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Friday
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Internal Revenue Service

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Environmental Protection Agency

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Food and Drug Administration

Aviation Safety
Federal Aviation Administration

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Health Insurance
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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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Agricultural Marketing Service

Packaging and Containers
Consumer Product Safety Commission

Pension Insurance
Pension Benefit Guaranty Corporation

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Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 496]

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 220,000 cartons during the period December 30, 1984–January 5, 1985. 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: Effective for the period December 30–January 5, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, 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 isssued 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 recommendations and information submitted by the Lemon Administration Committee and upon other available information. It is 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 December 21, 1984, at Los Angeles, California, to consider current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that lemon demand has declined due to the Christmas holiday.

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 is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. 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]

Section 910.796 is added as follows:

§ 910.796 Lemon Regulation 496.

The quantity of lemons grown in California and Arizona which may be handled during the period from December 30, 1984, through January 5, 1985, is established at 220,000 cartons.

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

Dated: December 24, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84–33810 Filed 12–27–84; 8:45 am]

BILLING CODE 3410–02–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

FCU Ownership of Fixed Assets

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: This rule is a revision of § 701.36 of the National Credit Union Administration Rules and Regulations. It is a threshold rule, that is it only becomes operative when FCUs decide to invest in excess of 5% of shares and retained earnings in fixed assets. The rule's scope is also being extended to Federal credit unions between $1 and $2 million in assets. The proposed rule eliminates certain reporting requirements from these credit unions, and it also exempts, with respect to Prohibited Transactions with credit union officials, informal leases with maturities less than one year.

The rule retains provisions that require that property needed for expansion be at least partially utilized within 3 years unless otherwise approved by the Administration. With one exception, it also continues to prohibit all Federal credit unions from acquiring real property for use as premises from directors, members of the supervisory and the credit committee, officials, and employees, their spouses, or members of their immediate families without written approval of the Administration. There are also certain housekeeping changes that clarify or simplify the existing rule.

DATE: Effective December 31, 1984.

ADDRESS: National Credit Union Administration Board, 1776 G Street, NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Charles Filson, Director, Office of Programs, or Louis P. Acuna, Director, Department of Supervision and Examination. Telephone (202) 357–1140 and (202) 357–1065, respectively.

SUPPLEMENTARY INFORMATION:

Background

Section 107(4) of the Federal Credit Union Act states in part that a Federal credit union shall have the power to purchase, hold, and dispose of property necessary or incidental to its operations.

On December 8, 1978, the National Credit Union Administration published a final rule (Section 701.36 of the NCUA Rules and Regulations) which requires all Federal credit unions having aggregate assets of $2 million or more to seek written approval of NCUA for any investment in fixed assets in excess of 5 percent of total assets or in excess of a previously approved investment limit. To support its request, the rule required a Federal credit union to submit specific reports and statements listed therein. The rule also included provisions that apply to all Federal credit unions. Those provisions relate to the obtaining of property for future expansion, the disposal of abandoned property, the estimated useful lives of fixed assets, the maximum assigned salvage values, and the obtaining of property from officials, employees, or their relatives. No changes have been made to the rule since it was adopted in 1978.

Summary

As a part of its regulatory review process, the National Credit Union Administration issued a request for comments on January 23, 1984, concerning these existing rules. It solicited views on the existing rule and on several questions relating to it. The National Credit Union Administration received 61 letters which addressed those questions. On September 13, 1984, the NCUA issued a proposed rule which would extend to Federal credit unions between $1 and $2 million in assets and which have over 5% in fixed assets. As of June 30, 1984, approximately 1,540 Federal credit unions fall into the size category, and at least 39 have reported fixed assets in excess of 5% of their total assets.

Comments

A total of 27 comment letters were received in response to the NCUA Board's September 13, 1984 proposal to modify § 701.36. Of the 27 comments, one was from a State Supervisor, four were from trade associations and twenty-two were from Federal credit unions.

The comments received were helpful and their effect is reflected throughout the analysis that follows:

Section 701.36(b)(4)(iii) Definitions. Investments in Fixed Assets Means.

It appears that the modification of the definition of fixed assets to include the "aggregate of lease payments pursuant to a lease agreement on fixed assets *with a maturity in excess of one year*" may have caused some confusion.

This change was not intended to attempt to specify the accounting procedures for lease agreements or to imply that leases with maturities in excess of one year should be recorded on the Federal credit union's books as an asset. Accounting guidelines for leases are already set forth in NCUA's *Accounting Manual for Federal Credit Unions* which conform to generally accepted accounting principles and FASB Statement 13. The modification was intended to apply to the prohibited transactions section of the rule to clearly permit short-term, informal lease agreements (i.e., month to month rent with no written lease agreement) with credit union officials, employees, or their spouses where the lease agreement can be terminated at will.

Some commenters further inferred from the proposed rule that the five percent limitation applied only to "capital" leases for fixed assets. The intent of the regulation is to prevent, or at least curb, excessive investments in fixed assets and the related costs and expenses that may be beyond the financial capability of the credit union. Some fixed asset lease arrangements may be classified as operating leases as opposed to capital leases and, therefore, not recorded as an asset on the books of the credit union. It is the Agency's position that these should be included in the computation for determining compliance with the five percent limitation since they also contribute to a credit union's overall commitment to fixed assets.

Accordingly, the definition of investments in fixed assets as specified in § 701.36(b)(4)(iii) of the proposed rule issued September 13, 1984, is modified to delete the reference to maturities on lease agreements and *§ 701.36(e)* **Prohibited Transactions** is modified to permit short-term, informal lease arrangements that may be terminated at will.

Section 701.36(b)(6) Definitions. Investments in Fixed Assets Means.

A commentor suggested that the rule would benefit by specifying who is covered by prohibited transactions concerning family members. Reference was made to the recently adopted Investment Regulation. We concur with the commentor's suggestion and have included it in the proposed final rule.

Section 701.36(c)(1) Definitions. Investment in Fixed Assets Means.

The September 13, 1984, proposal extended the rule to Federal credit unions between $1 and $2 million in assets. Twenty-one commenters supported this change and, specifically, twelve of these writers stated that the rule should apply to all Federally insured credit unions regardless of asset size. Overall support was expressed for the continued regulation of FCU ownership in fixed assets as a percentage of total assets. However, we believe, after review, that the following alternative is a more sound approach.

The 5% position should be based on shares and retained earnings rather than simply assets. This would not materially affect the threshold level for most credit unions, and would not greatly increase the number of Federal credit unions to be affected by this substantive change. For example, based on the ratio of fixed assets to total assets, 39 Federal credit unions between $1 million and $2 million in assets would be affected while under the proposal, 42, or only 3 more Federal credit unions would be affected. Moreover, the difference between total assets and shares (savings) and retained earnings, as can be seen, is negligible:

AS OF JUNE 30, 1984

[Amounts in thousands]

	All FCU's	Asset size category ($1,000,000 to 1,999,999)
Number operating	10,734	1,540
Total assets	$61,316,197	$2,225,623
Savings	56,261,448	2,003,044
Regular reserve	1,632,534	73,014
Other reserves	549,748	13,078
Undivided earnings	1,445,532	89,444
	$59,890,262	$2,178,580
Share and retained earnings divided by total assets (percent)	97.7	97.9

Thus, why consider the alternative? Shares tend to be a more stable indicator of a credit union's economic potential earnings base. Shares are less easily increased artificially than total assets. Retained earnings are also a traditional indicator of a credit union's ability to carry the cost of fixed assets. It is our opinion, therefore, that it would be much more preferable to change the regulation to make the threshold level five percent of combined shares and retained earnings. To accommodate this change, shares and retained earnings are defined in § 701.36(b)(7).

In addition, § 701.36(c)(4), concerning the one percent leeway provision is amended to clarify and reflect the Regional Director's authority in granting an additional amount for investment in fixed assets.

Regulatory Procedures

The proposed rule will have little or no significant economic impact on a substantial number of small credit unions, primarily those under $1 million

in assets. For those credit unions having aggregate assets in excess of $1 million and a ratio of fixed assets to shares and retained earnings greater than 5 percent, the rule will affect less than 250 Federal credit unions. Since the proposed rule is essentially the continuation of a previous rule, only approximately 42 Federal credit unions that are between $1 and $2 million in assets will be affected for the first time. Therefore, a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This final rule is being submitted to the Office of Management and Budget for approval. Any information collection requirements in the final rule will not take effect until they have been cleared by the Office of Management and Budget. Comments regarding information collection requirements contained in the final rule should be forwarded directly: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC. 20503. Attn: Judith McIntosh.

List of Subjects in 12 CFR Part 701

Credit Union.

By the National Credit Union Administration Board on the 19th day of December 1984.

Rosemary Brady,

Secretary of the Board.

Authority: 1757(4), 12 U.S.C. 1766, 12 U.S.C. 1784.

Accordingly, the NCUA Board has revised § 701.36 of the NCUA Rules and Regulations to read as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

§ 701.36 FCU Ownership of Fixed Assets.

(a) A Federal credit union's ownership in fixed assets shall be limited as described in this chapter.

(b) Definitions—As used in this section:

(1) Premises includes any office, branch office, suboffice, service center, parking lot, other facility, or real estate where the credit union transacts or will transact business.

(2) Furniture, Fixtures, and Equipment includes all office furnishings, office machines, computer hardware and software, automated terminals, heating and cooling equipment.

(3) Fixed Assets means premises and furniture, fixtures and equipment as these terms are defined above.

(4) Investments in fixed assets means:

(i) Any investment in real property (improved or unimproved) which is being used or is intended to be used as premises;

(ii) Any leasehold improvement on premises;

(iii) The aggregate of the lease payments pursuant to a lease agreement on fixed assets;

(iv) Any investment in the bonds, stock, debentures, or other obligations of a partnership or corporation holding any fixed assets used by the Federal credit union and any loans to such partnership or corporation; or

(v) Any investment in furniture, fixtures and equipment.

(5) Abandoned premises means former Federal credit union premises from the date of relocation to new quarters, and property originally acquired for future expansion for which such use is no longer contemplated.

(6) Immediate family member means a spouse, or a child, parent, grandchild, grandparent, brother or sister, or the spouse of any such individual.

(7) Shares mean all savings (regular shares, share drafts, share certificates, other savings) and retained earnings means regular reserve, reserve for contingencies, supplemental reserves, reserve for losses and undivided earnings.

(c) *Investment in Fixed Assets.* (1) No Federal credit union with $1,000,000 or more in assets, without the prior approval of the Administration, shall invest in fixed assets if the aggregate of all such investments exceeds 5 percent of shares and retained earnings.

(2) A Federal credit union shall submit such statement and reports as the NCUA regional director may require in support of any investment in fixed assets in excess of the limit specified above.

(3) If the Administration determines that the proposal will not adversely affect the credit union, an aggregate dollar amount or percentage of assets will be approved for investment in fixed assets. Once such a limit has been approved, and unless otherwise specified by the regional director, a Federal credit union may make future acquisitions of fixed assets, provided the aggregate of all such future investments in fixed assets does not exceed an additional 1 percent of the shares and retained earnings of the credit union over the amount approved.

(4) Federal credit unions shall submit their requests to the NCUA regional office having jurisdiction over the geographical area in which the credit union's main office is located. The regional office shall inform the requesting credit union, in writing, of the date the request was received. If the credit union does not receive notification of the action taken on its request within 45 calendar days of the date the request was received by the regional office, the credit union may proceed with its proposed investment in fixed assets.

(5) Federal credit unions with assets of between $1,000,000 and $2,000,000 that have investments in fixed assets in excess of 5 percent as of the effective date of this rule (December 31, 1984) may honor existing (firm) commitments to acquire fixed assets without the Administration's approval; however, these Federal credit unions must notify the appropriate NCUA regional office of the existence of such commitments within 30 days of the effective date of this rule.

(d) *Premises.* (1) When real property is acquired for future expansion, at least partial utilization should be accomplished within a reasonable period, which shall not exceed 3 years unless otherwise approved in writing by the Administration. After real property acquired for future expansion has been held for 1 year, a board resolution with definitive plans for utilization must be available for inspection by an NCUA examiner.

(2) A Federal credit union shall endeavor to dispose of "abandoned premises" at a price sufficient to reimburse the Federal credit union for its investment and costs of acquisition. Current documents must be maintained reflecting the Federal credit union's continuing and diligent efforts to dispose of "abandoned premises." After "abandoned premises" have been on the Federal credit union's books for 4 years, the property must be publicly advertised for sale. Disposition must occur through public or private sale within 5 years of abandonment, unless otherwise approved in writing by the Administration.

(e) *Prohibited Transactions.* With the exception of a short term informal lease agreement (maturity less than one year) no Federal credit union may acquire or lease premises without the prior written approval of the Administration from any of the following:

(1) A director, member of the credit committee or supervisory committee, official or employee of the Federal credit union, or immediate family member of such director, member of the credit committee or supervisory committee, official or employee.

(2) A corporation in which any director, member of the credit committee or supervisory committee, official or employee, or immediate family member of such director, member of the credit committee or supervisory committee, official or employee, is an officer or

director, or has a stock interest of 10 percent or more;

(3) A partnership in which any director, member of the credit committee or supervisory committee, official or employee, or immediate family member of such director, member of the credit committee or supervisory committee, official or employee is a general partner, or a limited partner with an interest of 10 percent or more.

[FR Doc. 84-33713 Filed 12-27-84; 8:45 am]
BILLING CODE 7535-01-M

12 CFR Part 704

Corporate Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: This final rule concerns corporate credit unions, i.e. credit unions operated primarily to serve other credit unions. The rule is a simplification and improvement of NCUA's previous rule on the subject. The rule establishes minimum reserve transfer requirements and charge-off standards for all federally insured corporate credit unions. The rule grants board authority to corporate Federal credit unions to develop new services for member credit unions in the areas of investments, liquidity management, payment systems and correspondent services.

DATE: Effective January 1, 1985.

ADDRESS: National Credit Union Administration, 1776 G Street NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Charles Filson, Director, or Harry Blaisdell, Office of Programs, NCUA at the above address or phone 202-357-1140.

SUPPLEMENTARY INFORMATION:

Background

Part 704 of NCUA Rules and Regulations, Corporate Central Credit Unions, has been revised as a part of the Agency's continuing program of review of regulations and as a result of provisions in the Garn-St Germain Act which amended Section 120(a) of the Federal Credit Union Act to permit the NCUA Board to differentiate the functions of corporate central Federal credit unions from natural person credit unions through the issuance of rules or orders of the Board. Part 704 was promulgated in 1977 to define the terms "corporate central Federal credit union" and "risk asset" and to establish a special reserve account for corporate central Federal credit unions. The Regulation was subsequently revised, effective November 10, 1979 to provide additional requirements pertaining to the operations of corporate central Federal credit unions. Specifically, sections were added covering "Management", "Annual Audit", and "Daily Balance Share Accounts." This latter revision was further clarified by Interpretative Ruling and Policy Statement IRPS-80-3, dated March 7, 1980.

Summary

The proposed rule deleted the "Management" and "Daily Balance Share Accounts" sections from the present rule in addition to deleting the definition of "Risk Asset" and various miscellaneous requirements. The proposed rule has been modified by the Final Rule in several areas to further simplify and clarify the intent of the Rule and reflect the observations and recommendations of the commentors. The term "Central" has been deleted throughout the rule in recognition of the distinction between corporate credit unions (herein referred to as Corporates) and central natural person credit unions. The only substantive changes were to § 704.2(a) and (b)—Corporate Reserves which were rewritten in their entirety.

Comments

A total of 31 comment letters were received in response to the NCUA Board's April 18, 1984 proposal to modify Part 704. Of the 31 comments, 5 were from state credit unions leagues, 18 were from corporate central credit unions, 6 were from other credit unions, and 2 were from national credit union trade associations. The comment period was subsequently extended by the Board in order to permit a forum of corporate credit unions to consider the proposed rule at its August 20 meeting. The comments received were extensive, insightful and helpful. Their effects are reflected throughout the analysis which follows.

Section 704.1 Scope. This section has been modified to state that special rules and authorities as authorized by the Garn-St Germain Act are being implemented for corporate credit unions. This section also identifies that state chartered federally insured Corporates are covered by § 704.3—Corporate Reserves.

Section 704.2 Definition. The definition of corporate credit union has been changed from one based on a percentage of "corporate accounts" to one based on a percentage of credit union accounts. Several writers suggested that a definition based on corporate accounts is much broader than one based on accounts of other credit unions. The change is to clarify that the primary purpose of corporate credit unions is to serve other credit unions. In addition the definition also clarifies the criteria for a corporate credit union by combining the "primary purpose" and ratio tests in one sentence.

Paragraph (b) clarifies the intent to include federally insured state chartered corporates under the reserving rule if these credit unions meet the ratio test.

The formerly proposed paragraph (b), defining "natural person credit unions" is considered unnecessary and, therefore, has been eliminated.

Paragraph (c) has been added to clarify that the term "undivided earnings" as used in this part includes other retained earnings, but excludes required valuation allowances.

Section 704.3 Corporate reserves. This section has been changed from the proposed rule to reflect the comments of many writers who argued that the procedures for reserving in corporate credit unions should not be based on a percentage of gross income but as a spread on the assets managed by the Corporate. The reasoning for this distinction from natural person credit unions was that corporates primarily operate as wholesale financial intermediaries where the reserving costs should reflect a fixed percent rather than fluctuating based on the return earned on the assets. Since corporate credit unions compete in a financial environment where the dominant procedure for managing investments is to take a fixed spread—for example the difference between the bid and asked price in securities purchases and the ¼% fee for broker assisted transactions—this approach seems reasonable.

Additionally, most commentors supported an increase in the equity level. However, some expressed skepticism that if Corporates were unable to make significant progress in building the statutory reserves at the previous 1½% limit, there would be little change by requiring 4%. Secondly, a few writers believed the level of reserves should be left solely to each corporate's discretion.

The staff believes that the financial record of the corporate credit unions warrants a higher level of reserves than the previous 1½%. While the relative progress in realizing the previous level of 1½% was limited, this was because the rate of growth of corporate assets was very high from 1980 thru 1983. The absolute level of statutory reserves in this time period went from *$18.5 million*

to *$58.4 million.* (NCUA 1983 Annual Report, Page 36.)

Also, the staff recognizes that the rate of asset growth in corporates will slow and possibly decline as the loan to share ratios increase in natural person credit unions. In a situation of declining assets, corporate credit unions would have reached the statutory level of 1½% and stopped adding to the level of reserves. Also while some commentors did maintain that corporate activity involves no "risk assets," using the natural person credit union definition of risk assets, the supervisory experience of the last 4 years does contain a series of very specific risks and concrete losses which, in the staff's judgment and the opinion of most commentors, support a higher level of reserves than previously required.

However, a majority of commentors did request a change in how the reserve is calculated. This change is adopted in the final rule. As rewritten, the Corporate reserving is according to a 2-tier structure. The transfer rate for a Corporate credit union with total reserves and undivided earnings of less than 2% of assets at the end of the transfer period is changed to .0015 of average daily assets for the transfer period. This rate is reduced to .0010 when this ratio is greater than 2% but the ratio of *Corporate Reserve only* to assets is less than 4%.

Assets, for purposes of this section, are total assets, less CLF shares and assets involved in matched repurchase transactions under the program developed by U.S. Central Credit Union and the Corporate network. The Board has traditionally exempted CLF income from reverse transfers. Reverse repurchases on behalf of the members of a Corporate using the U.S. Central Corporate network program have been given a previous exemption because the Corporates act primarily in an administrative capacity to forward securities to U.S. Central Credit Union and the principal risks and primary benefits are shared by U.S. Central Credit Union and the natural person credit unions. NCUA does not intend this specific exemption to become a precedent for all reverse repurchase transactions and believes that these financing arrangements can and do involve factors that should be subject to standard reserve requirements.

Average daily assets would be the daily average of assets calculated on the basis of assets at the beinning and end of the period or, if available, on assets at the close of each day in the period.

The use of the term "undivided earnings" (as now defined in § 704.2(c)) includes all other reserves and other forms of retained earnings but does not include asset valuation allowances (for example, for loan and investment losses) which have been established to provide full and fair disclosure as required in § 702.3.

The immediate effect of changing the method of reserving is two-fold:

(1) The reserve becomes a fixed operating expense, not a variable cost, fluctuating with the general level of interest rates.

