¼; SE¼NW¼; SE¼.	1584.00	2304.00

NK 19-12

Block	Description	Block Hectares	Bidding Unit Hectares
489	W½NW¼; SW¼.	864.00	
535	E½; SE¼SW¼.	1296.00	2160.00

NK 19-12

Block	Description	Block Hectares	Bidding Unit Hectares
494	W½NW¼; SE¼NW¼; SW¼.	1008.00	
495	E½E½.	576.00	1584.00

NK 19-12

Block	Description	Block Hectares	Bidding Unit Hectares
539	E½E½.	576.00	
583	NE¼NE¼.	144.00	720.00

NK 19-12

Block	Description	Block Hectares	Bidding Unit Hectares
531	N½; E½SE¼.	1440.00	
575	E½E½.	576.00	
619	NE¼NE¼.	144.00	2160.00

NK 19-12

Block	Description	Block Hectares	Bidding Unit Hectares
538	NW¼; W½SW¼.	864.00	
582	W½NW¼; SW¼.	864.00	1728.00

NK 19-12

Block	Description	Block Hectares	Bidding Unit Hectares
577	W½.	1152.00	
621	W½.	1152.00	2304.00

NK 19-12

Block	Description	Block Hectares	Bidding Unit Hectares
626	W½NE¼; W½; W½SE¼; SE¼SE¼.	1872.00	
671	W½NW¼; NW¼SW¼.	432.00	2304.00

NK 19-12

Block	Description	Block Hectares	Bidding Unit Hectares
667	N½NE¼; SE¼NE¼; E½SE¼.	720.00	
710	SW¼SW¼.	144.00	
754	W½NW¼; SW¼; S½SE¼.	1152.00	2016.00

NK 19-12

Block	Description	Block Hectares	Bidding Unit Hectares
706	SW¼NW¼; W½SW¼.	432.00	
750	SW¼NE¼; W½NW¼; SE¼NW¼; SW¼; W½SE¼.	1440.00	1872.00

NJ 19-1 Block Canyon

Block	Description	Block Hectares	Bidding Unit Hectares
42	SE¼SE¼.	144.00	
43	E½; NE¼SW¼; S½SW¼.	1584.00	1728.00

NJ 19-1 Block Canyon

Block	Description	Block Hectares	Bidding Unit Hectares
86	E½NE¼.	288.00	
131	E½; E½NW¼; SW¼.	2016.00	2304.00

NJ 19-1 Block Canyon

Block	Description	Block Hectares	Bidding Unit Hectares
124	W½NW¼; SE¼NW¼; SW¼.	1008.00	
168	W½.	1152.00	2160.00

NJ 19-2 Veatch Canyon

Block	Description	Block Hectares	Bidding Unit Hectares
8	NE¼NW¼; W½W½.	720.00	
9	NE¼NE¼.	144.00	
52	W½NW¼; SW¼.	864.00	1728.00

(d) The following is a listing of all blocks in Part II of this lease sale:

NK 19-6

644-647	730-738	795	859-870	926-927
687-693	751	816-826	883	945-958
707	773-782	839	900-914	970-971
				988-1002

NK 20-4

749-750	837-841	881-886	925-931	969-976
793-795				

NK 19-9

19-34	240-255	459-475	634-648	850-871
64-78	284-299	502-519	678-695	893-915
109-122	327-343	546-563	721-739	937-959
154-166	371-387	590-603	765-783	981-1003
195-210	415-431	605-607	808-827	

NK 20-7 Fundian Rise

2-9	221-233	441-457	661-671	881-883
46-54	265-278	485-501	705-713	925-926
90-99	309-323	529-544	749-755	969
134-144	353-368	573-587	793-797	
178-188	397-412	619-629	837-840	

NK 19-12

14-35	191-209	372-382	547-553	725
58-78	236-252	417-425	592-595	814
102-122	280-296	458-468	636-637	
147-166	326-339	503-511	681	

(e) The following partial blocks in Part II of this lease sale must be bid on individually:

NK 19-6

Block	Description	Hectares	Block	Description	Hectares
782	All	1444.08	914	All	1686.96
826	All	1525.11	958	All	1767.79
870	All	1606.07	1002	All	1848.55

NK 20-4

Block	Description	Hectares	Block	Description	Hectares
793	All	1525.11	925	All	1767.79
837	All	1606.07	969	All	1848.55
881	All	1686.96			

NK 19-9

Block	Description	Hectares	Block	Description	Hectares
34	All	1929.24	694	S½NE¼; NW¼; S½.	2016.00
78	All	2009.86			
122	All	2090.42	871	All	1145.42
166	All	2170.90	915	All	1224.75
210	All	2251.32	959	All	1304.00
254	All	2303.03	1003	All	1383.19
603	W½NE¼; W½; SE¼.	2016.00			
648	NW¼SW¼; S½S½.	720.00			

NK 20-7 Fundian Rise

Block	Description	Hectares	Block	Description	Hectares
2	All	1929.24	222	All	2303.03
46	All	2009.86	881	All	1224.75
90	All	2090.42	925	All	1304.00
134	All	2170.90	969	All	1383.19
178	All	2251.32			

NK 19-12

Block	Description	Hectares
35	All	1462.31
155	NE¼; N½NW¼.	864.00
280	N½N½; SW¼NW¼; W½SW¼.	1008.00
281	N½.	1152.00
282	N½; N½SW¼; SE¼SW¼; SE¼.	2160.00
326	N½NE¼; SE¼NE¼.	432.00

(f) The following blocks in Part II of this lease sale, as grouped into bidding units, must be bid on together:

NK 19-9

Block	Description	Block Hectares	Bidding Unit Hectares
255	All	28.64	
299	All	107.96	
343	All	188.17	
387	All	268.32	
431	All	348.40	
475	All	428.41	
519	All	508.35	1878.25

NK 19-9

Block	Description	Block Hectares	Bidding Unit Hectares
559	N½N½; SW¼NW¼; W½SW¼.	1008.00	
560	NE¼; N½NW¼; SE¼NW¼; NE¼SE¼.	1152.00	2160.00

NK 19-9

Block	Description	Block Hectares	Bidding Unit Hectares
605	N½NE¼; SE¼NE¼.	432.00	
606	N½; NE¼SE¼.	1296.00	1728.00

NK 19-9

Block	Description	Block Hectares	Bidding Unit Hectares
563	All	588.22	
607	N½; N½S½.	481.00	1069.22

NK 19-9

Block	Description	Block Hectares	Bidding Unit Hectares
695	S½N½; S½.	586.00	
739	All	907.03	1493.03

NK 19-9

Block	Description	Block Hectares	Bidding Unit Hectares
783	All	986.56	
827	All	1066.03	2052.59

NK 20-7 Fundian Rise

Block	Description	Block Hectares	Bidding Unit Hectares
221	All	28.64	
265	All	107.96	
309	All	188.17	
353	All	268.32	
397	All	348.40	
441	All	428.41	
485	All	508.35	1878.25

NK 20-7 Fundian Rise

Block	Description	Block Hectares	Bidding Unit Hectares
529	All	588.22	
573	N½;N½S½.	501.00	1089.22

NK 20-7 Fundian Rise

Block	Description	Block Hectares	Bidding Unit Hectares
661	S½.	413.71	
662	S½.	1152.00	1565.71

NK 20-7 Fundian Rise

Block	Description	Block Hectares	Bidding Unit Hectares
705	All	907.03	
749	All	986.56	1893.59

NK 20-7 Fundian Rise

Block	Description	Block Hectares	Bidding Unit Hectares
793	All	1066.03	
837	All	1145.42	2211.45

NK 19-12

Block	Description	Block Hectares	Bidding Unit Hectares
156	N½; N½SW¼; SE¼SW¼; SE¼.	2160.00	
199	SW¼SW¼.	144.00	2304.00

(g) The following blocks in Part II of this lease sale must be bid on individually (estimated Federal portion):

NK 19-6

Block	Hectares	Block	Hectares	Block	Hectares
646	1786	647	826	691	2150

NK 20-4

Block	Hectares	Block	Hectares	Block	Hectares
794	2059	795	845	839	2166

NK 20-7 Fundian Rise

Block	Hectares	Block	Hectares	Block	Hectares
9	1152	232	2295	412	1037
53	2252	233	902	456	2135
54	691	277	2038	457	602
188	1282	278	652		

(h) The following blocks in Part II of this lease sale, as grouped into bidding units, must be bid on together (estimated Federal portion):

NK 19-6

Block	Description	Block Hectares	Bidding Unit Hectares
692	All	1152	
693	All	123	1275

NK 19-6

Block	Description	Block Hectares	Bidding Unit Hectares
737	All	1670	
738	All	374	2044

NK 20-4

Block	Description	Block Hectares	Bidding Unit Hectares
749	All	922	
750	All	490	1412

NK 20-4

Block	Description	Block Hectares	Bidding Unit Hectares
840	All	979	
841	All	3	982

NK 20-4

Block	Description	Block Hectares	Bidding Unit Hectares
885	All	1363	
886	All	230	1593

NK 20-4

Block	Description	Block Hectares	Bidding Unit Hectares
930	All	1670	
931	All	294	1964

NK-20-4

Block	Description	Block Hectares	Bidding Unit Hectares
975	All	1402	
976	All	32	1434

NK 20-7

Block	Description	Block Hectares	Bidding Unit Hectares
98	All	1966	
99	All	302	2268

NK 20-7

Block	Description	Block Hectares	Bidding Unit Hectares
143	All	1814	
144	All	60	1874

NK 20-7

Block	Description	Block Hectares	Bidding Unit Hectares
322	All	1872	
323	All	221	2093

NK 20-7

Block	Description	Block Hectares	Bidding Unit Hectares
367	All	1574	
368	All	24	1598

13. Lease Terms and Stipulations.

(a) Bidders are advised that the Minerals Management Service is analyzing responses to the request for comments on primary lease terms published in the Federal Register on December 20, 1983 (48 FR 245, pp. 56279-81). It is expected that this analysis will be completed prior to issuance of a final Notice of Sale and that the results may cause alteration of subparagraph (b).

(b) Leases resulting from this sale for the following blocks or indicated portions of blocks will be for an initial term of 10 years:

NK 19-9

691-693; 694-S½NE¼,NW¼,S½; 695-S½N½,S½; 735-739; 778-783; 822-827; 866-871; 908-915; 952-959; 996-1003

NK 20-7 Fundian Rise

8-9; 51-54; 95-99; 139-144; 182-188; 226-233; 269-278; 312-323; 356-368; 400-412; 444-457; 487-501; 531-544; 574-587; 619-629; 661; 662-S½; 663-671; 705-713; 749-755; 793-797; 837-840; 881-883; 925-926; 969

NK 19-11

744-E½,E½W½; 783-784; 785-W½NE¼,W½,SE¼; 786-SW¼SW¼; 788-E½,E½NW¼; 826-829; 830-SW¼NE¼,W½,W½SE¼,SE¼SE¼; 832; 869-E½,E½W½; 870-874; 875-SW¼NW¼,W½SW¼,SE¼SW¼; 876; 906; 908-910; 911-W½,SW¼SE¼; 913-E½,E½W½; 914-920; 949-954; 955-NW¼NE¼,S½NE¼,W½,SE¼; 957-964; 991-E½E½,NW¼NE¼; 992-1008

NK 19-12

27-35; 70-78; 113-122; 156-N½,N½SW¼,SE¼SW¼,SE¼; 157-166; 199-SW¼SW¼; 200-209; 243-252; 285-296; 329-339; 372-382; 417-425; 457-468; 498-511; 539-E½E½; 541-553; 583-NE¼NE¼; 584-595; 619-NE¼NE¼; 624-625; 626-W½E½,W½,SE¼SE¼; 628-637; 665-W½,W½E½,SE¼SE¼; 667-N½NE¼, SE¼NE¼,E½SE¼; 668-670; 671-W½NW¼,NW¼SW¼; 672-681; 705; 706-SW¼NW¼,W½SW¼; 708-709; 710-SW¼SW¼; 712-725; 749; 750-SW¼NE¼,W½NW¼,SE¼NW¼,SW¼,W½SE¼; 752-753; 754-W½NW¼,SW¼,S½SE¼; 756-769; 793; 794-S½NE¼,NW¼NE¼,NW¼,S½; 796-798; 800-814; 837-857; 881-900; 925-943; 969-986

NJ 19-1 Block Canyon

41; 85; 117-121; 131-E½,E½NW¼,SW¼; 132; 161-167; 168-W½; 175-176; 205-211; 212-W½; 213-E½E½; 214; 220; 249-258; 293-303; 337-348; 381-393; 425-438; 469-482; 513-527; 557-572; 601-616; 645-660; 689-704; 733-748; 777-792; 821-836; 865-880; 920-924; 967-968

NJ 19-2 Veatch Canyon

16-18; 19-SE¼NW¼,W½NW¼,SW¼; 20-37; 58-62; 63-W½NE¼,W½,SE¼; 64-81; 89-93; 96-W½E½,W½; 98-E½,E½NW¼,NE¼SW¼; 99-125; 133-169; 177-213; 221-256; 266-300; 310-340; 355-384; 486-508; 530-551; 574-592; 618-636; 662-677; 706-719; 750-760; 794-804; 838-846; 882-885; 926-928; 970-971

NJ 19-3

1-15; 45-59; 89-101; 133-139; 177

All other leases issued as a result of this sale will be for an initial term of 5 years. Leases issued as a result of this sale will be on Form MMS-2005 (August 1982), available from the Regional Manager, at the address stated in paragraph 2.

(c) Except as otherwise noted, the following stipulations will be included in each lease resulting from this sale.

Stipulation No. 1

(a) "Cultural resource" means any site, structure, or object of historic or prehistoric archeological significance. "Operations" means any drilling, mining, or construction or placement of any structure for exploration, development, or production of the lease.

(b) If the Regional Manager (RM) believes a cultural resource may exist in the lease area, the RM will notify the lessee in writing. The lessee shall then comply with subparagraphs (1) through (3).

(1) Prior to commencing any operations, the lessee shall prepare a report, as specified by the RM, to determine the potential existence of any cultural resource that may be affected by operations. The report, prepared by an archeologist and geophysicist, shall be based on an assessment of data from remote-sensing surveys and of other pertinent cultural and environmental information. The lessee shall submit this report to the RM for review.

(2) If the evidence suggests that a cultural resource may be present, the lessee shall either:

(i) Locate the site of any operation so as not to adversely affect the area where the cultural resource may be; or

(ii) Establish to the satisfaction of the RM that a cultural resource does not exist or will not be adversely affected by operations. This shall be done by further archeological investigation, conducted by an archeologist and a geophysicist, using survey equipment and techniques deemed necessary by the RM. A report on the investigation shall be submitted to the RM for review.

(3) If the RM determines that a cultural resource is likely to be present on the lease and may be adversely affected by operations, he will notify the lessee immediately. The lessee shall take no action that may adversely affect the cultural resource until the RM has told the lessee how to protect it.

(c) If the lessee discovers any cultural resource while conducting operations on the leased area, the lessee shall report the discovery immediately to the RM. The lessee shall make every reasonable effort to preserve the cultural resource until the RM has told the lessee how to protect it.

Stipulation No. 2

If biological populations or habitats which may require additional protection are identified by the Regional Manager (RM) in the leased area, the RM will require the lessee to conduct environmental surveys or studies, including sampling, as approved by the RM, to determine existing environmental conditions, the extent and composition of biological populations or habitats, and the effects of proposed or existing operations on the populations or habitats which might require additional protective measures. The RM shall provide written notice to the lessee of his decision to require such surveys or studies. The nature and extent of any surveys or studies will be determined by the RM on a case-by-case basis.

Based on any surveys or studies which the RM may require of the lessee, the RM may require the lessee to: (1) relocate the site of operations so as not to adversely affect the significant biological populations or habitats deserving protection; or (2) modify operations in such a way as not to adversely affect the significant biological populations or habitats deserving protection; or (3) establish to the satisfaction of the RM that such operations will not adversely affect the significant biological populations or habitats deserving protection. Based on any surveys or studies which the RM may require of the lessee, the RM may also require the lessee to provide for periodic sampling of environmental conditions during operations.

The lessee shall submit all data obtained in the course of such surveys or studies to the RM, with locational information for drilling or other activity. The lessee may take no action that might result in any effect on the biological populations or habitats surveyed until the RM provides written directions to the lessee with regard to permissible actions.

In the event that important biological populations or habitats are identified subsequent to commencement of operations, the lessee shall make every reasonable effort to preserve and protect all biological populations and habitats within the lease area until the RM provides written instructions to the lessee with regard to the biological populations or habitats identified. Operations, including siting, must be conducted as specified by the RM and so as to ensure the protection and continued viability of the biological populations or habitats deserving protection in a manner consistent with the other purposes of the Outer Continental Shelf Lands Act, as amended.

Stipulation No. 3

Pipelines will be required: (1) if pipeline rights-of-way can be determined and obtained; (2) if laying such pipelines is technologically feasible and environmentally preferable; and (3) if, in the opinion of the lessor, the laying of pipelines is economically feasible taking into account any incremental costs of pipelines over alternative methods of transportation and any incremental benefits in the form of increased environmental protection or reduced multiple use conflicts. The lessor specifically reserves the right

to require that any pipeline used for transporting production to shore be placed in certain designated management areas. In selecting the means of transportation, including any loading facilities, consideration will be given to any recommendation of the Regional Technical Working Group or other similar advisory group with participation of Federal, State, and local government and industry. Where feasible and environmentally preferable, all pipelines, including both flow lines and gathering lines for oil and gas, shall be shrouded or buried to a depth suitable for adequate protection from water currents, sand waves, storm scouring, fisheries trawling gear, and other factors as determined on a case-by-case basis. All valves, taps, or other irregular surfaces that might be vulnerable or might damage fishing gear will be buried to a minimum of one foot, or to a depth suitable for adequate protection, or covered with an approved protective dome which will allow commercial trawling gear to pass over the structure without snagging or damaging the structure or fishing gear.

If, due to the criteria outlined above, pipelines are required, then no crude oil production will be transported by surface vessel from offshore production sites, except in the case of emergency, following the completion of pipeline installation. Determinations as to emergency conditions and appropriate responses to these conditions will be made by the Regional Manager (RM). Where the three criteria set forth in the first sentence of this stipulation are not met and surface transportation must be employed, all vessels used for carrying crude oil to shore from the leased area will conform with all applicable sections of Titles 33 and 46 of the U.S. Code and the regulations issued thereunder by the U.S. Coast Guard.

Subsea wellheads and temporary abandonments, or suspended operations that leave protrusions above the seafloor, shall be protected, if feasible and as appropriate, in such a manner as to allow commercial fisheries trawling gear to pass over the structure without snagging or otherwise damaging the structures or the fishing gear. Latitude and longitude coordinates of these structures, along with water depths, shall be submitted to the RM. The coordinates of such structures will be determined by the lessee utilizing state-of-the-art navigation systems with accuracy of at least ± 150 feet at 200 miles.

Stipulation No. 4

The Regional Manager (RM) may require the lessee to dispose of drill cuttings and drilling muds by shunting the material to a depth and location below the ocean surface as specified by the RM, or by transporting the material to disposal sites approved by the U.S. Environmental Protection Agency (EPA). After consultation with the EPA, the RM shall determine the method of disposal based upon review of the data obtained from the surveys and studies established pursuant to Stipulation No. 2 and from other relevant sources of information.

Based upon the composition of produced formation waters, the site-specific environmental conditions in a leasing area, and the data obtained from the surveys and studies established pursuant to Stipulation No. 2, as well as data from other relevant sources, the RM may require the lessee to reinject formation waters. The RM shall provide written notice to the lessee of a decision to require reinjection of such formation waters.

Stipulation No. 5

A proposed fisheries training program shall be included as a part of the lessee's exploration and development plans submitted under 30 CFR 250.34. The proposed program shall undergo review by the Regional Manager to insure its adequacy pursuant to the requirements of this stipulation. An approved fisheries training program shall be a prerequisite to approval of an exploration or development plan. The training program shall be for the personnel involved in vessel operations (related to offshore exploration, development and production operations) and platform and shorebased supervisors. The purpose of the training program shall be to familiarize persons working on the project of the value of the commercial fishing industry, the methods of offshore fishing operations, and the potential hazards, conflicts, and impacts resulting from offshore oil and gas activities. The program shall be formulated and implemented by instructors qualified and experienced in fishing activities common to the region, methods of communication, and navigational safety.

Stipulation No. 6

(To be included in leases resulting from this sale for the following blocks.)

Blocks falling within Air Force Warning Area W-506.

NK 19-11

381-382; 425-426; 469-470; 513-514; 557; 728-733; 734-N½,SW¼,N½SE¼; 735-N½,N½S½; 736-740; 741-W½W½,SE¼SW¼; 744-E½,E½W½;772-777; 778-W½; 780-N½NE¼,SE¼NE¼; 781-N½,SE¼; 782-784; 785-W½NE¼,W½,SE¼; 786-SW¼SW¼; 788-E½,E½NW¼; 816-821; 822-SW¼NE¼,W½,W½SE¼,SE¼SE¼; 823-SW¼SW¼; 825-E½,E½SW¼; 826-829; 830-SW¼NE¼,W½,W½SE¼,SE¼SE¼; 832; 860-866; 867-NE¼NW¼,W½W½; 869-E½,E½W½; 870-874; 875-SW¼NW¼,W½SW¼,SE¼SW¼; 876; 904-910; 911-W½,SW¼SE¼; 913-E½,E½W½; 914-920; 948-954; 955-NW¼NE¼,S½NE¼,W½,SE¼; 957-964; 992-1008

NJ 19-2 Veatch Canyon

21-37; 65-81

Blocks falling within the Narragansett Bay Operating Area.

NK 19-10 Block Island Shelf

647-648; 692-693; 737-744; 776-777; 782-790; 820-822; 827-836; 864-866; 872-880; 908-911; 917-NE¼,N½NW¼,E½SE¼; 918-920; 921-N½,N½SW¼,SW¼SW¼; 922-N½,SE¼; 923-924; 952-956; 962-964; 965-W½W½; 966-E½E½; 967-968; 996-1001; 1006-1008; 1010-E½E½; 1011-1012

NK 19-11

726-733; 768; 769-N½N½,SW¼NW¼; 770-777; 778-W½; 811-812; 813-W½SW¼,SE¼SW¼; 814-E½,N½NW¼,SE¼NW¼,NE¼SW¼; 815-821; 822-SW¼NE¼,W½,W½SE¼,SE¼SE¼; 823-SW¼SW¼; 841-843; 855-856; 857-W½; 858-E½E½; 859-866; 867-NE¼NW¼,W½W½; 885-891; 897-900; 901-W½; 902-E½NE¼; 903-910; 911-W½,SW¼SE¼; 929-944; 945-W½; 947-E½,NW¼,N½SW¼,SE¼SW¼; 948-954; 955-NW¼NE¼,S½NE¼,W½,SE¼; 986-988; 989-SW¼NE¼,W½,SE¼; 991-E½E½,NW¼NE¼; 992-999

NJ 19-1 Block Canyon

29-34; 40-41; 42-SE¼SE¼; 43-E½,NE¼SW¼,S½SW¼; 44; 73-79; 85; 86-E½NE¼; 87-88; 117-123; 124-W½NW¼,SE¼NW¼,SW¼; 131-E½,E½NW¼,SW¼; 132; 161-167; 168-W½; 175-176; 205-211; 212-W½; 213-E½E½; 214; 220; 249-258; 293-303; 337-348; 381-393; 425-438; 469-482; 513-527; 557-572; 601-616; 645-660; 689-704; 733-748; 777-792; 821-836; 865-880; 920-924; 967-968

NJ 19-2 Veatch Canyon

1-7; 8-NE¼NW¼,W½W½; 9-NE¼NE¼; 10-18; 19-SE¼NW¼,W½NW¼,SW¼; 20-28; 45-51; 52-W½NW¼,SW¼; 54-E½,E½W½; 55-62; 63-W½NE¼,W½,SE¼; 64-72; 89-95; 96-W½E½,W½; 98-E½,E½NW¼,NE¼SW¼; 99-116; 133-160; 177-204; 221-248; 266-292; 310-336; 355-384; 486-508; 530-551; 574-592; 618-636; 662-677; 706-719; 750-760; 794-804; 838-846; 882-885; 926-928; 970-971

a) Whether or not compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occur in, on, or above the Outer Continental Shelf, to any person or persons, or to any property of any person or persons who are agents, employees, or invitees of the lessee, its agents, independent contractors or subcontractors doing business with the lessee in connection with any activities being performed by, or on behalf of, the lessee in, on, or above the Outer Continental Shelf, if such injury or damage to such person or property occurs by reason of the activities of any agency of the U.S. Government, its contractors, or subcontractors, or any of their officers, agents or employees, being conducted as a part of, or in connection with, the programs and activities of the relevant Federal facility specified below. The lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of their officers, agents, invitees, or employees.

Notwithstanding any limitation of the lessee's liability in section 14 of the lease, the lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault of the United States, its contractors or subcontractors, or any of their officers, agents, invitees, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee, the agents, employees, or invitees of the lessee, its agents, or any independent contractors, or subcontractors doing business with the lessee in connection with the programs and activities of the below listed Federal facilities, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors, or subcontractors, or any of their officers, agents, or employees, and whether such claims might be sustained under a theory of strict or absolute liability or otherwise.

(b) The lessee, when operating or causing to be operated on its behalf, boat, ship, or aircraft traffic into the leased area or surrounding area of the lease shall enter into an agreement with the Commanding Officer of the relevant Federal facility listed below, prior to commencing such traffic. Such agreement shall provide for positive control of boats, ships, and aircraft operating in the designated areas and will provide for the

avoidance of interference with the programs and activities of the Federal facility.

(c) The lessee agrees to control his own electromagnetic emissions and those of his agents, employees, invitees, independent contractors, or subcontractors emanating from the leased area or surrounding area of the lease in accordance with the requirements specified by the Commanding Officer of the relevant Federal facility, to the degree necessary to prevent damage to, or unacceptable interference with, the programs and activities of the relevant Federal facility identified below.

Necessary monitoring, control, and coordination with the lessee, his agents, employees, invitees, independent contractors, or subcontractors will be effected by the Commanding Officer of the relevant Federal facility provided, however, that control of such electromagnetic communication shall in no instance prohibit all manner of electromagnetic communications during any period of time between a lessee, its agents, employees, invitees, independent contractors, or subcontractors and onshore facilities.

(d) Following is a list of Federal facilities with operations in the lease sale area. The lessee will contact the Regional Supervisor, Field Operations (RS/FO) for the name(s) of the facility(ies) relevant to the leased block.