(2) The absolute dollar transfers that are required to be reserved will be less than using a 2% of gross income method in *the current interest rate environment.*

Using June 30, 1984 call reports, 4 corporates had corporate reserves and undivided earnings in excess of 2% of assets at the end of the transfer period and would, if that ratio is still exceeded, be eligible to transfer at the 10 basis point level. On average, the ratio of Corporate Reserves and undivided earnings to assets was 1.31% and the Corporate Reserve was .68% of total assets.

The impact of the Rule was also examined by reviewing two corporate credit unions' actual reserve experience with the 2% of gross income method and the proposed method using net average daily assets. The larger corporate's reserve transfer would have been 27% less using the method in the final rule. The other, a mid-sized corporate ($200–300 million), would have transferred 30% less.

While this result is in part due to the level of interest rates (and hence gross income), most Corporates should have a slightly lesser amount transferred to statutory reserves; however, under the proposed rule they have an incentive to add to retained earnings to reach the second tier, or 2% reserve level, and thus to lower the required reserve transfer by ⅓. By encouraging broader equity buildup and by continuing statutory reserving when this might be discontinued due to declining assets, the staff believes this approach should lead to a higher overall level of capital than the previous approach.

The final rule still retains the authority for corporates to use the Corporate Reserve for extraordinary investment losses although it must be emphasized that such losses are to be reported in accordance with the full and fair disclosure requirements of Section 702.3.

Section 704.4 Representation. Minor changes were made to clarify and simplify the proposal, one of which was to retitle the section from "Management" to "Representation." The proposed rule provided that any representative of a member is eligible to be elected, rather than restrict officials to representatives of member credit unions members. Nearly all commentors supported the proposal and its philosophy that every member should have an equal opportunity to be represented on governing bodies of the corporate credit union.

A few disagreed strongly with this point of view. For example, one commentor stated:

To allow other than credit unions to determine policy actions determining the management discretion of a corporate credit union, is to allow the infusion of philosophy that is contrary to the intent of the primary members of a corporate.

Another commentor stated:

It was the consensus that . . . to grant additional powers to peripheral organizations would have a destabilizing effect by diluting the member/owner relationship with the very members the corporate was chartered to serve.

Most commentors did not agree with these comments and supported the rule as proposed. Moreover it is difficult to follow the logic of the above arguments. Corporates are limited to serving other credit unions unless there are specific bylaw or membership decisions to include other organizations or corporations serving credit unions. To accept these other organizations' funds and to grant them membership but not allow them the right to exercise the responsibilities of membership is inconsistent with the credit union principle of democratic control. The change previously discussed in § 704.2(a) reaffirms the Board's view that corporates primarily serve other credit unions. If the ratio criteria of that section is not met, then a federally chartered credit union cannot use the authorities and powers of section 704. The Board, therefore, expects that credit union members of Corporates will maintain their influence in the direction, policy and priorities of their Corporate through the democratic process.

Finally, one commentor expressed the opinion that mail ballot procedures should be required to insure that democracy prevails in corporate voting. While this position may have merit, the Board notes that standard mail ballot amendments are available for adoption by corporate Federal credit unions, and the Board believes that this is a decision that should be left to each Corporate.

Section 704.5 Annual audit. This section, which is unchanged from the proposal, requires an annual audit of each corporate Federal credit union by an independent, licensed auditor.

Section 704.6 Programs and services. This section was uniformly supported by commentors. The only substantial change was to eliminate the phrase "in its role as a financial intermediary" since the meaning was unclear. This section is promulgated pursuant to section 120(a) of the Federal Credit Union Act, which authorizes the NCUA Board to differentiate its treatment of corporate Federal credit unions. The purpose of this section is to grant corporate Federal credit unions the power to offer innovative programs and services to their members in the areas of investments, liquidity management, payments system and correspondent services. Because technology, regulation and various financial groupings and networks are all changing rapidly, the staff believes corporate credit unions can be most responsive in this environment with this approach rather than with a specifically authorized list. It is noted that the authority is limited to offering services and programs *to the corporate's members,* and is limited to four general types of activities. Otherwise, the Board has purposely determined not to impose regulatory detail. In the event questions do arise about new services or programs NCUA is ready and willing to review any proposed activity for legality prior to implementation.

Section 704.7 Prepayment penalties. With only one exception those commenting on this portion were supportive. Accordingly, there were no changes of substance from the proposed rule. A requirement that the penalty be part of the loan contract was added at the suggestion of one writer in order to provide credit union members the ability to know in advance the cost of prepayment. At the suggestion of some commentors, penalties were also limited to loans with fixed rates and for specific maturities emphasizing once again that the purpose is to remove any interest rate exposure on fixed rate loans for the corporate credit union.

IRPS 80-3

IRPS 80-3—Corporate Central Federal Credit Unions—is repealed in connection with the issuance of this final rule. The IRPS addressed matters, related to representation standards and audit requirements, that are either superseded by the rule or are now incorporated in the rule itself.

Effective Date

The effective date will be January 1, 1985, so that the revised reserving requirements for Corporate credit unions in § 704.3 will without question be in effect for the entire calendar year 1985.

Regulatory Flexibility Act and Financial Regulation Simplification Act

The NCUA Board hereby certifies that this final rule will not have a significant economic impact on a substantial number of small credit unions, because the rule applies only to corporate credit unions. Since the rule reduces burdens and delay would cause unnecessary harm, the Board finds that full and separate consideration of all the requirements of the Financial Regulation Simplification Act is impracticable. The Board has, however, considered most of these policies, as set forth above.

List of Subjects in 12 CFR Part 704

Credit unions, Corporate credit unions.

(12 U.S.C. Section 1762, 1766(a), 1781, 1789)

By the National Credit Union Administration Board on the 19th day of December, 1984.

Rosemary Brady,

Secretary of the Board.

1. NCUA Interpretive Ruling and Policy Statement 80-3—Corporate Central Federal Credit Unions—as published at 45 FR 14202, March 5, 1980, is repealed.

2. Part 704 is revised to read as follows:

PART 704—CORPORATE CREDIT UNIONS

Sec.

704.1 Scope.
704.2 Definitions.
704.3 Corporate reserve.
704.4 Representation.
704.5 Annual audit.
704.6 Programs and services.
704.7 Prepayment penalties.

Authority: 12 U.S.C. 1762, 1766(a), 1781, and 1789.

§ 704.1 Scope.

This part establishes certain special rules applying to corporate Federal credit unions and grants certain additional authorities to such credit unions. Section 704.3—Corporate Reserve—has applicability to both corporate Federal credit unions and federally insured state-chartered corporate credit unions.

§ 704.2 Definitions.

(a) "Corporate Federal credit union" means a Federal credit union (1) that is operated primarily for the purpose of serving other credit unions and (2) whose total dollar amount of outstanding loans to member credit unions plus shares issued to member credit unions equals or exceeds 75 per centum of its total outstanding loans plus shares.

(b) For purposes of § 704.3, a federally insured state-chartered credit union shall be deemed a federally insured state-chartered corporate credit union when its total dollar amount of outstanding loans to member credit unions plus shares and deposits issued to member credit unions equals or exceeds 75 per centum of its total outstanding loans plus shares and deposits.

(c) "Undivided earnings" means all forms of retained earnings except Corporate Reserves (or regular or statutory reserves, as applicable) and except for valuation allowances established to meet full and fair disclosure requirements of § 702.3.

§ 704.3 Corporate reserve.

(a) This section concerns the establishment and maintenance of a corporate reserve against loan losses and certain investment losses. For corporate Federal credit unions, this section applies in lieu of § 702.2 of NCUA's regulations (12 CFR 702.2). For federally insured state-chartered corporate credit unions, this section applies to the extent that applicable state law and regulations (1) require the transfer of a lesser amount to reserves for loan and investment losses than this section of (2) allow charges to reserves for other than loan and investment losses as permitted by this section.

(b) At the end of each dividend cycle and prior to paying a dividend (or, at the option of the credit union, on a monthly basis if dividends are paid more frequently than monthly) sums shall be set aside in a Corporate Reserve in accordance with the following schedule: (1) When the credit union's Corporate Reserve and undivided earnings are less than 2 percent of assets at the end of the transfer period, the credit union shall set aside an amount equal to .0015 times the credit unions's average daily assets for the transfer period times the number of days in the transfer period divided by 365. (2) When the Corporate Reserve and undivided earnings are equal to or greater than 2 percent of assets but the Corporate Reserve is less than 4 percent of assets, the credit union shall set aside an amount equal to .0010 times the credit union's average daily assets for the transfer period times the number of days in the transfer period divided by 365.

(c) Charges may be made to the corporate reserve for loan losses and for investment losses caused by factors other than trading losses or market fluctuations. No other charges shall be made except as may be authorized in writing by the NCUA Board or its designee. Charges shall be made in accordance with full and fair disclosure requirements as described in the Accounting Manual for Federal Credit Unions.

§ 704.4 Representation.

An organizational member (i.e., a member other than a natural person) of a corporate Federal credit union may appoint one of its members or officials as a representative to the corporate credit union. The representative shall be empowered to attend meetings, to vote and to stand for election on behalf of the member. No individual may serve as the representative of more than one organization member in the same corporate Federal credit union.

§ 704.5 Annual audit.

(a) The supervisory committee of a corporate Federal credit union shall cause an annual audit to be made by an independent, duly licensed CPA and shall submit the audit report to the board of directors. A summary of the audit report shall be submitted to the membership at the next annual meeting.

(b) A copy of the audit report shall be submitted to the appropriate regional office of the National Credit Union Administration within 30 days after receipt by the board of directors.

§ 704.6 Programs and services.

Pursuant to section 120(a) of the Federal Credit Union Act (12 U.S.C. 1766(a), and subject to other applicable provisions of law, regulation, bylaws, and any orders of the NCUA Board, a corporate Federal credit union may provide to its members services involving investments, liquidity management, payments systems and correspondent services.

§ 704.7 Prepayment penalties.

If provided for in the loan contract, a corporate Federal credit union is authorized to assess prepayment penalties on loans made at fixed rates and for specified maturities to member credit unions or other organizations.

[FR Doc. 84-33714 Filed 12-27-84; 8:45 am]
BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. NM-14; Special Conditions No. 25-ANM-6]

Special Conditions; Cessna Aircraft Company Model 650 Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued pursuant to §§ 21.16 and 21.17 of the Federal Aviation Regulations (FAR) to Cessna Aircraft Company for the Cessna Model 650 series airplane. The Model 650 airplane will have novel or unusual design features associated with an automatic takeoff thrust control system (ATTCS) for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. These special conditions contain the safety standards which the Administrator finds necessary, because of these design features, to establish a level of safety equivalent to that provided by the regulations applicable to the Cessna Model 650 series airplane.

EFFECTIVE DATE: January 13, 1985.

FOR FURTHER INFORMATION CONTACT: James Walker, Regulations and Policy Office, ANM-110, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2116.

SUPPLEMENTARY INFORMATION:

Background

On January 23, 1984, Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277, filed an application for an amendment to Type Certificate No. A9NM to include an Automatic Performance Reserve System, more commonly known as and referred to hereafter as an Automatic Takeoff Thrust Control System (ATTCS), installation for approval under that type certificate covering the Model 650 airplane.

The Model 650 is a low wing, twin-engine, pressurized transport category airplane having a maximum certificated takeoff weight of 21,000 pounds. The airplane is equipped with two AiResearch TFE-731-3B-100S turbofan engines, each producing 3,650 pounds rated thrust, or, alternatively, TFE-731-3BR-100S engines each rated at 3,850 pounds thrust. The higher rated -3BR engine is used in conjunction with the installation of an ATTCS. The airplane has a maximum permissible altitude of 51,000 feet and total occupancy of 15 persons, including the crew.

The modification covered under the amendment to the type certificate is the installation of an ATTCS. Automatic takeoff thrust control system special conditions issued to date for other airplanes require the ATTCS to be designed to permit manual decrease or increase in thrust up to the maximum takeoff thrust approved for the airplane under existing conditions through the use of power levers. The ATTCS system installed on the engines of the Model 650 airplane contains an electronic fuel controller and thrust limiters which automatically limit thrust and prevent engine operating limits from being exceeded under conditions with full throttle employed. In the event of an engine failure, a signal from the ATTCS is transmitted to the limiters for the maximum thrust. In the event of an ATTCS failure concurrent with engine failure, the crew would be required to activate an override switch to obtain the maximum thrust. Because of this aspect of the design feature in which the pilot must move his hand off the throttle to activate the maximum thrust available, the FAA has determined that item E.2.b. of the special conditions must provide that such activation is permitted, provided that the means to increase thrust is located on or forward of the power levers, is easily operated by either pilot, and meets the requirements of § 25.777.

The type design of the Model 650 airplane, with this automatic system installed, contains a number of novel or unusual design features for an airplane type certificated under the airworthiness requirements incorporated by reference in Type Certificate No. A9NM, or under the applicable airworthiness requirements in effect on the date of application for change to that type certificate. In either case, the applicable airworthiness requirements do not contain adequate or appropriate safety standards. In view of this, special conditions are necessary to provide a level of safety equal to that established by the regulations incorporated by reference in the type certificate and to support a finding by the Administrator that no feature or characteristic of the airplane with the automatic system installed makes it unsafe for the category in which certification is requested. These special conditions specify limits on the maximum thrust increment which may be applied to the operating engines by the ATTCS, prescribe system reliability and status monitoring requirements, requife provisions for manual selection of the

maximum takeoff thrust approved for the airplane under existing conditions, prohibit approval of the system if the automatic or manual application of maximum takeoff thrust would result in an engine operating limit being exceeded, and require the installation of an independent engine failure warning system if the inherent characteristics of the airplane do not provide a clear warning to the crew.

Discussion of Comments

Notice of proposed special conditions No. SC–84–2–NM was published in the **Federal Register** on July 20, 1984, 49 FR 29408. The following comment was received.

The commenter objected to the provisions of Special Conditions C.1 and C.2, which specify a level of reliability for the ATTCS system. It was the opinion of the commenter that the specification of a level of reliability of the system itself forecloses on the applicant's prerogative to achieve a specified level of reliability either through the ATTCS system [as proposed by FAA) or by some other means, at the applicant's discretion. The commenter further states that by specifying a level of safety isolated from the total airplane and limited to consideration of a single system, a level of reliability higher than that required by the airplane certification basis would be demanded by the special condition. The commenter believes this is contrary to the protections guaranteed the applicant by the equivalent level of safety statement in § 21.16 of the FAR.

The FAA does not agree that the reliability specified in the special conditions demands a greater level of safety than that required by the applicable certification basis. In 1977, the FAA initiated development of special conditions for current turbine powered transport category airplanes, coordinating the proposals world-wide with all interested groups. This effort was continued until early 1979 when a final version was completed. The same special conditions were subsequently applied to all applicants seeking approval of an ATTCS. The FAA has determined that the special conditions proposed to Cessna provide the level of safety necessary to satisfy an equivalent safety finding on the issue of trading airplane performance for a calculated ATTCS reliability and to assure a minimum safety standard intended by the applicable regulations. The FAA notes the arguments presented by the commenter; however, it has been determined that the special conditions, as proposed, are necessary for acceptance of a system that automatically increases power or thrust on operating engines when one engine fails during takeoff. Reliability requirements for the ATTCS system and combinations of failure probabilities should be consistent with those specified in the applicable regulations since installation and use of an ATTCS is optional and can be deactivated at the operator's discretion.

Type Certification Basis

The type certification basis for the Cessna Model 650 airplane with the ATTCS installed in Part 25 of the Federal Aviation Regulations (FAR) effective February 1, 1965, as amended by Amendments 25–1 through 25–39, 25–43, and 25–44; plus §§ 25.901(c) and 25.1199, as amended through 25–40; §§ 25.1309 and 25.1351(d), as amended through 25–41; §§ 25.177, 25.255, and 25.703, as amended through 25–42; and §§ 25.1305 and 25.1529, as amended through 25–54; FAR Part 36, as amended by Amendments 36–1 through 36–12; SFAR 27, as amended by Amendments 27–1 and 27–2; Special Conditions No. 25–102–NM–7; and Exemption No. 3436 from compliance with § 25.1305(d)(3) for type certification without an engine rotor system unbalance indicator; and the special conditions contained herein.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of novel or unusual design features of the airplane. Special conditions, as appropriate, are now issued after public notice, in accordance with §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis in accordance with § 21.101.

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 21

Air transportation, Aircraft, Aviation safety.

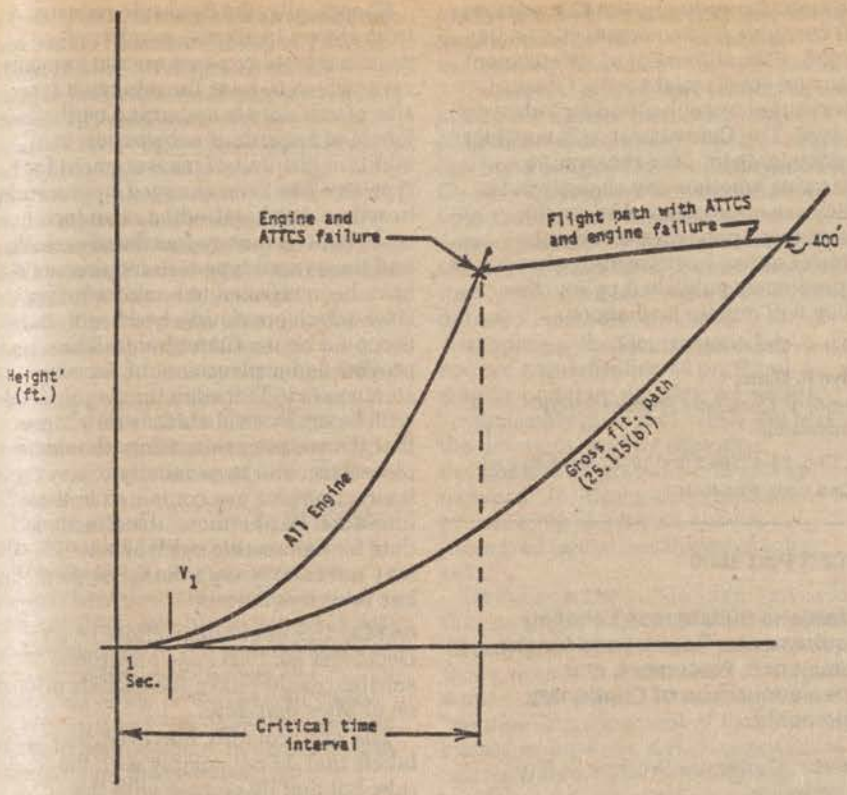
The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator the following special conditions are issued to Cessna Aircraft Company for the Cessna Model 650 series airplane, equipped with an automatic takeoff thrust control system (ATTCS):

A. *General.* With the ATTCS and associated systems functioning normally as designed, all applicable requirements of Part 25, except as provided in these special conditions, must be met without requiring any action by the crew to increase thrust.

B. *Definitions.* 1. *ATTCS.* An ATTCS is defined as the entire automatic system used on takeoff, including all devices, both mechanical and electrical, that sense engine failure, transmit signals, actuate fuel controls or power levers on operating engines to achieve scheduled thrust increase, and furnish cockpit information on system operation.

2. *Critical Time Interval.* When conducting an ATTCS takeoff, the critical time interval between V_1 minus 1 second and a point on the minimum performance, all-engine flight path where, assuming a simultaneous engine and ATTCS failure, the resulting minimum flight path thereafter intersects the Part 25 required gross flight path at no less than 400 feet from the takeoff surface. This definition is shown in the following graph:



3. *Takeoff Thrust.* Notwithstanding the definition of "takeoff thrust" in Part 1 of the Federal Aviation Regulations (FAR), "takeoff thrust" means each thrust obtained from each initial thrust setting approved for takeoff under these special conditions.

C. *Performance Requirements.* The following reliability and performance criteria apply:

1. An ATTCS system failure during the critical time interval must be shown to be improbable.

2. The concurrent existence of an ATTCS failure and engine failure during the critical time interval must be shown to be extremely improbable.

3. All applicable performance requirements of Part 25 must be met with an engine failure occurring at the most critical point during takeoff with the ATTCS system functioning.

D. *Thrust Setting.* The initial takeoff thrust set on each engine at the beginning of the takeoff roll may not be less than:

1. Ninety (90) percent of the thrust level set by the ATTCS (the maximum takeoff thrust approved for the airplane under existing conditions);

2. That required to permit normal operation of all safety-related systems and equipment dependent upon engine thrust or power lever position; or

3. That shown to be free of hazardous engine response characteristics when thrust is advanced from the initial takeoff thrust level to the maximum approved takeoff thrust.

E. *Powerplant Controls.* 1. In addition to the requirements of § 25.1141, no single failure or malfunction, or probable combination thereof, of the ATTCS system, including associated systems, may cause the failure of any powerplant function necessary for safety.

2. The ATTCS must be designed to:

a. Apply thrust on the operating engine, following an engine failure during takeoff, to achieve the selected takeoff thrust without exceeding engine operating limits;

b. Permit manual decrease or increase in thrust up to the maximum takeoff thrust approved for the airplane under existing conditions through the use of the power lever. For aircraft equipped with limiters that automatically prevent engine operating limits from being exceeded under existing conditions, other means may be used to increase the maximum level of thrust controlled by the power levers in the event of an ATTCS failure provided the means:

(1) Is located on or forward of the power levers;

(2) Is easily identified and operated under all operating conditions by a single action of either pilot with the hand that is normally used to actuate the power levers; and

(3) Meets the requirements of § 25.777, paragraphs (a), (b), and (c);

c. Provide a means to verify to the flightcrew before takeoff that the ATTCS is in a condition to operate; and

d. Provide a means for the flightcrew to deactivate the automatic function. This means must be designed to prevent inadvertent deactivation.

F. *Powerplant Instruments.* In addition to the requirements of § 25.1305:

1. A means must be provided to indicate when the ATTCS is in the armed or ready condition; and

2. If the inherent flight characteristics of the airplane do not provide adequate warning that an engine has failed, a warning system that is independent of the ATTCS must be provided to give the pilot a clear warning of any engine failure during takeoff.

(Secs. (313)(a), 601, and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.28 and 11.49)

Issued in Seattle, Washington, on December 13, 1984.

Raymond A. Salazar,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-33774 Filed 12-27-84; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1115

Reporting of Substantial Product Hazards; Opportunity for Public Comment

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of opportunity for written comment.

SUMMARY: The Commission is providing an opportunity for written comment on its enforcement policy on substantial product hazard reports. [Vice-Chairman Saundra Brown Armstrong voted to provide, in addition, an opportunity for the presentation of oral comments.]

DATES: Written comments may be submitted until February 15, 1985.

ADDRESSES: Written comments should be submitted to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Sheldon Butts, Office of the Secretary, telephone: (301) 492-6800.

SUPPLEMENTARY INFORMATION: Section 15(b) of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2064(b), requires "[e]very manufacturer of a

consumer product distributed in commerce, and every distributor and retailer of such product, who obtains information which reasonably supports the conclusion that such product—. . . (2) contains a defect which could create a substantial product hazard . . . [to] immediately inform the Commission . . . of such defect, unless such manufacturer, distributor, or retailer has actual knowledge that the Commission has been adequately informed of such defect."

"Substantial product hazard" is defined in section 15(a) of the CPSA, 15 U.S.C. 2064(a), as:

(1) a failure to comply with an applicable consumer product safety rule which creates a substantial risk of injury to the public, or

(2) a product defect which (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise) creates a substantial risk of injury to the public.

Part 1115 of Title 16 of the Code of Federal Regulations contains the Commission's rules interpreting the requirements of section 15(b) of the CPSA that manufacturers, distributors, and retailers report to the Commission when they obtain information which reasonably supports the conclusion that a product contains a defect which could create a substantial product hazard. These rules were issued after notice and the opportunity for public comments on August 7, 1978 (43 FR 34998).

On April 6, 1984 (49 FR 13820), the Commission published in the **Federal Register** a "Statement of Enforcement Policy on Substantial Product Hazard Reports." This notice expresses concern about the level of compliance with the reporting requirements in the statute and clarifies the Commission's interpretation of these reporting requirements. This notice, which contains guidelines concerning section 15(b) of the CPSA, was published without an opportunity for public comment.

Since the April 6, 1984 publication of the Commission's guidelines concerning section 15(b), the Commission has received several communications from organizations representing manufacturers of consumer products to the effect that they believe that, because of the importance of the requirements of section 15(b) and to eliminate misunderstandings concerning them, the public should be allowed to comment on the Commission's policy that was published on April 6, 1984.

The Commission is interested in knowing the views of interested members of the public on its policy in this area. Accordingly, the Commission will consider written comments on its April 6, 1984, statement of enforcement policy on substantial product hazard reports, that are submitted by February 15, 1985. The Commission will consider all comments that are received to determine whether any changes in its policy are appropriate. Unless the Commission publishes a **Federal Register** notice implementing changes to its previously published policy, this policy will remain unchanged.

Dated: December 24, 1984.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 84-33789 Filed 12-27-84; 8:45 am]

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16 CFR Part 1500

Hazardous Substances Labeling Requirements; Regulations for the Prominence, Placement, and Conspicuousness of Cautionary Statements

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission revises its regulations concerning the prominence, placement, and conspicuousness of cautionary statements on the labels of hazardous substances intended, or packaged in a form suitable, for household use. The revisions, as proposed, were intended to codify existing practices and policies governing placement and conspicuousness of labeling under the Federal Hazardous Substances Act (FHSA). In response to comments, however, the Commission has changed some of the requirements that were in the original proposal. These changes do not impose additional or heavier burdens on industry. Rather, they are clarifications or more liberal requirements resulting from consideration of the comments on the proposal. Nor do these changes provide less protection for the public. (Chairman Nancy Harvey Steorts and Commissioners Stuart M. Statler, Terrence M. Scanlon, and Carol G. Dawson voted to approve the published **Federal Register** notice. Commissioner Saundra B. Armstrong voted to approve the rule as published, but would have deleted the preamble section entitled "CERTIFICATION OF NO SIGNIFICANT ECONOMIC IMPACT ON SMALL ENTITIES.")

Specifically, the final rule reduces, from eleven to six, the number of principal display panel area increments upon which to base the minimum type size of statements appearing on the labels of hazardous substances. In addition, the unit of measurement for type size has been changed from a scale based on one hundredths of an inch to a scale based on sixty-fourths of an inch, and the overall type-size requirements have been reduced to conform to type sizes which previously had been accepted by the Commission. The provisions for placement of warning statements in literature that is provided with hazardous substances now state that the warning statements should be placed together in proximity to any instructions for use contained in the literature. Furthermore, the effective date for exhausting old labels which may not comply with these requirements has been lengthened.

DATES: The final rule is effective on December 30, 1985 as to hazardous substances that have their labels printed on or after that date.

The rule provides, however, that labels that do not comply with the final rule, but that do comply with the regulations and practices in effect at the time of printing, may be applied to the containers of subject hazardous substances until December 28, 1987 provided the labels were printed before December 30, 1985.

FOR FURTHER INFORMATION CONTACT: Charles M. Jacobson, Division of Regulatory Management, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6400.

Inquiries from the media should be directed to Lou Brott, Office of Public Affairs, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (202) 634-7780.

SUPPLEMENTARY INFORMATION:

Background

On December 13, 1978, the Consumer Product Safety Commission (Commission) published in the Federal **Register** a proposed rule setting forth the Commission's interpretations and policies for the type size, placement and conspicuousness of cautionary statements that are required by Section 2 (p)(1) of the Federal Hazardous Substances Act (FHSA or "the Act"), 15 U.S.C. 1261(p)(1), to appear on the labels of hazardous substances intended, or packaged in a form suitable, for use in the home. The proposal would revise the regulation now in effect under the Act.

16 CFR 1500.121, which had been issued to implement Section 2(p)(2) of the FHSA, 15 U.S.C. 1261(p)(2), which requires that cautionary statements be prominently located on the label of a hazardous substance in conspicuous and legible type that contrasts by typography, layout, or color with other printed matter on the label. The requirements of the existing 16 CFR 1500.121 are general rather than specific. Accordingly, over the years the Commission reviewed, on a case-by-case basis, individual labels to determine whether they complied with the requirements of the FHSA. As a results of these reviews, a number of practices and policies evolved concerning the labeling of hazardous substances.

The proposed amendment to 16 CFR 1500.121 was designed to promote uniformity in labeling practices by making these practices and policies more readily available to the public by publishing them in the Federal Register. In some instances, however, the provisions of the proposed rule varied slightly from existing labeling practices. To the extent possible, in responding to comments on the proposal, the Commission has revised the proposed rule to conform as closely as possible to the existing labeling practices that have been followed under 16 CFR 1500.121. To the extent that the final rule contains provisions that are in addition to, or are more detailed than, the provisions of the Act and of existing § 1500.121, these new interpretative provisions are intended to state labeling parameters that the Commission will accept as complying with the Act. Substances not labeled to comply with the provisions of the final rule may, but not necessarily, be considered misbranded.

Comments Received in Response to the Proposed Rule

The comments received in response to the proposed rule raised two types of issues. One type involved issues of general applicability that apply to the labeling of more than one hazardous substance. The second type related to specific products or container forms.

I. *General Issues.* Comments which raised issues of general applicability are discussed below.

A. *Principal display panel.* (1) Section 1500.121(a)(2)(iv) of the proposed rule contained a definition of "principal display panel" which defined that panel as "the portion(s) of the surface of the immediate container * * * which bear(s) the labeling customarily placed or designed to be placed facing outward when the package is displayed for retail sale." One comment questioned that part of the definition of principal display panels which read "* * * labeling customarily placed * * * facing outward * * *", on the ground that manfacturers have little control over retail display practices, regardless of how a package has been designed to be displayed. The Commission agrees that compliance with the regulation should not be dependent upon display practices which could vary from retailer to retailer, and the Commission also agrees that "facing outward" may be confusing. Accordingly, the Commission has revised the definition of principal display panel by deleting the words "customarily placed or" from the text of the definition and by changing" designed to be placed when facing outward" to "designed to be most prominently displayed, shown, or presented under conditions of retail sale."

(2) Section 1500.121(b)(2)(iii) provided that packages with multiple *principal* display panels must bear on *each* of those panels, at a minimum, the signal word (i.e., "danger", "warning", or "caution"), a statement of the principal hazard or hazards, and, if appropriate, instructions to read carefully any cautionary material that may be placed elsewhere on the label. A second commenter objected generally to the requirement that each of multiple principal display panels be labeled.

The requirement that each of multiple display panels be labeled with at least the minimum information required to appear on the principal display panel applies only in those situations where a manufacturer has designed a package with two or more panels equally suitable for retail display. This is not a new interpretation. It has been in effect since the time the Food and Drug Administration administered the Federal Hazardous Substances Act. The policy underlying this existing provision is that the information required to be on the principal display panel should be prominently available to the consumer before the decision to purchase is made. In the case where there is more than one principal display panel, this policy will not be achieved unless each of the panels is labeled. Accordingly, the Commission declines to modify its existing policy in this regard.

(3) In addition, where the principal display panel of the immediate container consists of a lid, cap, or other item which might be separated from the immediate container and discarded, § 1500.121(b)(2)(iii)(A) of the proposal provided that the container would be deemed to have a second principal display panel on that portion of the surface of the container most likely to face outward during consumer storage or use. One commenter expressed the opinion that the requirement that the display panel be deemed to appear on that portion of the container *most likely to face outward* during consumer storage or use was too vague and subjective to provide guidance to manufacturers.

The Commission agrees with this comment and has amended this provision of the regulation so that, in the case of a package which has as its principal display panel a lid or cap which may be separated from the immediate container and discarded, the immediate container should have another display panel which, at a minimum, must bear the signal word, statement of principal hazards, and instructions, if appropriate, to read any cautionary material that may be placed elsewhere on the label.

(4) Another commenter speculated that at some time in the future a manufacturer might create a package which had as its principal display panel a cap or other item where the remainder of the container might be so small that labeling is impossible. Accordingly, the commenter objected to the requirements of the regulation that the container be deemed to have a second principal display panel. The Commission notes that during the eleven years it has administered the Federal Hazardous Substances Act, it has not encountered a situation similar to that envisioned by the commenter. Furthermore, an existing regulation under the Act, 16 CFR 1500.82, established a procedure for granting exemptions from labeling in cases where a package is too small to accommodate the labeling required by the Act. Therefore, the possibility raised by this commenter does not outweigh the benefit provided by the second display panel. Accordingly, the Commission has not changed the requirement that a package with a principal display panel on a discardable lid or other feature shall have a second display panel. Should the situation envisioned by the commenter arise, the manufacturer can request an exemption pursuant to 16 CFR 1500.82.

(5) One commenter suggested that principal display panels of 4 square inches or less should be exempt from the requirements of § 1500.121(b)(2)(ii) and that the labeling otherwise required for such principal display panels should be permitted to be placed on other display panels. The commenter contended that otherwise these small principal display panels would be so cluttered that the impact of the necessary precautions would be lost.

The Commission does not believe that a general exemption for small principal display panels is necessary or desirable. Many principal display panels with an area of less than 4 square inches are able to accommodate all required labeling without impairing the consumer's ability to read and understand the labeling on the panel. In cases where a label would otherwise be too crowded, the manufacturer can request an exemption under § 1500.82, as explained above.

(6) Three commenters objected to the use, in § 1500.121(c)(i)(iii) of the proposal, of the circular top of a flat polish can as an example of a lid as a principal display panel. These commenters contended that, under normal conditions of retail display, polish cans are stacked, so that the side of the can is the principal display panel. The Commission believes that its clarification of the definition of the term principal display panel has addressed the concerns raised by these commenters. The example of the shoe polish can, however, did cause confusion in several instances, and the example has been eliminated from the final regulation.

B. *Type-size requirements.* The Commission's proposed rule contained a chart by which the type-sizes for individual containers for hazardous substances could be determined. The chart contained 11 increments based on the area of the principal display panel of the container to be used. Within each increment, type-sizes for the signal word, statement of hazard, and other cautionary materials on the label were designated in a scale based on hundredths of an inch.

The type sizes specified in §§ 1500.121(c)(1) and 1500.121(c)(2) of the proposed rule received the most comment. Generally, the comments questioned the use of a scale based on 1/100 of an inch as a tool for measuring compliance with the Act, questioned the need for 11 increments to determine the appropriate type size, and expressed concern that the type size specified for an individual increment of label area did not conform to the type sizes which previously had been permitted by the Commission. The commenters also raised issues regarding specific products and package types.

(1) With regard to the units of measurements of type size, the original provisions of 16 CFR 1500.121 were stated in terms of point size; thus, signal words (with some exceptions) had to appear on the label in 18-point type, statements of hazard generally had to appear in 12-point type, and other cautionary material had to appear in 10-point type. Point size, however, does not necessarily precisely specify the size of the image which may appear on the label. Thus, depending on the type style, a style which is designated as 18 point type may have a face or actual image which is only 16 points in height. This, of course, created a problem when Commission staff members reviewed labels. In many instances, based on the measurement of the type face, the staff sent letters of advice to manufacturers contending their products were out of compliance, even though the type style used met the required point size requirements. Accordingly, the Commission proposed to resolve this problem by specifying a scale for type size based on 1/100 of an inch, which would be measured against the actual image of the cautionary labeling appearing on the surface of the label. The 1/100 inch scale was chosen because 18/100 if an inch was equivalent to 18-point type. This approach was challenged by commenters for a number of reasons.

Many commenters pointed out that the printing industry had no readily available means with which to measure 1/100's of an inch and that point size was the standard used by that industry in printing labels. A number of other commenters pointed out that the use of 1/100 of an inch would cause products which had previously been measured on the basis of point size to be out of compliance by 1/1000 or 1/2000 of an inch, a difference which they claimed was too insignificant to justify a change. In general, the commenters favored changing the scale, with most supporting a fractional scale based on 64ths rather than 100ths of an inch.

The Commission has reviewed these comments and agrees that they have merit. Because there seems to be a consensus that a scale based on 64ths of an inch, or some variation thereof, would be most easily utilized by the printing industry and by the regulated manufacturers, the Commission has revised its proposed regulation accordingly. Thus, the final rule specifies type size on a scale based on 16ths, 32nds, and 64ths of an inch.

(2) A number of commenters also indicated that the scale proposed by the Commission contained requirements for larger type size than had been previously permitted by the Commission staff in reviewing labels for compliance with 16 CFR 1500.121. In some instances, the difference was caused by the fact that converting point size to a scale of 1/100ths of an inch was inexact. Thus, for example, 8 point type, which had previously been permitted under the regulations, might be smaller in actual image than type of 8/100ths of an inch in height, which the proposal would have required. In other instances, however, there were significant variations between the type sizes specified in the proposal and those which had been previously permitted under 16 CFR 1500.121. Because the proposed rule was intended primarily to simply codify the practices and policies which had been established under the existing type-size and placement regulations, the Commission undertook to eliminate the differences in the final rule. As part of this process, the Commission reviewed labels which had been submitted by commenters who claimed that labels which had previously been accepted would be out of compliance under the proposed regulation. As a result of its review, the Commission scaled down a number of the type-size specifications which were set forth in the proposed chart. This scaling down had the effect of bringing into compliance all of the few labels reviewed by the Commission which would otherwise have type smaller than specified in the proposal. Furthermore, conversion from a scale based on 100ths of an inch to one based on 64ths of an inch was done by selecting the type size, in 64ths of an inch, which most closely approached but did not exceed the actual height of its counterpart in 100ths of an inch.

The Commission believes that the steps of scaling down a number of the type-size specifications from those set forth in the proposed chart and of converting those specifications to a scale of 64ths of an inch in a manner which did not exceed the actual height of its counterpart in 100ths of an inch, will take care of the concerns expressed by these commenters.

(3) In addition to the comments on type size itself, several commenters questioned the need for the number of increments in type size that were specified in the proposed regulation. Some commenters pointed out that specifying permissible type sizes in so many increments could cause some products which were now deemed acceptable to not meet the provisions of the proposal. As an example, one commenter pointed out that the compliance with proposed table would require alteration of the type size for signal words and statements of hazard on one-point and one-quart containers which had previously been found to be acceptable.

In the process of its review of type size, the Commission also reviewed the policies which led to the selection of 11 incremental areas. The premise underlying this selection was that, as

the area of a display panel increases, type size should increase if it is to remain conspicuous. The approach of basing type size on display panel area has also been adopted in regulations issued under the Fair Packaging and Labeling Act, the Food, Drug and Cosmetic Act, and the Federal Insecticide, Fungicide and Rodenticide Act, and the Commission believes it is an appropriate means by which to establish requirements for conspicuousness. In its review, however, the Commission came to the conclusion that it had proposed too many type-size categories. The Commission reviewed a number of mock-up labels increasing in size in 11 increments of 5 square inches each to determine whether the increase in conspicuousness actually warranted such a detailed breakdown by display panel area and came to the conclusion that a smaller number of display panel area increments would provide adequate conspicuousness. Thus, in response to the comments, the table in the final rule is based on 6 principal display panel area increments: 0–2 square inches, ">2–5 square inches, ">5–10 square inches, ">10–15 square inches, ">15–30 square inches, and greater than 30 square inches. These conform to the basic standardized container sizes used by many manufacturers of hazardous substances. Five to 10 square inches would cover ¼ and ½ pint containers, 10–15 square inches would roughly conform to the surface area of a pint container, and 15–30 square inches would cover containers greater than 1 pint and up to 1 quart.

In cases where two or more principal display panel size increments in the proposed table are combined into one principal display panel size increment in the final rule, the final rule specifies as a minimum type size for the signal word, statement of hazard, and other cautionary material the type sizes which were established for the smaller size increment in the proposed rule. The Commission believes that the adoption of this policy will not compromise the conspicuousness of labeling and also believes that this will eliminate any necessity that labels which currently comply with the type size requirements of the original § 1500.121 will have to be altered.

(4) Two commenters stated that type-size requirements should not be based on the area of the principal display panel of the container, but rather on the area of the display panel on which the labeling statement appears. (This contention, of course, applies only to required cautionary information, such as first aid instructions, precautionary measures for handling and use, or requirements for handling and storage, that may be placed in locations other than the principal display panel. Under the regulations, the signal word and statement of hazard must always appear on the principal display panel.) The rationale for the commenters' position was that 16 CFR 1500.121 previously required only that the type to be used for other cautionary material bear a reasonable relationship to the other printing on the panel involved.

The Commission agrees with this view. Accordingly, the Commission has revised the table to make the type-size requirements applicable to the area of the display panel upon which the cautionary labeling statements in question appears. The Commission believes that permitting this practice will not compromise the public safety.