Commander
Submarine Group TWO
Naval Submarine Base
Groton, Connecticut 06340

Commanding Officer
Fleet Area Control and
Surveillance Facility
Virginia Capes
Virginia Beach, Virginia 23460

Commanding Officer
21st Air Division
Hancock Field
Syracuse, New York 13225

Stipulation No. 7

No structures or drilling rigs will be allowed within the below listed blocks or indicated portions of blocks, nor will anchor chains or other subsurface equipment be permitted to break the vertical plane passing through the block borders adjacent to the submarine transit lane and extending to the ocean floor.

NK 19-10 Block Island Shelf

647; 648-South and West of a diagonal line from the NW corner to the SE corner; 692; 693-South and West of a diagonal line from the NW corner to the SE corner; 737; 738-South and West of a diagonal line from the NW corner to the SE corner; 776-North and East of a diagonal line from the NW corner to the SE corner; 777; 782; 783-South and West of a diagonal line from the NW corner to the SE corner; 821-North and East of a diagonal line

from the NW corner to the SE corner; 822; 827; 828-South and West of a diagonal line from the NW corner to the SE corner; 866-North and East of a diagonal line from the NW corner to the SE corner; 872; 873-South and West of a diagonal line from the NW corner to the SE corner; 910-North and East of a diagonal line from the NW corner to the SE corner; 911; 917-NE¼,N½NW¼, E½SE¼; 918-South and West of a diagonal line from the NW corner to the SE corner; 955-North and East of a diagonal line from the NW corner to the SE corner; 956; 962-South and West of a diagonal line from the NW corner to the SE corner; 1000-North and East of a diagonal line from the NW corner to the SE corner; 1001; 1006; 1007-South and West of a diagonal line from the NW corner to the SE corner.

NJ 19-1 Block Canyon

34-North and East of a diagonal line from the NW corner to the SE corner; 40; 41-South and West of a diagonal line from the NW corner to the SE corner; 78-North and East of a diagonal line from the NW corner to the SE corner; 79; 85; 123-North and East of a diagonal line from the NW corner to the SE corner; 131-South and West of a diagonal line from the NW corner to the SE corner; 175; 176-South and West of a diagonal line from the NW corner to the SE corner; 213-214; 220; 258; 302-North and East of a diagonal line from the NW corner to the SE corner; 303; 347-North and East of a diagonal line from the NW corner to the SE corner; 348; 392-North and East of a diagonal line from the NW corner to the SE corner; 393; 437-North and East of a diagonal line from the NW corner to the SE corner; 438; 482-North and East of a diagonal line from the NW corner to the SE corner; 526-North and East of a diagonal line from the NW corner to the SE corner; 527; 571-North and East of a diagonal line from the NW corner to the SE corner; 572; 616; 660; 704; 748; 792; 836; 880; 924; and 968.

NJ 19-2 Veatch Canyon

177-South and West of a diagonal line from the NW corner to the SE corner; 221; 266; 310; 311-South and West of a diagonal line from the NW corner to the SE corner; 355-384; 486-511; 530; 574; 618; 662; 706; 750; 794; 838; 882; 926; 970.

Stipulation No. 8

(Maps depicting the areas identified below are available from the Regional Manager at the address stated in paragraph 2 of this Notice.)

(a) No drilling operations will be permitted in the below listed blocks within 200 meters of the geographical boundaries of submarine canyons as defined by the National Oceanic and Atmospheric Administration (NOAA).

NK 19-9

559-561; 603; 605-606; 648; 694-695

NK 20-7 Fundian Rise

574; 619; 662-663

NK 19-10 Block Island Shelf

921-922; 965-966; 1008; 1010

NK 19-11

734-735; 741; 744; 768-770; 778; 780; 785-786; 788; 812-814; 822-823; 825; 830; 832; 858; 867; 869; 875-876; 901; 911; 913; 919; 935-936; 945; 947; 955; 957; 979-980; 989; 991; 1000-1001

NK 19-12

154-155; 198-201; 243-247; 280; 282; 289-291; 326-327; 372; 417; 445-446; 450-451; 458-462; 489; 491; 494; 503-505; 530; 533; 535; 538-539; 577; 582-584; 619-620; 626; 628; 664-665; 667; 671-672; 706; 708; 710; 715-716; 750; 752; 754; 756; 759; 794; 796; 800; 837; 839-840; 842-844; 883-884; 887

NJ 19-1 Block Canyon

40-43; 85-87; 124; 131; 168; 212-213; 256-257

NJ 19-2 Veatch Canyon

8-10; 19-21; 29-30; 52; 54; 63-65; 96; 98; 108-109; 140-142; 185-187; 229-231

(b) Operations in the below listed blocks within 4 miles of the geographical boundaries of the submarine canyons as defined by NOAA shall be restricted as specified in either (1) or (2) below.

(1) The operator (lessee) shall submit a plan for monitoring drilling discharges in this area to the Regional Manager (RM) for approval. The monitoring plan will be designed to assess the fates of such discharges and their possible introduction into the submarine canyons. To accomplish this, both on- and off-lease monitoring may be required. Should such monitoring indicate that discharges are entering canyons, Stipulation No. 2 will be invoked.

(2) The RM, in consultation with the Environmental Protection Agency, may establish special requirements for disposal of drilling muds and cuttings and formation waters in this 4-mile zone. If such requirements are established, subparagraph (1) above will not apply.

NK 19-9

471-472; 514-517; 557-563; 601-603; 605-607; 646-648; 691-695; 736-739

NK 20-7 Fundian Rise

529-531; 573-576; 619-620; 661-664; 705-708

NK 19-10 Block Island Shelf

872-874; 876-879; 917-918; 920-923; 962-968; 1006-1008; 1010-1012

NK 19-11

725-727; 733-741; 744; 768-771; 777-778; 780-782; 784-786; 788; 811-815; 821-823; 825-826; 828-830; 832; 855-860; 865-867; 869-870; 873-876; 891-893; 900-904; 910-911; 913-914; 918-920; 934-937; 944-945; 947-948; 954-955; 957-958; 962-964; 978-982; 988-989; 991-993; 998-1002

NK 19-12

109-113; 153-158; 192; 197-204; 236-239; 241-248; 280-284; 286-292; 326-329; 332-336; 372-374; 417-419; 445-452; 456-463; 489; 491-497; 501-507; 530-533; 535-541; 546-550; 575-577; 579-585; 591-592; 619-621; 623-626; 628-629; 664-665; 667-673; 705-706; 708-710; 712-717; 749-750; 752-754; 756-761; 793-794; 796-798; 800-804; 837-845; 881-889; 925-932

NJ 19-1 Block Canyon

40-44; 79; 85-88; 123-124; 131-132; 167-168; 175-176; 211-214; 255-258; 299-302

NJ 19-2 Veatch Canyon

7-11, 17-22; 27-31; 51-52; 54-55; 62-66; 72-75; 95-96; 98-99; 106-110; 139-144; 151-154; 184-188; 228-232; 272-275

Stipulation No. 9

(This stipulation will be included in leases on blocks in water depths of 400-900 meters. These blocks are listed below.)

NK 19-9

606-N½,NE¼SE¼; 607-N½,N½S½; 647; 648-NW¼SW¼,S½S½; 690; 734; 821; 863-865; 907; 995.

NK 20-4

930-931; 974-976.

NK 19-11

739-740; 825-E½,E½SW¼, 866; 907; 947-E½,NW¼,N½SW¼,SE¼SW¼; 948; 987-988; 989-SW¼NE¼,W½,SE¼.

NK 20-7 Fundian Rise

6-7; 50; 138; 225; 268; 311; 355; 399; 443; 486; 530; 573.

NK 19-10 Block Island Shelf

1007-1008

NJ 19-1 Block Canyon

29-34; 40; 42-SE¼SE¼; 43-E½,NE¼SW¼,S½SW¼; 44; 73-79; 86-E½NE¼; 87-88; 122-123; 124-W½NW¼,SE¼NW¼,SW¼.

NJ 19-2 Veatch Canyon

14-15; 45-51; 52-W½NW¼,SW¼; 54-E½,E½W½, 55-57; 94-95.

NK 19-12

26; 69; 112; 155-NE¼,N½NW¼; 198; 241-242; 284; 327-328; 455-456; 497; 539-E½E½; 540; 579-E½,E½W½; 580-581; 582-W½NW¼,SW¼; 620; 621-W½; 623-E½,E½W½; 664.

The Director shall suspend or temporarily prohibit production or any other operation or activity pursuant to this lease if such suspension or cessation of operations or activities is necessary to complete operations or activities described in a development and production plan approved by the Regional Manager pursuant to 30 CFR 250.34.

14. Information to Lessees.

(a) Revisions of Department of Labor regulations on affirmative action requirements for Government contractors (including lessees) have been deferred, pending review of those regulations (see Federal Register of August 25, 1981, at 46 FR 42865 and 42968). Should changes become effective at any time before the issuance of leases resulting from this sale, section 18 of the lease form (MMS-2005, August 1982) would be deleted from leases resulting from this sale. In addition, existing stocks of the affirmative action forms described in paragraph 5 of this Notice contain language that would be superseded by the revised regulations at 41 CFR 60-1.5 (a) (1) and 60-1.7 (a) (1). Pending the issuance of revised versions of Forms 1140-7 and 1140-8, submission of Form 1140-7 (June 1982) and Form 1140-8 (June 1982) will not invalidate an otherwise acceptable bid, and the revised regulations requirements will be deemed to be part of the existing affirmative action forms.

(b) Surface occupancy or other activities which would, in the opinion of the U.S. Coast Guard, create a hazard to vessel traffic may not be permitted on such areas as vessel safety fairways, precautionary areas, or traffic separation schemes established by the Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221, et seq.), as amended. U.S. Army Corps of Engineers permits are required for construction of any artificial islands, installations, and other devices permanently or temporarily attached to the seabed located on the OCS in accordance with section 4(e) of the OCS Lands Act, as amended.

(c) Bidders are advised that the Departments of the Interior and Transportation have entered into a Memorandum of Understanding, dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

(d) Bidders are advised that during the conduct of all activities related to leases issued as a result of this lease sale, the lessee and its agents, contractors, and subcontractors will be subject to the provisions of the Marine Mammal Protection Act of 1972, the Endangered Species Act of 1973, and International Treaties.

The lessee or its contractors should be aware that disturbance of wildlife could be determined to constitute harassment, and thereby be in violation of existing laws. Violations under these Acts and Treaties may be reported to the National Marine Fisheries Service or U.S. Fish and Wildlife Service, as appropriate. Harassment of seabird breeding colonies, migratory waterfowl, and the only known gray seal colony in the region on Muskeget Island would be less likely to occur if existing and suggested minimum altitude restrictions are adhered to.

The U.S. Fish and Wildlife Service, under the authority of the Code of Federal Regulations (50 CFR 27.34), has requested that aircraft operating over designated National Wildlife Refuge boundaries maintain a 1,000-foot minimum altitude at all times. The Federal Aviation Administration (FAA) is responsible for making this minimum altitude a requirement and for enforcing it. For the protection of the gray seal colony on Muskeget Island, the National Oceanic and Atmospheric Administration recommends that aircraft maintain a 1,000-foot minimum altitude when in transit over the island at all times. Areas with special altitude requirements are indicated on FAA aeronautical charts and in pilot advisories.

(e) In the enforcement of Stipulation No. 2 for all blocks leased in the North Atlantic planning area, the Regional Supervisor, Field Operations (RS/FO) will receive recommendations from a Biological Task Force (BTF) working in accordance with its charter. The BTF will be composed of designated representatives of the Minerals Management Service, the U.S. Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, and the Environmental Protection Agency. The BTF may consult with representatives of the affected States before making recommendations to the RS/FO. The RS/FO will consult with the BTF on identifying areas or resources of biological importance, on the conduct of near-rig biological surveys by lessees, and on the appropriate course of action after surveys and other environmental studies have been conducted.

(f) Federal regulation (30 CFR 250.34) requires a lessee to conduct shallow hazards and other geological and geophysical surveys that are necessary for the evaluation of activities to be carried out under a proposed exploration or development/production plan or activities being carried out under an approved plan. Data collection by the lessee on a lease and, when necessary, off a lease will be analyzed and submitted by the lessee and then reviewed and, when necessary, reanalyzed by the Regional Manager (RM) to ensure that drilling,

development, and production activities can be conducted in an acceptable manner with minimum acceptable risk or damage to human, marine, and coastal environments. Based on the review and analysis of the data received and other available data and information, the RM either approves or requires modification to an exploration or development/production plan or application for permit to drill, or recommends that the Director, Minerals Management Service, temporarily prohibit or suspend the conduct of exploration or development/production activities, according to provisions of the OCS Lands Act, as amended, and appropriate regulations. Existing regulations authorize the RM to take whatever steps are necessary to assure safe operations offshore, whether shallow hazards are delineated before or after the lease sale.

In particular, lessees are alerted to the possibility that mass movement of sediments could occur and/or shallow gas may be present on the blocks listed below. The lessees are also informed that this list may not be all inclusive as other blocks in this sale may contain these same geohazards. The blocks listed below were identified in prelease surveys conducted for Sales 42 and 52.

Blocks Showing Evidence of Mass Movement

Blocks in NJ 19-1 Block Canyon

119 E½SE¼
120 SW¼
163 NE¼SE¼; S½SE¼
164 SW¼
210 NE¼NE¼; SW¼NE¼; SE¼NE¼; NE¼SE¼
211 NW¼; NW¼SW¼

Blocks in NK 19-12

493 S½SW¼; SE¼
536 S½; S½NE¼; NE¼NE¼; SE¼NW¼
537 Entire Block

Blocks Showing Evidence of Shallow Gas

Blocks in NK 19-12

587 SW¼NW¼
708 NE¼; SE¼NW¼; NE¼SW¼; NW¼SE¼

(g) Lessees should be prepared to take all reasonable and necessary measures to avoid harassment or unnecessary disturbance of endangered and threatened species and nonendangered cetaceans. In this regard, lessees should be particularly alert to the effects of boat and airplane or helicopter traffic on these species.

The following guidelines are offered to assist lessees in conducting activities, safety permitting, in such a manner as to cause minimal adverse impacts to endangered and threatened species and nonendangered cetaceans.

(1) Whenever possible, vessels and aircraft should avoid concentrations of endangered or threatened species and other cetaceans. Operators should, at all times, conduct activities at a maximum distance from these animals. To avoid disturbing groups of endangered whales and other cetaceans, aircraft should be operated at a minimum altitude of not less than 1,000 feet when within 500 lateral yards of such groups. Helicopters should not hover or circle above or within 500 lateral yards of such areas.

(2) When a vessel is operated near a concentration of whales or other cetaceans, the operator must take every precaution to avoid harassment or disturbance of these animals. Therefore, vessels should not intentionally approach within 100 yards of whales. Vessels capable of steering around them should do so.

(3) Vessels may not be operated in such a way as to separate members of a group or otherwise box in, cut off, or in any way restrict the whales' normal movements.

(4) Vessel operators should avoid excessive speed or radical changes in speed or direction when approaching or leaving the immediate area of whales.

(5) Small boats should not be operated at such a speed as to make collisions with endangered or threatened species or other cetaceans likely. When weather conditions require, such as when visibility drops, vessels should adjust speed accordingly to avoid the likelihood of injury to these animals.

(6) Sightings of these animals should be reported to other vessel operators in the area to alert them to the need to take necessary precautions.

(h) Bidders are advised that, in accordance with section 16 of each lease issued as a result of this lease sale, the lessor may require a lessee to operate under a unit, pooling, or drilling agreement and that the lessor will give particular consideration to requiring unitization in instances where one or more reservoirs underlie two or more leases with either a different royalty rate or a royalty rate based on a sliding scale.

(i) For those blocks listed in paragraph 13 as being offered for lease with an initial period of 10 years, bidders are advised that pursuant to 30 CFR 250.34-1(a)(3), the lessee shall submit to the Minerals Management Service either an exploration plan, where required, or a general statement of exploration intentions prior to the end of the ninth lease year.

(j) Bidders are advised that for the blocks listed below, not less than 30 days prior to placement of a drilling rig or structure onsite, the Regional Manager will notify the Commander, Submarine Group 2, Naval Submarine Base, Groton, Connecticut, of such operation and specific location.

NK 19-10 Block Island Shelf

739-748; 784-792; 829-836; 874-880; 919-920; 921-N½,N½SW¼,SW¼SW¼; 922-N½,SE¼; 923-924; 966-E½E½; 967-968; 1012

NK 19-11

726-733; 768; 769-N½N½,SW¼NW¼; 770-777; 778-W½; 811-812; 813-W½SW¼,SE¼SW¼; 814-E½,N½NW¼,SE¼NW¼,NE¼SW¼; 815-821; 822-SW¼NE¼,W½,W½SE¼,SE¼SE¼; 841-843; 855-856; 858-E½E½; 859-861; 863-865; 885-891; 897-900; 903; 929-944; 973-978; 980-E½E½; 981-985

(k) Bidders are advised that for the blocks listed in subparagraph (j) above, as well as for the blocks listed below, the Regional Manager may request lessees to adjust the timing of exploratory activities to prevent a significant concentration of drilling activity where such concentration would interfere with ongoing submarine operations.

NK 19-10 Block Island Shelf

908-909; 910-South and West of a diagonal line from the NW corner to the SE corner; 918-North and East of a diagonal line from the NW corner to the SE corner; 952-954; 955-South and West of a diagonal line from the NW corner to the SE corner; 962-North and East of a diagonal line from the NW corner to the SE corner; 963-964; 965-W½W½; 996-999; 1000-South and West of a diagonal line from the NW corner to the SE corner; 1007-North and East of a diagonal line from the NW corner to the SE corner; 1008; 1010-E½E½; 1011

NK 19-11

823-SW¼SW¼; 857-W½; 862; 866; 867-NE¼NW¼,W½W½; 901-W½; 902-E½NE¼; 904-910; 911-W½,SW¼SE¼; 945-W½; 947-E½,NW¼,N½SW¼, SE¼SW¼; 948-954; 955-NW¼NE¼,S½NE¼, W½,SE¼; 979-W½NE¼,W½; 986-988; 989-SW¼NE¼,W½,SE¼; 991-E½E½,NW¼NE¼; 992-999

NJ 19-1 Block Canyon

29-33; 34-South and West of a diagonal line from the NW corner to the SE corner; 41-North and East of a diagonal line from the NW corner to the SE corner; 42-SE¼SE¼; 43-E½,NE¼SW¼,S½SW¼; 44; 73-78; 86-E½NE¼; 87-88; 117-122; 123-South and West of a diagonal line from the NW corner to the SE corner; 131-North and East of a diagonal line from the NW corner to the SE corner; 132; 161-167; 168-W½; 176-North and East of a diagonal line from the NW corner to the SE corner; 205-211; 212-W½; 249-257; 293-301; 302-South and West of a diagonal line from the NW corner to the SE corner; 337-346; 347-South and West of a diagonal line from the NW corner to the SE corner;

381-391; 392-South and West of a diagonal line from the NW corner to the SE corner; 425-436; 437-South and West of a diagonal line from the NW corner to the SE corner; 469-481; 482-South and West of a diagonal line from the NW corner to the SE corner; 513-525; 526-South and West of a diagonal line from the NW corner to the SE corner; 557-570; 571-South and West of a diagonal line from the NW corner to the SE corner; 601-615; 645-659; 689-703; 733-747; 777-791; 821-835; 865-879; 920-923; 967

NJ 19-2 Veatch Canyon

1-7; 8-NE¼NW¼,W½W½; 9-NE¼NE¼; 10-18; 19-SE¼NW¼,W½NW¼,SW¼; 20-28; 45-51; 52-W½NW¼,SW¼; 54-E½,E½W½; 55-62; 63-W½NE¼,W½,SE¼; 64-72; 89-95; 96-W½E½,W½; 98-E½,E½NW¼,NE¼SW¼; 99-116; 133-160; 177-North and East of a diagonal line from the NW corner to the SE corner; 178-204; 222-248; 267-292; 311-North and East of a diagonal line from the NW corner to the SE corner; 312-336; 531-551; 575-592; 619-636; 663-677; 707-719; 751-760; 795-804; 839-846; 883-885; 927-928; 971

(l) Bidders are advised that the Secretary of the Interior has directed that a development-phase environmental impact statement (EIS) be prepared for the North Atlantic planning area, pursuant to section 25(e) of the OCS Lands Act, as amended. The content of this EIS will be in accordance with the rules and regulations promulgated by the Department.

(m) Subject to DOI consultation with the U.S. Coast Guard, it will be required that in the immediate vicinity of drilling operations an open sea skimming unit equivalent to Clean Atlantic Associates Fast Response Unit Model II and 1000 feet of open sea oil containment boom be maintained. In addition, a suitable deployment vessel and personnel trained in deployment and use of this equipment should be immediately available. As part of the approval of development and production plans, suitable pollution prevention equipment will be required in the immediate vicinity of development and production operations.

15. OCS Orders. Operations on all leases resulting from this sale will be conducted in accordance with the provisions of all Atlantic OCS Orders, and any other applicable OCS Orders.

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federal register

Monday
May 14, 1984

Part III

Department of Agriculture

Agricultural Research Service

Food and Agricultural Sciences National Needs Graduate Fellowships; Solicitation of Proposals From Colleges and Universities for Fiscal Year 1984; Notice

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Food and Agricultural Sciences National Needs Graduate Fellowships; Solicitation of Proposals From Colleges and Universities for Fiscal Year 1984

Notice is hereby given that under the authority contained in Section 1417(a)(3)(B) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152 (a)(3)(B)), the Agricultural Research Service (ARS) through its Higher Education Programs (HEP) unit will award competitive grants to colleges and universities for Graduate Fellowship Programs to meet national needs for the development of professional and scientific expertise in the food and agricultural sciences. The total amount available for this purpose in Fiscal Year 1984 is approximately $5,000,000.

As outlined by OMB Circular No. A-89, the official program number and title for the competitive Graduate Fellowships Program grants are: 10.001 Agricultural Research.

Proposals may be submitted by all U.S. colleges and universities which confer a master's or doctoral degree in at least one area of the food and agricultural sciences targeted for national needs fellowships. As defined in Section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3103), the terms college and university mean "an educational institution in any State which (A) admits as regular students only persons having a certificate of graduation from a school providing secondary education,or the recognized equivalent of such a certificate, (B) is legally authorized within such State to provide a program of education beyond secondary education, (C) provides an educational program for which a bachelor's degree or any other higher degree is awarded, (D) is a public or other nonprofit institution, and (E) is accredited by a nationally recognized accrediting agency or association."

It is the objective to award grants to colleges and universities which have superior teaching and research competencies in the food and agricultural sciences to encourage outstanding students to pursue and complete a graduate degree at such institutions in an area of the food and agricultural sciences for which there is a national need for the development of scientific expertise. Therefore, institutions which currently have excellent programs of graduate study and research in the food and agricultural sciences dealing with targeted national needs are particularly encouraged to apply.

An Application Kit for the Food and Agricultural Sciences National Needs Graduate Fellowships Program has been developed which provides the forms, additional instructions, and other relevant information needed by institutions to apply for assistance under the program described herein. To obtain a copy of the Application Kit, write or call the Grants Administrative Management office (address and telephone number below):

USDA, Office of Grants and Program Systems, Grants Administrative Management, Room 010 West Auditors Building, 15th and Independence Ave., SW, Washington, D.C. 20251, Telephone: (202) 475-5049

Proposals are due in the Grants Administrative Management office at the address shown above by the close of business on July 20, 1984. The grants awarded will be administered in accordance with OMB Circular A-110, Department of Agriculture Uniform Federal Assistance Regulations (& CFR Part 3015) and the provisions of this Notice, including the appendixes hereto. In addition, the determination of allowable costs will be made in accordance with the cost principles established by OMB Circular A-21.

Additional guidelines regarding the award and administration of these grants are set forth in the three Appendixes hereto, which are:

Appendix I—Program Description for FY 1984
Appendix II—Proposal Submission
Appendix III—Proposal Review and Evaluation

This is a new program for which appropriations must be obligated in FY 1984. Therefore, it has been determined that, because of the need to implement this program so that institutions can compete for and recruit and enroll highly outstanding students with an interest in pursuing graduate study and careers in the food and agricultural sciences, compliance with the notice and public procedure provisions of 5 U.S.C. 553 is impracticable and contrary to the public interest. Further, this action has been reviewed under Executive Order 12291 and it has been determined that this is not a major rule. Although this Notice establishes the procedures and criteria under which the recipients of competitive Graduate Fellowships Program grants in Fiscal Year 1984 will be selected and the terms and conditions under which such grants will be administered, it does not involve a substantial or major impact on the Nation's economy or large numbers of individuals or businesses. There will be no major increase in cost or prices for consumers, individual industries, Federal, State, local government agencies, or geographic regions.

Done at Washington, D.C., this 7th day of May 1984.

T. B. Kinney, Jr.,
Administrator, Agricultural Research Service.

Appendix I—Program Description for FY 1984

1. Food and Agricultural Sciences

Areas of graduate study in the food and agricultural sciences are encompassed by the following:

a. Agriculture, including soil and water conservation and use, the use of organic waste materials to improve soil tilth and fertility, plant and animal production and protection, and plant and animal health;

b. Processing, distributing, marketing, and utilization of food and agricultural products;

c. Forestry, including range management, production of forest and range products, multiple use of forest and rangelands, and urban forestry;

d. Aquaculture;

e. Home economics, including consumer affairs, food and nutrition, clothing and textiles, housing, and family well-being and financial management;

f. Rural community welfare and development;

g. Domestic and export market expansion for United States agricultural products; and

h. Production inputs, such as energy, to improve productivity.

2. Food and Agricultural Science Areas Targeted for FY 1984 National Needs Graduate Fellowships

Food and agricultural science areas appropriate for grant applications are those in which shortages of expertise have been determined and targeted by ARS-HEP for national needs fellowship support. For FY 1984, the targeted national needs areas for which grant applications will be accepted are as follows:

a. Biotechnology (particularly plant/animal genetics and molecular biology as applied to food and fiber crops and animals)—thirty-five percent of funds available will be awarded for this national need area.

b. Food and Agricultural Marketing—twenty-five percent of funds available

will be awarded for this national need area.

c. Agricultural Engineering (including the application of microprocessor technology within biological systems and including soil and water conservation)—twenty percent of funds available will be awarded for this national need area.

d. Food Science/Human Nutrition—twenty percent of funds available will be awarded for this national need area.

For Fiscal Year 1984, at least 90% of the program funds will be used to support institutional doctoral fellowship programs. No more than 10 percent of the funds will be used to support institutional master's fellowship programs. In addition, grants will be awarded to support master's fellowship programs only in the areas of Agricultural Engineering and Food Science. Master's fellowship programs will not be supported in Biotechnology, Food and Agricultural Marketing, or Human Nutrition.