(5) Two commenters objected to the proposed type-size requirements on the ground that those requirements would cause their products, which they considered to be in compliance with 16 CFR 1500.121, to be deemed out of compliance with the proposed regulation. Both commenters offered examples of such labels. In both instances, the label submitted contained a reduced type size based on the provision in existing § 1500.121 that permits type size to be reduced when the size of the label space requires such a reduction. The existing regulation, however, also provides that the reduced type size should be no smaller than necessary and that it may not be reduced to a size smaller than 6 point type.

One of the two commenters purported to demonstrate that an increased type size was unnecessary by submitting a mock-up label which the manufacturer claimed would require the instructions for the use of the product to appear in less than 6 point type because the cautionary labeling took a disproportionate amount of the label space.

The Commission has reviewed the labels submitted by both commenters. In both instances, the Commission believes that the labels do not comply with the existing provisions of 16 CFR 1500.121. For example, one item submitted was a package having a principal display panel with an area in the increment of 50–100 square inches. This surface area is normally found in containers of approximately one-gallon capacity. The Commission has not encountered any instances in which it was necessary to reduce the size of the signal word from the 18 point type specified in the current regulation to the 12 point type used by this commenter. Similarly, with regard to the mock-up label that was submitted, the type style and spacing of the cautionary material on that label could be designed to occupy far less space than it does in the submitted label. Because the manufacturer is simply objecting to the use of 8 point type rather than 6 point type, the Commission notes that the submitted label could be redesigned to utilize 8 point type and thereby comply with the proposed rule.

Accordingly, the Commission has not altered the tables on the basis of these comments.

(6) Some commenters requested that the type-size specification chart limit the minimum type size for large containers to the equivalent of the 18 point, 12 point and 10 point requirements for signal words, statements of hazard, and other cautionary labeling, respectively, which are currently in effect under the existing regulations. The Commission agrees that this is a reasonable request, because the revised regulation is intended only to codify existing labeling practices. Accordingly, the Commission has made the requested change in Table I.

(7) Three commenters requested that the statement "read carefully other cautions on the ——— panel," which is required by the regulations when all the cautionary labeling required by the Act does not appear on the principal display panel, appear in type equivalent to 6 point, regardless of the area of the display panel upon which it appears. The Commission believes that this alteration is inappropriate, because it could result in situations where a container with a relatively large principal display panel area, *e.g.*, 75 square inches, would have an instruction on that panel appearing in 6 point type, a type size that would be too small to be conspicuous.

(8) One commenter on the type-size requirements claimed that the regulation would preclude manufacturers from using scaled-down copies of labels for large containers in cases where they wish to apply labels to smaller containers of the same product. No rationale was given for this position, nor is the Commission in a position to determine whether the revisions to the table which it has made in response to comments will alleviate this objection. The Commission would note, however, that under the existing regulations, compliance with the requirements for type size has never been governed by whether the manufacturer is able to photographically reduce an existing label so that it can be used on smaller containers. This consideration does not appear to be relevant to whether the

type size on the smaller labels is sufficiently legible and conspicuous. In addition, manufacturers who wish to use this technique for making smaller labels could do so by making the larger labels of an appropriate size. Accordingly, the Commission has not changed the proposal in response to this comment.

(9) The Commission, in promulgating the proposed regulation, intended only to codify existing practices and policies which had evolved under 16 CFR 1500.121, although the Commission was aware that the proposed regulation might require some changes in labeling where these were not being followed. Many commenters challenged the Commission's contention that this rule would not cause substantive changes. Many made sweeping statements that all labels would have to be changed or that a great majority of the labels would have to be changed, without giving any specific reasons why these steps might be necessary. A few commenters, however, provided specific examples which the Commission believes were characteristic of the types of changes which these commenters predicted. These examples were specifically addressed in the area of type size. The Commission has revised its proposed regulation to address any inconsistency which might have existed between the proposed type size requirements and those type sizes actually in use by manufacturers. The Commission believes that these revisions, in large measure, will alleviate much of the concern that labels might have to be revised. In addition, as explained below, the Commission has made changes to the proposed effective date to further reduce any possible adverse economic impact on labels currently in use. The Commission believes that these two steps will prevent the need for significant numbers of unscheduled label changes. The Commission also notes that, during the years it has been enforcing the FHSA, it has encountered many firms whose products do not comply with the FHSA type size, placement, and conspicuousness requirements. Promulgation of this regulation in no way relieves such firms from making label corrections when their products do not comply with the current requirements of the Act and its regulations.

C. *Cautions on other panels.* Several commenters requested that the use of a "practical equivalent" be permitted for the statements "Keep Out of Reach of Children" or "Read Carefully Other Cautions on ———— Panel."

(1) In regard to the statement "Keep Out of Reach of Children," the commenters pointed out that such a change would be consistent with the language of section 2(p)(1)(J) of the FHSA and 16 CFR 1500.3(b)(1)(i)(J) (*i.e.* "The statement 'Keep out of the reach of children' or its practical equivalent"). These comments have merit, and the requisite change has been made.

(2) With respect to the use of the "practical equivalent" for the statement "Read carefully other cautions * * *," two commenters expressed concern that the Commission should permit the use of a practical equivalent. One also expressed concern that the example given in the regulations would be too long a statement for some packages to accommodate. The Commission emphasizes that it has no desire to mandate a specific label statement covering this topic. As long as a statement is sufficient to notify the purchaser or user of a product that other cautionary information appears elsewhere on the package, such language would be a legitimate practical equivalent to the example which appeared in the proposed regulation. For example, "read cautions on back" or "other cautions on back" would be adequate. By the same token, however, simply including the statement "SEE BACK" probably would not be sufficient to notify the user of the product to look for cautionary information elsewhere. While the Commission is amendable to the use of practical equivalents, and has made the requisite change in § 1500.121(b)(2) in response to these comments, it will reject those which do not inform the public that other *cautionary* information appears elsewhere on the package.

D. *Accompanying literature.* Section 2(n) of the Federal Hazardous Substances Act requires that words, statements, or other information required to be on the label of a hazardous substance must also appear on all accompanying literature that contains directions for use, whether written or otherwise.

Two commenters requested that the Commission define the term "accompanying literature" as it is used in proposed § 1500.121(c)(6). This action is unnecessary because existing § 1500.3(c)(9) already defines "accompanying literature."

The Commission's proposed regulation, at § 1500.121(c)(6), specified type size and placement for cautionary information in accompanying literature. Several commenters claimed that inclusion of this provision in the regulation would require substantial redesign of accompanying literature. Accordingly, that group took the position that an existing regulation, 16 CFR 1500.125, adequately addresses the subject of labeling in accompanying literature and that the proposed requirements should be stricken. Other commenters accepted the proposed requirements but requested a revision of the provision that the labeling in accompanying literature immediately precede the directions for use, be blocked together within a square or rectangular area, and be in a specified type size.

(1) With regard to the comments that claim the current regulation covering accompanying literature (§ 1500.125) is adequate, the commenters have misconstrued the purpose of that regulation. That regulation does not purport to establish type size and placement requirements for cautionary material in accompanying literature. Rather, that regulation simply requires that literature that accompanies a hazardous substance, and that contains instructions for use, must bear the cautionary material required under Section 2(p) of the Federal Hazardous Substances Act.

It has been the Commission's experience that the material in such accompanying literature is not necessarily limited to instructions for use. In many instances, accompanying literature is used by manufacturers to promote other products or to describe the various benefits of the products that have been purchased. In such cases, if there were no requirements for placement of the cautionary material, the cautionary material easily could be obscured by its placement in the text. For example, if the instructions for use appeared on the second page of a ten-page booklet and the cautionary material appeared on page ten, the benefit contemplated by the statute clearly would not be achieved. For this reason, the Commission disagrees with those who contend that 16 CFR 1500.125 is adequate to effectively notify the public. The Commission therefore declines to delete the provision that cautionary labeling in accompanying literature should be placed together within the same general area and in reasonable proximity to any directions for use.

(2) With regard to the comments objecting to the proposed type size, placement, and blocking requirements for cautionary information in accompanying literature, the Commission believes that those comments have merit. Accordingly, the regulation now simply states that cautionary material should be placed together in the same general area in

reasonable proximity to any instructions for use and that it should be in a type size that is reasonably related to other printed matter in the accompanying literature. This will allow manufacturers latitude in designing their accompanying literature, while ensuring that the user of a product is advised effectively of the hazards associated with it.

(3) Several commenters suggested that the type-size requirements for cautionary material in accompanying literature were overly complex and needed revision. The Commission concurs with this assessment. Accordingly, the final regulation contains only two basic type provisions applicable to accompanying literature. First, the type size of the cautionary labeling must be reasonably related to the type size of any other printed matter in the accompanying literature. It must also be in conspicuous and legible type, which is in contrast by typography, layout, or color with other printed matter on the label.

E. *Horizontal placement of cautionary statements.* Proposed § 1500.121(b)(1) stated that all cautionary labeling should appear in lines generally parallel to the base on which the package upon which the label appears rests as it was to be displayed for sale. This revisions, however, exempted collapsible tubes.

(1) Several commenters, while supporting the proposition that the signal word and statement of hazard should appear parallel to the base of the principal display panel, questioned whether it might be more effective to permit the other cautionary labeling to run in lines which might be perpendicular to the base of the package. The rationale for this position was that for certain cylindrical tubes of narrow diameter, or for small F-style metal cans where the other cautionary labeling appeared on the side of the can, the statement might be more legible and effective if the cautionary labeling were allowed to run vertically.

The Commission has in the past adopted this suggested interpretation for cylindrical tubes with a small diameter and for small F-type containers where both "front" and "back" are used as a principal display panel. The rationale was that permitting such a statement to run vertically would provide a more conspicuous warning for the user or purchaser of the product. Accordingly, the final regulation permits cautionary labeling (other than the signal word, the statement of hazard, and the instruction to "read cautions on the other panel") to run in lines that are generally parallel to the other labeling on the same panel, provided that all of the other labeling appearing on that panel runs in the same direction.

(2) In response to other specific comments, the name and address of the manufacturer of the product need not appear horizontally on the label, regardless of which display panel it appears on. Cartridges, which may be displayed in an upright manner but may be stored in the home lying on their side, need not have cautionary labeling parallel to the base upon which they rest during retail display.

F. *Border lines.* The regulation as proposed stated that the signal word, statement of principal hazards, and instructions to read carefully any cautionary material that may be placed elsewhere on the label, that are required to be on the principal display panel, should be blocked together within a square or rectangular area. The proposed regulation further provided that the area must be enclosed by a border line if the required statements might be obscured by the design of the label, the use of vignettes, or the proximity of other labeling, and that the cautionary labeling must be separated on all sides from any other printed or graphic matter by a space no smaller than the height of the type size in which the other cautionary material required by the Act appears on the label.

Several commenters claimed that these provisions were too subjective and suggested that the Commission instead require merely a border line when the separation between the main panel cautionary statements and other printed material on the label was less than the height of the type size in which the other cautionary material was required to appear.

The Commission agrees that this is a reasonable revision to the regulation. Accordingly, the rule has been revised to require that the signal word, statement of hazard, and statement to "read the other cautionary material appearing elsewhere on the container" shall be blocked together within a square or rectangular area with or without a border line and further provides that a border line may be used in lieu of maintaining a space between that cautionary material and other labeling material which appears on the main panel.

G. *Grouping.* (1) One commenter claimed that the requirement that the statements described in the previous paragraph be blocked together within a square or rectangular area would require a complete change for almost every product that company manufactured. The Commission believes this manufacturer's concern is unwarranted. The requirement contained in the proposed revision of 16 CFR 1500.121 was simply intended to duplicate the existing requirement of § 1500.121(a) that principal display panel labeling under the FHSA be placed together and that the necessary prominence for such labeling statements be achieved within the borders of a square or rectangle, with or without a border line. The proposed revision to § 1500.121 was not intended to make any change in this aspect of type size and placement requirements. Accordingly, insofar as the commenter produces a product which currently complies with the regulations, the final rules will require no change in that manufacturer's labeling. The Commission, however, has revised the language of the final regulation to make the provision more clear.

(2) One commenter suggested that because requirements for labeling on principal display panels were in effect, and are restated at § 1500.121(b)(2) of the proposed rule, that the requirement in § 1500.121(d)(2) of the proposed rule, dealing with interference with the conspicuousness of the cautionary labeling statement by virtue of label design, vignettes, or other printed material, be deleted. The Commission agrees that there may be some overlap between the requirements of § 1500.121(d)(2) and the requirements in § 1500.121(b)(2) for the placement and conspicuousness of signal words and statements of hazard. However, because the provisions of § 1500.121(d)(2) apply to all cautionary labeling, the Commission declines to eliminate § 1500.121(d)(2) in its entirety but instead has made that provision applicable solely to cautionary material appearing on panels other than the principal display panel.

H. *Elongated type style.* The proposed rule would not have allowed the use of any type style which, by virtue of the ratio of its height to its width, was not clearly legible. The proposal gave an example of a ratio it regarded as being inappropriate. The Commission received four comments, all of which favored specifying a definite height-to-width ratio, rather than leaving the requirements for legibility open to interpretation. The Commission agrees that specifying an acceptable ratio would be more useful to the manufacturers of hazardous substances. The ratio of the height to the width of the letters in the example in the proposal of an inappropriate ratio is approximately four-to-one, and the ratio which is currently in effect under regulations promulgated pursuant to the

Fair Packaging and Labeling Act is three-to-one. Accordingly, the Commission has revised the final order to state, consistent with regulations under the Fair Packaging and Labeling Act, that the height of the type used for cautionary statements not exceed the width by a factor of more than three.

I. *Contrast.* With respect to the use of color to achieve adequate prominence, three comments were received.

(1) One commenter objected to the use in the regulation of the term "sharp" contrast, stating that the existing regulations merely required that the color of a cautionary statement merely contrast with the background. The Commission rejects this comment and notes that the commenter is in error in his interpretation of the existing regulation. Existing 16 CFR 1500.121(a) requires that the necessary prominence "shall be achieved * * * by use of suitable contrasts with the background achieved by *distinctive* typography or color, and by both color and typography when needed" (emphasis added). In view of this language, the Commission believes the requirement that the statement sharply contrast with its background is completely consistent with the existing regulations.

(2) In response to a second comment, however, the Commission has altered the language concerning the proposed examples of types of color combinations that do not satisfy the requirements of sharp contrast to indicate that the examples *might* not satisfy these requirements. That commenter correctly pointed out that, depending upon type style, label layout, and other factors, these statements, which would otherwise be inconspicuous, might become sufficiently clear to meet the requirements of the FHSA.

(3) A third comment claimed that the proposed draft inferred that color was the only method by which adequate conspicuousness could be obtained and correctly pointed out that the statute permits other methods to be used to achieve contrast. The Commission agrees in general with this comment and has revised the proposed regulation to require that color be in sharp contrast only if the color of the cautionary labeling is the primary method used to meet the conspicuousness-contrast requirement. The Commission notes, however, that merely using relief printing on an item does not necessarily guarantee that the item will meet the requirements of the FHSA. In addition, such conspicuousness also can be achieved, as the commenter pointed out, by distinctive layout, type size, borders, or other suitable means.

J. *"Child deterrent" labeling.* The Commission received one comment suggesting that it use this regulation as a vehicle to promote "child deterrent" labeling, that is, labeling which does not rely on the use of primary colors, pleasant pictures or multiple colors, which the commenter believes are unduly attractive to children. The Commission is unable to grant this request at this time. The proposed regulation was intended solely to codify prominence, conspicuousness, and placement requirements for hazardous substances as they are now interpreted by the Commission. The action requested by the commenter is outside the scope of the proposal and, in any event, the Commission lacks data showing that this rather sweeping action is warranted.

K. *Legibility.* In order to remove the subjectivity associated with the proposal, one commenter wanted the Commission to specify legibility in terms of a normal observer viewing a product under a specific light level of a specified number of foot-candles. The Commission agrees that this appears to be one method which could make the regulation more objective. However, the Commission has no data showing that the costs associated with requiring manufacturers to engage in this complex process would be justified by the benefit to be obtained. Manufacturers are, of course, free to use such a technique to determine that their labels are conspicuous, but the Commission declines at this time to adopt, or propose, such specific requirements. The Commission notes that it has encountered little controversy over whether the color of a cautionary statement contrast sufficiently with its background to render that statement conspicuous.

L. *Tags.* (1) One commenter suggested that, in those cases where compliance with the Act is permitted by the use of a tag or other suitable material securely affixed to an unlabeled hazardous substance, the Commission should require that the tag be *greater than* 5 square inches in area, rather than *no less than* five square inches as specified in the proposal. The commenter's concern was occasioned by the fact that the Commission's proposed type-size regulations were based on increments of 0–2 square inches, greater than 2 square inches to 5 square inches, *greater than* 5 square inches to 10 square inches, etc. The commenter was concerned that manufacturers, by virtue of the wording of the regulation, would strive to arrive at a tag that was *exactly* 5 square inches in area to avoid the necessity of using the larger type size associated with tags *greater than* 5 inches in area.

The Commission declines to adopt this suggestion. If the tag is exactly 5 square inches in area, the type size associated with that incremental area may be used because that type size is adequate and conspicuous. Thus, there is no need to require a larger tag. If a tag is greater than 5 square inches in area, a larger type size should be used to comply with the FHSA. As a practical matter, manufacturers may find it difficult to provide tags "exactly" 5 square inches in area.

(2) One commenter suggested that tags bearing cautionary material be permitted to be used where a container of a hazardous substance is too small to bear the requisite cautionary labeling. The Commission notes that the Federal Hazardous Substances Act itself requires that the cautionary information required under the Act appear on the immediate container of a hazardous substance. In addition, Section 3(c) of the Act permits the Commission to promulgate regulations exempting hazardous substances from the requirements of the Act if, because of the size of the package involved, full compliance with the labeling requirements is impractical or unnecessary. Because of these provisions, the Commission declines to amend this regulation to make provision for the use of tags in the case of packages too small to accommodate cautionary labeling.

There are two reasons for this refusal. First, the determination of whether a package is too small to accommodate labeling would be a subjective one at the discretion of the manufacturer. Second, especially for products that are used more than once, the Commission believes that there is a strong likelihood that the tag could be removed and discarded and that the user of the product would be deprived of valuable cautionary information. Inasmuch as there is a procedure under Section 3(c) of the Act by which exemptions for small packages can be granted, the Commission believes that the appropriate method to obtain an exemption is for manufacturers to avail themselves of that procedure on a case by case basis.

M. *"Keep out of the reach of children."* One commenter suggested that the statement "Keep Out of the Reach of Children" should be required to appear on the principal panel together with the signal word and the statement of hazard, because of the thousands of children poisoned yearly by hazardous substances. The Commission declines to

adopt this suggestion because it is outside the scope of the proposal, which simply was to codify those policies and practices that have been in effect over a number of years. The need for the action suggested by this commenter, which would require the revision of literally millions of labels, has not been demonstrated. Insofar as a hazardous substance is found to present a threat of serious injury or serious illness to young children, it would be appropriate to address that hazard by promulgating a special (child-resistant) packaging standard for the product under the Poison Prevention Packaging Act of 1970.

N. *Household size containers.* One commenter requested that the term "household size container" be better defined. This term is defined at 16 CFR 1500.3(c)(10)(i), and a further definition is unnecessary.

O. *Ingredients to be mixed.* Another commenter asked what type of labeling would be required in instances where two distinct substances in individual containers were marketed together with instructions that the substances are to be mixed before using. This commenter was concerned that, while the individual chemicals in each product might present specific hazards, the mixture might present an entirely different hazard which would not necessarily be reflected in the labeling of either of the containers. While this issue is outside the scope of this regulation, which is concerned only with the prominence, placement, and conspicuousness of cautionary labeling statements, in the situation described by this commenter, one or both containers under current regulations must bear information describing any hazard associated with the mixed substance.

P. *Percent by weight.* Another commenter requested that the Commission require that the percent by weight of a hazardous substance in a given product be stated on the label of that product. Again, this request involves a matter outside the scope of the proposal, and the Commission declines to include the percentage as a requirement. However, the question of whether the addition of a percentage of a hazardous component would be of any meaningful benefit to the user or purchaser of the product is being considered as part of the recommendations of the Report of the Toxicological Advisory Board. *See.* 48 FR 57585, 57586; December 30, 1983.