3. Competitive Graduate Fellowship Grant Proposals

Institutions may submit up to three proposals. However, no more than two proposals may be submitted by an institution on behalf of the same college or administrative unit. A single proposal must request support for a fellowship program that would enroll a minimum of four new graduate students in a national need area or areas. While institutions may submit up to three proposals, the total amount of funds awarded to a single institution will not exceed $190,000.

Funds awared in Fiscal Year 1984 may be utilized by institutions to pay twelve month graduate stipends which must be $15,000 to doctoral students and $10,000 to master's students during their first year of enrollment in the institution's graduate fellowship program in a national needs area, and related allowable costs as determined by the applicable cost principles.

Contingent on future ARS appropriations and on reapplication by an institution documenting satisfactory progress, grants may be renewed to continue support for doctoral degree fellows for a maximum of two additional twelve month periods or for master's fellows for one additional twelve month period. The award of any grant pursuant to this Notice, however, shall not in any way obligate ARS to renew or continue support for any fellowship program or fellow beyond the initial twelve month period of study.

Fellows selected by an institution must enroll in a program leading to a graduate (master's or doctoral) degree in one of the targeted, national needs areas of the food and agricultural sciences. Such persons may not have been enrolled previously in its program at the same degree level.

Fellows to be supported with grant funds must be citizens or nationals of the United States as determined in accordance with the Federal law and must have a strong interest, as judged by the institution, in pursuing a degree in an area of targeted national need and in preparing for a career as a food and agricultural scientist or professional.

Proposals must substantiate institutional willingness and capacity to enroll and educate at least four new graduate students meeting these qualifications; and must identify, define and document the level(s) and composition of the specific graduate study program(s) the institution has chosen for competition. The focus of the academic program and its relationship to developing expertise in an area of national need must be fully and clearly developed.

4. Fellowship Appointments

Fellowships must be awarded within 12 months of the effective date of a grant. Fellowship appointments may be made only to persons who enroll full-time in a mission-oriented graduate degree program in an area of the food and agricultural sciences targeted for national needs fellowships.

It will be the responsibility of the grantee institution to award fellowships to student of high academic ability. A fellowship award shall be for period of 12 months. A fellow who maintains satisfactory progress in his or her course of study may have the fellowship renewed, subject to his of her academic standing, the availability of funds, and the renewal of the institution's grant. Doctoral degree fellows are only eligible for support for a maximum of 36 months within a 48 month period. Master's level fellows are eligible for support for a maximum of 24 months during a 36 month period. However, it is the intent of this program that fellows pursue full-time uninterrupted study. It is expected that, in subsequent years, the institution will continue to support individuals originally appointed to fellowships through such other institutional means as teaching assistantships and research assistantships. Within the framework of the program guidelines, all decisions with respect to (a) the initial appointment of fellows and (b) in the event of grant renewal, the reappointment in the second and third years of support will be made by the institution. On completion of a fellow's first year of tenure, the institution should satisfy itself that the fellow is (a) making satisfactory academic progress, and (b) carrying out, or plans to carry out national needs related research. If an institution finds it necessary to terminate support of a fellow for insufficient academic progress, the fellow is ineligible for future assistance under the program. If a fellow finds it necessary to interrupt his or her program of study through withdrawal from school or through failure to re-enroll for health, employment, or personal reasons, the institution must retain the funds for the purpose of allowing the fellow to resume study any time within a 12 month period. However, a fellow may interrupt his or her program of study only one time without forfeiting eligibility to resume fellowship support.

For fellowships terminated because of insufficient academic progress and for fellowships held because of interrupted programs of study not resumed within 12 months, funds will revert to the granting agency. A fellow may elect to accept a graduate assistantship and postpone receipt of a fellowship stipend. If so, upon completion of the assistantship, the fellow may resume fellowship support for the remaining period of eligibility. It should be noted however that the maximum period of eligibility is 48 months for a doctoral fellowship; and 36 months for a master's fellowship.

5. Fellowship Activities

A fellow must be enrolled at all times during tenure in a full-time program leading to a graduate degree in one of the targeted national needs fields specified in paragraph 2. However, the normal requirement of formal registration during part of this tenure may be waived, if permitted by the policy of the fellowship institution, and provide that the fellow remains engaged in appropriate full-time fellowship activities. Fellows in academic institutions are not entitled to vacations as such. They are entitled to the normal short student holidays observed by the institution. The time between semesters or academic quarters is to be utilized as an active part of the training period. A period of terminal leave (vacation) is not permitted nor may payment from grant funds be made for leave not taken. A fellow may not accept, during the period of support, any other fellowship or assistantship or be employed by the institution or any other agency. However, a grant supporting research costs of the fellow is acceptable, exclusive of salary or wages and fringe benefits for the fellow.

6. Financial Provisions

The basis 12-month stipend to be pain from ARS funds will be $15,000 per year for doctoral students and $10,000 for master's students. No dependency allowances are provided. Monthly payments will be made to fellows by the institution, according to standard institutional procedures.

Appendix II—Preparation of a Proposal

A proposal for participation in the program should be double spaced and prepared in 6 parts: Proposal Cover Page, National Need Summary Page(s), National Need Narrative(s), Budget, Faculty Vitae, and Appendix.

Part 1. *Proposal Cover Page.* The form for the cover page is contained in the Application Kit. Please provide all requested information and authorizing signatures.

Part 2. *National Need Summary Page(s).* A brief one-page summary by degree level (i.e., master's doctoral) of each national need area addressed in the proposal should be given which describes the graduate study area proposed and the academic and research strengths of the institution in the national need area. The summary should not include any reference to the specific number of fellowships requested. No other part of the proposal should appear on this page. The information on this summary page will be use in assigning the most appropriate panelists to review the proposal. If the proposal is supported, this page may be used in program publications. The *National Need Summary Page* form is provided in the Application Kit.

Part 3. *National Need Narrative(s).* A narrative for *each* national need area should be written in three sections and should be limited to approximately 10 pages. The three sections to be included are as follows:

Sec. 1. An overview of the national need area of study and related graduate research areas for which fellowship funding is requested and as are shown on the cover sheet. This section should also present a description of a proposed fellow's graduate plan of study and a justification for the number of fellows to be supported in terms of the institution's capacity to train additional graduate students as set forth in the proposal.

Sec. 2. The institution's case that it now supports a major, productive, recognized program of graduate study and research in the area of national need in which selected fellows would be engaged. Evidence should be included of current activity and the extent of that activity, quality of existng graduate training programs in the proposed national need area and availability of instructional and research facilities for the proposed graduate training area. The proposal must thoroughly document the institution's plan for recruitment and procedure for selection of outstanding students.

Sec. 3. A summary of important data relevant to Sections 1 and 2 of Part 3 of the proposal such as student enrollment and degree patterns in recent years, facilities, and student and faculty support sources. All faculty vitae included in Part 5 should be individually numbered. Those faculty contributing to institutional competence in the national need area should be identified and cited by number in this section.

Part 4. *Budget.* Prepare a budget page identifying all costs associated with the proposal. Use the *Proposal Budget* form provided in the Application Kit.

Part 5. *Faculty Vitae.* Summary vitae (emphasizing major accomplishments during the past 5 years) for all faculty contributing to institutional competence in the national need area(s) addressed in the proposal should be included in this section. Arrange the vitae in alphabetical order and assign a number to each individual vita in the upper right hand corner.

Part 6. *Appendix.* Include any supporting documentation deemed necessary.

Appendix III—Proposal Review and Evaluation

The proposal evaluation process includes both internal staff review and merit evaluation by panels of scientists, educators, industralists, and Government officials who are highly qualified to render expert advice in the targeted areas. The goal of the process of selection and structuring of evaluation panels is to provide optimum expertise and objective judgment in the evaluation of proposals specific to a particular area of national need.

Each national need area addressed in a proposal will be evaluated individually and in competition with other proposals addressing the same national need area. In essence, proposals addressing more than one national need area will be rated for each national need area addressed. Therefore, funding may be awarded to a particular portion(s) of a proposal addressing a national need area in lieu of funding a proposal in its entirety. If only a portion(s) of a proposal is funded, administrative costs per fellowship as indicated on Line M of the *Proposal Budget* will be used to arrive at total funds to be awarded. Both internal staff and the panelists will evaluate proposals primarily on the basis of the following criteria, as *applied to each individual national need area* addressed in a proposal:

EVALUATION CRITERIA

Criteria	Weight (paints)
a. The degree to which the proposal identifies and delineates a request for funds to support a fellowship program in an important area(s) of national need, and the extent to which it establishes that the proposed program(s) of graduate training will result in the development of scientific expertise related to a national need(s) in a reasonable period of time	30
b. The degree to which the propsal reflects that program faculty and facilities are capable of supporting outstanding graduate study and research at the forefront of science and technology related to the chosen area(s) of national need	30
c. The degree to which the institution's plans for recruitment and selection of academically outstanding fellows reflect excellence as documented in the proposal	20
d. The degree to which the proposal reflects multidisciplinary and/or multiuniversity collaborative approaches to the propoeed program(s) of graduate study	10
e. The academic merit of the proposal as represented by its organization and clarity	10

Institutions submitting proposals judged most meritorius under the criteria set out above will be awarded grants within the limitations of available funds.

When a proposal results in a grant, it becomes a part of the record of the agency's transactions, available to the public upon specific request. Information that the Agency and the grantee mutually agree to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged, should be clearly marked as such and sent in a separate statement, two copies of which should acccompany the proposal. The original copy of a proposal that does not result in a grant will be retained by the Agency for a period of three years. Other copies will be destroyed. Such a proposal will be released only: (1) with the consent of the applicant or (2) to the extent required by law. A proposal may be withdrawn at any time prior to the final action thereon.

After final decisions have been announced, the ARS will, upon request, inform the project director of the reasons for its decision on a proposal. Verbatim copies of reviews, not including the identity of the reviewer, will be made available to respective project directors upon specific request.

Grantees should be aware that the ARS may, as a part of its own program evaluation activities, carry out in-depth evaluations of selected awarded projects through independent third parties. Thus, grantees should be prepared to cooperate with evaluators retained by the ARS to analyze both the institutional context and the impact of any supported project.

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federal register

Monday
May 14, 1984

Part IV

Department of Justice

Bureau of Prisons

28 CFR Part 540

Control, Custody, Care, Treatment, and Instruction of Inmates; Proposed rules

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 540

Control, Custody, Care, Treatment, and Instruction of Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: The Bureau of Prisons is publishing proposed amendments to its final rules on Incoming Publications and on Telephone Regulations for Inmates. The rule on incoming publications is amended to state that inmates may receive newspapers only from the publisher. This amendment is intended to allow institution mailroom staff to more effectively use their time, while reducing the likelihood of unauthorized items (contraband) being smuggled into the institution in a large newspaper. The rule on telephone regulations is amended to specify conditions under which the Bureau may limit or deny inmate/attorney telephone privileges. This rule is intended to prevent the abuse of such privileges.

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

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 760, 320 1st Street NW., Washington, D.C. 20534. Comments received will be available for examination by interested persons at the above address.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724–3062.

SUPPLEMENTARY INFORMATION: Pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(q), notice is hereby given that the Bureau of Prisons intends to publish in the **Federal Register** proposed amendments to its rules on incoming publications and on telephone regulations for inmates. A final rule on incoming publications was published in the **Federal Register** June 29, 1979 (44 FR 38259 et seq.), with an amendment published December 7, 1982 (47 FR 55129 et seq.). A final rule on telephone regulations for inmates was published in the **Federal Register** June 29, 1979 (44 FR 38249), with an amendment published June 1, 1983 (48 FR 24622 et seq.).

The existing rule on Incoming Publications allows an inmate to receive newspapers from any source. Newspapers, because of their volume and bulk, can be used to smuggle contraband into the institution. The examination of such materials by mailroom staff is time consuming, and may not be totally effective. To address these concerns, we are proposing to revise our policy on Incoming Publications to state that an inmate may receive a newspaper only from the publisher. Other softcover material, such as paperback books, newspaper clippings, and magazines may be received from any source. The Bureau's proposed amendment is expected to have little impact on the availability of newspapers in the institution. Inmates are able to subscribe to newspapers, plus each institution has newspapers available (e.g., in the institution library) for inmate reading.

Section 540.102, Inmate telephone calls to attorneys, now includes the Bureau's proposed rule for limiting or denying inmate/attorney telephone privileges. While the Bureau does not believe such restrictions ordinarily will be necessary, the rule provides staff with guidance on when a limitation or denial of this privilege may be imposed. The proposed rule is similar to the existing Bureau rule on limitation or denial of attorney visits and correspondence (see 28 CFR 543.14).

The Bureau of Prisons has determined that these rules are not major rules for the purpose of EO 12291. This Bureau of Prisons has determined that EO 12291 does not apply to these rules since the rules involve agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that these rules, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), do not have a significant impact on a substantial number of small entities.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, Room 760, 320 1st Street, NW., Washington, D.C. 20534. Comments received during the comment period will be considered before final action is taken. The proposed rules may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Part 540

Prisoners.

In consideration of the foregoing, it is proposed to amend Subchapter C of 28 CFR, Chapter V by revising Part 540, Subparts F and I to read as follows:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

I. In Subchapter C, Part 540, amend Subpart F to read as follows:

Subpart F—Incoming Publications

A. The authority citation for Part 540, Subpart F reads as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

B. In § 540.71, revise paragraph (a) to read as follows:

§ 540.71 Procedures.

(a) An inmate may receive hardcover publications only from the publisher, from a book club, or from a bookstore. An inmate may receive a newspaper only from the publisher. An inmate may receive other softcover material (for example, paperback books, newspaper clippings, or magazines) from any source. The Warden may have all incoming publications inspected for contraband.

* * * * *

II. In Subchapter C, Part 540, amend Subpart I to read as follows:

Subpart I—Telephone Regulations for Inmates

A. The authority citation for Part 540, Subpart I reads as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

B. Revise § 540.102 to read as follows:

§ 540.102 Inmate telephone calls to attorneys.

(a) Except as provided in paragraphs (b)–(d) of this section, the Warden may not apply frequency limitations on inmate telephone calls to attorneys when the inmate demonstrates that communication with attorneys by correspondence, visiting, or normal telephone use is not adequate.

(b) An act by an attorney which violates Bureau regulations or institution guidelines and which threatens the security, good order, or discipline of the institution, or the protection of the public is grounds for limitation or denial by the Warden of the attorney's telephone privileges. Acts by an attorney which may warrant such limitation or denial include, for example, the following:

(1) A false statement as to the attorney's identity or qualifications;

(2) A plan, attempt, or act to introduce contraband into the institution;

(3) A conspiracy to commit, an attempt to commit, or the actual commission of an act of violence within an institution; and

(4) Encouraging an inmate to violate the law, Bureau of Prisons rules, or local implementing guidelines.

(c) Unless the breach of regulations is extreme or repeated, limitation (for example, monitoring of telephone calls) rather than a denial of telephone privileges is proper, especially where the inmate is represented by the attorney and is confronted with a court deadline. The Warden shall also consider referral of the matter to the state agency regulating the attorney's professional conduct.

(d) An act by an inmate in violation of Bureau regulations or institution guidelines warrants a limitation by the Warden of the inmate's telephone privileges with attorneys only if necessary to protect institution security, good order, or discipline, or to protect the public. The Warden may not deny telephone privileges with attorneys generally.

(e) The attorney may appeal any limitation or denial by the Warden of attorney telephone privileges to the Regional Director. The inmate affected may appeal through the Administrative Remedy Procedures.

Dated: May 9, 1984.

Norman A. Carlson,

Director, Bureau of Prisons.

[FR Doc. 84-12827 Filed 5-11-84; 8:45 am]

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federal register

Monday
May 14, 1984

Part V

Department of Energy

10 CFR Part 1046

Defense Programs; Physical Protection of Security Interests, General, Protective Force Personnel; Proposed Rulemaking

DEPARTMENT OF ENERGY

10 CFR Part 1046

Defense Programs; Physical Protection of Security Interests, General, Protective Force Personnel

AGENCY: Defense Programs, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) is proposing regulations which set forth the medical and physical fitness qualification standards for protective force personnel. The purpose of the proposed standards is to ensure that protective force personnel at DOE facilitites can effectively perform their normal and emergency duties without undue hazard to themselves, fellow employees, the plant site and the general public. Generally, the proposed rules require incumbent and applicant protective force personnel at government-owned facilities to meet certain professionally developed and validated medical and physical fitness qualification standards.

DATES: Written comments must be received by 4:00 p.m. June 13, 1984.

Hearing dates and times:

Oak Ridge Hearing: 9:30 a.m.–May 30, 1984
Albuquerque Hearing: 9:30 a.m.–June 5, 1984
San Francisco Hearing: 9:30 a.m.–June 7, 1984
Washington, D.C. Hearing: 9:30 a.m.–June 12, 1984

Requests to speak at a hearing must be received by 4:00 p.m. on the following dates:

Oak Ridge Hearing: May 25, 1984
Albuquerque Hearing: June 1, 1984
San Francisco Hearing: June 5, 1984
Washington, D.C. Hearing: June 8, 1984

A list of speakers will be available and speakers selected to participate in the hearing will be notified by 4:00 p.m. on the following dates:

Oak Ridge Hearing: May 29, 1984
Albuquerque Hearing: June 4, 1984
San Francisco Hearing: June 6, 1984
Washington, D.C. Hearing: June 11, 1984

Fifteen copies of speakers' statements must be received by DOE at the appropriate hearing location no later than 4:00 p.m. on the following dates:

Oak Ridge Hearing: May 29, 1984
Albuquerque Hearing: June 4, 1984
San Francisco Hearing: June 6, 1984
Washington, D.C. Hearing: June 11, 1984.

ADDRESSES: Written comments should be submitted to: Martin J. Dowd, Department of Energy, Defense Programs, DP 343, Germantown, Washington, D.C. 20545, (301) 353–4642.

Requests to speak at any of the four hearings and requests for the lists of speakers should be submitted to: Martin J. Dowd, Department of Energy, Defense Programs, DP 343, Germantown, Washington, D.C. 20545, (301) 353–4642.

The hearing locations are:

Oak Ridge Hearing: American Museum of Science and Energy, Oak Ridge, Tennessee 37830, Contact: Jim Alexander, (615) 576–0887
Albuquerque Hearing: Federal Building, 517 Gold Street, Sw., Albuquerque, New Mexico 87115, Contact: Anna Bachicha, (505) 846–6938
San Francisco Hearing: Lawrence Livermore National Laboratory, Auditorium Building 123, Livermore, California 94550, Contact: Carol Powell, (415) 273–6398
Washington, D.C. Hearing: Department of Energy, Forrestal Building, Room GJ–015, 1000 Independence Avenue, SW., Washington, D.C. 20585, Contact: Gail Bradshaw, (202) 252–5806.

Speakers should submit their statements to the contact person at the appropriate hearing location by the appropriate date listed above.

Requests for copies of the DOE *Physical Standards Validation Study* and *Report of Special Committee Appointed by Division of Safeguards and Security to Review Medical Standards for Guards* should be submitted to Martin J. Dowd, Department of Energy, Defense Programs, DP 343, Germantown, Washington, D.C. 20545.

Copies of the DOE *Physical Standards Validation Study* and *Report of Special Committee Appointed by Division of Safeguards and Security to Review Medical Standards for Guards*, transcripts of public hearings, and written comments may be read in the DOE Freedom of Information Reading Room: U.S. Department of Energy, Freedom of Information, Public Reading Room, Forrestal Building, Room 1E–190, 1000 Independence Avenue SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT:

Martin J. Dowd, Department of Energy, Defense Programs, DP 343, Germantown, Washington, D.C. 20545, (301) 353–4642
W. Mayo Lee, Department of Energy, Office of General Counsel, Room 6A–141, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252–6754.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion
III. Summary of Validation Study
IV. Comment Procedures
V. Procedural Requirements

I. Background

Congress enacted the Atomic Energy Act in 1954, 42 U.S.C. 2011 *et seq*, declaring it "to be the policy of the United States that * * * the development, use, and control of atomic energy shall be * * * subject at all times to the paramount objective of making the maximum contribution to the common defense and security," (42 U.S.C. 2011). Congress specifically found that "[t]he development, utilization and control of atomic energy for military and for all other purposes are vital to the common defense and security," and that "[s]ource and special nuclear material, production facilities, and utilization facilities, are affected with the public interest, and regulation * * * of the facilities used in connection therewith is necessary in the national interest to assure the common defense and security and to protect the health and safety of the public, "(42 U.S.C. 2012(a), (e)). Responsibility for such "regulation" of Government-owned nuclear facilities and nuclear weapons is vested in the Secretary of Energy. (42 U.S.C. 7151). In this capacity, the Secretary is empowered "to effectuate the policies set forth above by providing for * * * a program for Government control of the possession, use, and production of atomic energy and special nuclear materials * * * to make the maximum contribution to the common defense and security," (42 U.S.C. 2013(c)).

The nation-wide nuclear program administered by the Secretary of Energy principally is conducted at nuclear facilities owned by the federal government. Most of these facilities, however, are operated under contracts with private industry. Because of the nature of the material, equipment, data and personnel found at these facilities, each facility must be afforded a high degree of physical security. Such security is provided, in part, by the uninterrupted presence of armed security inspectors and unarmed guards. The armed security inspectors are the first line of human defense against terrorist or other assault on this nation's nuclear facilities, weapons, materials and technologies. Nonetheless, ultimate responsibility for protecting government-owned DOE facilities is vested in the Secretary of Energy.

II. Discussion

Based on DOE's assessment of its security capabilities and on the increasing threat of terrorist,

paramilitary, criminal and other threatening activity, DOE has determined that the medical and physical fitness of protective force personnel is essential to the national security and common defense. Consequently, it is the responsibility of the Secretary of Energy to ensure that protective force personnel meet minimum medical and physical fitness standards. Thus, in this Notice of Proposed Rulemaking the Secretary is proposing medical and physical fitness qualification standards for DOE contractor-employed protective force personnel at government-owned facilities.

This Notice of Proposed Rulemaking proposes that certain medical and physical fitness qualification standards be adopted for protective force personnel located at specific DOE facilities nationwide. Specifically, certain medical and physical fitness qualification standards are proposed for armed security inspectors and certain medical qualification standards are proposed for unarmed guards. DOE proposes that the applicable qualification standards apply to all contractor-employed incumbent security personnel and applicants for protective force employment. The medical qualification standards which are being proposed were established by a highly qualified board of physicians familiar with DOE's security environment. See *Report of Special Committee Appointed by Division of Safeguards and Security to Review Medical Standards for Guards*, October 26, 1976. More recently, the physical fitness standards, which apply only to armed security inspectors, also have been professionally developed and validated. In this regard, Professional Management Associates, Inc. (PMA) was privately contracted by DOE in 1980 to develop and validate a set of physical fitness qualification standards for armed protective force personnel which would constitute an accurate indicator of essential job behavior. On September 30, 1982 PMA submitted its *Physical Standards Validation Study* to DOE.

The physical fitness standards for security inspectors proposed by PMA were developed and validated in accordance with the Equal Employment Opportunity Commission's "Guidelines on Employment Selection," (29 CFR 1607.1 *et seq.*), as well as recognized test selection and validation standards of the American Psychological Association. A total of 69 male and female subjects principally drawn from the protective security force at Sandia National Laboratory participated in actual development of these physical fitness standards. After pre-testing 38 subjects 41 years old or order and 31 subjects 40 years old or younger, it was determined that, at a minimum, the best and most accurate predictor of an armed security inspector's ability to perform "offensive combative," or response force, security duties was his or her ability to run one mile in 8 minutes 30 seconds or less and to run a prone-to-running 40 yard dash in 8.0 seconds or less. None of the 69 subjects tested suffered any severe injuries during this pre-testing. Each participant was subjected to both stress and non-stress medical examinations throughout the development of these standards.

In addition, DOE is proposing that incumbent security inspectors participate in a DOE approved physical fitness training program. A model physical fitness training program has been developed by DOE to assist incumbent security inspectors in preparing to satisfy the physical fitness qualification standards. The DOE training program is modelled on one successfully used by recuperative heart patients, and is tailored to be compatible with each individual's physical condition. Although the training program generally may extend over a 21-week period, a particular individual may enter at the training level appropriate to his or her physical condition.

Today, DOE is proposing to adopt medical and physical fitness standards and require participation in a DOE approved training program as part of its regulations governing the physical protection of DOE's security interests by protective force personnel. Satisfaction of the medical and physical fitness standards, if applicable, by incumbent personnel is required within 6 months from the date this proposed rule is made effective. In addition each facility will be obligated to provide a training program for incumbent personnel. Finally, before any security inspector may train for or any security inspector or applicant actually engage in the physical fitness standards tests, DOE requires that each individual be medically certified as physically fit to undertake the activity. The medical examination may include both stress and non-stress measurements, with particular emphasis on cardio-vascular health. Medical certification is required within 30 days of both testing and training.

Security inspectors who are unable to satisfy the physical fitness standards within 6 months of the day the rule becomes effective may be either transferred to unarmed guard status, transferred to another appropriate position, or discharged from employment. Time extensions may be granted in cases of temporary, but not chronic or permanent, medical infirmity. The medical qualification standards for security inspectors and guards may be waived in certain instances.

III. Summary of Physical Standards Validation Study

Because DOE has been involved in litigation regarding its physical fitness qualification standards and because they are most likely to be the area of most interest to commenters, an Executive Summary of the *Physical Standards Validation Study* is printed as Appendix A to this Notice of Proposed Rulemaking. DOE invites comments on the validation study as well as the appropriateness of the proposed physical fitness standards.

IV. Comment Procedures

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposals set forth in this Notice.

Comments should be identified on the outside of the envelope and on the documents themselves, with the designation, "Protective Force Personnel: Medical and Physical Fitness Qualification Standards," Docket Number DP–1. Fifteen copies should be submitted.

All comments received on or before June 13, 1984, and all other relevant information, will be considered by DOE before taking further action on this Notice of Proposed Rulemaking.

All comments received will be available for public inspection in the DOE Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Any person submitting information which that person believes to be confidential, and which may be exempt by law from public disclosure, should submit one complete copy as well as fifteen copies from which the information claimed to be confidential has been deleted. DOE shall make the final determination regarding any such claim of confidentiality. This procedure is set forth in 10 CFR 1004.11 (44 FR 1980, January 8, 1979).

DOE will hold several public hearings on these proposed rules. DOE has chosen the following locations because it believes it will afford an opportunity

to the greatest number of affected persons to participate in the hearing process. The hearing locations, dates, and times are listed in the **ADDRESSES** and **DATES** section of this Notice.

Any person who has an interest in the proposed regulations, or who is a representative of a group or class of persons which has an interest in them may make a written request for an opportunity to make an oral presentation. Such a request to speak at a hearing should be addressed to the appropriate person listed in the **ADDRESSES** section of this Notice, and must be received by 4:00 p.m., local time, on the appropriate date listed in the **DATES** section of this Notice. A request may also be hand delivered between the hours of 8:00 a.m., and 4:00 p.m., Monday through Friday, except Federal holidays.

The person making the request should describe briefly his or her interest in the proceeding and, if appropriate, state why that person is a proper representative of a group. The person should also give a concise summary of the proposed oral presentation, and should provide a phone number where the person may be reached. Each person selected to be heard at a public hearing will be notified by the date listed in the **DATES** section of this Notice. Those persons selected to be heard should submit fifteen copies of their statement to the appropriate hearing location the last working day preceding the hearng. If a person cannot provide fifteen copies, alternate arrangements can be made in advance of the hearing. This should be done in the letter requesting to speak.

DOE reserves the right to select persons to speak at the hearings, to schedule their presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation will be limited, based on the number of persons requesting to speak.

A DOE official will preside at each hearing. These will not be judicial or evidentiary-type hearings. Questions may be asked to speakers only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. Any decision made by DOE with respect to the subject matter of the hearings will be based on all of the information available to DOE.

Any participant who wishes to ask a question at the hearing may submit the question in writing to the presiding officer. The presiding officer will determine whether the question is relevant and material, and whether the time limitations permit it to be presented for an answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, incuding the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Office, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcript from the reporter.

If DOE must cancel a hearing, DOE will make every effort to publish an advance notice of such cancellation in the **Federal Register.** Notice of cancellation will also be given to all persons scheduled to speak at the hearing.

V. Procedural Requirements

A. Review Under Executive Order 12291

This Notice of Proposed Rulemaking was reviewed under Exectuive Order 12291 (46 FR 12193, February 27, 1981). DOE has concluded that the rule is not a "major rule" under the Executive Order, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, State, Federal, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Pursuant to Section 3(c)(3) of Executive Order 12291, these proposed rules were submitted to the Director of OMB for a 10-day review. The Director has concluded his review under that Executive Order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164 (5 U.S.C. 601 *et seq.*), requires, in part, that an agency prepare an initial regulatory flexibility analysis for any proposed rules, unless it determines that the proposed rules will not have a "significant economic impact on a substantial number of small entities." In the event that such an analysis is not required for a particular proposed rule, the agency must publish a certification and an explanation of that determination in the **Federal Register.** The rules proposed in this Notice deal with medical and physical fitness qualification standards for protective force personnel, including guards and security inspectors. The proposed rules economic impact on small businesses is negligible. Accordingly, pursuant to Section 605(b) of the Regulatory Flexibility Act, DOE certifies that these proposed rules will not have a significant economic impact on a substantial number of small entities.

C. Environmental Review

DOE has determined that the proposed regulations are not a major Federal action with significant environmental impact, and therefore do not require preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

D. Paperwork Reduction Act

The collection of information requirements in these proposed rules will be submitted to the Office of Management and Budget in accordance with Section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and procedures implementing that Act, 5 CFR 1320. 1 *et seq.*

E. Section 404 of the DOE Act

Pursuant to the requirements of Section 404(a) of the Department of Energy Organization Act (42 U.S.C. Section 7101 *et seq.*, Pub. L. 95–91) DOE has referred this Notice of Proposed Rulemaking, concurrently with the issuance hereof, to the Federal Energy Regulatory Commission for a determination as to whether the proposal would significantly affect any matter within the Commission's jurisdiction. The Commission will have until the close of the comment period to make this determination.

F. Lists of Subjects in 10 CFR Part 1046 (Proposed)

This is a proposed new Part. Subjects may include: Security Measures, Medical and Physical Fitness Qualification Standards, Government Contracts.

Authority: Atomic Energy Act, 68 Stat. 919, (42 U.S.C 2011 *et. seq.*); Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565 (42 U.S.C. 7101 *et seq.*).

In consideration of the foregoing, DOE proposes to add a new Part 1046 to Chapter X, Title 10 of the code of Federal Regulations.

Issued in Washington, D.C., this 7th day of May, 1984.

Robert L. Morgan,

Acting Assistant Secretary for Defense Programs.

Appendix A to Preamble of Notice of Proposed Rulemaking

I. Introduction and Overview

This report summarizes the background, methodology, findings, conclusions and recommendations of the United States Department of Energy (USDOE) Security Inspector Physical Fitness Standards Validation Study.

Background

On January 31, 1978, in response to an acknowledged need to assure the reliability of the human element in nuclear security systems, the USDOE, Office of Safeguards, and Security (OSS) published Interim Management Directive (IMD) 6102. Part IV of IMD 6102 set certain medical and physical fitness standards for USDOE Security Inspectors. Both categories of standards were set to realistically reflect the potential requirements of Security Inspectors' duties under emergency conditions. The medical standards have thus far stood the test of time. The physical fitness standards, on the other hand, were suspended shortly after their implementation.

In mandating a set of physical fitness measures and standards for Security Inspectors, USDOE/OSS was faced with the task of selecting a battery of such measures and standards for a unique position. No professionally developed or accepted fitness tests for armed guards existed. The closest approximation was found in the civilian law enforcement field, and a "Police Officer's Agility Test" was selected and adopted, without validation, for use in the IMD 6102.

On November 2, 1979, the physical fitness standards of IMD 6102 were temporarily suspended. On March 25, 1980, the suspension was made permanent. The proximal cause of the suspension was problems encountered during the adminstration of the physical fitness test. The underlying cause was the realization that the standard had not been validated and that its implementation was of questionable legality.

Since any physical fitness standard has the potential for adverse impact on certain groups under the protection of the Equal Employment Opportunity Commission (EEOC) and/or the Office of Federal Contract Compliance (OFCC), such a standard should be validated prior to implementation. That is, the standard should be shown to be either an essential job behavior or a valid predictor of an essential job behavior. While the standards set forth in Part IV of IMD 6102 would appear to be realistic and reasonable to anyone familiar with Security Inspectors' emergency duties, they had not been demonstrated to be so.

Realizing the advisability of suspending the unvalidated standards and still faced with the pressing need to assure that those personnel charged with Security Inspector duties were physically capable of performing them, USDOE/OSS let a contract on August 8, 1980, for the professional development and validation of a battery of physical fitness measures and standards for the Security Inspectors of the USDOE nulcear security community.

The Problem

In order for a measure and standard to be technically validated, it must be demonstrated that the measure and standard are accurate predictors of job performance. A fitness measure is selected or designed to predict job performance and is applied to a group of subjects. Then, some objective measure of job performance, or criterion, is applied to the same group. If the results of the two measures correlate at a statistically and practically significant level, the first may be considered a valid measure of the second. Criterion related validity is determined by the degree of correlation between the test and the criterion. If the correlation is sufficiently high, no other proof of validity is necessary. The problems to be solved are the development and criterion-related validation of an easily and economically administered set of physical fitness measures and standards for the USDOE Security Inspector population.

Conduct

During Phase I, the project team visited a selected number of field sites, assembled all available information on the background of the problem, interviewed the responsible supervisors and managers of USDOE/OSS and developed and submitted a project plan.

During Phase II, all facilities and field offices to be affected by the standard were visited. Individual task selection conferences were held at each. A common task matrix was created from which the most physically demanding tasks common to all or most facilities were selected and presented to the Central Task Selection Conference. At that conference, an agreed-upon common task list and a provisional implementation strategy were developed and approved.

During Phase III, objectively graded simultations of the tasks selected at the Central Task Selection Conference were developed. A provisional physical fitness battery was selected. A subject sample was recruited from the Sandia National Laboratories, Albuquerque (SNLA) security force. The subjects participated in stress tests, a physical fitness battery and graded task simulations. All data derived from these measures were submitted to statistical analyses, and the relationships between elements of the fitness battery and elements of the criteria were determined. Based on these relationships, a physical fitness test battery, including measures and standards, was selected. A type physical fitness training program was developed to enhance performance of the fitness battery.

Philosophy

Throughout this study, the philosophy of the project team was to involve those to be affected by the standard in its development at every opportunity. During Phase I, assistance was obtained from the field in acquiring an understanding of the nuclear security environment. The concepts for standard development were presented at the USDOE Safeguards and Security Directors' Conference in Oakland, California, and at the Institute for Nuclear Materials Management Guard Training Workshop in Gatlinburg, Tennessee, before the plan was finalized. During Phase II, every effort was made to achieve an accurate understanding of job requirements at each site based on the information obtained from security personnel at that site. Agreement on site-specific task lists was obtained at each site and reaffirmed at the Central Task Selection Conference. Finally, during Phase III, the opinions of all security personnel who participated in task simulation trials were obtained as to the realism, objectivity and appropriateness of the criteria. In short, every effort was made to ensure that those personnel to whom the standard would be applied had the maximum voice in its development.

II. Task Analysis Conduct and Results

Conduct

The overall purpose of this phase of the study was task analysis. In all, over 50 separate offices and facilities were visited by members of the project team. This phase was concluded with the conduct of a Central Task Selection Conference held at Headquarters, USDOE, in Washington, D.C.

The conduct of task analyses diverged considerably from what might be considered a "normal" job analysis. Initial studies had shown that, with a very few site-specific exceptions, the most physically demanding duties expected of a Security Inspector were not to be found in routine, day-to-day activities. Instead, participation in armed, combative tasks that would only take place in training or in the event of an actual hostile act against a nuclear facility represented the greatest potential physical demand on Security Inspectors. For this reason, although project team members did observe and participate in routine duties at each site, the emphasis was on duties performed during simulated reaction drills.

During site visits, interviews and conferences were held with the following nuclear security personnel:

- USDOE Management; 102
- Contractor Management and Supervisory; 328
- Security Force Protective Personnel

Formally Interviewed:

—Total: 513
—By Sex:
  —Male: 421
  —Female: 92
—By Age:
  —30 and under: 144
  —31 to 40: 119
  —41 to 50: 103
  —51 to 60: 107
  —61 and over: 40

The 513 Security Inspectors formally interviewed represent approximately 20 percent of the total security force. Additionally, approximately twice that number were informally contacted during observation and participation in on-site security functions. Although no real effort was made to stratify the sample interviewed, it was generally representative of the

population as a whole. Some over-representativeness of females and older personnel occurred.

Results

The task analysis site visits resulted in agreed-upon lists of tasks, conditions and standards for the Security Inspectors at each site. Specific, by-site findings are provided in the full report from which this summary is extracted. Consolidating these findings and eliminating all tasks that failed the two criteria of commonality and physical demand resulted in the common task matrix, Figure 1. This matrix was presented to the Central Task Selection Conference at the and of Phase II for consideration, selection and approval.

After considerable discussion and debate, agreement was achieved and approval was obtained on the following common task list.

- TASK 1: OFFENSIVE COMBATIVES
- TASK 2: DEFENSIVE COMBATIVES
- TASK 3: HOSTILE BUILDING SEARCH
- TASK 4: RESPONSE TO CONTAINMENT
- TASK 5: RESPONSE TO ALARM

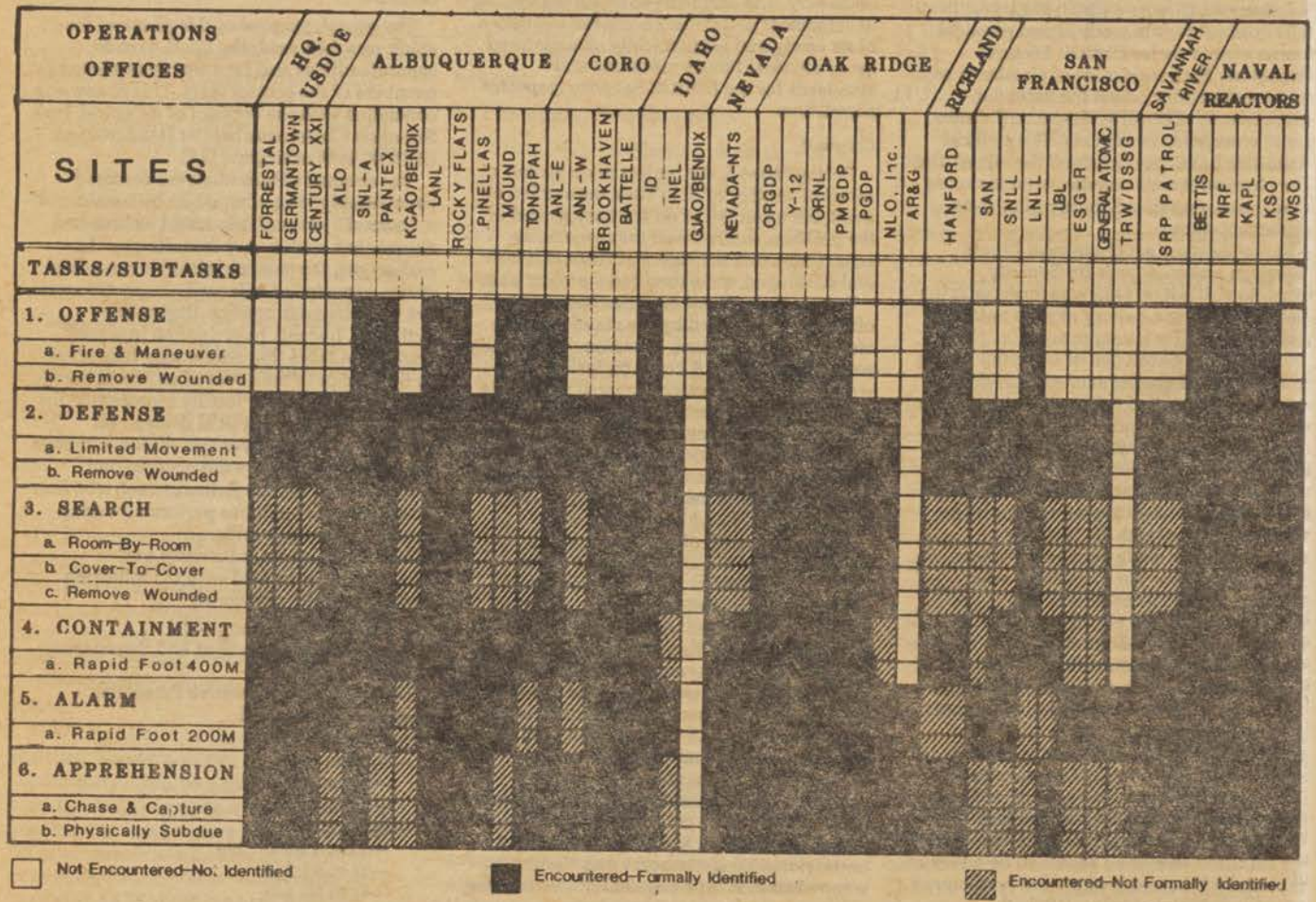
It should be noted that Task 1, Offensive Combatives, only applied to those sites indicated in Figure 1. For that reason, an implementation strategy was presented, discussed and approved.

This strategy dictated that, providing that there was a significant difference between the physical demands of Offensive Combatives and those of other tasks, only those facilities having an offensive role would be required to meet the higher standards. All others would be required to meet the physical fitness standards set for Defensive Combatives, Response to Containment, Hostile Building Search and Response to Alarm. For those facilities with offensive requirements, two options were available. Either all assigned Security Inspectors would have to meet the higher standards or select members of a designated response force would be required to meet the higher standards and all other Security Inspectors would be required to meet the lower standards.

Following agreement on the common task list and implementation strategy, a list of provisional task simulations was approved.

FIGURE 1

COMMON TASK MATRIX



III. Stress Tests, Fitness Tests and Criterion Trials

Sample

Following task selection and approval of the provisional simulation list, the conduct of the project shifted to SNLA, where the third and final phase of the study was conducted. A subject sample was recruited from the SNLA Security Inspector and Auxiliary Guard forces and stratified insofar as possible to represent the national Security Inspector population by age and sex. The desired sample composition for a minimum sample size of 60 and the actual sample that completed the study are as shown in Table 1.

TABLE 1

ACTUAL VS. DESIRED SAMPLE

By Age	Desired			Completed			Difference		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
30 and Under	12	6	18	20	3	29	(+)8	(-)3	(+)5
31 to 40	11	3	14	8	0	8	(-)3	(-)3	(-)6
41 to 50	10	2	12	22	1	23	(+)12	(-)1	(+)11
51 to 60	12	0	12	13	0	13	(+)1	0	(+)1
61 and Over	4	0	4	2	0	2	(-)2	0	(-)2
Total	49	11	60	65	4	69	(+)16	(-)7	(+)9

The above table indicates that, although there were no differences of concern by age, there was a considerable under-representativeness of females in the sample. Therefore, although cross-validation by age was practical, cross-validation by sex was not.

Stress Testing

Once subjects had been medically cleared, each underwent a maximum stress test employing a graduated treadmill protocol. Resting and maximum heart rates and oxygen utilization, as well as oxygen deficit resulting from maximum exercise, were recorded as was percentage of body fat estimated by skinfold measurement. These tests were conducted under the constant supervision of a physician who monitored and recorded heart functioning by oscilloscope and strip chart recorder. Results were used for ensuring that subjects were medically fit to continue the program and for providing data for linking physical fitness test performance to performance on task simulations.

Fitness Testing

A provisional physical fitness test battery was selected on the basis of apparent validity in predicting performance in armed combative situations. The battery consisted of the following measures:

- 1-Mile Run
- ½-Mile Run
- 40-Yard Prone-to-Running Dash
- 80-Yard Shuttle Run
- 40-Yard Agility Run

Seventy-three test subjects were tested on the physical fitness battery, of whom 69 remained in the program. Two minor stress injuries occurred, neither of which resulted in lost work time. Data obtained from these tests were used later in correlational analyses with task simulation performance results.

Criterion Trials

Scored simulations of the five generic tasks approved by the Central Task Selection Conference were constructed using Multiple Integrated Laser Engagement Simulation (MILES) equipment to provide objective results of subject performance. Subjects were pitted against a series of automatic targets that were responsive to laser near-miss and kill signals and that were equipped with a MILES shoot-back capability. Target locations, trip points and shoot-back aim points were designated to ensure that each subject encountered exactly the same situation.

Scoring on the five task simulations was as follows:

- *Offensive Combatives*
  - —Overall mission accomplishment.
  - —Number of targets killed.
  - —Number of times subject was killed.
  - —Elapsed time.
- *Defensive Combatives*
  - —Overall mission accomplishment.
  - —Number of targets killed.
  - —Whether or not subject was killed.
- *Hostile Building Search*
  - —Overall mission accomplishment.
  - —Number of targets killed.
  - —Number of time subject was killed.
  - —Whether or not hostage was killed.
  - —Elapsed Time.
- *Response to Containment*
  - —Overall mission accomplishment.
  - —Number of targets killed.
  - —Whether or not subject was killed.
  - —Elapsed time from staging area to containment position.
- *Response to Alarm*
  - —Overall mission accomplishment.
  - —Whether or not subject was killed.
  - —Whether or not subject was killed.
  - —Elapsed time from guard post to alarm location.

At the beginning of each day's trial subjects were fitted with coveralls, safety gear and MILES harness and issued appropriate weapons. A briefing and demonstration were provided on loading, immediate action, safety, sighting and firing of the weapons involved. At that point, each subject confirmed the zero of his/her own weapon, assisted as necessary by test personnel.

Following zero confirmation, subjects were given administrative, safety and tactical conduct briefings. During the tactics briefings, reactions under fire, tactical movement, minimum exposure firing and other basic individual tactics were covered.

Subjects then began task trials for the day. The first trial was for practice only. Subjects were encouraged to ask questions and to learn from the practice trial. Following target position change, subjects participated in the record trial, in which all scores previously discussed were recorded. Finally, following a second target change, subjects were fitted with heart rate monitor electrodes and with a Max Planck gas meter for participation in the physiological measurement run. Although scores were recorded on these runs just as they had been on the record runs, only those scores obtained on the record runs were used for correlation with physical fitness measures.

As with any criterion-related validation strategy, the most difficult part of this study was the development of appropriate criteria. Throughout Phase II, the task analysis phase, efforts concentrated on finding the most objective criteria possible. At the Central

Task Selection Conference, task simulations and scoring systems were presented for evaluation and approval by representatives of the nuclear security field. Final task simulations and scoring systems were as close as possible to the concepts approved. It was the opinion of the project team that the most objective criteria possible had been developed. However, one last measure of criteria appropriateness was obtained. All subjects who took part in task trials were interviewed as to their opinions of the criteria. Open oral critiques were held at the conclusion of each exercise. Subjects were also asked to complete critique sheets. All critique sheets were completed privately to ensure anonymity. No names or control mumbers were required. No critique sheets were reviewed until all subjects had departed for the day.

Detailed results of these critiques are provided in the report from which this summary was extracted. Participant comments were overwhelmingly supportive of the realism, applicability, objectively and overall fairness of evaluation of all simulations.

IV. Data Analysis

Descriptive Statistics

Descriptive statistics, including means, ranges frequency distributions, percentages and standard deviations (SD), were calculated to provide a general overview of subjects' physiological characteristics and performance on predictor and criterion variables.

Results for the physical fitness events were as displayed in Table 2. Mission accomplishment results were as displayed in Tables 3 through 7. Descriptive statistics regarding physiological measurements and detailed results of each scored simulation are ommitted from this summary but are available in the full report.

TABLE 2

PHYSICAL FITNESS TEST RESULTS

Event	Mean	SD	Range	Minimum	Maximum
1-Mile Walk/ Run (min:sec)	8:26	1:51	7:31	5:40	13:11
1/2-Mile Walk/ Run (min:sec)	3:44	0:49	3:38	2:25	6:03
Prone-to-Running 40-Yd Dash (sec)	7.02	1.04	7.62	5.60	13.22
40-Yd Agility Run (sec)	16.10	1.56	8.65	13.25	21.90
80-Yd Shuttle Run (sec)	24.95	2.26	12.56	21.42	33.98

TABLE 3

OFFENSIVE COURSE MISSION ACCOMPLISHMENT

Mission Accomplished	Frequency	Percent
Yes	28	40.60
No	40	58.00
Missing	1*	1.40
Total	69	100.00

*Minor injury incurred on previous simulation precluded participation in record offensive simulation.

TABLE 4

DEFENSIVE COURSE MISSION ACCOMPLISHMENT

Mission Accomplished	Frequency	Percent
Yes	48	69.60
No	20	29.00
Missing	1*	1.40
Total	69	100.00

*Minor injury incurred on previous simulation precluded participation in record defensive simulation.

TABLE 5

HOSTILE BUILDING SEARCH MISSION ACCOMPLISHMENT

Mission Accomplished	Frequency	Percent
Yes	54	78.30
No	15	21.70
Total	69	100.00

TABLE 6

RESPONSE TO CONTAINMENT MISSION ACCOMPLISHMENT

Mission Accomplished	Frequency	Percent
Yes	45	65.20
No	24	34.80
Total	69	100.00

TABLE 7

RESPONSE TO ALARM MISSION ACCOMPLISHMENT

Mission Accomplished	Frequency	Percent
Yes	56	81.20
No	13	18.80
Total	69	100.00

Primary Analyses

At that point in the data analysis, the stage was set to provide answers to the primary research questions of the study. The first of these questions required that the single predictor and the combination of predictors that had the highest correlations with the separate criterion elements be identified in the first stage of analysis, correlation coefficients were computed between all predictor and criterion variables. Because of the number of correlations with criterion variables computed for each predictor variable, error rate was a serious concern.

A highly conservative method of reducing error rate is to divide the generally acceptable significance level by the number of separate correlations. In this case, the resulting computation is .05 ÷ 22 = .002. By adopting .002 as the level of significance at which the study hypothesis would be accepted, any one of the 22 correlations that achieved that level could be conservatively used as evidence of a significant relationship between predictor and criterion. The more often such correlations were found, the stronger would be the evidence of validity.

In Tables 8 through 10, significance levels between .05 and .002 are reported for information only. All significance decisions were made at the .002 level and are asterisked. These tables indicate correlation, probability levels and percentages of variance accounted for by those correlations achieving significance at or beyond .002. Tables for the 1-mile run, the 1/2-mile run and the 40-yard dash are presented in that order. Results for the shuttle run and for the agility run are presented in the full report but omitted from this summary since these events were dropped from the final test batterries.

Data presented in Tables 8 through 10 indicate that the best single predictor for Offensive Combatives is the 1-mile run (r = -.6412) and for Defensive Combatives plus all other tasks, the 1/2-mile run (r = -.6309). Thus, the first half of the question, the best single predictor, was answered. From a technical and legal defensibility standpoint, it is important to note that both predictors correlate with mission accomplishment well beyond the .002 level selected. At that point, the validity of all single measures was established. The next step was to select the best combination of measures that would provide the highest correlation and the greatest amount of variance accounted for.