Q. *Effective date.* The provisions of the proposed rule would have applied to hazardous substance labels printed more than 90 days after the date of publication of a final rule. Under the proposal, labels printed prior to 90 days could be applied for up to two years after publication of the final rule. The proposed rule would have applied to all hazardous substances to which labels were applied more than two years after publication of the final rule.

The Commission received a number of comments on these requirements, with most anticipating a large number of labels requiring changes. The commenters suggested that the time for revising labels be extended to periods ranging from 180 days to 1 year. Factored into these requests were the times necessary for label design, customer approval, plate revision, and actual printing. The commenters pointed out that, in the case of lithographed cans and containers, label changes also require scheduling for can manufacturers to manufacture the containers themselves and to make the requisite changes. In the case of preprinted labels, however, most commenters indicated that 180 days would be sufficient to make the changes.

Accordingly, the Commission has decided to extend the original effective date proposed for any necessary label conversions. Because this regulation is intended to merely maintain the *status quo*, the Commission believes there is little value in establishing different dates for preprinted labels and preprinted containers. Therefore, the proposed ninety days allowed for label conversion has been changed in the final regulation to 365 days. The Commission believes that this effective date is consistent with the requests of the commenters and further believes that delaying the effective date will not jeopardize the public health and safety because this regulation essentially codifies practices which are already in effect.

Regarding the proposed use of old labels for up to two years after final publication, the Commission has decided to lengthen the time from two to three years because it has also lengthened the time in which label revision is to be made. Thus, the Commission has revised its effective date to permit labels printed prior to expiration of 365 days after publication of the final rule to be applied to containers of hazardous substances for a period of up to three years after publication of the final rule. Any hazardous substance to which a label is applied more than three years after publication of the final rule would be subject to the provisions of this regulation.

II. *Specific Issues.* Comments which raised issues specific to various products or container forms are discussed below.

A. *Tubes.* One commenter requested that the Commission permit manufacturers using tubes to determine the area of the principal display panel by measuring the tube as if it were a cylindrical container. This would permit the manufacturer to base type size on a measurement of 40 percent of the circumference of the tube times the height of the tube. Inasmuch as tubes are closely related to cylindrical containers, the Commission concludes that this request is reasonable, and the regulation has been changed accordingly.

B. *Blister cards.* One commenter questioned the method by which one would determine the type size required to be placed on the back of blister cards. The commenter's concerns arise because Section 2(m) of the FHSA requires any cautionary statement which is not clearly visible through the outer container or wrapper of a hazardous substance to appear on that outer container or wrapper. Thus, in the case of a tube marketed on a blister card, if the signal word and statement of hazard on the tube are clearly visible through the blister, that material need not appear on the face of the card itself. However, if the other cautionary material appears on the back of the tube and is obscured by virtue of the tube's being packaged on the card, that information must appear upon the card as well as the tube itself.

With regard to the issue of labeling on principal display panels, in the case of a blister pack, the product itself and the cautionary labeling which appears on the main panel of the product is often visible through the blister. The Commission believes that this visibility is sufficient to draw the purchaser's eye toward the product and that allowing the type-size requirements to be governed by the display panel area of the product itself, rather than of the card, is adequate to protect the public. In the case where the blister card, or any other type of outer package, obscures the cautionary labeling on the product, the type size of the labeling appearing on the card or other package should be related to the size of the package. Thus, if a blister card obscures a statement of cautionary labeling appearing on the back of the product contained in the blister, that statement should also appear on the card itself in a type size appropriate to the area of the card.

C. *Test kits.* One commenter questioned whether the proposed rule would apply to hardness test kits for

water softener testing and chlorine test kits for swimming pools. This commenter analogized these test kits to chemistry kits and to cleaning and spot-removing kits, which previously received limited exemptions from labeling under 16 CFR 1500.83. Those exemptions however, do not apply to the labels of individual containers of the kits but, rather, to the requirement of the Act that the outer container, in this case the carton or package in which individual bottles of the chemicals are contained, bear all requisite labeling for each chemical contained therein. The exemption of § 1500.83 provides that such labeling need not be present on the outer container if the outer container bears instructions that the kit contains individually hazardous chemicals, that the user of the kit should read the cautions on the individual containers, and that the products be kept out of the reach of children. It is unclear from the comment whether the commenter sought an exemption for the kit or for the individual containers packaged therein. If the commenter sought the latter, the Commission must refuse the request. The individual containers of the chemicals used for these tests have never been exempt from the labeling requirements of the Act, nor has any regulation been promulgated for similar types of products used in chemistry sets or cleaning and spot-removing kits. If the commenter desires an exemption from labeling of the outer container of the kit while placing the requisite labeling on each individual container, the commenter could contact the Commission staff with a request for an exemption, setting forth the products he manufactures, the current labeling he places on those products, and the terms of the specific exemption desired.

D. *Effect on other labeling requirements (chemistry sets, toys, pacifiers, etc.).* One commenter inquired whether the proposed regulations superseded specific labeling requirements for chemistry sets, electrical and thermal toys, and pacifiers, among other things. This is not the case. The provisions of the regulation issued below apply only to products which bear labeling required by Sections 2(p)(1) and 3(b) of the Federal Hazardous Substances Act or where the requirements of § 1500.121 are specifically incorporated by reference in other regulations. These provisions would not apply to pacifiers since their labeling is not required by Sections 2(p)(1) or 3(b) and there is no reference in their labeling requirements to § 1500.121. Chemistry sets, on the other hand, would be subject to these provisions, since § 1500.121 is incorporated by reference in § 1500.83(a)(23). Electrical and thermal toy labeling is partially subject to these provisions since § 1505.3(e) references § 1500.121 for precautionary statements. However, even for chemistry sets and toys, no regulations specifically mentioning these products are superseded by § 1500.121.

E. *Pesticides (FIFRA or TSCA).* One commenter requested that the Commission exempt pesticides from the requirements of this regulation to avoid conflicting or duplicative requirements. Two other commenters suggest that the Commission's labeling requirements be reviewed to assure that they are compatible with labeling requirements established under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) or under the Toxic Substances Control Act (TSCA). In response to the first comment, this regulation is not applicable to pesticides because the Federal Hazardous Substances Act by its terms excludes pesticides from the definition of a hazardous substance. With regard to the other two comments, the Commission agrees that it is desirable for its type-size, placement, and conspicuousness requirements to be consistent with those promulgated by other agencies, and the final regulation is as consistent as possible.

F. *Wet cell batteries.* The Commission received two lengthy and detailed comments on the subject of wet cell batteries. These comments generally questioned the applicability of the proposed type size and placement requirements to wet cell batteries. One of the comments raised the question of whether or not the battery top would be considered the principal display panel and whether the entire battery top would be used in calculating the area of the principal display panel if the cautionary labeling is placed on the gang vent covers. Due to the unique design and current marketing practice, the top of most wet cell batteries would be considered the principal display panel. For the purpose of calculating the area of the principal display panel, only the combined area of the gang vent covers need be considered if a manufacturer chooses to place the cautionary labeling on the gang vent covers. Each comment raised a number of collateral issues dealing with the Commission's jurisdiction over these products, such as the question of whether a wet cell battery was a container for a hazardous substance and the potential of electrolyte in such batteries to be involved in accidental injury. The specific issues raised by the commenters are not relevant to whether a broadly applicable labeling rule should be issued. However, the Commission believes that wet cell batteries are products subject to its jurisdiction and that such batteries must be labeled in accordance with the FHSA if they meet the definition of a hazardous substance. Currently, most wet cell batteries contain more than 10 percent sulfuric acid which would cause them to be corrosive by definition. Second, insofar as batteries are labeled consistent with expressed Commission policies, this regulation requires no alteration in existing labeling practices.

Environmental Considerations

The rule published below falls within the categories of Commission actions described in 16 CFR 1021.5(c) that have little or no potential for affecting the human environment. For this reason, neither an environmenal assessment nor an environmental impact statement is required.

Certification of No Significant Economic Impact on Small Entities

The requirements of the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*) that agencies prepare a final regulatory flexibility analysis for rules issued under the Administrative Procedure Act (5 U.S.C. 553) is inapplicable to the rule issued below since the rule was proposed before January 1, 1981, the effective date of the RFA. Nevertheless, as provided in 5 U.S.C. 605(b), the Commission has certified that the rule published below will not have a significant economic impact on a substantial number of small entities. It is merely a codification of existing practices and policies governing placement and conspicuousness of labels which have evolved under the Federal Hazardous Substances Act and its regulations.

Conclusion

The Commission, having carefully reviewed the comments on the proposal and the other available information, finds that the rule set forth below is necessary for the efficient enforcement of the Federal Hazardous Substances Act.

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous materials, Imports, Infants and children, Labeling, Law enforcement, Toys.

PART 1500—[AMENDED]

Therefore, pursuant to the provisions of the Federal Hazardous Substances

Act (sections 2(p)(2), 10(a); 15 U.S.C. 1261(p)(2), 1269(a)) and under the authority vested in the Commission by the Consumer Product Safety Act (section 30(a), 86 Stat. 1231, 15 U.S.C. 2079(a)), the Commission hereby amends Chapter II, Subchapter C, Part 1500, of Title 16 of the Code of Federal Regulations as follows:

1. The authority citation for Part 1500 reads as follows:

Authority: Secs. 2–5, 10, 14, 74 Stat. 372–76, 387–89, as amended, 80 Stat. 1303–05, 83 Stat. 187–89, 84 Stat. 1673 (15 U.S.C. 1261 and note, 1262–64, 1269, 1273) unless otherwise noted.

2. Section 1500.121 is revised to read as follows:

§ 1500.121 Labeling requirements; prominence, placement, and conspicuousness.

(a)(1) *Background and scope.* Section 2(p)(1) of the Federal Hazardous Substances Act (FHSA) or "the Act"), 15 U.S.C. 1261(p)(1), requires that hazardous substances bear certain cautionary statements on their labels. These statements include: signal words; affirmative statements of the principal hazard(s) associated with a hazardous substance; the common or usual name, or chemical name, of the hazardous substance; the name and place of business of the manufacturer, packer, distributor, or seller; statements of precautionary measures to follow; instructions, when appropriate, for special handling and storage; the statement "Keep Out of the Reach of Children" or its practical equivalent; and, when appropriate, first-aid instructions. Section 2(p)(2) of the Act specifies that all such statements shall be located prominently on the label of such a substance and shall appear in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the label. This regulation contains the Commission's interpretations and policies for the type size and placement of cautionary material on the labels of hazardous substances and contains other criteria for such cautionary statements that are acceptable to the Commission as satisfying section 2(p)(2) of the Act. Labels that do not comply with this regulation may be considered misbranded.

(2) *Definitions.* For the purposes of this section:

(i) "Container" means the immediate package from which a hazardous substance may be dispensed and also any article, package or wrapping, such as a tube or cone used for a firework or a wet cell battery casing containing sulfuric acid, which is necessary for the substance to function during actual use.

(ii) "Cautionary material," "cautionary labeling," and "cautionary labeling required by the Act" mean all items of labeling information required by sections 2(p) (1) of the FHSA (repeated in 16 CFR 1500.3(b)(14)(i) or by the regulations which require additional labeling under section 3(b) of the Act.

(iii) "Display panel" means any surface of the immediate container, and of any outer container or wrapping, which bears labeling.

(iv) "Principal display panel" means the portion(s) of the surface of the immediate container, and of any outer container or wrapping, which bear(s) the labeling designed to be most prominently displayed, shown, presented, or examined under conditions of retail sale. (See paragraph (c)(1) below.)

(v) "Type size" means the actual height of the printed image of each upper case or capital letter as it appears on the label of a hazardous substance. (See paragraph (c)(2) below.)

(vi) "Signal word" means the appropriate word "DANGER," "WARNING," or "CAUTION," as required by sections 2(p)(1) (C) or (D) of the Act.

(vii) "Statement of principal hazard(s)" means that wording descriptive of the principal or primary hazard(s) associated with a hazardous substance required by section 2(p)(1)(E) of the Act. Some examples of such statements are "HARMFUL OR FATAL IF SWALLOWED," "VAPOR HARMFUL," "FLAMMABLE," and "SKIN AND EYE IRRITANT."

(viii) "Other cautionary material" means all labeling statements, other than "signal words" or "statement(s) of principal hazard(s)," required by the Act or by regulations issued under the Act.

(b) *Prominent label placement.* To satisfy the requirement of the Act that cautionary labeling statements shall appear "prominently" on the label of a hazardous substance, all such statements shall be placed on the label as follows:

(1) *Horizontal placement of labeling statements.* Except for the name and place of business of the manufacturer, packer, distributor, or seller, all cautionary material required by the Act shall appear in lines that are generally parallel to any base on which the package rests as it is designed to be displayed for sale or, on display panels other than the principal display panel, in lines generally parallel to all other labeling on that panel. This requirement does not apply to labeling on collapsible tubes, cylindrical containers with a narrow diameter, or F-type containers where both the "front" and "back" of the container are principal display panels. (See paragraph (e) below.)

(2) *Principal display panel labeling.* (i) All items of cautionary labeling required by the Act may appear on the principal display panel on the immediate container and, if appropriate, on any other container or wrapper. See paragraph (b)(4) below for requirements and exceptions for labeling outer containers and wrappings.

(ii) The signal word, the statement of principal hazard(s), and, if appropriate, instructions to read carefully any cautionary material that may be placed elsewhere on the label shall be blocked together within a square or rectangular area, with or without a border, on the principal display panel on the immediate container and, where required by paragraph (b)(4) below, on any outer container or wrapping. All cautionary statements placed on the principal display panel shall be separated on all sides from other printed or graphic matter, with the exception of the declaration of net contents required under the Fair Packaging and Labeling Act, 15 U.S.C. 1453(a) (2) and (3), by a border line or by a space no smaller than the minimum allowable height of the type size for cautionary material required by the Act (exclusive of signal words and statements of hazard) on the principal display panel.

(iii) Depending on the design of the package or the configuration of the label, or both, a package may have more than one principal display panel. If so, each principal display panel must bear, at a minimum, the signal word, statement of principal hazard or hazards, and, if appropriate, instructions to read carefully any cautionary material that may be placed elsewhere on the label.

(A) Where the principal display panel of the immediate container consists of a lid, cap, or other item which may be separated from the immediate container and discarded, the container shall be deemed to have a second principal display panel elsewhere on the immediate container which must bear, at a minimum, the signal word, statement of principal hazard(s), and instructions, if appropriate, to read any cautionary material which may be placed elsewhere on the label.

(3) *Prominent label placement—other display panel labeling.* All items of cautionary labeling required by the Act which do not appear on the principal display panel shall be placed together on a display panel elsewhere on the container. The name and place of business of the manufacturer, packer, distributor, or seller may appear

separately on any display panel. Where cautionary material appears on a display panel other than the principal display panel, the principal display panel shall bear the statement "Read carefully other cautions on the ——— panel," or its practical equivalent. [A description of the location of the other panel is to be inserted in the blank space.]

(4) *Outer container or wrappings.* All cautionary labeling appearing on the immediate container of a hazardous substance shall also appear on any outer container or wrapping used in the retail display of the substance, in the same manner as required for the immediate container. Those cautionary labeling statements appearing on the immediate container which are clearly legible through any outer container or wrapper used in retail display need not appear on the outer container or wrapping itself. (See Section 2(n)(1) of the Act.)

(5) *Placement of the word "Poison" and the skull and crossbones symbol.* The word "poison" and, when appropriate, the skull and crossbones symbol shall appear on the label of a hazardous substance as follows:

(i) If a hazardous substance is "highly toxic," as defined in § 1500.3(c)(i) and section 2(h)(1) of the FHSA, the label must bear the word "poison" in accordance with section 2(p)(1)(H) of the Act, in addition to the signal word "DANGER," and must also bear the skull and crossbones symbol. Some products, under § 1500.14(b) of the regulations, may, in addition to any required signal word, be required to bear the word "poison" and the skull and crossbones symbol because of the special hazard associated with their ingredients. In both instances, the word "poison" and the skull and crossbones symbol need not appear on the principal display panel on the container, unless all other cautionary labeling required by the Act appears on the principal display panel. The word "poison" and the skull and crossbones symbol, when required, must appear either together with other cautionary labeling on a display panel other than the principal display panel or together with the signal word and statement(s) of principal hazard on the principal display panel.

(ii) Where, pursuant to a regulation issued under section 3(b) of the Act, the label of a hazardous substance requires the word "poison" instead of a signal word, the word, "POISON" shall appear in capital letters on the principal display panel, together with the statement(s) of the principal hazard. Certain substances for which the word "poison" is required instead of any signal word are listed in § 1500.129.

(c) *Conspicuousness—type size and style.* To satisfy the requirement that cautionary labeling statements under the Act be conspicuous and legible, such statements shall conform to the following requirements:

(1) *Area of principal display panel.* The area of the principal display panel is the area of the side or surface of the immediate container, or of the side or surface of any outer container or wrapping, that bears the labeling designed to be most prominently displayed, shown, presented, or examined under conditions of retail sale. This area is not limited to the portion of the surface covered with labeling; rather, it includes the entire surface. Flanges at the tops and bottoms of cans, conical shoulders of cans, handles, and shoulders and necks of bottles and jars are excluded in measuring the area. For the purposes of determining the proper type size for cautionary labeling, the area of the principal display panel (or other panel bearing cautionary labeling, under paragraph (c)(2)(ii) below) is to be computed as follows:

(i) In the case of a rectangular package, where one entire side is the principal display panel, the product of the height times the width of that side shall be the area of the principal display panel.

(ii) In the case of a cylindrical or nearly cylindrical container or tube on which the principal display panel appears on the side, the area of the principal display panel shall be 40 percent of the product of the height of the container times its circumference.

(iii) In the case of any other shape of container, the area of the principal display panel shall be 40 percent of the total surface of the container, excluding those areas, such as flanges at tops and bottoms, specified in paragraph (c)(1) above. However, if such a container presents an obvious principal display panel (such as an oval or hour-glass shaped area on the side of a container for dishwashing detergent), the area to be measured shall be the entire area of the obvious principal display panel.

(2) *Type-size requirements.* (i) The term "type size" refers to the height of the actual printed image of each upper case or capital letter as it appears on the label. The size of cautionary labeling shall be reasonably related to the type size of any other printing appearing on the same panel, but in any case must meet the minimum size requirements in Table 1.

(ii) When an item of labeling is required to be in a specified type size, all upper case, or capital, letters must be at least equal in height to the required type size, and all other letters must be the same style as the upper case or capital letters. Unless otherwise specified in the regulations (examples appear at §§ 1500.14(b)(6), 1512.19, 1508.9, and 1505), the type size of all cautionary statements appearing on any display panel shall comply with the specifications in Table 1 when the area of the display panel is measured by the method in paragraph (c)(1) above:

TABLE I

Area of principal display panel in square inches	0–2	>2–5	>5–10	>10–15	>15–30	>30
Type size in inches*						
Signal word **	3/64	1/16	3/32	7/64	1/8	5/32
Statement of hazard	3/64	3/64	1/16	3/32	5/32	1/64
Other cautionary material***	1/32	3/64	1/16	1/16	3/64	5/32

> means "greater than."
* minimum height of printed image of capital or upper case letters.
** including the word "poison" when required instead of a signal word by Section 3(b) of the Act (§ 1500.129).
*** size of lettering for other cautionary material is based on the area of the display panel on which such cautionary material appears.

(iii) If all of the required cautionary labeling does not appear on the principal display panel, the statement to "Read carefully other cautions on the ——— panel," or its practical equivalent, must appear in, as a minimum, the same type size as that required in Table 1 for the other cautionary material which appears elsewhere on the label of a hazardous substance. The size of the cautionary labeling that does not appear on the principal display panel is determined by the area of the panel on which it does appear.

(3) *Type style—proportion.* The ratio of the height of a capital or uppercase letter to its width shall be such that the height of the letter is no more than 3 times its width.

(4) *Signal word and statements of hazard—capital letters.* The signal word, the word "poison" if required instead of a signal word (see § 1500.129), and the statement of principal hazard or hazards shall be in capital letters.

(5) *Multiple statement of hazard—type size and style.* All statements of principal hazard or hazards on a label shall appear in the same size and style of type, and shall appear in the same color or have the same degree of boldness.

(6) *Accompanying literature containing directions for use.* Where literature accompanying the package of a hazardous substance has directions for use, written or otherwise, section 2[n] of the Act requires the literature to bear cautionary labeling.