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TABLE 8

1-MILE RUN WITH ALL CRITERION VARIABLES

Simulation	Performance Measure			
	Mission Accomplished	Targets Killed	Subjects Killed	Elapsed Time
Offensive Combatives	r = -.6412 p = .0005* r^2 = 41.11	r = -.4950 p = .0005* r^2 = 24.50	r = .5056 p = .0005* r^2 = 25.56	r = .4199 p = .0005* r^2 = 17.63
Defensive Combatives	r = -.5305 p = .0005* r^2 = 28.62	r = -.5385 p = .0005* r^2 = 29.00	r = .5798 p = .0005* r^2 = 33.62	NOT APPLICABLE
Hostile Building Search	r = -.4038 p = .0005* r^2 = 16.31	r = -.3843 p = .001* r^2 = 14.77	r = .2754 p = .011 r^2 = NR	r = -.0250 p = NS r^2 = NR
Response to Containment	r = -.1105 p = NS r^2 = NR	r = -.1105 p = NS r^2 = NR	r = -.0835 p = NS r^2 = NR	r = .7111 p = .0005* r^2 = 50.57
Response to Alarm	r = -.2700 p = .012 r^2 = NR	r = -.1875 p = NS r^2 = NR	r = .2700 p = .012 r^2 = 7.29	r = .5991 p = .0005* r^2 = 35.89
Totals Across Tasks	r = -.6303 p = .0005* r^2 = 39.73	r = -.5802 p = .0005* r^2 = 33.66	r = .6080 p = .0005* r^2 = 36.97	NOT APPLICABLE

Legend: r = Correlation coefficient
p = Significance level
r^2 = Percent of total variance accounted for
* = Significant at or beyond .002 level
NS = Not significant at .05 level
NR = Not reported due to lack of significance

TABLE 9

1/2-MILE RUN WITH ALL CRITERION VARIABLES

Simulation	Performance Measure			
	Mission Accomplished	Targets Killed	Subjects Killed	Elapsed Time
Offensive Combatives	r = -.5835 p = .0005* r^2 = 34.05	r = -.4433 p = .0005* r^2 = 19.65	r = .4975 p = .0005* r^2 = 24.75	r = .4286 p = .0005* r^2 = 18.37
Defensive Combatives	r = -.5163 p = .0005* r^2 = 26.66	r = -.5195 p = .0005* r^2 = 26.99	r = .5585 p = .0005* r^2 = 31.19	NOT APPLICABLE
Hostile Building Search	r = -.4342 p = .0005* r^2 = 18.85	r = -.4207 p = .0005* r^2 = 17.70	r = .3133 p = .004 r^2 = NR	r = .0178 p = NS r^2 = NR
Response to Containment	r = -.1388 p = NS r^2 = NR	r = -.1388 p = NS r^2 = NR	r = .0790 p = NS r^2 = NR	r = .7327 p = .0005* r^2 = 53.68
Response to Alarm	r = -.2949 p = .007 r^2 = NR	r = -.2350 p = .026 r^2 = NR	r = .2949 p = .007 r^2 = NR	r = .6775 p = .0005* r^2 = 45.90
Totals Across Tasks	r = -.6309 p = .0005* r^2 = 39.80	r = -.5804 p = .0005* r^2 = 33.69	r = .6184 p = .0005* r^2 = 38.24	NOT APPLICABLE

Legend: r = Correlation coefficient
p = Significance level
r^2 = Percent of total variance accounted for
* = Significant at or beyond .002 level
NS = Not significant at .05 level
NR = Not reported due to lack of significance

TABLE 10

40-YARD DASH WITH ALL CRITERION VARIABLES

Simulation	Performance Measure			
	Mission Accomplished	Targets Killed	Subjects Killed	Elapsed Time
Offensive Combatives	r = -.3177 p = .004 r^2 = NR	r = -.3779 p = .001* r^2 = 14.28	r = .3247 p = .003 r^2 = NR	r = .2780 p = .011 r^2 = NR
Defensive Combatives	r = -.3075 p = .005 r^2 = NR	r = -.3195 p = .004 r^2 = NR	r = .3171 p = .004 r^2 = NR	NOT APPLICABLE
Hostile Building Search	r = -.3192 p = .004 r^2 = NR	r = -.4271 p = .0005* r^2 = 18.24	r = .3018 p = .006 r^2 = NR	r = -.1171 p = NS r^2 = NR
Response to Containment	r = -.3499 p = .002* r^2 = 12.24	r = -.3499 p = .002* r^2 = 12.24	r = .0234 p = NS r^2 = NR	r = .4834 p = .0005 r^2 = 23.37
Response to Alarm	r = -.1768 p = NS r^2 = NR	r = -.1648 p = NS r^2 = NR	r = .1768 p = NS r^2 = NR	r = .4568 p = .0005* r^2 = 20.87
Totals Across Tasks	r = -.4742 p = .0005* r^2 = 22.49	r = -.5096 p = .0005* r^2 = 25.97	r = .4214 p = .0005* r^2 = 17.76	NOT APPLICABLE

Legend: r = Correlation coefficient
p = Significance level
r^2 = Percent of total variance accounted for
* = Significant at or beyond .002 level
NS = Not significant at .05 level
NR = Not reported due to lack of significance

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Because of the extremely high intercorrelations among predictor variables (values not reported in this summary), little increase in variance accounted for was achieved by combining predictors into a test battery. The only significant increase came from combining the 1-mile run with the 40-yard dash for Offensive Combatives and the ½-mile run with the 40-yard dash for all other simulations.

Tables 11 through 14 provide the results of multiple regression computations for the 1-mile and 40-yard dash and for the ½-mile run and 40-yard dash as predictors of overall mission accomplishment and of total targets killed, respectively. No other multiple correlations provided statistically significant increases in variance accounted for.

TABLE 11

1-MILE RUN AND 40-YARD DASH WITH MISSION ACCOMPLISHMENT

Measure	Multi-R	P	R^2	R^2 Change	P
1-Mile Run	.6303	.0005	.3972	.3972	.0005
40-Yard Dash	.6453	.0005	.4164	.0192	NS

TABLE 12

1-MILE RUN AND 40-YARD DASH WITH TARGETS KILLED

Measure	Multi-R	P	R^2	R^2 Change	P
1-Mile Run	.5802	.0005	.3367	.3367	.0005
40-Yard Dash	.6193	.0005	.3836	.0467	.0280

TABLE 13

1/2-MILE RUN AND 40-YARD DASH WITH MISSION ACCOMPLISHMENT

Measure	Multi-R	P	R^2	R^2 Change	P
1/2-Mile Run	.6309	.0005	.3980	.3980	.0005
40-Yard Dash	.6440	.0005	.4147	.0167	NS

TABLE 14

1/2-MILE RUN AND 40-YARD DASH WITH TARGETS KILLED

Measure	Multi-R	P	R^2	R^2 Change	P
1/2-Mile Run	.5804	.0005	.3369	.3369	.0005
40-Yard Dash	.6170	.0005	.3806	.0438	.0340

These results indicate that the best single predictor for Offensive Combatives is the 1-mile run, and the best combination of predictors is the 1-mile run and the 40-yard dash. For Defensive Combatives and all other simulations, the best single predictor is the ½-mile run, and the best combination of predictors is the ½-mile run and the 40-yard dash. Other measures could be added, as they all reach significant correlation with one or more criterion elements. However, no significant increases in variance accounted for would result.

The second and third research questions to be answered were, respectively, What is the cutting score (the point below which personnel would not be considered qualified) that provides the least overall error? Since even the most valid instrument will account for only a portion of job performance variance, some error in prediction must result from its use. This error can show itself in personnel who pass the test but cannot perform on the job (false positives) or in personnel who fail the test but could perform on the job (false negatives). To answer the question of the least overall error, scores were identified that would provide the least number of total errors when false positives and false negatives were combined. To answer the question of the least false negatives, least was defined as zero, and scores were identified that would provide no false negatives regardless of the number of false positives.

A cross-tabulation procedure was used to locate the point on measure performance that would produce the least false positives and false negatives combined. Then, the same cross-tabulations were examined to locate the point at which there were no false negatives. The results of these efforts are provided in Tables 15 through 19. Data presented include the least-overall-error point together with the number of false positives, false negatives and total errors and the zero-false-negatives point with the resulting total (false positives) errors.

TABLE 15

CUTTING SCORES FOR 1-MILE RUN AND 40-YARD DASH ON OFFENSIVE COMBATIVES

Measure	Least Error Point	False Pos.	False Neg.	Total Errors	No-False-Negatives Point	Total (False Positives) Errors
1-Mile Run	7:45 min:sec	5	4	9	8:30 min:sec	14
40-Yard Dash	6.5 sec	8	16	24	8.0 sec	36

TABLE 16

CUTTING SCORES FOR 1/2-MILE RUN AND 40-YARD DASH ON DEFENSIVE COMBATIVES

Measure	Least Error Point	False Pos.	False Neg.	Total Errors	No-False-Negatives Point	Total (False Positives) Errors
1/2-Mile Run	4:40 min:sec	12	0	12	4:40 min:sec	12
40-Yard Dash	8.2 sec	17	0	17	8.2 sec	17

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TABLE 17

CUTTING SCORES FOR 1/2-MILE RUN AND 40-YARD DASH ON HOSTILE BUILDING SEARCH

Measure	Least Error Point	False Pos.	False Neg.	Total Errors	No-False-Negatives Point	Total (False Positives) Errors
1/2-Mile Run	4:40 min:sec	8	2	10	5:10 min:sec	11
40-Yard Dash	8.2 sec	11	0	11	8.2 sec	11

TABLE 18

CUTTING SCORES FOR 1/2-MILE RUN AND 40-YARD DASH ON RESPONSE TO CONTAINMENT

Measure	Least Error Point	False Pos.	False Neg.	Total Errors	No-False-Negatives Point	Total (False Positives) Errors
1/2-Mile Run	5:00 min:sec	20	2	22	6:00 min:sec	23
40-Yard Dash	7.5 sec	10	9	19	8.2 sec	20

TABLE 19

CUTTING SCORES FOR 1/2-MILE RUN AND 40-YARD DASH ON RESPONSE TO ALARM

Measure	Least Error Point	False Pos.	False Neg.	Total Errors	No-False-Negatives Point	Total (False Positives) Errors
1/2-Mile Run	5:00 min:sec	9	2	11	5:48 min:sec	11
40-Yard Dash	8.0 sec	9	1	10	13.2 sec	13

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As Tables 15 through 19 indicate, the least-overall-error cutting scores for Offensive Combatives are 7 minutes 45 seconds for the 1-mile run and 6.5 seconds for the 40-yard dash. The zero-false-negatives cutting scores are 8 minutes 30 seconds and 8.0 seconds, respectively. For Defensive Combatives plus all other simulations, the least-overall-error cutting scores are 4 minutes 40 seconds on the ½-mile run and 7.5 seconds on the 40-yard dash. The zero-false-negatives cutting scores were 4 minutes 40 seconds (identical with least-overall-error) and 8.2 seconds, respectively.

Cross-Validation

The fourth and last research question was, Are the group patterns established in previous research questions different for different subsamples within the study? This is basically a question of cross-validation. When a measure or standard has the potential for adverse impact on a group, EEOC guidelines require that the validity of that measure and standard be demonstrated separately for the group in question. In this case, it is assumed, although not shown by this study, that females and older members of the population may be adversely affected by the measures and standards. That is, there could be a higher number of failures expected among females and older persons based on previously demonstrated correlations between sex, age and physical condition.

As previously stated, the number of females who could be induced to participate to completion in this study was too low for meaningful analysis. Therefore, cross-validation by sex was not possible. To cross-validate by age, the entire sample was divided at the median age, 41.5 years, and correlations were computed separately for the two groups. Results of predictor-criterion correlations on the measures selected showed that the measures were as valid for the older group as for the younger group, if not more so.

The second part of the cross-validation question has to do with cutting scores. If these measures and standards were to be used only for personnel selection, a different strategy would have been adopted to set cutting scores, and those scores would have had to be demonstrated to be equally applicable to the older group. Since the measures and scores selected are to be used for retention as well as selection, however, a zero-false-negatives cutting score was used. By definition, these scores apply to every member of the sample and all subgroups, such as age groups, within the sample. Therefore, the measures and cutting scores selected were found to withstand the test of cross-validation for age.

V. Conclusions and Recommendations

Conclusions and recommendations regarding measures, standards, implementation policies and future activities are provided along with discusions of the rationale leading to each. Where appropriate, data and discussion previously presented are summarized.

Conclusions

The major conclusions of this study are that

- All essential assumptions save that of range restrictions are valid. (The impact of the failure of the range restriction assumption is discussed in the full report, from which this summary was extracted.)
- The physical fitness measures and standards developed during the standards validation project are valid predictors of Security Inspector effectiveness in combative situations.
- From a technical validity standpoint, these measures and standards are legally defensible.

Recommended Measures and Standards

The measures and standards recommended for application to the USDOE Security Inspector population are as illustrated in Table 20.

TABLE 20

RECOMMENDED MEASURES AND STANDARDS

Category	Measure	Cutting Scores
Offensive	1-Mile Run	8 minutes 30 seconds
	40-Yard Dash	8.0 seconds
Defensive	1/2-Mile Run	4 minutes 40 seconds
	40-Yard Dash	8.5 seconds

The rationale behind the selection of these measures was previously discussed. Although all measures that were evaluated essentially passed the test of validity, no others contributed significantly to the explanation of criterion variance when combined with the measures recommended. The measures in Table 20 have the additional advantages of simplicity, minimum equipment and facility requirements and ease of application and standardization, all of which were aims of this study. If anything, the measures may appear too simple to have the predictive validity claimed. For example, a measure requiring that each Security Inspector demonstrate the ability to withstand X number of minutes on a treadmill protocol, achieving a minimum speed and incline and producing given levels of oxygen utilization, heart rate and oxygen debt, might appear to be a more valid measure of the physical fitness required for job performance. Such a measure could be validated by this study. However, the only advantage to its employment would be the appearance of technical complexity. The measures recommended by this study are as effective for the prediction of job performance, if not more so, and may be applied at considerably less expense.

The standards are those based on a zero-false-negatives strategy. They provide the point below which no Security Inspector would be expected to perform the combative duties indicated. There are several reasons why this strategy was adopted over the least-overall-error strategy. The first of these can be traced back to the original reason for the imposition of physical fitness standards. That reason was to furnish assurance that Security Inspectors possessed the minimum level of physical fitness required for combative duties, not to find those who could best perform those duties. Therefore, the zero-false-negatives strategy is more appropriate.

The second reason for the more conservative approach is that the standard is to be applied to incumbents. If it were only to

be applied to applicants, falsely rejecting someone who could possibly do the job might be defensible in the cause of higher expected mission performance. When an incumbent's job may be placed in jeopardy, however, the more conservative approach must be taken.

The third reason is that, by setting minimum standards and then expanding them into a scoring table, a system is devised that furnishes information both on the minimally qualified and on the best qualified. A recommended scoring table and procedure are furnished in Appendix A to this summary.

Implementation

The following implementation recommendations are provided:

- That the measures, standards and suggested training program resulting from this project be provided by letter to the field as soon as approved by USDOE.
- That the suggested training program be implemented immediately while the revised IMD or Order is in the process of production, coordination and publication.
- That facilities begin testing six months after the receipt of the original letter and the beginning of training.
- That Security Inspectors be given an additional six months in which to achieve compliance after testing has begun.

The above recommendations are made to provide for immediate program implementation while, at the same time, guaranteeing everyone affected the maximum opportunity to achieve recommended standards. Although the purpose of this study is not to provide legal advice, it should be noted that the recommended strategy would provide a good deal of protection from any injunction against immediate implementation. Conversely, a more aggressive strategy, such as one that called for immediate standards achievement, would be much more open to such litigation.

Future Activities

The following recommendations regarding future activities are made:

- That, following one year of testing, results for the Security Inspector population be analyzed to provide further normative data.
- That, at the earliest opportunity, this study be replicated using another Security Inspector sample, from another facility, and concentrating on female representation. Such replication would strengthen the conclusions of this study and would, hopefully, provide for cross-validation by sex.
- That the physiological data obtained by this study be subjected to statistical analyses in order to provide for possible revision of medical standards.

The first recommendation, analysis of future test results, is made for two reasons. First, the normative data obtained could be used to strengthen the arguments for the reasonableness of the recommended standards. Second, such data would provide the scientific community with normative physical fitness data on a large sample (more than 2,500) of the United States population across the complete spectrum of employable ages and across sex and ethnicity. Such information, obtained separately, would cost several millions of dollars. Obtained from an existing testing program, costs would be minimal.

The second recommendation, study replication, meets three needs. First, the results of this study would be strengthened if repeated by a separate and independent authority. Second, potential arguments against country-wide applicability of standards based only on SNLA security force performance could be largely negated by a second study at a different facility. Third, and most important, replication could provide the opportunity for cross-validation by sex, the lack of such cross-validation being the greatest weakness of this study.

Replication need not be nearly as expensive and time consuming as the original Phase III endeavor. The second-generation shoot-back targets developed by SNLA, combined with the experience gained in the initial study, would reduce the costs and time involved considerably.

The final recommendation, that of physiological data anlaysis for potential medical standards revision, is based on the fact that original medical standards were set in the absence of any real measure of the physical demands of job performance. Those measures are now available in the form of the physiological data obtained during this study.

Summary

The above recommendations regarding measures and standards are based on the results of physical fitness and task performance data analysis and represent valid, realistic and conservative parameters. Recommendations regarding implementation are provided in the hope that the smoothest possible transition to the new standards will be achieved. Finally, recommendations for future activities are made in order to suggest ways in which USDOE could achieve maximum benefit from the research results generated by this project.

APPENDIX A

RECOMMENDED SCORES

Points	Offensive		Defensive	
	1-Mile Run (min:sec)	40-Yard Dash (sec)	1/2-Mile Run (min:sec)	40-Yard Dash (sec)
0	> 10:00	> 10.0	> 5:25	> 10.5
5	10:00		5:25	
10	9:50	10.0	5:20	10.5
15	9:40		5:15	
20	9:30	9.5	5:10	10.0
25	9:20		5:05	
30	9:10	9.0	5:00	9.5
35	9:00		4:55	
40	8:50	8.5	4:50	9.0
45	8:40		4:45	
50	8:30	8.0	4:40	8.5
55	8:20		4:35	
60	8:10	7.5	4:30	8.0
65	8:00		4:25	
70	7:50	7.0	4:20	7.5
75	7:40		4:15	
80	7:30	6.5	4:10	7.0
85	7:20		4:05	
90	7:10	6.0	4:00	6.5
95	7:00		3:55	
100	< 7:00	< 6.0	< 3:55	< 6.5

QUALIFIED: 100 points with minimum 50 in each event
SUPERIOR: 150 points
OUTSTANDING: 180 points
MAXIMUM: 200 points

1. Part 1046 is proposed to be added to 10 CFR Chapter X to read as follows:

PART 1046—PHYSICAL PROTECTION OF SECURITY INTERESTS

Subpart A—General

Sec.
1046.1 Purpose.
1046.2 Scope.
1046.3 Definitions.

Subpart B—Protective Force Personnel

1046.11 Medical and Physical Fitness Qualification Standards.
1046.12 Physical Fitness Training Program.
1046.13 Medical Certification.

Appendix A to Subpart B, Part 1046—Medical and Physical Fitness Qualification Standards.

Authority: Sec. 2201, Pub. L. 83-703, 68 Stat. 919 (42 U.S.C. 2011 *et seq.*); sec. 7151, Pub. L. 95-91, 91 Stat. 565, (42 U.S.C. 7101 *et seq.).*

Subpart A—General

§ 1046.1 Purpose.

The purpose of this part is to set forth Department of Energy, hereinafter "DOE," security policies and procedures regarding the physical protection of security interests.

§ 1046.2 Scope.

This part applies to DOE contractor employees at Government-owned

facilities, whether or not privately operated.

§ 1046.3 Definitions.

For the purpose of this part:

Contractor. The term "contractor" includes subcontractors.

Defensive combative personnel. Security inspectors other than offensive combative personnel.

Designated physician. An occupational medical physician who is recommended by the designated management supervisory official of the local DOE field office and authorized by the Medical Director, Office of Operational and Environmental Safety, Headquarters, to determine the medical and physical condition of protective force personnel. When an occupational medical physician is not available, physicians who are not board-certified in occupational medicine may be recommended and authorized by the Medical Director as designated physicians for the purpose of this Part. Designated physicians need not be employed full-time, but contractually shall be responsible to DOE for performance of the medical functions required by this part.

Facility. An educational institution, manufacturing plant, laboratory, office building or other area utilized by the DOE or its contractors or subcontractors for the performance of work under DOE jurisdiction.

Field organization. Any organizational component of the DOE located outside the Washington, D.C. metropolitan area.

Guard. An unarmed individual who is employed for, and charged with, the protection of classified matter or Government property.

Medical condition. The term "medical condition" includes general health, physical fitness and condition, emotional and mental stability, and mental health.

Offensive combative personnel. Security inspectors assigned to response force duties including pursuit and assault functions.

Protective force personnel. Guards and security inspectors assigned to protective details, who are employed to protect DOE security interests.

Security inspector. A uniformed person who is authorized under section 161.k of the Atomic Energy Act of 1954, as amended, or other statutory authority, to carry firearms and to make arrests without warrants and who is employed for, and charged with, the protection of classified matter, special nuclear material, or other Government property.

Subpart B—Protective Force Personnel

§ 1046.11 Medical and Physical Fitness Qualification Standards.

Beginning (insert date 6 months from effective date of regulation), DOE contractors shall not employ as protective force personnel any individual who fails to meet the applicable medical and physical fitness qualification standards or to requalify with such standards as set forth in Appendix A, to this Subpart, "Medical and Physical Fitness Qualification Standards."

§ 1046.12 Physical Fitness Training Program.

Unless the applicable physical fitness qualification standards have been satisfied, each security inspector shall participate in a DOE approved physical fitness training program for the purpose of ensuring such security inspector's ability to meet the physical fitness qualification standards set forth in Appendix A, to this subpart, "Medical and Physical Fitness Qualification Standards."

§ 1046.13 Medical Certification.

Each individual shall have a medical examination within 30 days preceding participation in a physical fitness training program and the physical fitness qualification test, and a determination and written certification by a designated physician that there are no foreseeable medical risks as disclosed by the medical examination to the individual's participation in a physical fitness training program and the physical fitness qualification standards test.

Appendix A to Subpart B of Part 1046

Medical and Physical Fitness Qualification Standards

a. *Applicability.* This Appendix A to Subpart B of Part 1046 provides the minimum medical and physical fitness qualifications, criteria, and guides to be used by designated physicians and management supervisory officials in advising responsible DOE officials whether the medical and physical condition of protective force personnel to be employed by DOE contractors reasonably assures that they can effectively perform their normal and emergency duties without undue hazard to themselves, fellow employees, the plant site and the general public.

B. *Application of Medical Qualification Standards.*

(1) The standards in this Appendix are the minimum necessary to determine the medical and physical capability of protective force personnel to perform all normal and emergency duties effectively and safely.

(2) Security inspector applicants shall meet the applicable standards in this Appendix prior to assignment to security inspector duties.

(3) Incumbent security inspectors shall meet the applicable standards in this Appendix annually or shall be relieved of security inspector duties subject to the provisions in paragraph G below.

(4) Guards shall meet the applicable standards in this Appendix prior to assignment to guard duties and biennially thereafter, subject to the provisions of paragraph J below.

(5) The determination of whether or not the examinee meets the medical standards in this Appendix shall be made by a designated physician.

(6) The determination of whether or not the examinee meets the physical fitness standards in this Appendix shall be made by a designated management supervisory official in coordination with a designated physician.

(7) When a designated physician determines that special medical evaluations and/or practical performance tests are necessary in order for an examinee to demonstrate the examinee's abilities to perform all normal and emergency duties, a determination of the adequacy of performance shall be made by a designated physician.

(8) For those facilities where it is necessary to determine the medical qualification of security inspectors or security inspector applicants to perform special assignment security inspector duties which might require exposure to unusually high levels of stress or physical exertion, field office managers may develop more stringent medical qualification requirements or additional medical or physical tests as necessary for such determinations. All such additional qualification requirements shall be forwarded, with justification, for the approval of the Director of Safeguards and Security, Headquarters, prior to application and if approved, shall be implemented in the same manner that these qualification standards have been implemented.

(9) The provisions of DOE 5480.1A, ENVIRONMENTAL PROTECTION, SAFETY, AND HEALTH PROTECTION PROGRAM FOR DOE OPERATIONS, of 8–13–81, Chapter VIII, Part 4 apply for return to work after recovery from a temporarily disqualifying medical or surgical condition.

C. *Administrative Procedures and Requirements.*

(1) *Medical Confidentiality and Retention of Medical Reports.*

(a) The medical information and data on each employee or applicant shall be maintained as confidential, privileged medical information and shall not be released by a designated physician without the written consent and release of the employee or applicant, except as permitted or required by law.

(b) When an individual has been examined by a designated physician, all available history and test results should be retained by the responsible DOE or DOE contractor medical department, in accordance with DOE 5480.1A, Chapter VIII, Part 4, whether or not the individual completes the examination,

and whether or not potentially disqualifying defects are recorded.

(2) *Change of Health Status of Protective Force Personnel.*

(a) It is the specific responsibility of protective force employees to report immediately to their supervisor any known or suspected change in their health which might impair their capacity for duty or the safe and effective performance of assigned job duties.

(b) Supervisory personnel have the responsibility to make a timely report to a designated physician on any behavorial or health changes or deterioration in work performance that is observed in protective force personnel under their jurisdiction. Examples of areas that may indicate medical or emotional problems include: incidents of ineptness, poor judgment, lack of physical or emotional stamina, social incompatibility, excessive absence, lateness, or a tendency to become accident prone.

(3) *Use of Corrective Devices.*

(a) When the use of corrective devices, such as eyeglasses and hearing aids, is required to enable an examinee to meet successfully medical qualification requirements, a determination shall be made by a designated line supervisory authority that the use of all such devices is compatible with all emergency and protective equipment that the examinee may be required to wear or use while performing his or her assigned job duties.

(b) It is incumbent upon cognizant field office management to exercise all reasonable and practicable effort to accommodate required emergency and protective equipment to the use of corrective devices, including the provision of equally effective alternate equipment if such is available.

(c) If eyeglasses are used, they shall be of the safety glass type.

D. *Security Inspector Medical Qualification Standards.*

(1) *General Qualifications.*

The examinee shall possess mental, sensorial, and motor skills as required to perform safely and effectively all assigned job duties. Such qualifications include:

(a) Mental alertness and reliable judgment;

(b) Acuity of senses and ability of expression sufficient to allow accurate communication by written, spoken, audible, visible, or other signals; and,

(c) Motor power, range of motion, neuromuscular coordination and dexterity.

(2) *Specific Minimum Qualifications.*

(a) *Head, Face, Neck, Scalp.* Configuration suitable for fitting and effective use of personal protective equipment when the use of such equipment is required by assigned normal or emergency job duties.

(b) *Nose.* Ability to detect odor of products of combustion and of tracer or marker gases.

(c) *Mouth and Throat.* Capacity for clear and audible speech as required for effective communication on the job.

(d) *Ears.* Hearing loss in the better ear not to exceed 30 db average at 500, 1000, 2000 Hz with no level greater than 40 db in any of these frequencies (by ISO 1964 and ANSI 1969 audiometry). If a hearing aid is necessary, suitable testing procedures shall be used to assure auditory acuity equivalent to the above requirement.

(e) *Eyes. 1 Distant Visual Acuity.*

(*a*) Uncorrected acuity of no less than 20/200 in the better eye.

(*b*) Corrected acuity of at least 20/30 in the better eye and 20/40 in the other eye.

(*c*) If uncorrected distant vision in the better eye is not at least 20/40, security inspectors shall carry an extra pair of corrective lenses.

2 Near Visual Acuity. Corrected or uncorrected vision of at least 20/40 (14/28 Snellen) in the better eye.

3 Color Vision. Ability to distinguish red, green, and yellow. Special color vision testing and certification shall be required where fine color discrimination is critical to the safe or effective performance of assigned job tasks.

4 Peripheral Vision. Field of vision in the horizontal meridian shall not be less than a total of 140 degrees.

5 Depth Perception. Adequate depth perception as measured by stereopsis or demonstration in a practical operational test.

(f) *Cardiorespiratory.*

Respiratory. Capacity and reserve to perform physical exertion in emergencies at least equal to the demands of the job assignment, and ability to utilize respiratory protective filters and air supply masks when this emergency equipment is required by assigned job requirements.

2 Cardiovascular. Normal configuration and function. Capacity for exertion during emergencies. Normal resting pulse; regular pulse. Full symmetrical pulses in extremities and neck. Normotensive, with tolerance to rapid postural changes. If an examination reveals significant cardiac arrhythmia, murmur, enlargement, hypertension, hypotention, or other evidence of cardiovascular abnormality, an evaluation by a specialist in internal medicine or cardiology may be required and evaluated by a designated physician.

(g) *Abdomen and Viscera.* No clinically significant abnormalities.

(h) *Musculo-Skeletal.* Normal symmetrical structure, range of motion, and power.

(i) *Skin.* No significant abnormal intolerance to chemical, mechanical and other physical agents. Capability to tolerate use of personal protective covering and decontamination procedures when required by assigned job duties.

(j) *Endocrine/Nutritional/Metabolic.* Endocrine nutritional/metabolic status adequate to meet the stresses and demands of assigned normal and emergency job duties. Ability to accommodate to changing work and meal schedules without potential or actual incapacity.

(k) *Hematopoietic.* Normal function.

(l) *Lymphatic.* Normal.

(m) *Neurological.* Normal central and peripheral nervous system function.

(n) *Mental and Emotional.* Normal mental status and an absence of neurotic or psychotic conditions which would affect adversely an ability to handle firearms safely or to act safely and effectively under normal and emergency conditions.

(o) *Laboratory.*

1 Hemogram. Freedom from clinically significant abnormalities of the formed elements of the blood that could reasonably be expected to affect the safe and effective performance of assigned duties.

2 Urinalysis. Absence of proteinuria and glycosuria unless the absence of a disqualifying systemic or genitourinary condition and the absence of significant microscopic abnormality has been demonstrated.

3 Other Studies. Any other medical investigative procedure, including electrocardiogram and chest x-ray, which a designated physician considers necessary for adequate medical evaluation.

E. *Security Inspector Medical Disqualification Standards.*

(1) *Freedom from Incapacity.* The examinee shall be free of any condition, habit, or practice which could reasonably be expected to result in sudden, subtle, or unexpected incapacitation.

(2) *Conditions for Medical Disqualification.* The presence of any of the following conditions shall disqualify the examinee from employment as a security inspector.

(a) *Respiratory.* Significant pulmonary pathology or decrease in pulmonary function which could interfere with the safe and effective performance of assigned job duties.

(b) *Cardiovascular.*

1 Ishemic Heart Disease.

2 Myocardial Infarction.

3 Coronary Insufficiency.

4 Angina Pectoris.

5 Heart Failure.

6 Significant Arrythmia.

7 Arterial Aneurysm.

8 Signficant Peripheral Vascular Insufficiency.

9 Corrective Heart Surgery.

10 Corrective Arterical or Great Vessel Surgery.

11 Prosthetic Valve.

12 Artificial Pacemaker.

(c) *Endocrine/Nutritional/Metabolic.*

1 Any endocrine, nutritional, or metabolic condition that would not allow the examinee adequately to meet the stresses and demands of assigned normal or emergency job duties.

2 Inability to accommodate to changing work schedules or to delay in meals without potential or actual incapacity.

3 Inability to tolerate prolonged used of wearing of protective garments such as respirator masks, air masks, or bullet-resistant garments.

4 Disabetes mellitus requiring the use of insulin. Uncontrolled diabetes, ketoacidosis, or diabetic coma within the previous 2 years.

5 Obesity of such degree that it would interfere with the safe and effective performance of normal and emergency job duties.

(d) *Skin.* Recurrent severe dermatitis of hypersensitivity to irritants or sensitizers sufficient to interfere with wearing required personal protective equipment or likely to be aggravated by or interfere with established or required decontamination procedures.

(e) *Hematopoietic Dysfunction.* Clinically significant hematopoietic disorders which may interfere with the safe and effective performance of assigned job duties.

(f) *Malignant Neoplasms.* Malignment neoplastic disease.

(g) *Neurological.*

1 History of epilepsy or other convulsive disorder.

2 History of any disturbance of consciousness or neurological disease or any other presently existing condition that may interfere with the safe and effective performance of assigned job duties.

(h) *Eyes.* Total Blindness in one or both eyes. (See Chapter 930, Appendix A–3, of the Office of Personnel Management Regulations)

(i) *Mental and Emotional.* An established history or clinical diagnosis of any of the following:

1 Any psychological or mental condition which could cause impaired alertness, judgment, or motor ability. A history of clinically significant emotional or behavioral problems shall require thorough clinical evaluation which may include, but not necessarily be limited to, psychological testing and psychiatric evaluation.

2 Attempted suicide or an expressed threat of suicide.

3 A condition in which a person's intake of alcohol is sufficient to damage his or her physical health, job performance, personal functioning, or when alcohol has become a prerequisite to his or her daily functioning.

4 A condition in which a person is addicted to or dependent or drugs as evidenced by habitual use or a clear sense of need for the drug.

5 The use of prescribed or otherwise legally obtainable medication taken in such a dosage that a temporary delay in taking such medication might result in unacceptable incapacity. For example, certain dosages or requirements for steroids, anticoagulants, antiarrhythmics, sedatives, tranquilizers, etc.

F. *Physical Fitness Standards for Security Inspectors.*

All persons authorized to carry firearms must meet a minimum standard of physical fitness. There are two categories for such persons: Offensive Combative and Defensive Combative. Persons not authorized to carry firearms are exempt from these physical fitness standards.

(1) *Offensive Combative Standard* must be met by all persons assigned to response force duties. The standard is a one (1) mile run with a maximum qualifying time of 8 minutes 30 seconds and a 40 yard prone-to-running dash with a maximum qualifying time of 8.0 seconds

(2) *Defensive Combative Standard* must be met by all other protective force personnel authorized to carry firearms. The standard is a half (0.5) mile run with a maximum qualifying time of 4 minutes 40 seconds and a 40 yard prone-to-running dash with a maximum qualifying time of 8.5 seconds.

(3) *Qualification* in the appropriate combative standard must be accomplished at least annually and under the supervision of the protective force training officer or other individual designated by the responsible DOE field office.

(4) *Medical Certification.* (a) Each individual who participates in a physical fitness training program to prepare to meet the physical fitness standards set forth in this Appendix shall first be certified by a designated physician that he or she is medically fit to participate in the program. This certification shall be obtained not more than 30 days prior to each individual entering the physical fitness training program.

(b) Before any individual takes the physical fitness standards test he or she shall first be certified by a designated physician that he or she is medically fit to take the physical fitness standards test. This certification shall be obtained not more than 30 days before taking the physical fitness qualification test.

(c) Individuals who require less than 30 days training prior to actual testing to meet the physical fitness standards need only obtain a single medical certification.

(5) *Initial Qualification Time Limit.* Individuals authorized to carry firearms shall meet the applicable physical fitness standard by (6 months from date this rule is effective).

(6) *New Employees.* Individuals authorized to carry firearms who are employed after the effective date of this rule shall met the applicable physical fitness standard prior to his or her initial assignment to duties which requires such individual to carry firearms.

(7) *Training Program.* Incumbent security inspectors who do not meet the applicable physical fitness standards set forth above within 30 days of the effective date of this rule shall participate in a physical fitness training program.

G. *Waiver of Security Inspector Medical and Physical Fitness Standards.*

(1) Waivers of elements of the medical standards of this Appendix may be granted for certain otherwise disqualifying medical or physical deficiencies by the cognizant field office management provided that:

(a) The DOE field organization authority, in consultation with a designated physician, determines that a certain medical or physical defect may be considered for waiver without compromising the intent of these medical standards to assure that all security inspectors are capable of safely and effectively performing all normal and emergency duties.

(b) The individual demonstrates by medical examination and/or practical test, as determined necessary by a designated physician, the ability to perform effectively and safely all routine and emergency duties.

(c) A statement of demonstrated ability must be prepared by a designated physician and must clearly (1) identify the individual, (2) state the nature and degree of the specific medical or physical defect, and (3) record the satisfactory medical evaluation and/or performance of the practical test required by a designated physician.

(d) Waivers shall be reviewed, revalidated, and reissued at intervals not to exceed one (1) year.

(e) Individuals who have been adversely affected by application of the standards may appeal the denial of waiver to the cognizant DOE safeguard and security field office for review. Further evidence may be offered relating solely to the medical or physical fitness of the individual involved. Such individual may select a representative of his or her own choice to assist and/or appear in the individual's behalf in any appeal. After findings and a determination have been made at the field office level, such individual has a right to petition the Director of Safeguards and Security, DOE Headquarters, for a final determination based upon his or her review of the record of the case.

(2) There will be no waivers granted from the physical fitness standards set forth in Paragraph F above. However, time extensions not to exceed 6 months may be granted on a case-by-case basis for those individuals who, because of a temporary medical or physical condition as certified by a designated physician, are unable to satisfy the physical fitness standards within the required time period without suffering undue physical harm.

H. *Guard Medical Qualification Standards.*

(1) *General Qualifications.* The examinee shall possess mental, sensory, and motor skills as required to perform safely and effectively all assigned job duties. Such qualifications include:

(a) Mental alertness and reliable judgment.

(b) Acuity of senses and ability of expression sufficient to allow accurate communication by written, spoken, audible, visible, or other signals.

(c) Motor power, range of motion, neuromuscular coordination, and dexterity.

(2) *Specific Minimum Qualifications.*

(a) *Head, Face, Neck, and Scalp.* Configuration suitable for fitting and effective use of personal protective equipment when the use of such equipment is required by assigned normal or emergency job duties.

(b) *Nose.* Ability to detect odor of products of combustion and of tracer or marker gases.

(c) *Mouth and Throat.* Capacity for clear and audible speech as required for effective communication on the job.

(d) *Ears.* Hearing loss not to exceed 50 db average at 500, 1000, and 2000 Hz in one ear (by ISO 1964 or ANSI 1969 audiometry).

(e) *Eyes.* Near and distant visual acuity, with or without correction of at least 20/40 in the better eye. One-eyed individuals may qualify.

I. *Guard Medical Disqualification Standards.*

(1) *Freedom from Incapacity.* The examinee shall be free of any condition, habit, or practice which could reasonably be expected to result in sudden, subtle, or unexpected incapacitation.

(2) *Conditions for Medical Disqualification.* The presence of any of the following conditions normally shall disqualify the examinee from employment as a guard:

(a) *Respiratory.* Significant pulmonary pathology or decrease in pulmonary function which could interfere with the safe and effective performance of assigned job duties.

(b) *Cardiovascular.*

1 Ischemic Heart Disease.

2 Myocardial Infarction.

3 Coronary Insufficiency.

4 Angina Pectoris.

5 Heart Failure.

6 Significant Arrythmia.

7 Arterial Aneurysm.

8 Significant Peripheral Vascular Insufficiency.

(c) *Endocrine/Nutritional/Metabolic.*

1 *Diabetes Mellitus.* Uncontrolled diabetes, ketoacidosis, or diabetic coma within the previous two years.

2 *Obesity.* Obesity of such degree that it would interfere with the safe and effective performance of normal and emergency job duties.

(d) *Hematopoietic Dysfunction.* Clinically significant hematopoietic disorders which may interfere with the safe and effective performance of assigned job duties.

(e) *Malignant Neoplasms.* Malignant neoplastic disease.

(f) *Neurological.*

1 History of epilepsy or other convulsive disorder.

2 History of any disturbance of consciousness or neurological disease or any other presently existing condition that may interfere with the safe and effective performance of assigned job duties.

(g) *Mental and Emotional.* An established history or clinical diagnosis of any of the following:

1 Any psychological or mental condition which could cause impaired alertness, judgment, or motor ability. A history of clinically significant emotional or behavioral problems shall require thorough clinical evaluation which may include, but not necessarily be limited to, psychological testing and psychiatric evaluation.

2 Attempted suicide or an expressed threat of suicide.

3 A condition in which a person's intake of alcohol is sufficient to damage his or her physical health, job performance, personal functioning, or when alcohol has become a prerequisite to his or her daily functioning.

4 A condition in which a person is addicted to or dependent on drugs as evidenced by habitual use or a clear sense of need for the drug.

5 The use of prescribed or otherwise legally obtainable medication taken in such a dosage that a temporary delay in taking such medication might result in unacceptable incapacity. For example, certain dosages or requirements for steroids, anticoagulants, antiarrhythmics, sedatives, tranquilizers, etc.

J. *Waiver of Guard Medical Standards.*

Waivers of elements of the medical standards of this Appendix may be granted for certain otherwise disqualifying medical or physical deficiencies by the cognizant field office management provided that:

(1) The field organization authority, in consultation with a designated physician, determines that a certain medical or physical defect may be considered for waiver without compromising the intent of these medical standards to assure that all guards are capable of safely and effectively performing all normal and emergency duties.

(2) The individual demonstrates by medical examination and/or practical test, as determined necessary by a designated physician, the ability to perform effectively and safely all routine and emergency duties.

(3) A statement of demonstrated ability must be prepared by a designated physician and must clearly (1) identify the individual, (2) state the nature and degree of the specific medical or physical defect, and (3) record the satisfactory medical evaluation and/or of performance of the practical test required by a designated physician.

(4) Waivers shall be reviewed, revalidated, and reissued at intervals not to exceed two (2) years.

(5) Individuals who have been adversely affected by application of these medical standards may appeal the denial of waiver to the cognizant DOE safeguard and security field office for review. Further evidence may be offered relating solely to the medical or physical fitness of the individual involved. Such individual may select a representative of his or her own choice to assist and appear in the individual's behalf in any appeal. After findings and a determination have been made at the field office level, such individual has a right to petition the Director of Safeguards and Security, DOE Headquarters, for a final determination based upon his or her review of the record of the case.

K. *Uniform Application.*

With respect to contractor-employed protective force personnel, contractors shall administer and apply the medical and physical fitness qualifications set forth above in accordance with their published personnel policies and practices, including the provisions of existing collective bargaining agreements and consistent with the policies set forth in DEAR 970.2201(b)(2). Where existing labor or collective bargaining agreements are in conflict with the provisions of this rule, such agreements shall be brought into conformance with this rule immediately.

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Monday
May 14, 1984

Part VI

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standard; Occupant Crash Protection; Supplemental Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-14; Notice 35]

Federal Motor Vehicle Safety Standard; Occupant Crash Protection

AGENCY: Department of Transportation.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: On October 19, 1983, the Department of Transportation published a notice of proposed rulemaking (NPRM) proposing several alternative actions regarding protection for an automobile's front seat occupants in case of frontal, side-impact, and roll-over accidents. We received over 6,000 comments on our NPRM, some of which raised complex issues or led to the development of other alternatives requiring further analysis. This notice supplements the NPRM and asks for comments on the remaining issues and alternatives.

DATE: Comments on this notice must be received on or before June 13, 1984.

ADDRESS: Comments should refer to the docket and notice numbers set forth above be submitted to: Docket Section, Room 5109, 400 Seventh Street, SW, Washington, D.C. 20590. Docket hours are 8:00 a.m. to 4:00 p.m. (EDT), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Neil R. Eisner, Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-4723).

SUPPLEMENTARY INFORMATION:

Background

On October 23, 1981, the National Highway Traffic Safety Administration (NHTSA) issued an order pursuant to section 103 of the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1392, amending Federal Motor Vehicle Safety Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208; "FMVSS 208"), by rescinding the provisions that would have required the front seating positions in all new cars to be equipped with automatic restaints (46 FR 53419; October 29, 1981).

On June 24, 1983, the Supreme Court held that NHTSA's rescession of the automatic restraint requirement failed to meet the arbitrary or capricious standard of the Administrative Procedure Act, 5 U.S.C. 706(2)(A). *Motor Vehicle Manufacturer's Association* v. *State Farm Mutual Automobile Insurance Co.*, 103 S. Ct. 2856. In particular, the Court found the agency had failed to present an adequate basis and explanation for rescinding the requirement on three critical points. The Court stated, also, that the agency must either consider the matter further or adhere to or amend the standard along the lines that its "reasoned analysis" and explanation supports.

In response to the Supreme Court decision, on October 19, 1983, the Department of Transportation published an NPRM proposing several alternative actions to address the issue of protection for an automobile's front seat occupants in case of frontal, side-impact, and roll-over accidents (48 FR 48622; October 19, 1983). We received over 6,000 comments on that NPRM. Some of these comments raised issues or led to the identification of other altenatives on which we would like to receive further public comment. In addition, as the remainder of this notice makes clear, there remains significant uncertainty concerning the very issues the Supreme Court directed the agency to assess and explain further—the suitability of air bags as a mandatory crash protection system, the public acceptability of automatic safety belt systems and the likely usage rates of detachable automatic safety belts. These uncertainties result from the paucity of hard data provided to the Department during the comment period on the NPRM. We would like to stress that comments should be limited to the issue and alternatives raised in this SNPRM: It is not necessary to resubmit comments on the issues and alternatives raised in our October 19 NPRM.

Public Acceptance

In our NPRM, we noted that some of the available evidence can be interpreted to indicate singificant opposition in the United States to efforts through the force of law or technological means to compel the use of safety belts. Although we did raise the issue of whether the public's hostility might cause removal of the automatic restraint from the automobile, the primary emphasis in the NPRM was on the general phrase "public acceptability," without further definition. In this regard, it is important to note that some have argued that "public acceptability" has a very narrow legal interpretation. In a submission to the rulemaking docket, State Farm Mutual Automobile Insurance Company contends that public acceptability is only to be considered to the extent that people will render the safety equipment useless by disabling it. If the public will tolerate and use the system in sufficient numbers for the potential benefits to be realized, then, State Farm argues, the requirement meets any statutory test of public acceptability. The Department would like public comment on this interpretation. Any comment should, of course, provide the basis for the conclusions reached.

Assuming that this interpretation is correct, we then must consider the related issue of what percentage of front seat occupants would defeat an automatic restraint and whether that perentage would be sufficient to prevent the necessary safety benefits of the system from being achieved. In other words, would enough safety benefits be achieved to justify the restraint system? Another commenter, the Pacific Legal Foundation, for example, argues that the number of people who defeated the seat belt-ignition interlocks that were required in the mid-1970s indicates that a sufficiently high number of people will defeat automatic occupant restraints to defeat the overall benefits of the system.

Effectiveness

The benefits of an occupant restraint system depend both on the degree to which it is used and on its effectiveness. Effectiveness is generally expressed as the amount (in percentage terms) that injuries or deaths are reduced for restrained occupants when compared to those who are unrestrained.

After publication of the NPRM on October 19, 1983, the Department assembled a task force to review and, if necessary, develop revised estimates of the effectiveness of various restraint systems. The task force was comprised of NHTSA employees who are experts in the field of restraint design, crash testing and accident data analyses. As part of this effort, the task force analyzed data available from the National Crash Severity Study (NCSS), the National Accident Sampling System (NASS), and the agency's Fatal Accident Reporting System (FARS).

Because safety belt usage has been low and only a small number of cars have automatic belts or airbag systems, very little accident data exist from which to develop "real world" effectiveness estimates for these systems. Thus, adjustments had to be made to extrapolate likely future effectiveness of occupant restraints from the existing data. A number of approaches were utilized to accomplish this.

For airbags, the task force's estimates were based on: (1) Controlled tests with dummies, and (2) analyses of accidents of cars without airbags in which subjective judgments were made

regarding whether the presence of an airbag might have prevented a death or injury. The analyses involved four new studies. Three studies were concerned with fatality effectiveness. They used the NCSS, a major accident data collection program designed to result in a nationally representative sample, as a fundamental source of accident data. Effectiveness was estimated by partitioning the NCSS accidents into various sub-groups by distinguishing characteristics and then making judgments about whether an airbag could have prevented the fatalities that ocurred in that sub-group. A fourth study estimated moderate to critical injury effectiveness by comparing injury rates sustained in the airbag fleet cars to a comparable non-airbag group in the NCSS file.

Even the more extensive manual safety belt accident data required further analysis. Based on an analysis of accident severity, people who presently wear safety belts tend to be involved in less severe, hence less serious, accidents than those who fail to use belts. As safety belt effectiveness decreases in very severe crashes as compared to more moderate accidents, data in the accident files regarding manual belt effectiveness had to be adjusted to accurately estimate belt effectiveness under assumptions of increased belt use. This was necessary to account for the increasing number of severe crashes involving seatbelt users that would result if presently unbelted occupants were assumed to be restrained by a belt.

With respect to automatic belts, recent research by the Canadian government has indicated that the absence of a lap belt may result in the 2-point automatic belt being less effective in preventing ejection. In addition, the door mounted, 2-point belt may have little capability of preventing ejection of an occupant in the event of an accidental door opening during a collision. However, even a 3-point automatic belt will not prevent all fatalities involving ejection, since some fatalities occur as a result of impacting interior components before ejection, while others occur as result of occupant contact with objects outside the vehicle after partial ejection. Moreover, the door mounted belt in the 2-point system may actually prevent door openings in many instances, since the "loading" of the belt (which is attached to the door) can tend to keep the door closed during a crash.

To determine the effectiveness of automatic belts, the Department reviewed a number of different data sources: analyses of accidents involving existing automatic belt systems, crash tests, and the Canadian study discussed above. Based on manufacturer submissions to the Department, some manufacturers may use a 3-point automatic lap/shoulder belt. In addition, in our analysis of accident data involving VW rabbits with automatic belts, (which are 2-point belts with knee bolsters), we were unable to determine with certainty the usage rates of the automatic belts. Because of a lack of firm usage data, we could not precisely estimate effectiveness. Three-point automatic belts should be as effective as manual belts, and our estimates for effectiveness of automatic belts reflect this; the estimates have been adjusted downward by 5 percent at the lower end of the range because there is some evidence that 2-point belts are less effective than 3-point belts.

To portray accurately the limited amount of available data and the subjective nature of necessary adjustments, ranges of effectiveness estimates were developed for each type of restraint. The summary of effectiveness estimates is displayed in Table 1. The derivation of the numbers in the table can be found in a Departmental analysis of effectiveness, which has been placed in the docket. Comments are invited on the approach utilized by the Department in developing these estimates and on the estimates themselves.

Usage

Manual belts

Despite the various changes to inertial seatbelt designs to improve belt usage (replacing separating lap and shoulder belts and buckles with an integrated lap and shoulder belt having a single buckle and adding an inertial reel to give occupants freedom of movement) and to remind occupants to use their belts (adding brief audible and visible reminders), the rate of manual belt usage has not changed substantially over the 15-year history of FMVSS 208 (except during the brief period around 1973 when interlocks and continuous buzzers were used).

Based on recent NHTSA data, the overall safety belt usage rate for front seat occupants is 12.5 percent. This information also showed that usage varies significantly by seating position—14 percent for drivers, 8.4 percent for passengers in the right front seat, and 5 percent for passengers in the center seat.

TABLE 1.—SUMMARY OF EFFECTIVENESS ESTIMATES

[All accident directions]

Injury	Manual lap belts	Manual lap and shoulder belts	Automatic belts[1]	Airbags alone	Airbags and lap belts	Airbags and lap/shoulder belts
Fatal	30–40	40–50	35–50	20–40	40–50	45–55
Moderate to critical	25–35	45–55	40–55	25–45	45–55	50–60
Minor	10	10	10	10	10	10

[1] Current data indicates that 2-point automatic belts may be 5 percent less effective than manual lap and shoulder belts, and that 3-point belts may be as effective as manual belts; the lower end of the range in this table for automatic belts reflects a 5 percent reduction for 2-point belts.

N.B.: A knee restraint is assumed to be an integral part of all airbag systems and some automatic belt systems

Automatic belts

Usage rates for automatic belts vary substantially depending on the particular type of belt design and on the method of measuring usage. (Around 500,000 American fleet automobiles have been equipped with automatic belts; they include some 1975–1984 VW Rabbits, 1978–1980 GM Chevettes, and the 1981–1984 Toyota Cressidas.) However, studies of usage rates of existing automatic restraints are not necessarily applicable to systems that would be used to comply with a regulation. For example, some of the existing systems are equipped with starter interlocks (which DOT is prohibited from requiring), owners of some of the equipped automobiles were atypical, some purchased the systems voluntarily, disconnecting and storing of the belts on some systems was very easy, some were installed only on rental vehicles (drivers may be atypical and, also, may not try to take long-term action to defeat the system), and some involved motorized (with easier ingress and egress) systems.

The Department's current estimate is based on an analysis of usage of existing systems and surveys of usage and attitudes. Essentially, we attempted to determine whether certain features of automatic belts might overcome some of the reasons people do not use manual belts. We are currently employing usage estimates for automatic belts of 20, 50 and 70 percent (see Table 3), although we would expect actual usage to be toward the lower end of this range. The Supreme Court, in *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut.*, 103 S.Ct.2856

(1983), stated that usage rates for automatic belts should be higher than current manual belt usage because of the automatic nature of the belt, which would overcome some of the stated reasons for not buckling up: laziness, forgetfulness, and not wanting to be bothered. In responding to NHTSA's argument that even a five percentage point increase in belt use cannot be reliably predicted for automatic belts, the Supreme Court said:

> But this and other statements that passive belts will not yield substantial increases in seatbelts usage apparently take no account of the critical difference between detachable automatic belts and current manual belts. A detached passive belt does require an affirmative act to reconnect it, but—unlike a manual seatbelt—the passive belt, once reattached, will continue to function automatically unless again disconnected. Thus, inertia—a factor which the agency's own studies have found significant in explaining the current low usage rates for seatbelts—works in favor of, not against, use of the protective device. Since 20 to 50 percent of motorists currently wear seatbelts on some occasions, there would seem to be grounds to believe that seatbelts used by occasional users will be substantially increased by detachable passive belts *State Fram* at 2872.

While the Department agrees that automatic belt usage should be higher than current manual belt usage, there is no way to know precisely how much higher this would be. For example, detachable automatic belts are as easy to detach as current manual belts, yet some designs of these systems present difficulties in entering and exiting the automobile. The actual usage rate for various automatic belt systems will depend upon many considerations, such as comfort and convenience (including ease of entry and exit) and appearance (the existence of the webbing). Education programs and the proven on-the-road effectiveness could also affect usage. We would like public comment on the issues raised in this section, and any additional data that might narrow the very wide range of uncertainty concerning likely usage rates of various automatic belt systems.

Airbags

Impact protection benefits for airbags do not depend on usage since the occupant does not have to do anything. However, for maximum protection, a lap belt should also be use. (This is discussed further in the "Benefits" section of this SNPRM.) As to whether airbags will deploy when they should, the Department believes that airbag technology is reliable and that airbags would function properly (they will not activate inadvertently and they will activate when they should) in virtually all instances. The automobile manufacturers agree.

Although usage is not a factor with airbags, there are two related issues: In how many accidents will there be no airbag to deploy because: (1) It had deployed earlier and not been repaired, or (2) it had been disabled or dismantled for whatever reason (e.g., fear of inadvertent deployment)?

Based on an analysis of the number of automobiles involved in accidents, the Department has determined that, if all automobiles were equipped with airbags and none of the airbags were repaired after an accident, 1.2 percent of the fleet would be without airbags at all times. This figure would be slightly higher if there were inadvertent deployments and they were not repaired. We have no reliable methodology for determining what percent of these airbags would, in fact, not be repaired. Because it would be very difficult to dismantle or remove an airbag—much more difficult than a belt system—and because it is not visible like an automatic belt, we estimate that only a small percent of car owners—perhaps one percent—would defeat the airbag. If, as a result of these two problems, two percent of all automobiles were without airbags at any one time, airbags would still be ready to deploy in 98 percent of the fleet. Thus, for analysis purposes, we are estimating that an airbag would be "used" at least 98 percent of the time. We would like public comment on this particular issue as well as the others raised in this section.