(i) All such cautionary labeling shall be in reasonable proximity to any direction for use and shall be placed together within the same general area.

(ii) The type size of such cautionary labeling shall be reasonably related to the type size of any other printed matter in the accompanying literature and must be in conspicuous and legible type by typography, layout, or color with other printed matter on the label. The signal word and statement of principal hazard or hazards shall appear in capital letters.

(d) *Conspicuousness—contrast.* To satisfy the requirement that cautionary labeling statements appear in conspicuous and legible type which is in contrast by typography, layout, or color with the other printed matter on the label, such statements shall conform to the following requirements:

(1) *Color.* Where color is the primary method used to achieve appropriate contrast, the color of any cautionary labeling statement shall be in sharp contrast with the color of the background upon which such a statement appears. Examples of combinations of colors which may not satisfy the requirement for sharp contrast are: black letters on a dark blue or dark green background, dark red letters on a light red background, light red letters on a reflective silver background, and white letters on a light gray or tan background.

(2) *Interference with conspicuousness—labeling design, vignettes, or other printed material.* For cautionary information appearing on panels other than the principal display panel, the label design, the use of vignettes, or the proximity of other labeling or lettering shall not be such that any cautionary labeling statement is obscured or rendered inconspicuous.

(e) *Collapsible metal tubes.* Collapsible metal tubes containing hazardous substances shall be labeled so that all cautionary labeling required by the Act appears as close to the dispensing end of the container as possible. The placement and conspicuousness of these statements shall conform to the provisions of paragraphs (b), (c), and (d) above.

(f) *Unpackaged hazardous substances.* Where practicable, unpackaged hazardous substances intended, or distributed in a form suitable, for use in or around a household or by children shall be labeled so that all items of information required by the Act appear upon the article itself. In instances where this is impracticable (for example, because of the size or nature of the article), the required cautionary labeling must be displayed by means of a tag or other suitable material that is no less than five square inches in area and is securely affixed to the article so that the labeling will remain attached throughout conditions of merchandising and distribution to the ultimate consumer. The placement and conspicuousness of all cautionary labeling appearing on such a tag or material, or on an unpackaged article, shall conform to the provisions of paragraphs (b), (c), and (d) above. For the purposes of determining the proper type size to use on a tag or other material, the area of one side of the tag or other material shall be the area of the principal display panel.

(g) *Exemptions.* All requirements of the Act are satisfied by compliance with this § 1500.121. However, exemptions can be granted under section 3(c) of the Act and § 1500.83, or under the provisions of another statute should this section be incorporated in regulations under another statute. Section 1500.82 contains the requirements for exemption requests under the Federal Hazardous Substances Act.

(h) *Effective date.* The provisions of this rule apply to hazardous substances bearing labels printed after December 30, 1985. Labels printed prior to the effective date of this rule may be applied until not later than December 28, 1987. This rule applies to all hazardous substances to which labels are applied after December 28, 1987.

Dated: December 21, 1984.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Relevant Material

1. Memorandum to the Commission from David Schmeltzer, Associate Executive Director for Compliance and Enforcement, "Proposed Revisions to the Requirements for Type Size, Placement and Conspicuousness of Federal Hazardous Substances Act Labeling Statements," with attached draft **Federal Register** notice, dated October 20, 1978.

2. Vote Sheet prepared by the Office of General Counsel, with attached copy of 16 CFR 1500.121, dated October 27, 1978.

3. Tape recording of Commission meeting of November 9, 1978.

4. Proposal to amend 16 CFR 1500.121, 43 FR 58195 (December 13, 1978).

5. Comments on proposed rule.

Comment No.	Date	Correspondent	Signed by
(1)	Jan. 15, 1979	The W.W. Henry Co., Huntington Park, CA.	Ken Coleman.
(2)	Jan. 29, 1979	Wilhold Glues, Inc., Sante Fe Springs, CA.	C.W. Comegys, Jr.
(3)	Feb. 1, 1979	Hach Chemical Co., Ames, Iowa.	Sharon S. Sloat.
(4)	Feb. 9, 1979	Toy Mfgrs. of America, Inc., Aaron Locker, Counsel, New York, N.Y.	Aaron Locker.
(5)	Feb. 9, 1979	The Proctor & Gamble Co., Cincinnati, Ohio.	T.W. Mooney.
(6)	Feb. 9, 1979	Universal Printing Co., Seattle, Wash.	Frank A. Lester, Pres.
(7)	Feb. 12, 1979	The Adhesive & Sealant Council, Inc., Leighton Conklin & Lemov, Counsel.	Jerald A. Jacobs. Gary J. Kushner.
(8)	Feb. 12, 1979	Economics Laboratory, Inc., St. Paul, Minn.	Jon R. Grunseth.
(9)	Feb. 12, 1979	Cities Service Co., Tulsa, Okla.	Herman A. Fritschen.
(10)	Feb. 12, 1979	Classic Chemical, Camden, N.J.	John J. Veltry.
(11)	Feb. 12, 1979	Mrs. Regina Franck, Lakewood, Ohio.	Interested Person.
(12)	Feb. 12, 1979	National Paint & Coatings Assoc., Washington, D.C.	John M. Montgomery, V. Pres., & GC.
(13)	Feb. 12, 1979	Dow Chemical Corp., Midland, Mich.	Jack L. Crosby.
(14)	Feb. 12, 1979	Chemical Specialities Mfg., Assoc., Wash. D.C.	Ralph Engel.
(15)	Feb. 12, 1979	General Motors Corp., Warren, Mich.	R.A. Wilson.
(16)	Feb. 13, 1979	Franklin Laboratories, Denver, Colo.	C. Neil Shankweiler.
(17)	Feb. 13, 1979	CPSC Seattle Area Office, Seattle, Wash.	Edward R. Floyd.
(18)	Feb. 13, 1979	Bell Chemical Co., Chicago, Ill.	John Mansnarus.
(19)	Feb. 13, 1979	Pace National Corp., Kirkland, Wash.	Frank Saltarelli.
(20)	Feb. 15, 1979	Krylon Dept. Div. of Borden Chemical, Borden Inc.	John J. McAnaffy.
(21)	Feb. 16, 1979	The Coleman Co., Inc., Wichita, Kans.	Harold J. Pfountz.
(22)	Feb. 21, 1979	Ford Motor Co., Dearborn, Mich.	J.C. Eckhold.
(23)	Feb. 26, 1979	The Valspar Corp., Minneapolis, Minn.	J.B. Kenney.
(24)	Mar. 2, 1979	Siloo Incorporated, New York, N.Y.	E.E. LaRue.
(25)	Mar. 8, 1979	E.I. Du Pont DeNemours & Co., Wilmington, Del.	F.T. Johnson.
(26)	Mar. 8, 1979	United Paint Mfg., Inc., Spokane, Wash.	Larry M. Grossman.

Comment No.	Date	Correspondent	Signed by
(27)	Mar. 14, 1979	Commonwealth of Puerto Rico, Dept of Consumer Affairs.	H. deKercado Febres.
(28)	Mar. 14, 1979	Tom Hagedorn, Member of Congress, Washington, D.C.	Tom Hagedorn.

6. Memorandum to the Commission from David Schmeltzer, Associate Executive Director for Compliance and Administrative Litigation, "Draft Final Rule to Amend Hazardous Substances Labeling Requirements for the Prominence, Placement and Conspicuousness of Cautionary Statements" with attached draft **Federal Register** notice, dated October 2, 1984.

7. Commissioner's Vote Sheet prepared by the Office of General Counsel, dated October 9, 1984.

8. Tape recording of Commission briefing of November 14, 1984.

9. Ballot Vote sheet dated November 16, 1984, prepared by the Office of General Counsel.

10. Final rule, **Federal Register** of December 28, 1984.

[FR Doc. 84-33611 Filed 12-27-84; 8:45 am]
BILLING CODE 6355-01-M

16 CFR Part 1700

Poison Prevention Packaging Requirements; Exemption of Certain Conjugated Estrogen and Norethindrone Acetate Tablets

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission exempts certain conjugated estrogen and norethindrone acetate tablets from the requirements for child-resistant packaging that previously applied because these substances are oral prescription drugs. These drugs are used for the treatment of a variety of female hormonal imbalance disorders. These drugs are exempted because of their low toxicity.

DATE: The exemption is effective December 28, 1984.

ADDRESSES: All documents that the Commission has concerning this proceeding may be inspected at, or copies obtained from, the Office of the Secretary, 5401 Westbard Avenue, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Charles M. Jacobson, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, D.C. 20207, telephone (301) 492-6957.

Inquiries from the media should be directed to Lou Brott, Office of Media Relations, Consumer Product Safety Commission, Washington, D.C. 20207, telephone (301) 634-7780.

SUPPLEMENTARY INFORMATION:

A. The Petition

By letter dated May 20, 1983, Ayerst Laboratories petitioned the Commission to exempt mnemonic[1] dispenser packages of conjugated estrogen tablets and norethindrone acetate tablets from special packaging requirements under the Poison Prevention Packaging Act of 1970 (PPPA), 15 U.S.C. 1471-1476. These drug products are hormones used for the treatment of a variety of female hormonal imbalance disorders and at that time were required to be in special packaging because they were oral prescription drugs subject to 16 CFR 1700.14(a)(10).

As justification for the exemptions, the petitioner submitted animal test data and human experience data which indicated the absence of acute toxicity resulting from accidental ingestion of conjugated estrogens or norethindrone acetate by young children. The petitioner also stated that the exemptions are warranted because the active ingredients in these products are identical, or similar, to those found in the cyclically administered oral contraceptive drugs for which exemptions were previously proposed by the Commission and which are in effect on an interim basis (39 FR 5197; February 11, 1974).

Conjugated estrogens have been available for several decades as a prescription drug for the treatment of female hormonal imbalances. It is estimated that between 2.9 and 3.6 million women are now using these products, which are manufactured by about 12 companies.

Norethindrone acetate is a progestin used in both oral contraceptives and in hormonal supplements. Its use in oral contraceptives is widespread, and it is present in combination with estrogens or other hormones. This is probably the most common route of exposure of American women to this drug.

As a hormonal supplement used to treat female hormonal imbalances, norethindrone acetate has a relatively small market compared to other prescription products. It is believed that only two companies offer oral prescription norethindrone acetate products and that a few very small manufacturers of generic varieties may exist on the market from time to time.

The petitioner indicated that if the exemption were granted, the conjugated estrogen tables would be marketed in mnemonic packages of up to 21 tablets of 1.25 mg each. The norethindrone acetate tablets would be marketed in mnemonic packages of up to 10 tablets of 5 mg each. The petitioner argues that the mnemonic packaging will greatly aid patient compliance and convenience. The Commission believes that limiting an exemption to tablets dispensed in mnemonic packages will also serve to limit the amount of the drug to which a child could gain access in a reasonable time.

B. Toxicity Data

Theoretical lethal dose. Based upon extrapolation of animal data submitted by the petitioner, the theoretical lethal dose of conjugated estrogens, for a 10 kilogram (22 pound) child, would be between 1.8 and 3.3 grams, which is equivalent to 70-125 times the amount of the drug contained in a single package. The theoretical lethal dose for the progestin would be between 12.6 and 50.1 grams, which is equivalent to 250-1000 times the amount contained in a single package.

Chronic Toxicity. Both estrogens and progestins should be avoided during pregnancy because of possible damage to the fetus. Similar effects have been observed for a variety of drugs, indicating the special susceptibility of the fetus *in utero* to the toxic effects of many chemicals and drugs.

Long-term therapeutic administration of estrogenic compounds has been shown to lead to an increased risk, in women, of endometrial cancer and of various blood clotting disorders. There is, however, no evidence that such effects would be expected from a single acute exposure in a child. No such effects have been reported over the 20 to 30 years during which these drugs have been marketed.

C. Injury Data

The staff examined data from the Food and Drug Administration (FDA), Division of Poison Control, and from the Commission's Children and Poisoning (CAP) database, regarding accidental ingestions of estrogens and progestins by children under age five. In addition to data involving those brands specified in the petition, all generic and other brands were examined.

Data from the FDA for the five-year period from 1977 through 1981 show 231

[1] A mnemonic package is any package designed to administer one dosage unit at a time and incorporating any feature which serves to remind the user to take the dosage at regularly specified intervals throughout the period during which the medication is to be administered.

reported cases of estrogen ingestions. Nine of these cases reported symptoms of nausea or vomiting. None of the children was hospitalized. Eighty-eight accidental ingestions of progestins were reported, but no symptoms were reported in these cases. One of the 88 children was hospitalized. This case did not mention any symptomatology, indicating that the child may have been kept for observation as a precautionary measure.

The CAP database showed nine cases of estrogen ingestions, and 4 cases of progestin ingestions for the period from January, 1978, through October, 1983. In 12 cases, the children were treated and released; in one case, the child was treated and transferred, but not hospitalized. National Electronic Injury Surveillance System (NEISS) estimates based on these cases are 178 for estrogens, and 225 for progestins. Caution should be used interpreting these estimates because of the higher degree of sampling variability associated with small sample sizes.

D. FDA Comments

The petition was sent to the FDA for comment. The FDA reviewed poison control data for conjugated estrogens and norethindrone acetate for the years 1979 through 1981. These data show that neither product was involved in significant numbers of accidental ingestions by young children under age five. Exposure to conjugated estrogens ranged from 2.2 to 3.1 percent of the total accidental hormonal ingestions while exposure to norethindrone acetate ranged from 0.2 to 5.0 percent of such ingestions. The number of children who exhibited symptoms following ingestion of conjugated estrogens ranged from 2.3 to 6.0 percent. No symptoms were reported in association with ingestion of norethindrone acetate.

The FDA states that these data suggest that the frequency of acute injury from ingestion of either product will remain low. Further, the FDA would not expect the availability of either product in mnemonic packaging to increase the percentage of reported cases. The FDA also examined the possible chronic health effects of the two drug products on young children and concluded that, as packaged, these two drug products do not pose a long-term risk to children who may accidentally ingest them.

E. Action on the Petition

After considering the available information, the Commission preliminarily concluded that the degree and nature of the hazard to children in the availability of the conjugated estrogen tablets and norethindrone acetate tablets that are the subject of this petition are such that special packaging is not required to protect children from serous personal injury or serious illness resulting from handling, using or ingesting such substances. Accordingly, the Commission voted to grant the petition. On May 23, 1984, the Commission published a proposed amendment to 16 CFR 1700.14(a)(10) that would exempt from requirements for child-resistant packaging (i) Conjugated Estrogen Tablets, U.S.P., when dispensed in mnemonic packages containing not more than 26.5 mg of the drug and (ii) Norethindrone Acetate Tablets, U.S.P., when dispensed in mnemonic packages containing not more than 50 mg of the drug. 49 FR 21765.

F. Comment on the Proposal

In response to the proposal, the Commission received one comment. The commenter argues that the scope of the proposed exemption should be broadened to include all mnemonic dispenser packages containing drug products that rely solely upon the activity of one or more progestogen or estrogen substances, alone or in combination. In support of this contention, the commenter notes that there are other products that he believes are pharmacologically similar to those that are the subject of the proposed exemption. The commenter believes that by broadening the exemption to generically include these other products, and similar products that may be introduced in the future, the Commission will avoid the need to consider numerous other product-specific exemption requests.

In order to broaden the scope of the exemption as requested by this commenter, it would be necessary to define the new exemption and to develop a rationale for the new definition; it would than be necessary to propose the broadened exemption for public comment as required by the Administrative Procedure Act. The Commission does not believe that any possible long-term gain in administrative efficiency would warrant the substantial delay in issuance of the proposed exemption that would result if the proposed exemptions were held in abeyance while a broader exemption was being considered. Therefore, the Commission has decided to issue the exemptions as originally proposed. The Commission staff, however, believes that there may be merit in the commenter's suggestion; therefore, a proposal for a project for the development of a technical rationale for the broadened exemption will be considered by the Commisssion when priorities for further Commission activities are established.

G. Regulatory Flexibility Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et. seq.*) generally requires the agency to prepare proposed and final Regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. The purpose of the Regulatory Flexibility Act, as stated in section 2(b) (5 U.S.C. 602 note), is to require agencies, consistent with their objective, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to regulations. Section 605 of the act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact of a substantial number of small entities.

The exemption issued below will have the effect of granting to the manufacturers of the exempted products the option of packaging their products in an additional manner. The difference in costs for packaging with special packaging and with packaging permitted by the exemption is not believed to be significant. Accordingly, the Commission certifies that this exemption will not have any significant economic effect on a substantial number of small entities.

H. Environmental Considerations

The Commission's regulations governing environmental review procedures state at 16 CFR 1021.5(c)(3) that exemption of products from requirements for child-resistant packaging under the PPPA normally has little or no potential for affecting the human environment. The Commission does not foresee any special or unusual circumstances surrounding the exemption issued below. For this reason, neither an environmental assessment nor an environmental impact statement is required in this proceeding.

I. Effective Date

Since the rule issued below provides for an exemption, the provision of 5 U.S.C. 553(c) requiring a delay in the effective date is inapplicable. Accordingly, the rule shall become effective December 28, 1984.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

Conclusion

For the reasons given above, the Commission, under sections 2, 3, and 5 of the Poison Prevention Packaging Act (Secs. 2, 3, 5, Pub. L. 91–601, 84 Stat. 1670–72, 15 U.S.C. 1471–72, 1474) amends § 1700.14(a)(10) of Title 16 of the Code of Federal Regulations by adding subparagraphs (xvii) and (xviii), reading as follows:

§ 1700.14 Substance requiring special packaging.

(a) * * *

(10) * * *

(xvii) Conjugated Estrogen Tablets, U.S.P., when dispensed in mnemonic packages containing not more than 26.5 mg of the drug and containing no other substances subject to this § 1700.14(a)(10).

(xviii) Norethindrone Acetate Tablets, U.S.P., when dispensed in mnemonic packages containing not more than 50 mg of the drug and containing no other substances subject to this § 1700.14(a)(10).

Dated: December 21, 1984.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 84–33609 Filed 12–27–84; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Removal of a Portion of a Regulation; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration is amending the animal drug regulations to remove that portion reflecting approval of a new animal drug application (NADA) providing for use of a 0.8-gram-per-pound tylosin (as tylosin phosphate) premix in making complete swine feeds used for increased rate of weight gain and improved feed efficiency. The sponsor, Kent Feeds, Inc., requested the withdrawal of approval. In addition, Kent Feeds, Inc. is being removed from the list of sponsors of approved NADA's.

EFFECTIVE DATE: January 7, 1985.

FOR FURTHER INFORMATION CONTACT: David N. Scarr, Center for Veterinary Medicine (HFV–214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1846.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, approval of NADA 96–272 for Kent Feeds' GM–T 40 Medicated Premix (0.8-gram-per-pound tylosin phosphate) is withdrawn. This document amends the regulations to remove those portions of 21 CFR 510.600 and 558.625 that reflect approval of the NADA.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), Parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

§ 510.600 [Amended]

1. Part 510 is amended in § 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* by removing from paragraph (c)(1) the entry for "Kent Feeds, Inc.," and from paragraph (c)(2) the entry for "013975".

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.625 [Amended]

2. Part 558 is amended in § 558.625 *Tylosin* by removing paragraph (b)(36) and marking it "[Reserved]".

Effective date. January 7, 1985.

(Sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e)))

Dated: December 20, 1984.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 84–33690 Filed 12–27–84; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8001]

Income Tax; Taxable Years Beginning After December 31, 1953; Carryforward Elections and Election To Allocate State Ceiling to Facilities for Local Furnishing of Electricity

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary income tax regulations relating to carryforward elections and the election to allocate State ceiling to certain facilities for local furnishing of electricity. This action is necessary because of changes to the applicable tax law made by the Tax Reform Act of 1984. These regulations affect all purchasers and governmental issuers of tax exempt private activity bonds. In addition, the text contained in the temporary regulations set forth in this document serves as the text of the notice of proposed rulemaking cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

DATE: These temporary regulations are effective in general for governmental obligations issued after December 31, 1983.