Benefits

As we noted earlier, the safety benefits to be derived from any occupant restraint system are a function of both the usage of the system and its effectiveness, when used, in reducing injuries or deaths. In Table 2 we provide the number of fatalities and injuries to front seat automobile occupants that we have estimated for 1990, if no occupant restraints were used, and the number that are anticipated if manual/lap shoulder belts were used at the rate of 12.5 percent (the current average usage rate for all front seat occupants). In Table 3, we show the incremental annual benefits that could result from automatic occupant restraints or mandatory belt use laws. These are the benefits over and above those accruing from current levels of restraint usage. They assume full implementation; i.e., they are the annual benefits that would result after automatic restraints were installed in virtually all cars or mandatory use laws were in effect in all states. Since the estimates in Table 1 used a range for the effectiveness for each of the restraint systems, the benefits in Table 3 are also given over a range; the benefits are provided for the low end, mid-point and high end of the effectiveness range. (For example, if airbags have a 20 percent effectiveness (the low end of the range of effectiveness), used without lap belts they should prevent 3,780 fatalities; if they are 40 percent effective (the high end), they should prevent 8,630 fatalities.) For automatic restraints we provide figures for airbags only, airbags with lap belts, and airbags with lap and shoulder belts. For automatic belts and mandatory seatbelt use laws, we provide data for a usage range of 20 to 70 percent. The data on mandatory belt use laws is based on the effectiveness estimates for manual belts.

TABLE 2.—FATALITY AND INJURY ESTIMATES FOR 1990

	Fatalities	Moderate-critical injuries	Minor injuries
No occupant	26,017	395,200	2,987,200
Manual lap/shoulder belts (12.5% usage)	24,560	370,000	2,950,000

TABLE 3.—ANNUAL INCREMENTAL REDUCTION IN FATALITIES AND INJURIES AS A FUNCTION OF OCCUPANT RESTRAINT AND RESTRAINT EFFECTIVENESS

	Fatalities			Moderate-Critical Injuries		
	Low	Mid-point	High	Low	Mid-point	High
Airbags only	3,780	6,190	8,630	73,660	110,360	147,560
Airbags with lap belts (12.5 percent usage)	4,410	6,670	8,960	83,480	117,780	152,550
Airbag with lap/shoulder belts (12.5 percent usage)	4,570	6,830	9,110	85,930	120,250	155,030
Automatic Belts						
Usage:						
20 percent	520	750	980	8,740	12,180	15,650
50 percent	3,230	4,060	4,900	55,610	68,230	81,000
70 percent	5,030	6,270	7,510	86,860	105,590	124,570
Mandatory Belt Use Laws (Manual Belts)						
Usage:						
20 percent	770	870	980	12,620	14,130	15,650
50 percent	3,860	4,380	4,900	65,300	73,100	81,000
70 percent	5,920	6,720	7,510	100,430	112,410	124,570

For the calculations in Table 3, belt usage with airbags was assumed to be at the current average 12.5 percent level for front seat manual belt usage. A lap belt should be worn with an airbag to obtain maximum protection in side and roll over accidents, as well in frontal crashes. Because of this, questions arise over the usage rate of the belt system supplied with an airbag. (We do not know whether manufacturers would supply lap/shoulder belts or just lap belts.) On argument is that belt use would decline because people would believe that airbags give ample protection. On the other side, it is contended that usage will increase if just lap belts are provided because the shoulder belt portion makes the belt uncomfortable to some poeple; lap belt usage in the past was near 20 percent. Education may help overcome the "decrease" argument but habit (people are unlikely to change their habits) may also overcome the "increase" argument.

As a result, in our benefit calculations, we have assumed that current belt usage will continue with respect to the belts accompanying airbags. We have, however, also provided data on the benefits of airbags even if belts were not used. Because we are uncertain about actual usage rates under mandatory belt use laws or for automatic belts, we have provided a range of benefits.

We would like public comment on both the assumptions we made to develop the safety benefit data as well on the actual data that was developed; i.e., will the various systems prevent the number of fatalities and injuries set forth in Table 3.

The potential reduction in fatalities and injuries that would result from automatic restraints could produce a corresponding decrease in funeral, medical, and rehabilitation expenses. A reduction in these expenses could, in turn, result in reductions in premiums for any insurance that covers them. Automobile insurance premiums could also increase to cover added expenses due to accidents or thefts involving airbag equipped automobiles. The insurance companies were generally reluctant to commit to any specific premium reduction because, they stress, premiums are based on actual loss experience. Therefore, we cannot be certain that consumers would receive any reductions.

Based on our calculations of the number of fatalities and injuries that would be prevented, we have estimated that, over the life of each vehicle, the discounted value of automobile insurance savings (assuming a 10 percent discount rate, a 10-year vehicle life, and low and high effectiveness values) should be between $67 to $123 for cars equipped with airbags. Spread over the entire vehicle fleet (including uninsured vehicles), the discounted value is between $62 to $115. For belt systems, the savings would depend upon usage rates but could be between $65 to $94 per insured car, if usage rose to 70 percent; at 20 percent usage, the figures would be between $5 to $14, respectively.

We have also calculated that between $47 million and $1.082 billion could be saved annually in health, government, and workers compensation insurance. The discounted value of future health, government, and workers' compensation insurance savings expressed on a per vehicle basis would be in the range of $2 to $54. There would also be small savings in life insurance premiums.

Table 4 summarizes the insurance savings that could result from a requirement for automatic occupant restraints. Midpoint values have been used for illustrative purposes.

TABLE 4.—SUMMARY OF POTENTIAL INSURANCE PREMIUM SAVINGS [1] FROM AUTOMATIC RESTRAINT REQUIREMENTS

[In 1982 dollars]

	Mid-point effectiveness range				Total annual savings (millions)
	Insured vehicles		All Vehicles		
	Annual savings	Lifetime [2] savings	Annual savings	Lifetime [2] savings	
All airbags:					
Auto insurance	14	95	13	89	1,774
Health insurance	NA	NA	6	42	834
Life insurance	NA	NA	1	5	93
Total	NA	NA	20	136	2,701
Automatic belts:					
Auto insurance:					
20 percent usage	1	10	1	9	180
70 percent usage	13	85	12	79	1,580
Health insurance:					
20 percent usage	NA	NA	0	4	65
70 percent usage	NA	NA	6	37	743
Life insurance:					
20 percent usage	NA	NA	0	1	10
70 percent usage	NA	NA	1	4	88
Total:					
20 percent usage	NA	NA	1	14	275
70 percent usage	NA	NA	19	120	2,411

[1] Values for automatic belts are upper limit; they do not account for lower belt usage by those involved in accidents.
[2] Assuming a 10 percent discount rate a 10-year vehicle life.

If airbags are required in all automobiles, collision and property damage liability insurance policies will have to absorb additional costs for replacing deployed airbags, for the value airbags add to vehicles that are "totalled" and for the added costs that will result when some damaged vehicles are considered "totalled" instead of repairable because of the added costs of replacing the airbags. Comprehensive insurance policies will also have to absorb additional costs for the value that airbags add to vehicles that are stolen or damaged by such things as fire and flood. The cost to insurance companies for these airbags would be increased by the average depreciated value of airbags in the vehicles. These additional losses from airbags may cause premium increases, over the life of each insured vehicle (assuming a 10 percent discount rate and a 10-year vehicle life), of $3.65 for comprehensive, $13.45 for collision, and $6.35 for property damage liability. For all vehicles (including uninsured vehicles), these losses would average $2.77 for comprehensive, and about $8.85 for collision and $5.95 for property damage liability. This information is highlighted in Table 5.

We would like comment on whether our estimates of the insurance savings

and costs are accurate. If accurate, we wish to know whether the entire amount of insurance savings will be passed on to the consumer as premium reductions. We would also like to know whether—and, if so, how—such premium reductions can be assured. If the entire amount of any savings would not be passed on to the insured, we would like the rationale for why they cannot be.

TABLE 5.—SUMMARY OF POTENTIAL AUTOMOBILE PHYSICAL DAMAGE PREMIUM COSTS RESULTING FROM AIRBAGS

[In 1982 dollars]

	Per insured vehicle annual cost	Per insured vehicle life-time [1] cost	Per vehicle annual cost	Per vehicle life-time [1] cost	Total annual costs (millions)
Collision	1.90	13.45	1.31	8.85	177.2
Property damage liability	.94	6.35	.88	5.95	118.1
Comprehensive	.54	3.65	.41	2.77	55.4
Total [2]			2.60	17.57	350.7

[1] Assuming a 10 percent discount rate and a 10-year vehicle life.
[2] No total is provided for per insurance vehicle figures because each type of insurance covers a different number of vehicles. The addition of these numbers would, therefore, be meaningless.

A number of commenters, including insurance companies, have stressed the benefits of automatic restraints and have provided estimates on the number of fatalities or injuries that would be prevented. Yet many insurance companies are reluctant to commit to any insurance premium reductions if automatic restraints are required—even reductions smaller than the accident savings they anticipate. They cannot do so, they contend, because premiums are based on actual loss experience. Considering how certain so many are about how high the level of benefits associated with automatic restraints will be and, more importantly, considering how valuable premium reductions may be to ensuring public acceptability of automatic restraints and their increased cost, it is unclear why the insurance companies will not commit to at least some significant premium reduction beginning with the introduction of any automatic restraints. If a level of certainty sufficient to justify a mandatory national requirement exists, why is that certainty insufficient to justify a premium reduction in anticipation of decreased insurance losses? What significance should be attached to the reluctance of the insurance companies to commit themselves prior to analyzing their actual loss experience? Finally, why do insurance markets currently fail to provide incentives for use of manual belt systems, which generally are as or more effective than automatic restraints yet are considerably less costly to consumers of automobiles and automobile insurance? The Department requests further public comment on these issues.

Test Procedures

Since 1979, NHTSA has been conducting crash tests to develop a consumer information program on the comparative crashworthiness information about new cars. The program, known as the New Car Assessement Program (NCAP), relies on data obtained from a single crash test of each vehicle conducted according to test procedures similar to those prescribed in FMVSS 208 but at a higher speed of 35 mph.

From the outset of the program, criticism has been voiced that the results from a single crash test of a vehicle do not necessarily represent the true frontal crash protection provided by the vehicle. To address these criticisms and to begin to assess the repeatability of crash tests, NHTSA conducted a series of 12 crash tests of a single model, the Chevrolet Citation. The test vehicles were produced in one plant on a single shift, so that they would be as similar as possible. The tests were conducted at three test facilities during 1983. NHTSA followed the standard NCAP test procedure. At the same time, General Motors conducted a series of four tests of Chevrolet Citations produced at the same time and in the same plant as the cars tested by NHTSA. GM did not follow precisely the NCAP test procedure but did follow procedures permitted by FMVSS 208's compliance test specifications.

The results of NHTSA's and GM's repeatability crash tests and the public comments on them are contained in Docket 83–03, which NHTSA has incorporated into the record of this proceeding. In brief, NHTSA's 12 tests produced driver Head Injury Criteria (HIC) readings from 495 to 954. Passenger HIC readings ranged from 542 to 793. GM's four tests produced driver HIC's from 620 to 970 and passenger HIC's from 940 to 1960.

Citing these results, some comments in the docket have raised concern that the test procedures in FMVSS 208 would not produce repeatable results, thereby failing to meet the statutory criteria that a standard be objective and practicable. The docket also reflects the concern of some commenters that certain specific components of the test procedure may not meet the need for motor vehicle safety. These commenters point to two appellate court cases interpreting the statutory concepts of "objectivity" and "practicability."

In *Chrysler Corp.* v. *DOT*, 472 F.2d 659 (6th Cir. 1972) (subsequent references to this decision will be to *"Chrysler"* and a page number from the decision), the Sixth Circuit Court of Appeals found that the test procedures and the test device specified by FMVSS 208 (as issued in 1971) were not objective. "Objective" was defined by the court to mean in the context of this case:

> That tests to determine compliance must be capable of producing identical results where test conditions are exactly duplicated, that they be decisively demonstrable by performing a rational test procedure, and that compliance is based upon the readings obtained from measuring instruments as opposed to the subjective opinions of human beings. *Chrysler* at 676.

The court described some particular examples in which permissible variations in the test procedure could produce wide variations in test results and noted with disapproval the agency's offer to investigate whether differences in test results (between manufacturer tests and agency compliance tests) were due to differences in the test dummies. The court stated that in this regard, "objectivity requires that each essential element of compliance be made by specified measuring instruments; there is no room for an 'agency investigation' in this procedure." *Chrysler* at 678.

In 1978, the Ninth Circuit Court of Appeals invalidated portions of FMVSS 121 regulating air brakes on trucks and tractor-trailers. *Paccar, Inc.* v. *NHTSA*, 573 F.2d 632 (9th Cir. 1978). In *Paccar*, the court found that the standard's compliance test procedures were objective (as defined by the Sixth Circuit Court in *Chrysler*) but not practicable because:

> The fluctuations in skid numbers on a given road surface make it impracticable for manufacturers to conduct tests that will assure that their vehicles will exactly meet the objective standard when tested by NHTSA. Their only recourse will be, not

simply to comply with the stated standard, but to overcompensate by testing their vehicles on road surfaces substantially slicker than official regulations require. *Paccar* at 644.

The commenters' concerns about repeatability include issues relating to the test dummy specifications, the compliance test procedures and the apparent need to "overdesign" in order to ensure compliance. These issues are discussed individually below.

After the *Chrysler* case invalidated portions of Standard 208 in 1972, NHTSA acted expeditiously to provide detailed specifications for test dummies to address the specific concerns raised by the *Chrysler* court. (See 49 CFR Part 572 for these specifications.) NHTSA concluded at that time that the new test dummy specifications ensured that the device was sufficiently repeatable for compliance test purposes. We continue to believe that the test dummy is a repeatable test device and is not a major source of the variability found in NHTSA's 35 mph repeatability test series. (NHTSA has recently received a petition for rulemaking from General Motors to permit the optional use of a new dummy, the Hybrid III. The agency is actively considering this petition and will address the merits of the GM petition at a later date. The agency's consideration of this petition or other possible improvements to the dummy specifications does not alter the agency's conclusion that the current test dummy satisfies all legal criteria.) We specifically request comments on this conclusion. Commenters should specifically address whether the test dummy specified in Part 572 satisfies the statutory criteria for a motor vehicle safety standard (objectivity, practicability, and meeting the need for auto safety).

With regard to the repeatability of the FMVSS 208 test procedure, Ford Motor Company argued in several submissions to the docket that the current test procedures were neither practicable nor objective due to the variability associated with the compliance test procedures. Ford stated that the variability shown in NHTSA's NCAP repeatability tests was so high that it would have to design a vehicle to meet a HIC of 561, in order to be reasonably certain that a randomly selected vehicle would pass a compliance test. Ford believes that this degree of overcompensation is unreasonable, and calls into question the objectivity and practicability of the standard's test procedures. General Motors has also questioned the practicability of the test procedures. GM stated that the NCAP repeatability series demonstrated variations of plus or minus 63 percent in test results and produced a coefficient of variation of more than 21 percent, which GM deemed unacceptable.

In contrast, the Insurance Institute for Highway Safety (IIHS) also addressed the repeatability issue in its comments and concluded that tests conducted according to NHTSA's NCAP test procedures (identified as IP 212–02) are repeatable. IIHS noted that the significantly higher HIC values and lap and shoulder belt loads obtained in GM's four tests correlated to GM's use of a different test procedure during its testing. (While different from that used in NHTSA's NCAP testing, the procedure used by GM is permissible under FMVSS 208's test procedures.)

As a result of the NCAP repeatability series, NHTSA has modified its NCAP test procedures to eliminate confusion that was observed in the repeatability series and to provide additional test procedure specificity. These changes are expected to decrease possible test procedure variability. These revised procedures affect foot positioning of the dummy and guidance on applying the force used in positioning the upper torso of the test dummy in the vehicle seat. Because we believe that these changes to the test procedure will reduce variability, we are proposing to adopt the relevant NCAP test procedures, as modified after the repeatability test series, as the compliance procedures for FMVSS 208, but to retain the 30 mph crash speed required by the standard. (We are not proposing to require those aspects of the NCAP test procedures that are strictly limited to consumer information, such as those specifying the placement of several high-speed cameras.) Although NHTSA has not previously incorporated the compliance test procedure into the Standard, the procedure is clearly an integral part of the Standard and changes to the procedure should be made only through the rulemaking process so that all parties have an opportunity to comment. We are interested in obtaining comments on the effect of adopting the NCAP procedures as the compliance procedure for FMVSS 208. Given that some "variability" will always exist, commenters are asked to specify what they believe to be a reasonable range of variability, within the meaning of the *Chrysler* and *Paccar* cases. We would also like comment on the point raised by Ford Motor Company that the variability seen in NHTSA's NCAP repeatability series would require an unreasonable amount of "overdesign" in order to ensure with reasonable certainty that a vehicle would pass a compliance test. In this regard, we are interested in comments on what a reasonable level of "overdesign" would be, especially in light of the long-standing and well-known industry practice of "overdesigning" vehicles to exceed the minimum levels of protection specified by Federal Motor Vehicle Safety Standards, and what the direct and indirect consequences of such "overdesign" are. We are also interested in comments on the relevance of the Citation variability tests (conducted at 35 mph) to the FMVSS 208 compliance tests (specified to be conducted at 30 mph) and the applicability of the new Citation results to other vehicles. With the exception of the improved test procedures proposed above, we do not believe that additional changes are necessary to the test procedure to eliminate variability. We believe that the variability remaining after amending the compliance test procedures would be due largely to vehicle-to-vehicle differences, which are outside the control of the Department.

Regarding another test procedure issue, Ford Motor Company argued that the 30 degree oblique test required by the FMVSS 208 compliance procedures is an obstacle to producing vehicles equipped with airbags. Ford argues that the oblique tests are unnecessary and undesirable; Ford maintains that oblique tests add costs, lead time and greater variability to the test results. While Ford did not provide specific data to support each of these arguments, we have our own concerns that the oblique test may be redundant and thereby impose regulatory obligations without meeting the need for motor vehicle safety. It is well known that the crash pulse is less severe in oblique tests, resulting in less serious injury measurements on test dummies. This conclusion is supported in NHTSA's own data, which show consistently lower HIC's and other measurements in oblique crashes. The traditional rationale for requiring the oblique tests has been to ensure that vehicles were designed in such a way as to prevent injuries occurring from sideways motion of the test dummy. We are aware of this traditional rationale; however, we do not believe that the record supports the need to retain the oblique tests in order to prevent those injuries. In other words, it appears that a vehicle that could meet the perpendicular test requirements will provide an adequate level of protection in oblique tests. In light of their minimal contribution to motor vehicle safety, we propose eliminating the 30 degree oblique test requirements of FMVSS 208. We are interested in receiving comments containing specific data in

support of keeping or eliminating the 30 degree oblique tests.

Although the *Chrysler* court said that "objectivity" requires *identical* test results when test conditions are exactly duplicated, we do not believe that this language requires numerically identical measurements when test conditions are exactly duplicated. Instead, we believe it prohibits large and unnecessary variability in compliance test results due to factors other than product variability. We also believe that, with its proposed improvements, the FMVSS 208 test procedures will satisfy the *Chrysler* test of objectivity. We specifically request comments on this interpretation and tentative conclusion.

Another test procedure issue on which we seek additional comment is one raised by Ford Motor Company in its comments. Ford requested that the standard be revised so that it would no longer require actual conformity of each vehicle to the requirements of FMVSS 208 but, rather, that the manufacturers would have to show that the vehicle was "designed to conform" to the Standard's requirements. This approach is now used in NHTSA's vehicle lighting standard (FMVSS 108) in acknowledgement of the relatively wide manufacturing tolerances employed in the lighting industry. (The traditional rationale for allowing lights to be "designed to conform" to safety standards has been that minor deviations from the individual test points required by the standard are generally not discernible to the human eye and, therefore, occasional marginal failures have not been found by NHTSA to be in noncompliance with the standard. In recent years, however, NHTSA has reopened the issue of whether lighting equipment should be required to conform strictly to the safety standard and has announced its intention to continue consideration of this question in the future.) The "design to conform" approach requires the manufacturer to justify to NHTSA that it had taken reasonable steps in the design and testing of the equipment (or in the case of Ford's proposal, the entire vehicle) so as to certify that the vehicle had been designed in such a way that it should conform to the Standard's requirements.

We are not proposing to adopt Ford's requested language. We are concerned that such language would introduce unacceptable levels of subjectivity into the determination of compliance with the Standard, in direct contravention of the *Paccar* court's determination that "practicability" requires an absence of unnecessary subjectivity. We are particularly interested in receiving comments on whether Ford's proposed amendment could be reconciled with the *Paccar* interpretation of "practicability." We would also be interested in receiving comments on the effect of Ford's proposed change on vehicle design and compliance.

Several commenters urged the agency to amend the standard so that the Head Injury Criterion (HIC) measurement is relevant for compliance purposes only if there is contact between the test dummy and the vehicle's interior. These commenters argue that real world crash data do not show signficant head and neck injuries except when there has been specific head contact, raising the possibility that an across-the-board maximum HIC of 1,000 in all tests may be a requirement that does not meet the need for motor vehicle safety. NHTSA's research and analysis show that serious head and neck injuries may occur without a head contact and that brain or spinal injury thresholds can be exceeded when the angular acceleration of the head exceeds specific limits regardless of whether there has been head contact. In addition, although the maximum HIC limit is designed to reduce head injury, it can assist in reducing injuries to the critical areas of the cervical and upper thoracic spine. If HIC measurements were not made unless there is a head contact, the test dummy could pass the requirements of FMVSS 208, yet still experience severe head whip, which could, on a human, lead to brain or spinal injuries. For this reason, we are not proposing to eliminate the requirement that the HIC maximum be met in the absence of a head strike. However, we are concerned about whether the maximum HIC of 1,000 in the absence of a head strike is an appropriate criterion to reduce potential head or neck injuries.

Our concern is based on several factors. First, the historic derivation of the measurement of 1,000 HIC as an appropriate threshold for potential serious injury had as its foundation the Wayne State Tolerance Curve (WSTC). This curve, which relates the acceleration levels and impulse durations found to produce linear skull fractures, was derived from experiments involving head impacts. Although other work was subsequently used to develop HIC, the WTSC was the principal source and much of the additional work also was based on experiments in which a head impact occurred. Second, there has continually been debate on the relevance of such a requirement. When the HIC first was proposed as a criterion of FMVSS 208 in 1972, comments to the docket claimed that head acceleration of belted occupants greatly contributed to HIC but injury data did not show that serious injury occurred in the absence of a head strike. We recognized the uncertainty of the significance of HIC in the absence of a head strike and concluded that "the present evidence [is] too scanty to be conclusive in either direction" (37 FR 12393; June 27, 1972, and 37 FR 22871; October 26, 1972). As a result, and because of leadtime considerations, the agency temporarily amended the standard (until August 15, 1975) to require compliance with a HIC of 1,000 only for *belted* dummies for the duration of head contact. Thus, non-head contact HIC's of 1,000 or greater, for belted dummies, were temporarily permitted. Third, recent data continue to cloud the issue. In the NHTSA-sponsored Head and Neck Injury Criteria Workshop of March 1981, Dr. Claude Tarriere of Peugeot-Renault noted that based on accident data involving 458 front seat, belted, occupants in frontal crashes, when the head did not make contact, "not a single case of significant head injury was found" and only 35 cases of minor, AIS 2, neck injuries occurred (see "Head and Neck Injury Criteria—A Consensus Workshop," NHTSA, DOT HS 806 434, July 1983). Based on subsequent crash tests, Dr. Tarriere noted that even though HIC's of between 1,000 and 2,000 were reached, no cervical or cerebral injury to cadavers occurred. He thus concluded that "without head impact—HIC is not a significant parameter to predict brain injury." Data presented by NHTSA at the workshop, based on its National Crash Severity Study, showed only 1 AIS–5 (critical) head injury, and no other injuries greater than AIS 2 (moderate), for noncontact cases out of 755 cases of head injury.

Lastly, the Committee on Common Market Automobile Constructors (CCMC) has petitioned the agency to increase the allowable HIC to 1,500 and only apply the criterion in cases of head contact. Although the CCMC petition will be addressed separately at a later date, their submission of new data is relevant to the issue of non-contact HIC's.

Based on all the above data and positions, we believe there is sufficient uncertainty regarding the application of a HIC of 1,000 when no head contact occurred to seek comments on its appropriateness. However, we are not suggesting the elimination or modification of the criterion at this time, recognizing that it is a surrogate for potential neck injury in addition to possible head injury.

Instead, we specifically request comments on whether a different HIC value will provide adequate protection for occupants who do not experience head contact with the vehicle interior; whether a different HIC value is an appropriate threshold for protection when there has been no head contact; and what data exists to support the threshold values of 1,000, 1,500 or any other number proposed for consideration by the commenter.

Alternatives

General

Based on the public comment that we have received and our further analysis, we have identified four other alternatives on which we would like to receive further public comment. These four were not identified in the NPRM in the specific manner now being considered. We have not narrowed our choices to these alternatives; rather we wish to have public comment on them so that they may be considered along with the other alternatives proposed in our October 19, 1983, NPRM. One major issue that is involved in each of the four is the legal authority of the Department to mandate the alternative or at least some aspects of it.

Seatbelt usage and mandatory seatbelt usage laws

A large number of commenters stressed the value of the current manual belt systems. Our analysis of effectiveness has indicated that manual lap and shoulder belts are as effective or more effective than any other restraint system, with the possible exception of the combination of airbags and lap/shoulder belts. See Table 1. By examining the potential benefits of mandatory use laws, as shown in Table 3, it can be seen that manual lap and shoulder belts can provide significant benefits, when used.

We would like to receive additional public comment about mechanisms that the Department of Transportation could implement to provide incentives to increase seatbelt usage without additional Federal legislation. For example, are there ways to use the Department's authority to encourage the passage of mandatory seatbelt use laws? Would providing the states with an option to choose an alternative to automatic occupant crash protection be appropriate? Would providing more local choice in a matter involving serious public concern result in a more effective rule? Are there ways to ensure "comparable" levels of safety among alternative approaches? Would the manufacturers be able to easily comply if there were alternative means of compliance?

A number of analyses of seatbelt use in countries that have mandatory use laws show that such laws do increase usage. Survey results, based on responses from officials in 21 countries, show that when seatbelt usage was required and the requirement was properly enforced, usage increased dramatically and remained high. Seatbelt usage generally increased from prelaw usage rates of 20–40 percent to post-law usage rates of 70–90 percent.

Success is dependent, however, on how well the public is prepared for these laws and on the diligence of enforcement. For example, the Insurance Institute for Highway Safety released a study in June of 1979 in which they contend that safety belt use laws have had "some limited success in reducing occupant fatalities." Success is limited, they argue, because the occupants most likely to be in serious crashes are the least likely to respond to laws. The study further noted that involuntary belt users tend to comply with use laws by wearing their belts incorrectly. However, there is no U.S. data on this point.

A 1980 study by Peat Marwick Mitchell and Co. (PMM) analyzed the effectiveness of foreign mandatory seatbelt use experience. Although 20 nations were studied, data on both belt usage and fatality/injury reduction were available in only six nations. The data on those six nations is contained in Table 6. The PMM study, while noting the increases in usage and decreases in fatalities and injuries, also made two important points: (1) Many countries enacted other safety legislation at the same time the mandatory seatbelt use laws became effective. This obscures the data concerning the reduction in fatalities; (2) According to researchers in several of the countries, the reduction in fatalities and injuries resulting from the mandatory seatbelt use laws was less than expected.

The data in Table 3 indicate the important safety benefits that can be derived from an effective MUL. The relative benefits of an MUL compared to an automatic occupant restraint rule is dependent on two unknowns: the percentage of automobiles that would be equipped with airbags and the usage rates for any automatic belts that were installed. For example, if most cars were equipped with automatic belts and seatbelt usage increased 15 to 20 percent, some people would consider the automatic occupant restraint rule quite successful. An MUL would more than match the safety benefits of this rule, however, even if it was only half as successful as the data indicate foreign MULs have been. Unlike an automatic occupant restraint rule, MULs achieve these safety benefits without adding any cost to the car.

TABLE 6.—Effects of Belt Use Laws in Selected Countries

Country	Effective date of law	Belt usage (percent)		Reductions/occupants (percent)	
		Before	After	Fatalities	Injuries
Australia	Jan. 1972	[1] 25–75	[2] 78–87	[3] 20–25	[3] 20
France	July 1973	25	[4] 95	[5] 22	[5] 32
Belgium	June 1975	17	87	25	25
Switzerland	Jan. 1976	[6] 42	[7] 88	12	9–14
Denmark	Jan. 1976		75	18	30
Canada	1976–77	17–29	77–80	18.3	19.4

[1] 1971.
[2] 1972–76.
[3] 1972–74.
[4] May 1979, highways.
[5] 1975.
[6] 1975, expressways.
[7] 1977.

Moreover, an MUL can save more lives immediately. It is effective for all cars as soon as it is passed. An automatic occupant restraint rule requires lead time before the manufacturers can begin installing the devices and then it would take ten years before most of the American fleet was replaced with cars with the automatic restraints.

At the same time, we recognize that MULs must be enacted before they can have any effect and there is no certainty that any would be passed without sufficient incentives. Although a number of states are considering MULs, no state has passed one that is applicable to the general population. Many commenters have argued that the possibility that MULs may be passed is an insufficient basis for the Department of Transportation to decide not to issue an automatic occupant restraint rule; such inaction, they assert, would violate the Department's obligations under the

National Traffic and Motor Vehicle Safety Act.

To meet the concerns over the potential for enactment of MULs and still be able to take advantage of their benefits, the Department is requesting comments on two alternatives that would require automatic occupant restraints in automobiles unless MULs were passed. Both alternatives would require automatic occupant restraints in all cars manufactured after a set date; that date would be the minimum necessary lead time. Under Alternative I, if any state passed an MUL, a waiver from the automatic restraint requirements would be granted for cars sold to residents of that state. This could also be considered a waiver of Federal preemption rights; that is, the Federal government would permit a state to enact a statute permitting cars without automatic restraints to be sold to residents of its state if certain conditions are met. Under Alternative II, automatic occupant restraints would be required in all cars manufactured after the set date unless 75 percent of the states pass MULs. Under both alternatives, the manufacturers would be required to submit reports during the period between issuance of the rule and its compliance date showing that they were making steady progress toward the installation of automatic restraints. We would like comment on the general concept of these two alternatives as well as the specific details set forth below.

Under either alternative, the Department would issue minimum criteria for each state's MUL. The following minimum criteria for an MUL are proposed for comment:

(1) A requirement that each front seat occupant of a passenger car, which was required by Federal regulation, when manufactured, to be equipped with front seat occupant restraints, have those devices properly fastened about their bodies at all times while the vehicle is in motion.

(2) A prohibition of waivers from the mandatory use of seatbelts, except for medical reasons;

(3) An enforcement program that complies with the following minimum requirements:

(a) *Penalties.* A penalty of $25.00 or more for each violation of the MUL, with a separate penalty being imposed for each person violating the law.

(b) *Civil litigation penalties.* The violation of the MUL by any person when involved in an accident shall be used in mitigating any damages sought by that person in any subsequent litigation to recover damages for injuries resulting from the accident.

(c) *The establishment of prevention and education programs to encourage voluntary compliance with the MUL.* The programs may include advertising, school lectures, brochures, and other proven and innovative encouragement mechanisms. The education program shall advise the public of the many ways to establish MUL violations, including police observations at intersections, from passing cars, motorcycles or unmarked police cars, or during stops for other routine enforcement, as well as other methods of detection.

(d) *The posting of roadside signs notifying motorists of the MUL.* These signs should be posted at appropriate locations to ensure that drivers entering the state are apprised of the MUL and that residents of the state will be reminded of the MUL on a regular basis.

(e) *The establishment of an MUL evaluation program by the state.* The program shall provide for an annual report on the effectiveness of the MUL. The report shall include recommendations to improve MUL compliance, if appropriate.

We would like to receive comment on these criteria. Will they, for example, ensure an effective MUL? From the states' perspective do they impose an undue burden with respect to the benefits achieved? Are there other appropriate criteria that should be added to this list or substituted for particular items? Should the requirements for wearing seatbelts be limited to the times when the car is in forward motion?

Under Alternative I, the Department solicits comment on whether it would be necessary to prohibit the state's residents from selling cars without automatic restraints to residents of states that have not obtained a waiver from the requirements for an automatic restraint. This would apply to cars with up to 3,000 miles to prevent the creation of a market for "used" new cars with manual belts.

We would like comment on the particulars of this provision. Will this provision successfully prevent people from circumventing the intent of the rule? What burdens might it create for manufacturers, distributors or dealers? Will states be able to effectively enforce this provision? What kind of burden will it impose on the states? Are current state automobile registration requirements sufficient to handle the problem of sales to residents of non-MUL states? When a resident dealer or individual wishes to sell an automobile without an automatic occupant restraint, would a simple signature under a form certification that, to the best of the dealer's or owner's knowledge, the car is only being sold to the resident of another MUL state be effective and also relatively non-burdensome?

The waiver would only be granted to a state that the Department determined had an MUL that met the required conditions. A state could pass an MUL at any time and, at any time after it took effect, cars sold to its residents could be sold without automatic restraints. If the state rescinded its statute, on the effective date of the rescission, all cars sold to its residents would have to have automatic restraints. (We assume that, in rescinding its statute, the state would provide sufficient lead time for the dealers to sell cars without automatic restraints and for manufacturers to deliver cars with such restraints.)

We recognize that if only a small number of states pass MULs under Alternative I, the manufacturers may perfer to put automatic occupant restraints in all cars. For that reason, we specifically request data indicating the effects of this alternative. How effectively could manufacturers repond to state passage of an MUL? Is there a minimum number of states—with a minimum number of automobile sales—that would have to pass MULs before non-automatic restraint cars could be offered for sale in those states? If so, what are those numbers and what are they based on? As we have set forth the alternative, the state could permit but not *require* that cars sold in the state be equipped only with manual belts. We would, however, like public comment on this issue. Should we consider allowing the state to require manual lap/shoulder belts if it passes an MUL? How would this affect costs?

To determine whether the manufacturers were making appropriate progress toward compliance with the automatic restraint requirement rather than waiting for states to pass MULs, the Department also believes that it would be necessary to require the manufacturers to submit reports to the Department certifying that the necessary steps were being taken.

On March 1, 1985, the manufacturers would be required to submit a report setting forth:

(1) A breakdown of what type of automatic crash protection will be used in each car manufactured or assembled by the manufacturer.

(2) A schedule for meeting the rule's date. The schedule would have to include any modifications to property, plants, or machinery and the ordering and purchasing of any equipment, special tools, parts or supplies.

(3) An explanation of what and how any modifications would be made to the

manufacturer's compliance plans if any waivers are granted under Alternative I.

The manufacturers would also be required to submit reports on September 1, 1985, and September 1, 1986, describing what actions have been taken since the prior report, and when they were taken, to comply with the requirement to provide automatic protection. The report also would have to explain whether any modifications are necessary to the March 1, 1985, schedule and, if so, why they are necessary.

Under Alternative II, no automatic restraints would be required if enough states pass MULs. Is 75 percent an appropriate number? Should it be based, instead, on passage of MULs covering at least 75 percent (or some other percent) of the nation's population? A major concern with this alternative is what to do if one or more states rescind their MUL after 75 percent pass a law. Should the automatic restraint requirement automatically take effect as soon as the minimum lead time passes or should a grace period be permitted to see if new states can be added to get back to 75 percent? Should we require passage by 80 percent initially but negate the automatic restraint requirement as long as at least 75 percent retain their MULs? Should we—and can we—require that any MUL remain in effect for a minimum time period? How could we do this and how long a time period should we use?

Which of the two alternatives offers the most local choice? Which provides the most incentive for the passage of MULs?

Mandatory Demonstration Program

In our October 19, 1983, NPRM, one of the alternatives on which we requested public comment was a demonstration program. In the NPRM, we contemplated a program similar to one set up by Secretary Coleman in 1976; that program involved voluntary participation by the manufacturers. During the comment period, Ford Motor Company proposed a mandatory demonstration program or field test rule. Ford's proposal involves three "interdependent elements." Ford wants the Department to revise its restraint requirements and test procedures and to get behind passage of state MULs, in addition to requiring participation in a program to demonstrate automatic restraints—to determine whether they will be used and whether they will be effective.

Ford specifically proposed that each manufacturer be required to equip five percent of its passenger cars with automatic restraints for four years. This, Ford said, would place about one-half million such cars on the road each years. Ford noted that increasing the volume may decrease the necessary time for the program but could also increase the lead time before the program could begin. Although Ford was willing to commit to put airbags in some of the cars (if driver side only airbags were permitted), it suggested that incentives could be used, if necessary to get other manufacturers to use a mix of automatic restraints. Manufacturers could be given greater credit toward the volume requirement, for example, if they used airbags in some cars.

Ford believes it would need two years lead-time before it could begin complying with a requirement for automatic restraints in five percent of its cars, with some airbag cars, if it could use a driver side airbag system similar to the one it is currently developing for its Tempo.

Ford also believes that the Department has the legal authority to issue a regulation that only applies to a certain percentage of cars, where the choice of particular cars has no relationship to the safety of the car. Ford submitted a memorandum to the docket on this legal issue, which summarized its conclusions as follows:

> A revised safety standard with this [mandatory field] evaluation component would pass muster under the Act because it would continue to require the use of occupant restraint technologies which NHTSA previously has found "meet the need for motor vehicle safety," and because it would implement a practicable field evaluation program of reasonable size and duration. In the circumstances of this rulemaking, such a program could be justified as essential to developing reliable data with which to address the legitimate questions that the Supreme Court recognized still remain about the relative effectiveness of passive restraint technology, including public acceptance of particular alternatives.

In our NPRM, we asked a number of questions concerning a voluntary demonstration program. At this time it is *not* necessary to resubmit comments on the concept or specifics of such a program (e.g., the number of cars necessary or the problems of evaluating data where the purchase of a car with an automatic restraint was voluntary). At this time, we would like comments only on the merits and legality of Ford's specific proposal. What advantages or disadvantages does it have compared to a voluntary program? What other steps besides Ford's suggestion should be taken to ensure a program that would provide sufficient variety in the types of automatic restraints used? Are there any commenters who believe the Department's legal authority would be challenged and what would be the basis for such a challenge? If challenges are deemed possible, are there any modifications that could be made to the proposal that would make it less susceptible to challenge.

Driver-side only airbags for small cars

In our NPRM, we proposed for consideration, among other alternatives, a rule that would have required airbags only for the driver's side of the car. The other front seat positions could be protected by manual seat belts or, in the alternative, by any form of automatic restraint. The Department now wishes to specifically obtain comment on an alternative that would require airbags only on the driver's side of small cars. (Under this alternative, the final rule could prescribe either manual belts or any type of automatic restraint for the other seating positions in small cars and all seating positions in all other cars.)

Many people contend that smaller cars are less safe than larger cars and that they have an advantage in the Department's crash testing because the tests are against a stationary wall rather than a moving object where larger cars would perform better. The driver's position is, obviously, the one most used; the driver accounts for three-fourths of all front seat fatalities in automobile accidents. The manufacturers also contend that there are technical problems with using airbags on the passenger side of cars that are especially compounded in smaller cars with potential out-of-position occupants.

In addition, many commenters talked about the advantages of airbags and the desire to see them installed in cars. Some are concerned that a rule that simply requires automatic occupant restraints would result primarily in automatic seatbelts and that very few, if any, airbags would be installed.

A driver-side only airbag requirement for small cars could respond to many of these concerns. It could provide the greatest amount of protection where it is most needed. It could, for that reason, be more cost-beneficial than requiring airbags for all positions in small cars or in all cars. It could also help ensure the continued development and improvement of airbag technology. By not mandating airbags for the entire fleet, it would also provide the manufacturers with a great deal of flexibility and could encourage the manufacturers to develop and improve other restraint systems. Would such a requirement also ensure that airbags would become readily available to others who might be impressed by their

safety benefits and want to purchase them in larger cars?

The Department is interested in comments on whether this alternative would satisfy the statutory criteria. Should the distinction be made purely on size? What would be a reasonable wheel-base, or other criterion, to use to define "small car" for this rule? Is there sufficient legal justification to show that small cars require more stringent safety requirements than larger cars? What type of belt system would be installed with the airbag? Should the Department rquire a lap/shoulder belt or just a lap belt? Should we require an automatic belt?

Would this alternative result in some shift to larger cars with reduced fuel economy? Alternatively, would more people buy smaller cars because of this requirement since the smaller cars might be perceived to be safer than before the rule? Would there be other market effects? Would there be serious objection from these who were concerned that we were providing better protection to the driver than the passengers?

Analyses

The Department considered the impacts of the proposals in the notice of proposed rulemaking and determined that several of the proposals were major within the meaning of Executive Order 12291 and significant within the meaning of the DOT Regulatory Policies and Procedures. A Preliminary Regulatory Impact Analysis (PRIA) was prepared and placed in the public docket. As part of that rulemaking, this SNPRM remains major and significant; it is based on the PRIA and the additional data contained in the SNPRM or, as referenced in the SNPRM, in the docket. A free copy of the analysis may be obtained by contracting the Docket Section.

The Department also considered the economic impacts of these proposals for the purposes of the Regulatory Flexibility Act. I certify that none of the proposals would have a significant economic impact on a substantial number of small entities. As we said in the NPRM, few of the affected vehicle manufacturers would qualify as small businesses within the meaning of that Act. Similarly, few of the safety belt or airbag manufacturers are small businesses. The original equipment suppliers of belt webbing are all large and diversified firms with over 1,000 employees. Although some firms that produce replacement belts for the after-market may qualify as small businesses, none of those firms rely on belt webbing sales as a major source of income. As to airbag manufacturers, they were either primarily large firms, or subsidiaries of large firms, at the time of the rescission in 1981. Small organizations and govenmental jurisdictions should not be substantially affected because, even under the airbag only alternative, the percentage increase in the price of a new car would be only several points. Accordingly, the Department does not expect the purchases by these small entities to be substantially affected. Similarily, the Department does not expect that sales to the general public will be significantly affected. Thus, new car dealers should not experience a substantial economic impact. As to the MUL alternatives discussed in this SNPRM, the burdens do not appear substantial and would be adopted voluntarily by the states. The Department has, however, specifically requested comment on these issues.

Pursuant to the National Environment Policy Act, the Department also prepared a draft environmental impact statement concerning the proposed alternatives at the time of the NPRM. A copy of that draft statement has been placed in the Docket Section under the docket and notice numbers of this notice.

Information Collection Requirements Approval

The alternative proposals that involve MULs, if adopted, would impose reporting requirements that would be subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) and OMB implementing regulations (5 CFR Part 1320). The Department has submitted the proposed information collection requirement to OMB for review. Comments on the information collection requirements may be submitted to the Office of Information and Regulatory Affairs of OMB (to the attention of the DOT desk officer), as well as to the Rules Docket.

Public Comments

Interested persons are invited to submit comments on this NPRM. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary agruments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulations.

Because this is a supplemental notice, the Department determined that a 30-day comment period was sufficient. All comments received before the close of business on the comment closing date indicated above will be considered, and will be availabe for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, we are proceeding under a tight, expedited schedule. Comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future action. The Department will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envolpe with their comments a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

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(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407))

Issued in Washington, D.C. on May 10, 1984.

Elizabeth Hanford Dole,

Secretary of Transportation.

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H.R. 355 Pub. L. 98-280

To declare certain lands held by the Seneca Nation of Indians to be part of the Allegany Reservation in the State of New York. (May 9, 1984; 98 Stat. 177) Price: **$1.50**

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Price	Revision Date
1, 2 (2 Reserved)	$6.00	Jan. 1, 1984
3 (1983 Compilation and Parts 100 and 101)	7.00	Jan. 1, 1984
4	12.00	Jan. 1, 1984
5 Parts:		
1-1199	13.00	Jan. 1, 1984
1200-End, 6 (6 Reserved)	6.00	Jan. 1, 1984
7 Parts:		
0-45	13.00	Jan. 1, 1984
46-51	12.00	Jan. 1, 1984
52	14.00	Jan. 1, 1984
53-209	7.50	Jan. 1, 1983
*210-299	13.00	Jan. 1, 1984
300-399	7.50	Jan. 1, 1984
400-699	6.50	Jan. 1, 1983
*700-899	13.00	Jan. 1, 1984
900-999	8.50	Jan. 1, 1983
*1000-1059	12.00	Jan. 1, 1984
1060-1119	9.00	Jan. 1, 1984
*1120-1199	7.50	Jan. 1, 1984
1200-1499	13.00	Jan. 1, 1984
1500-1899	6.00	Jan. 1, 1984
1900-1944	8.00	Jan. 1, 1983
1945-End	7.00	Jan. 1, 1983
8	7.00	Jan. 1, 1984
9 Parts:		
1-199	13.00	Jan. 1, 1984
200-End	9.50	Jan. 1, 1984
10 Parts:		
0-199	9.00	Jan. 1, 1983
200-399	12.00	Jan. 1, 1984
*400-499	12.00	Jan. 1, 1984
*500-End	13.00	Jan. 1, 1984
11	5.50	July 1, 1983
12 Parts:		
*1-199	9.00	Jan. 1, 1984
200-299	8.00	Jan. 1, 1983
*300-499	9.50	Jan. 1, 1984
500-End	8.00	Jan. 1, 1983
*13	13.00	Jan. 1, 1984
14 Parts:		
1-59	13.00	Jan. 1, 1984
60-139	7.00	Jan. 1, 1983
140-199	7.00	Jan. 1, 1984
200-1199	7.00	Jan. 1, 1983
1200-End	7.50	Jan. 1, 1984
15 Parts:		
0-299	7.00	Jan. 1, 1984
300-399	7.00	Jan. 1, 1983
400-End	12.00	Jan. 1, 1984

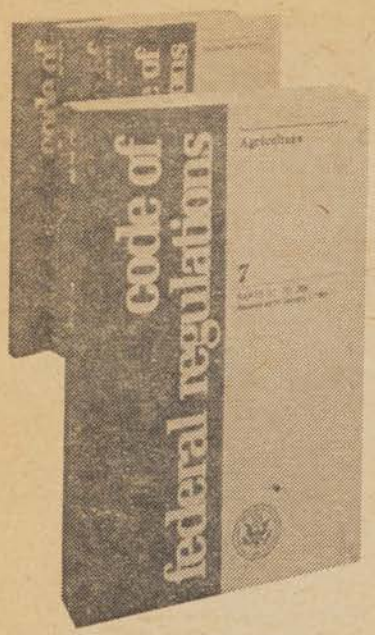
Title	Price	Revision Date
16 Parts:		
0-149	9.00	Jan. 1, 1984
150-999	9.50	Jan. 1, 1984
1000-End	7.00	Jan. 1, 1983
17 Parts:		
1-239	8.00	Apr. 1, 1983
240-End	7.00	Apr. 1, 1983
18 Parts:		
1-149	7.00	Apr. 1, 1983
150-399	8.00	Apr. 1, 1983
400-End	6.50	Apr. 1, 1983
19	8.50	Apr. 1, 1983
20 Parts:		
1-399	5.50	Apr. 1, 1983
400-499	7.00	Apr. 1, 1983
500-End	7.50	Apr. 1, 1983
21 Parts:		
1-99	6.00	Apr. 1, 1983
100-169	6.50	Apr. 1, 1983
170-199	6.50	Apr. 1, 1983
200-299	4.75	Apr. 1, 1983
300-499	8.00	Apr. 1, 1983
500-599	6.50	Apr. 1, 1983
600-799	5.00	Apr. 1, 1983
800-1299	6.00	Apr. 1, 1983
1300-End	5.00	Apr. 1, 1983
22	8.50	Apr. 1, 1983
23	7.00	Apr. 1, 1983
24 Parts:		
0-199	6.00	Apr. 1, 1983
200-499	8.00	Apr. 1, 1983
500-799	5.00	Apr. 1, 1983
800-1699	6.50	Apr. 1, 1983
1700-End	6.00	Apr. 1, 1983
25	8.00	Apr. 1, 1983
26 Parts:		
§§ 1.0-1.169	8.00	Apr. 1, 1983
§§ 1.170-1.300	7.50	[1] Apr. 1, 1982
§§ 1.301-1.400	6.00	Apr. 1, 1983
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§§ 1.641-1.850	7.50	[1] Apr. 1, 1982
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§§ 1.1201-End	8.50	Apr. 1, 1983
2-29	7.00	Apr. 1, 1983
30-39	6.00	Apr. 1, 1983
40-299	7.50	Apr. 1, 1983
300-499	6.00	Apr. 1, 1983
500-599	8.00	[2] Apr. 1, 1980
600-End	5.00	Apr. 1, 1983
27 Parts:		
1-199	6.50	Apr. 1, 1983
200-End	6.50	Apr. 1, 1983
28	7.00	July 1, 1983
29 Parts:		
0-99	8.00	July 1, 1983
100-499	5.50	July 1, 1983
500-899	8.00	July 1, 1983
900-1899	5.50	July 1, 1983
1900-1910	8.50	July 1, 1983
1911-1919	4.50	July 1, 1983
1920-End	8.00	July 1, 1983
30 Parts:		
0-199	7.00	July 1, 1983
200-699	5.50	Oct. 1, 1983
700-End	13.00	Oct. 1, 1983
31 Parts:		
0-199	6.00	July 1, 1983
200-End	6.50	July 1, 1983

Title	Price	Revision Date
32 Parts:		
1–39, Vol. I	8.50	July 1, 1983
1–39, Vol. II	13.00	July 1, 1983
1–39, Vol. III	9.00	July 1, 1983
40–189	6.50	July 1, 1983
190–399	13.00	July 1, 1983
400–699	12.00	July 1, 1983
700–799	7.50	July 1, 1983
800–999	6.50	July 1, 1983
1000–End	6.00	July 1, 1983
33 Parts:		
1–199	14.00	July 1, 1983
200–End	7.00	July 1, 1983
34 Parts:		
1–299	13.00	July 1, 1983
300–399	6.00	July 1, 1983
400–End	15.00	July 1, 1983
35	5.50	July 1, 1983
36 Parts:		
1–199	6.50	July 1, 1983
200–End	12.00	July 1, 1983
37	6.00	July 1, 1983
38 Parts:		
0–17	7.00	July 1, 1983
18–End	6.50	July 1, 1983
39	7.50	July 1, 1983
40 Parts:		
0–51	7.50	July 1, 1983
52	14.00	July 1, 1983
53–80	14.00	July 1, 1983
81–99	7.50	July 1, 1983
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150–189	6.50	July 1, 1983
190–399	7.00	July 1, 1983
400–424	6.50	July 1, 1983
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41 Chapters:		
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1, 1–11 to Appendix, 2 (2 Reserved)	6.50	July 1, 1983
3–6	7.00	July 1, 1983
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8	4.75	July 1, 1983
9	7.00	July 1, 1983
10–17	6.50	July 1, 1983
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18, Vol. III, Parts 20–52	6.50	July 1, 1983
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101	14.00	July 1, 1983
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42 Parts:		
1–60	12.00	Oct. 1, 1983
61–399	7.50	Oct. 1, 1983
400–End	17.00	Oct. 1, 1983
43 Parts:		
1–999	9.00	Oct. 1, 1983
1000–3999	14.00	Oct. 1, 1983
4000–End	7.50	Oct. 1, 1983
44	12.00	Oct. 1, 1983
45 Parts:		
1–199	9.00	Oct. 1, 1983
200–499	6.00	Oct. 1, 1983
500–1199	12.00	Oct. 1, 1983
1200–End	9.00	Oct. 1, 1983
46 Parts:		
1–40	9.00	Oct. 1, 1983
41–69	9.00	Oct. 1, 1983
70–89	5.00	Oct. 1, 1983
90–139	9.00	Oct. 1, 1983
140–155	8.00	Oct. 1, 1983
156–165	9.00	Oct. 1, 1983
166–199	7.00	Oct. 1, 1983
200–399	12.00	Oct. 1, 1983
400–End	7.00	Oct. 1, 1983
47 Parts:		
0–19	12.00	Oct. 1, 1983
20–69	14.00	Oct. 1, 1983
70–79	13.00	Oct. 1, 1983
80–End	13.00	Oct. 1, 1983
48	1.50	[3] Sept. 19, 1983
49 Parts:		
1–99	7.00	Oct. 1, 1983
100–177	14.00	Nov. 1, 1983
178–199	13.00	Nov. 1, 1983
200–399	12.00	Oct. 1, 1983
400–999	13.00	Oct. 1, 1983
1000–1199	12.00	Oct. 1, 1983
1200–1299	12.00	Oct. 1, 1983
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[1] No amendments to these volumes were promulgated during the period Apr. 1, 1982 to March 31, 1983. The CFR volumes issued as of Apr. 1, 1982 should be retained.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1983. The CFR volume issued as of Apr. 1, 1980, should be retained.

[3] Refer to September 19, 1983, FEDERAL REGISTER, Book II (Federal Acquisition Regulation).



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