FOR FURTHER INFORMATION CONTACT: Mitchell H. Rapaport of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3740).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the temporary regulations relating to the limitation on the aggregate amount of private activity bonds that may be issued by a governmental unit under section 103(n) of the Internal Revenue Code of 1954 as amended by section 621 of the Tax Reform Act of 1984 ("the Act") (Pub. L. 98–369; 98 Stat. 915). This document amends A–2 of § 1.103(n)–4T and adds a new § 1.103(n)–7T to Part 1 of Title 26 of the Code of Federal Regulations. The temporary regulations provided by this document will remain in effect until superseded by final regulations on this subject.

Explanation of Provisions

Section 103(n) of the Internal Revenue Code of 1954 provides that a private activity bond issued as part of an issue

shall not be treated as an obligation described in section 103(a) if the aggregate amount of private activity bonds issued by the issuing authority during the calendar year exceeds such authority's private activity bond limit for the calendar year. Section 103(n), in effect, provides a ceiling on the aggregate amount of private activity bonds that may be issued within a State during a single calendar year.

This document amends A–2 of § 1.103(n)–4T to permit carryforward elections to be made, in certain circumstances, specifying more than one prospective address for the project and more than one prospective initial owner, operator, or manager.

Section 644(b) of the Act permits the State of New York to elect to use in 1984 up to one-half of its State ceiling for 1985, 1986, and 1987 in order to issue obligations to provide facilities described in section 644(a) of the Act. The temporary regulations provide rules on the time and manner in which the election may be made.

Non-Applicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is not required.

Regulatory Flexibility Act

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of these temporary regulations is Mitchell H. Rapaport of the Legislation and Regulations 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 regulations, on matters of both substance and style.

List of Subjects in 26 CFR 1.61–1 Through 1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

Amendments to the Regulations

For the reasons set out in the preamble, Part 1 of Title 26 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

Paragraph 1. A–2 of § 1.103(n)–4T is revised to read as follows:

§ 1.103(n)–4T Elective carryforward of unused private activity bond limit (Temporary).

* * * * *

A–2: (i) An issuing authority may make the election by means of a statement, signed by an authorized public official responsible for making allocations of such issuing authority's private activity bond limit, that the issuing authority elects to carry forward its unused private activity bond limit. The statement shall be filed with the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255. Except with respect to elections to carry forward any unused private activity bond limit for calendar year 1984, the election must be filed prior to the end of the calendar year with respect to which the issuing authority has the unused private activity bond limit; elections with respect to unused private activity bond limit for calendar year 1984 must be filed prior to February 26, 1985. The statement is to be titled "Carryforward election under section 103(n)."

(ii) The statement required by (i) of this A–2 shall contain the following information:

(A) The name, address, and TIN of the issuing authority,

(B) The issuing authority's private activity bond limit for the calendar year,

(C) The aggregate amount of private activity bonds issued by the issuing authority during the calendar year for which the election is being made,

(D) The unused private activity bond limit of the issuing authority, and

(E) For each carryforward project—

(*1*) A description of the project, including its address (by its street address or, if none, by a general description designed to indicate its specific location) and the general type of facility (*e.g.*, an airport described in section 103(b)(4)(D)),

(*2*) The name, address, and TIN of the initial owner, operator, or manager, and

(*3*) The amount to be carried forward for the project.

(iii) For purposes of (ii)(E) of this A–2, in the case of a carryforward project for which the initial owner, operator, or manager is to be selected pursuant to a competitive bidding process, the election may include up to 3 prospective addresses for the project and the name, address, and TIN of more than one prospective initial owner, operator, or manager, if prior to the end of the calendar year for which the election is made—

(A) In the case of elections for calendar years other than 1984, the issuing authority has taken preliminary official action approving the undertaking of the carryforward project,

(B) All persons included as prospective owners, operators, or managers have met all applicable conditions (if any) to submit proposals to provide the project, and

(C) The issuing authority has expended (or has entered into binding contracts to expend) in connection with the planning and construction of the carryforward project the lesser of $500,000 or 2½ percent of the carryforward amount.

(iv) For purposes of (ii) of this A–2, in the case of a carryforward election for the purpose of issuing student loan bonds, the statement need not include the address of a facility or the name, address, and TIN of an initial owner, operator, or manager of a project but shall state that the carryforward election is for the purpose of issuing student loan bonds.

* * * * *

Par. 2. New § 1.103(n)–7T is added following § 1.103(n)–6T to read as follows:

§ 1.103(n)–7T Election to allocate State ceiling to certain facilities for local furnishing of electricity. (Temporary)

(a) *Election*—(1) *In general.* The issuing authorities of the State of New York ("New York") may elect to use in 1984 up to one-half of the amount that would have been New York's State ceiling (as defined in section 103(n)(4) and A–1 of § 1.103(n)–3T) for calendar years 1985, 1986, and 1987 for the purpose of issuing obligations to provide facilities for the local furnishing of electric energy described in section 644(a) of the Tax Reform Act of 1984 (the "Act"). For purposes of this paragraph, New York's State ceiling for calendar years 1985, 1986, and 1987 is considered equal to the State ceiling for 1984 (without taking into account any increase in the State ceiling for 1984 as a result of an election under section 644(b) and this section).

(2) *Procedure.* The election shall be made by filing the statement described in this paragraph (a)(2) with the Internal Revenue Service Center, Philadelphia, Pennsylvania, on or before December 31, 1984. The statement shall be titled "Allocation election under section 644 of the Tax Reform Act of 1984," shall be signed by the Governor of New York or his authorized representative, and shall contain the following information:

(i) The name, address, and TIN of the issuing authority (or authorities) that is

expected to issue the obligations for the facilities described in section 644(a) of the Act pursuant to the election described in section 644(b) of the Act and this section, and

(ii) The amount of the State ceiling for each of calendar years 1985, 1986, and 1987 with respect to which the election is made.

(b) *Effect of election*—(1) *In 1984.* The amount of the State ceiling for calendar years 1985, 1986, and 1987 with respect to which the election is made will be considered part of New York's State ceiling for calendar year 1984. For purposes of section 644(b) of the Act, such amount will be considered used in 1984 only to the extent that obligations are issued in 1984 to provide facilities for the local furnishing of electric energy described in section 644(a) of the Act, or to the extent that a proper election is made on or before December 31, 1984 (and is not revoked or amended between the time it is made and the end of 1984) pursuant to section 103(n)(10) and § 1.103(n)–4T to carry forward all or part of such amount to provide such facilities during the carryforward period applicable to calendar year 1984 State ceiling.

(2) *In 1985, 1986, and 1987.* An election under section 644(b) of the Act and this section to use in calendar year 1984 an amount of New York's State ceiling for a subsequent calendar year reduces the State ceiling for such subsequent calendar year by the amount with respect to which the election is made, whether or not such amount is considered used in 1984 pursuant to this paragraph (b). Thus, no obligations may be issued pursuant to the election described in section 644(b) of the Act and this section to provide a facility other than the facilities for the furnishing of electric energy described in section 644(a) of the Act.

(3) *Other effects.* An election or the failure to make an election under section 644(b) of the Act and this section shall not affect any otherwise applicable rule that permits an issuing authority, for any calendar year, to—

(i) Allocate a portion of its private activity bond limit,

(ii) Issue obligations within its private activity bond limit, or

(iii) Elect under section 103(n)(10) and § 1.103(n)–4T to carry forward any portion of its private activity bond limit, in order to issue obligations to provide a facility described in section 644(a) of the Act.

(c) *Revocation of election.* An election made under section 644(b) of the Act and this section may not be revoked or amended. An insubstantial deviation from a specification contained in an election under section 644(b) of the Act and this section shall not prevent obligations from being issued pursuant to such election.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in section 644(b) of the Tax Reform Act of 1984 (98 Stat. 940) and in sections 103(n) and 7805 of the Internal Revenue Code of 1954 (98 Stat. 915, 26 U.S.C. 103(n); 68A Stat. 917, 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: December 24, 1984.

Ronald A. Pearlman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 84–33784 Filed 12–26–84; 9:17 am]

BILLING CODE 4830–01–M

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26 CFR Part 301

[T.D. 7998]

Increased Rate of Interest on Substantial Underpayments Attributable to Certain Tax Motivated Transactions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the increased rate of interest on substantial underpayments attributable to certain tax motivated transactions. In addition, the text of the temporary regulations set forth in this document serves as the text of the proposed regulations cross-referenced in the Notice of Proposed Rulemaking in the Proposed Rules section of this issue of the **Federal Register.** Changes to the applicable tax law were made by the Tax Reform Act of 1984. The regulations will affect taxpayers who have interest accruing on certain underpayments after December 31, 1984.

DATES: The regulations apply with respect to interest accruing after December 31, 1984, on substantial underpayments attributable to certain tax motivated transactions.

FOR FURTHER INFORMATION CONTACT: Linda M. Kroening of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3238, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Procedure and Administration Regulations (26 CFR Part 301) to provide rules relating to the increased rate of interest on substantial underpayments attributable to certain tax motivated transactions under section 6621 of the Internal Revenue Code of 1954. The regulations reflect the addition of section 6621(d) to the Internal Revenue Code of 1954 by section 144 of Tax Reform Act of 1984 (Pub. L. 98–369, 98 Stat. 682).

Section 6621(d) provides that interest payable under section 6601 with respect to any substantial underpayment attributable to one or more tax motivated transactions shall accrue at an annual rate equal to 120 percent of the adjusted rate established under section 6621(b). A tax motivated transaction is defined in section 6621(d)(3)(A) as any valuation overstatement (within the meaning of section 6659(c)), any loss disallowed by reason of section 465(a), any credit disallowed under section 46(c)(8), any straddle as defined in section 1092(c) (without regard to sections 1092 (d) and (e)), and any use of an accounting method specified in regulations as a use which may result in a substantial distortion of income.

The temporary regulations specify several accounting methods that may result in a substantial distortion of income. Additional accounting methods may be specified in future temporary or final regulations.

Section 6621(d)(3)(B) provides further that the Secretary by regulations may specify additional transactions that will be treated as tax motivated transactions, and the temporary regulations do so. Future temporary or final regulations may modify this list.

A substantial underpayment is defined in section 6621(d)(2) as any underpayment of income tax for any taxable year in excess of $1,000 which underpayment is attributable to one or more tax motivated transactions. The temporary regulations provide that, for purposes of determination whether an underpayment is substantial (*i.e.*, greater than $1,000), the amount of the underpayment is the aggregate underpayment for a taxable year attributable to all tax motivated transactions.

The increased rate of interest established by section 6621(d) applies to interest accruing after December 31,

1984. The temporary regulations provide that this increased rate is applied to interest accruing on amounts outstanding after December 31, 1984, regardless of the date prescribed for payment of the tax. Finally, the temporary regulations provide guidance for calculating the amount to which the increased rate of interest applies.

The temporary regulations have been drafted in question and answer format. No inference should be drawn regarding issues not raised or the reasons for including certain questions and not others. The temporary regulations contained in this document will remain in effect until final regulations are published in the **Federal Register.**

Special Analyses

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. No general notice of proposed rulemaking is required by 5 U.S.C. 533 for temporary regulations. Accordingly, a Regulatory Flexibility Analysis is not required (5 U.S.C. Chapter 6).

Drafting Information.

The principal author of these regulations is Linda M. Kroening of the Legislation and Regulations 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 regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Statistics, Taxes, Disclosure of information, Filing requirements.

Amendments to the Regulations

The amendments to 26 CFR Part 301 are as follows:

PART 301—[AMENDED]

Paragraph. New § 301.6621–2T is added immediately after § 301.6621–1 to read as follows:

§ 301.6621–2T Questions and answers relating to the increased rate of interest on substantial underpayments attributable to certain tax motivated transactions. [Temporary]

The following questions and answers relate to the increased rate of interest on substantial underpayments attributable to certain tax motivated transactions as provided in section 6621(d) of the Internal Revenue Code of 1954, as added by section 144 of the Tax Reform Act of 1984 (Pub. L. 98–369, 98 Stat. 682):

Q–1. What is the annual interest rate under section 6621 for purposes of computing the amount of interest that must be paid under section 6601 (relating to interest on underpayments)?

A–1. In general, the annual interest rate for purposes of section 6601 is the adjusted rate of interest established under section 6621 (b) § 301.6621–1 ("adjusted rate"). If, however, a tax motivated underpayment (as defined in A–2 of this section) for a taxable year is substantial (as defined in A–7 of this section), section 6621(d) provides that the annual rate of interest with respect to the tax motivated underpayment is 120 percent of the adjusted rate ("120 percent rate"), rounded to the nearest tenth of a percent.

Q–2. What is a tax motivated underpayment?

A–2. A tax motivated underpayment is the portion of a deficiency (as defined in section 6211) of tax imposed by subtitle A (income taxes) that is attributable to any of the following tax motivated transactions:

(1) Any instance in which the value of any property, or the adjusted basis of any property, claimed on a return is 150 percent or more of the amount determined to be the correct amount of such valuation or adjusted basis (*i.e.*, a valuation overstatement within the meaning of section 6659(c)(1));

(2) Any loss disallowed for any period by reason of section 465(a) or any amount included in gross income by reason of section 465(e);

(3) Any credit disallowed for any period by reason of section 46(c)(8) or section 48(d)(6);

(4) Any loss disallowed for any period with respect to a straddle, as defined in section 1092(c), but without regard to sections 1092 (d) and (e);

(5) Any use of an accounting method that may result in a substantial distortion of income for any period (see A–3 of this section); and

(6) Any deduction disallowed with respect to any other tax motivated transactions (see A–4 of this section).

Q–3. What accounting methods may result in a substantial distortion of income for any period under A–2(5) of this section?

A–3. A deduction or credit disallowed, or income included, in any of the circumstances listed below shall be treated as attributable to the use of an accounting method that may result in a substantial distortion of income and shall thus be a tax motivated transaction that results in a tax motivated underpayment:

(1) Any deduction disallowed for any period by reason of section 464 or section 278(b), relating to certain expenses of farming syndicates;

(2) In the case of a taxpayer who computes taxable income using the cash receipts and disbursements method of accounting, any interest deduction disallowed for any period by reason of section 461(g), relating to prepaid interest, provided the interest is not paid with respect to indebtedness incurred in connection with (i) the purchase, refinancing, or improvement of the principal residence of the taxpayer, or (ii) the purchase of consumer goods by the taxpayer;

(3) Any interest deduction disallowed for any period because the amount of the claimed deduction was computed using a method resulting in an amount of interest for a period that exceeds the true cost of the indebtedness for the period computed by applying the effective rate of interest on the loan to the unpaid balance of the loan for the period (*i.e.*, the economic accrual of interest for the period), provided the interest is not accrued with respect to indebtedness incurred in connection with (i) the purchase, refinancing, or improvement of the principal residence of the taxpayer, or (ii) the purchase of consumer goods by the taxpayer (see Rev. Rul. 83–84, 1983–1 C.B. 97, and sections 163(e), 446(b), and 483);

(4) Any deduction disallowed for any period under section 709, relating to organization or syndication expenditures of a partnership;

(5) In the case of any expenditure described in section 248(b) that was incurred by an S corporation, any deduction disallowed because it exceeds the amount allowable under section 248, relating to organizational expenditures;

(6) Any deduction disallowed for any period under section 267(a), relating to transactions between related taxpayers;

(7) Any deduction disallowed for any period, or any income required to be included for any period, under section 467, relating to certain payments for the use of property or services;

(8) Any deduction disallowed for any period under section 461(i), relating to certain deductions of tax shelters; and

(9) In the case of a taxpayer who computes taxable income using the cash receipts and disbursements method of accounting, any deduction disallowed for any period because (i) the expenditure resulting in the deduction was a deposit rather than a payment, (ii)

the expenditure was prepaid for tax avoidance purposes and not for a business purpose, or (iii) the deduction resulted in a material distortion of income (see, *e.g.*, Rev. Rul. 79–229, 1979–2 C.B. 210).

Q–4. Are any transaction other than those specified in A–2 of this section and those involving the sue of accounting methods under circumstances specified in A–3 of this section considered tax motivated transactions under A–2(6) of this section?

A–4. Yes. Deductions disallowed under the following provisions are considered to be attributable to tax motivated transactions:

(1) Any deduction disallowed for any period under section 183, relatiing to an activity engaged in by an individual or an S corporation that is not engaged in for profit, and

(2) Any deduction disallowed for any period under section 165(c)(2), relating to any transaction not entered into for profit.

Q–5. How is the amount of a tax motivated underpayment determined?

A–5. Except as provided in A–6 of this section, the amount of a tax motivated underpayment is detemined in the following manner:

(1) Calculate the amount of the tax liability for the taxable year as if all items of income, gain, loss, deduction, or credit, had been reported properly on the income tax return of the taxpayer ("total tax liability"); and

(2) without taking into account any adjustments to items of income, gain, loss, deduction, or credit that are attributable to tax motivated transactions (as defined in A–2 through A–4 of this section), calculate the amount of the tax liability for the taxable year as if all other items of income, gain loss, deduction, or credit had been reported properly on the income tax return of the taxpayer ("tax liability without regard to tax motivated transactions").

(3) The difference between the total tax liability and the tax liability without regard to tax motivated transactions is the amount of the tax motivated underpayment.

Example. Taxpayer A, a calendar year taxpayer, files his 1984 income tax return reporting $70,000 of taxable income and $23,171 of tax liability. On January 20, 1986, A enters into a closing agreement with the Internal Revenue Service that includes the following adjustments;

Section 162 deduction disallowed (not tax motivated)	$7,500
Loss disallowed under section 465 (tax motivated—see A–2(2) of this section)	5,000
Section 170 deduction disallowed because of a valuation overstatement (tax motivated—see A–2(1) of this section 10,000	
Loss disallowed with respect to a straddle as defined in section 1092(c) (tax motivated—see A–2(4) of this section	7,000
Other adjustments (none of which are tax motivated)	4,000
1. Reported taxable income	70,000
(Add all adjustments to flems of income, gain, loss, deduction, or credit (including tax motivated transactions subject to section 6621(d)))	+33,500
Tax=$39,685 ("total tax liability")	103,500
2. Reported taxable income	70,000
(Add adjustments to items of income, gain, loss, deduction, or credit other than those with respect to items that are tax motivated)	+11,500
Tax=$28,691 ("tax liability without regard to tax motivated transactions")	81,500

The tax motivated underpayment (i.e., the underpayment attributable to tax motivated transactions) is $10,994 ($39,685—$28,691). Accordingly, the interest on $10,994 woulld be computed at the 120 percent rate.

The remainder of the underpayment (*i.e.*, the underpayment not attributable to tax motivatd transactions) is $5,520 ($28,691 (taxliability without regard to tax motivated items)—$23,171 (tax paid with return)). The interest on $5,520 would be computed at the adjusted rate.

Q–6: How are the amounts of the tax motivated underpayment and the underpayment attributable to fraud or negligence detemine if all or a portion of the taxpayer's underpayment is attributable to one or more tax motivated transactions and all or a portion is subject to the addition to tax imposed by section 6653(a)(2) (in the case of an underpayment attributable to negligence or intentional disregard) or section 6653(b)(2) (in the case of an underpayment attributable to fraud)?

A–6: If all or a portion of the taxpayer's underpayment is attributable to tax motivated transactions, and all or a portion is attributable to fraudulent or negligent items (*i.e.*, items that result in an underpayment subject to the addition to tax imposed by section 6653 (a)(2) or (b)(2)), the amount of the tax motivated underpayment and the underpayment attributable to fraud or negligence is determined in the following manner:

(1) Determine the following amounts;

(i) The tax liability for the taxable year of the taxpayer as if all items of income, gain, loss, deduction, or credit had been reported properly on the income tax return of the taxpayer ("total tax liability");

(ii) The tax liability for the taxable year of the taxpayer as if all items of income, gain, loss, deduction, or credit without taking into account adjustments to items of income, gain, loss, deduction, or credit that are both (a) attributable to tax motivated transactions and (b) subject to section 6653(a)(2) or section 6653(b)(2), had been reported properly on the income tax return of the taxpayer ("tax liability without regard to fraudulent or negligent tax motivated items");

(iii) The tax liability for the taxable year of the taxpayer as if all items of income, gain, loss, deduction, or credit, without taking into account adjustments to items of income, gain, loss, deduction, or credit that are subject to section 6653(a)(2) or section 6653(b)(2), had been reported properly on the income tax return of the taxpayer ("tax liability without regard to fraudulent or negligent items");

(iv) The tax liability for the taxable year of the taxpayer as if all items of income, gain, loss, deduction, or credit, without taking into account adjustments to items of income, gain, loss, deduction, or credit that are wither subject to section 6653(a)(2) or section 6653(b)(2) or attributable to tax motivated transactions, had been reported properly on the income tax return of the taxpayer ("tax liability without regard to tax motivated or fraudulent or negligent items").

(2) The tax motivated underpayment attributable to fraudulent or negligent items is the excess of the total tax liability over the tax liability determined without regard to fraudulent or negligent tax motivated items ((i)–(ii)).

(3) The tax motivated underpayment is the sum of (a) the tax motivated underpayment attributable to fraudulent or negligent items ((i)–(ii)) plus (b) the excess of the tax liability without regard to fraudulent or negligent items over the tax liability without regard to tax motivated or fraudulent or negligent items ((iii)–(iv)). Interest on this underpayment is computed at the 120 percent rate.

(4) The underpayment attributable to fraudulent or negligent items is the excess of the total tax liability over the tax liability without regard to fraudulent or negligent items ((i)–(iii)). The section 6653 addition to tax is 50 percent of the interest on this underpayment computed at the 120 percent rate on an amount equal to the tax motivated underpayment attributable to fraudulent

or negligent items (computed in (2)) and at the adjusted rate on the remainder.

Example. Taxpayer A, a calendar year taxpayer, files his 1984 income tax return reporting $70,000 of taxable income and $23,171 of tax liability. On January 20, 1986, A enters into a closing agreement with the Internal Revenue Service that includes the following adjustments:

Section 162 deduction disallowed (not tax motivated but fraudulent or negligent)	$7,500
Loss disallowed under section 465(a) (tax motivated—see A–2(2) of this section—and fraudulent or negligent)	5,000
Section 170 deduction disallowed because of a valuation overstatement (taxs motivated—see A–2(1) of this section—but not fraudulent or negligent	10,000
Loss disallowed with respect to a straddle as defined in section 1092(c) (tax motivated—see A–2(4) of this section but not fraudulent or negligent)	7,000
Other adjustments (none of which are tax motivated or fraudulent or negligent)	4,000

The tax motivated underpayment is determined in the following manner:

(1)(i9) Reported taxable income	$70,000
(Add all adjustment	+33,500
Tax=$39,685 ("total tax liability")	103,500
(ii) Reported taxable income	70,000
All adjustments other than those with respect to items that are both tax motivated and fraudulent or negligent	+28,500
Tax=$37,185 ("tax liability without regard to fraudulent or negligent, tax motivated items")	98,500
(iii) Reported taxable income	70,000
(All adjustments other than those with respect to items that are fraudulent or negligent)	+21,000
Tax=$33,435 ("tax liability without regard fraudulent or negligent items")	91,000
(iv) Reported taxable income	70,000
(All adjustments other than those with respect to items that are either tax motivated or fraudulent or negligent)	+4,000
Tax=$25,091 ("tax liability without regard to tax motivated or fraudulent or negligent items")	74,000

(2) The tax motivated underpayment attributable to fraudulent or negligent items is $2,500 ((i)–(ii) or $39,685–$37,185).

(3) The tax motivated underpayment is $10,844 ((2)+((iii)–(iv)) or $2,500+($33,435–$25,091)). Interest on $10,844 is computed at the 120 percent rate.

(4) The underpayment attributable to fraudulent or negligent items is $6,250 ((i)–(iii) or $39,685–$33,435). The section 6653 addition to tax is 50 percent of the interest on $6,250, computed at the 120 percent rate on an amount equal to the tax motivated underpayment attributable to fraudulent or negligent items ($2,500) and at the adjusted rate on the remainer ($3,750).

(5) In summary, therefore, the total underpayment is $16,514 (total tax liability ($39,685) less reported tax liability ($23,171)) of which $10,844 accrues interest at the 120 percent rate and $5,670 ($16,514–$10,844) accrues interest at the adjusted rate. In addition, $6,250 of the underpayment is subject to the section 6653(a)(2) or section 6653(b)(2) addition to tax. The underlying interest, upon which the addition to tax is based, is computed using the 120 percent rate for the portion of the underpayment subject to section 6621(d) ($2,500) and the adjusted rate for the portion that is not subject to section 6621(d) ($3,750).

Q–7. Does the 120 percent rate apply to all tax motivated underpayments?

A–7. No. The 120 percent rate applies only if the tax motivated underpayment for the taxable year is substantial. A tax motivated underpayment is substantial only if it exceeds $1,000. If, for example, a taxpayer has a $600 underpayment attributable to a valuation overstatement (within the meaning of section 6659(c)(1)) and a $500 underpayment attributable to a loss disallowed under section 465(a), the amount of the tax motivated underpayment is $1,100. Because the amount of the tax motivated underpayment is thus substantial the 120 percent rate applies.

Q–8. How do carryovers affect the amount of the tax motivated underpayment and the amount of the underpayment attributable to fraudulent or negligent items?

A–8. For purposes of A–5 and A–6 of this section, a net operating loss carryover, capital loss carryover, or credit carryover is treated as a deduction or credit in the year in which taken into account. In any computation of tax liability required under A–5 or A–6 of this section (*i.e.*, total tax liability, tax liability without regard to tax motivated transactions, etc.), the amount of such deduction or credit is the amount of the carryover determined as if the taxpayer had properly reported in each taxable year all items of income, gain, loss, deduction, or credit affecting the amount of the carryover other than adjustments of a type not taken into account in such computation of tax liability. A net operating loss carryback, capital loss carryback, or credit carryback is not taken into account, however, in determining the amount of the tax motivated underpayment or the amount of the underpayment attributable to fraud or negligence for periods before the last date prescribed for filing the income tax return for the taxable year in which the carryback arises (determined without regard to extensions).

Q–9. What amount is subject to the 120 percent rate if the amount of a taxpayer's unpaid tax for a year is less than the taxpayer's substantial tax motivated underpayment?

A–9. The 120 percent rate applies with respect to the lesser of—

(1) The amount of unpaid tax for the taxable year determined in accordance with § 301.6601–1; or

(2) The substantial tax motivated underpayment for the taxable year.

Q–10. What is the effective date for the 120 percent rate?

A–10. The 120 percent rate applies to interest accruing on a deficiency attributable to a substantial tax motivated underpayment after December 31, 1984, including interest accruing with respect to transactions described in A–3 and A–4 of this section, regardless of the date prescribed for payment of the tax.

Example. Taxpayer A files his income tax return on April 15, 1983 (the last date prescribed for payment of tax for taxable year 1982 under section 6601). In January 1985, Taxpayer A files a petition in the Tax Court in response to a statutory notice of deficiency for taxable year 1982, which includes a tax motivated underpayment of $10,000. In September 1986, the Tax Court enters a decision for the Internal Revenue Service. Under section 6601, interest accrues at the adjusted rate, compounded daily, on tax motivated underpayments outstanding before January 1, 1985, and at the 120 percent rate, compounded daily, on amounts outstanding after December 31, 1984. The underpayment that is subject to the 120 percent rate includes both the $10,000 tax motivated underpayment and the interest that accrued on the underpayment at the adjusted rate from April 16, 1983, through December 31, 1984.

Q–11. Can a taxpayer stop the running of interest on a tax motivated underpayment by application of a remittance?

A–11. Yes. The running of interest on a tax liability stops on the date the remittance (either a payment of tax or a deposit in the nature of a cash bond) is received by the Internal Revenue

Service, regardless of when the liability is assessed or the remittance is actually applied against the taxpayer's account. A taxpayer must make a remittance for both the tax liability and the interest that has accrued as of the date of remittance to stop the running of interest on both the tax liability and the accrued interest with respect to the liability. (See Rev. Proc. 84–58.) Taxpayer cannot make partial remittances applicable only to tax motivated underpayments. Under A–9 of this section, the 120 percent rate applies to the amount of unpaid tax to the extent that amount does not exceed the tax motivated underpayment. Therefore, a partial remittance is applied first to any tax due that is not attributable to a tax motivated underpayment. The excess of the partial remittance over tax that is not attributable to a tax motivated underpayment, if any, will then be applied to tax due that is attributable to a tax motivated underpayment.

Q–12. Does the 120 percent rate apply to interest accuring on interest, penalties, additional amounts, or additions to tax as provided in section 6601(e)(2)?

A–12. The 120 percent rate applies only to taxes imposed by subtitle A (income taxes) and to interest accured with respect to such taxes. The penalties, additional amounts, and additions to tax specified in section 6601(e)(2) are not imposed by subtitle A and are not, therefore, included in the amount of a tax motivated underpayment. They are, however, included in the amount of unpaid tax for purposes of A–9 of this section.

Example. Taxpayer A, for taxable year 1984, has a $10,000 tax motivated underpayment and a $2,000 addition to tax for a total unpaid tax of $12,000. If A makes a $5,000 payment of tax, he will still have a $10,000 tax motivated underpayment but will now have only $7,000 of unpaid tax. Pursuant to A–9 of this section, therefore, the 120 percent rate would apply to the $7,000 of unpaid tax.

* * * * *

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it would be impractical to issue it first under the notice and comment procedure provided in 5 U.S.C. 553(b) or subject to the effective date limitation of 5 U.S.C. 553(d).

This Treasury decision is issued under the authority contained in sections 6621 (d) and 7805 of the Internal Revenue Code of 1954 (98 Stat. 682, 26 U.S.C. 6621 (d); 68A Stat. 917, 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: December 24, 1984.

Ronald A. Pearlman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 84–33782 Filed 12–27–84; 8:45 am]

BILLING CODE 4830–01–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Non-multiemployer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits in Non-Multiemployer Plans, 29 CFR Part 2619, by adding a new table, Table I–85, to Appendix D. Table I–85 is to be used for plans covered under Title IV of the Employee Retirement Income Security Act of 1974, as amended, that terminate in 1985. The table is needed to determine an expected retirement age for plan participants in terminating pension plans that provide for an early retirement benefit. The expected retirement age is needed to calculate the value of the early retirement benefit and, thus, the total value of benefits under the plan.

EFFECTIVE DATE: January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Corporate Policy and Regulations Department, Code 611, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006, 202–254–6476 (202–254–8010 for TTY and TTD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Title IV of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.*, as amended, established an insurance program for certain pension plans that terminate. Under that program, the Pension Benefit Guaranty Corporation ("PBGC") guarantees the payment of certain pension benefits in covered plans that terminate if plan assets are not sufficient to provide for those benefits (29 U.S.C. 1322). Upon plan termination, the plan administrator must determine the total value of pension benefits under the plan in order to determine if plan assets are sufficient to provide for those benefits. If plan assets are not sufficient to provide for all benefits guaranteed by the PBGC, the employer is liable for the insufficiency in accordance with the provisions of 29 U.S.C. 1362.

The PBGC's regulation on Valuation of Plan Benefits in Non-Multiemployer Plans, 29 CFR Part 2619, sets forth rules for valuing benefits both in plans that are trusteed by the PBGC and in those that are not. Subpart D of Part 2619 sets forth the method for determining the expected retirement ages to be used to determine the value of early retirement benefits in plans that provide for early retirement. Appendices D and E of Part 2619, contain tables used to determine an expected early retirement age for each participant and give examples of that calculation.

In Appendix D, there are two sets of tables. The first set, Selection of Retirement Rate Category (I–79 through I–84), is used to determine whether a participant has a low, medium, or high probability of retiring early. The second set of tables, Expected Retirement Ages for Individuals in the Low/Medium/High Categories (II–A, II–B, and II–C), is used to determine the expected retirement age.

The first set of tables determines the probability of early retirement based on the year a participant would reach normal retirement age and the participant's monthly benefit at normal retirement age. The second set of tables establishes, by probability category, the expected retirement age based on both the earliest age a participant could retire and the normal retirement age under the plan. This expected retirement age is used to calculate the value of the early retirement benefit and, thus, the total value of benefits under the plan and the amount of employer liability, if any, owed to the PBGC.

The first set of tables in Appendix D, as published in the 1984 edition of 29 CFR (I–70 through I–84), establish a retirement rate category for each of the calender years 1979 through 1984. Each table applies only to plans terminating in that particular year, and a table normally remains in effect only for a calendar year. This rule amends Appendix D of Part 2619 to add Table I–85 in order to update the correlation between the amount of a participant's benefit and the probability that the participant will elect early retirement. Table I–85 will be used to value benefits in plans that terminate during calendar year 1985.

In addition, the formats of Table I–83 and Table I–84 are corrected by this rule.

The PBGC has determined that notice of and public comment on this rule are

impracticable and contrary to the public interest. This determination is based on the need to issue the table promptly so the appendix will reflect, as accurately as possible, the relationship between a participant's benefit and the probability of early retirement. The PBGC has found that the public interest is best served by issuing this table without an opportunity for notice and comment so that plan administrators can calculate the value of plan benefits before submitting a notice of intent to terminate. Also, plan administrators will be able to predict employer liability more accurately prior to plan termination and can, therefore, lessen or avoid interest charges under 29 CFR 2622.7 for late payment of employer liability. Moreover, because of the need to provide immediate guidance for the valuation of benefits under plans that will terminate on or after January 1, 1985, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making this amendment to the final regulation effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291 of February 17, 1981 (46 FR 13193) because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, Part 2619 of Chapter XXVI of Title 29, Code of Federal Regulations is hereby amended by adding a new table and making corrections as follows:

1. The authority citation for Part 2619 reads as follows:

Authority: Sections 4002(b)(3), 4041(b), 4044, and 4062(b)(1)(A), Pub. L. 93-406, 88 Stat. 1004, 1020, 1025, and 1029, as amended by secs. 403(l), 403(d), and 402(a)(7), Pub. L. 96-364, 94 Stat. 1302, 1301, and 1299 (29 U.S.C. 1302, 1341, 1344, 1362).

2. In Appendix D to Part 2619, Table I-83 is amended by revising the headings to read as set forth below. The first entry in each column is republished unchanged to display the new format.

TABLE I-83—SELECTION OF RETIREMENT RATE CATEGORY

[For plans with a valuation date after Dec. 31, 1982 and before Jan. 1, 1984]

Participant reaches NRA in year—	Participant's Retirement Rate Category is—			
	Low [1] if monthly benefit at NRA is less than—	Medium [2] if monthly benefit at NRA is		High [3] if monthly benefit at NRA is greater than—
		From	To—	
1984	$259	$259	$1,091	$1,091
* * * * *	*			

[1] Table II-A.
[2] Table II-B.
[3] Table II-C.

3. In Appendix D to Part 2619, Table I-84 is amended by revising the headings to read as set forth below. The first entry in each column is republished unchanged to display the new format.

TABLE I-84—SELECTION OF RETIREMENT RATE CATEGORY

[For plans with a valuation date after Dec. 31, 1983 and before Jan. 1, 1985]

Participant reaches NRA in year—	Participant's Retirement Rate category is—			
	Low [1] if monthly benefit at NRA is less than—	Medium [2] if monthly benefit at NRA is		High [3] if monthly benefit at NRA is greater than—
		From	To—	
1985	$264	$264	$1,110	$1,110
* * * * *	*			

[1] Table II-A.
[2] Table II-B.
[3] Table II-C.

4. Appendix D to Part 2619 is amended by adding Table I-85, as follows:

Appendix D—Tables Used to Determine Expected Retirement Age

TABLE I-85—SELECTION OF RETIREMENT RATE CATEGORY

[For plans with a valuation date after Dec. 31, 1984 and before Jan. 1, 1986]

Participant reaches NRA in year—	Participant's Retirement Rate Category is—			
	Low [1] if monthly benefit at NRA is less than—	Medium [2] if monthly benefit at NRA is		High [3] if monthly benefit at NRA is greater than—
		From	To—	
1986	$270	$270	$1,137	$1,137
1987	283	283	1,188	1,188
1988	294	294	1,238	1,238
1989	306	306	1,286	1,286
1990	317	317	1,332	1,332
1991	328	328	1,380	1,380
1992	340	340	1,430	1,430
1993	352	352	1,482	1,482
1994	365	365	1,535	1,535
1995 or later	378	378	1,590	1,590

[1] Table II-A.
[2] Table II-B.
[3] Table II-C.

Royal S. Dellinger,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 84-33734 Filed 12-27-84; 8:45 am]

BILLING CODE 7708-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-2739-4]

Approval and Promulgation of Implementation Plans; Massachusetts; Table of EPA Approved Regulations

Correction

In FR Doc. 84-33111 beginning on page 49454 in the issue of Thursday, December 20, 1984, make the following correction: On page 49454, in the first column, in the **EFFECTIVE DATE** paragraph, in the second line, "February 19, 1984" should have read "February 19, 1985."

BILLING CODE 1505-01-M

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40 CFR Part 721

[OPTS-50505A; FRL-2668-6]

Toxic Substances Control Act; Significant New Uses of Chemical Substances; Substituted Methylpyridine and Substituted 2-Phenoxypyridine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for chemical substances which were the subject of premanufacture notices (PMNs) P-83-23, P-83-24, P-83-49, P-83-75, and P-83-272, and a TSCA section 5(e) consent order issued by EPA. The Agency believes that these substances may be hazardous and that uncontrolled manufacture, processing, import, distribution in commerce, use, or disposal may result in significant human or environmental exposure.

DATES: This rule shall be promulgated for purposes of judicial review at 1:00 p.m. eastern time on January 11, 1985. This rule shall become effective March 12, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065); In Washington, DC: (554-1404); outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: OMB Control Number 2070-0012.

I. Authority

Section 5(a)(2) of TSCA authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule, after considering all relevant factors, including those listed in section 5(a)(2). Once a use is determined to be a significant new use, persons must, under section 5(a)(1)(B), submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. Such a notice is subject to the same requirements and procedures as a PMN submitted under section 5(a)(1)(A) of TSCA which are interpreted at 40 CFR Part 720 published in the **Federal Register** of May 13, 1983 (48 FR 21722). In particular, these include the information submission requirements of section 5 (b) and (d)(1), certain exemptions authorized by section 5(h), and the regulatory authorities of section 5 (e) and (f). If EPA does not take regulatory action under section 5, 6, or 7 to control activities on which it has received a SNUR notice, section 5(g) requires the Agency to explain in the **Federal Register** its reasons for not taking action.

Substances covered by proposed or final SNURs are subject to the export reporting requirements of TSCA section 12(b). EPA regulations interpreting section 12(b) requirements appear at 40 CFR Part 707. Substances subject to final SNURs are subject to TSCA section 13 import certification requirements at 19 CFR 12.118 through 12.127 and 127.28, published in the **Federal Register** of August 1, 1983 (48 FR 34734). The EPA policy in support of these requirements appears at 40 CFR Part 707 published in the **Federal Register** of December 13, 1983 (48 FR 55462).

II. Applicability of General Provisions

EPA has promulgated general provisions under 40 CFR Part 721, Subpart A which are applicable to SNURs and were published in the **Federal Register** of September 5, 1984 (49 FR 35011). These general provisions apply to this SNUR without change except as discussed in this preamble and provided in the rule. Interested persons should refer to that document for a detailed discussion of the general provisions.

The general provisions governing SNUR reporting were promulgated subsequent to the proposal of this rule. Therefore, this final rule is structurally different from its proposal because the non-substantive and procedural matters are now contained in Subpart A to Part 721.

III. Summary of this Rule

The chemical substances subject to this rule are identified generically as substituted methylpyridine (P-83-24, P-83-49, and P-83-272) and substituted 2-phenoxypyridine (P-83-23 and P-83-75). EPA is designating the following as significant new uses of P-83-49 and P-83-272:

Manufacture or processing without:

1. Requiring use of the following personal protective equipment for persons involved in any operation where dermal contact and or/inhalation of the substances may occur, and where local exhaust ventilation is present at the site of the operation:

a. Chemical cartridge respirator, approved by the National Institute for Occupational Safety and Health (NIOSH) for protection from organic vapors, and used and fitted according to regulations in 29 CFR 1910.134 and 30 CFR Part 11.

b. Chemical worker gloves and aprons or other equivalent personal protective clothing determined to be impervious to the particular substance in its conditions of use. (Equipment may be determined to be impervious either by testing under the conditions of use, including the duration of exposure, or by evaluating the specifications supplied by the supplier of the equipment.)

2. Requiring use of the following personal protective equipment for persons involved in, and in the immediate area of any operation where dermal contact and/or inhalation of the substance may occur, and where local exhaust ventilation is not present at the site of the operation:

a. Full facepiece, positive pressure air-supplied respirator, approved by the Bureau of Mines, Department of Interior or by NIOSH fitted according to procedures established at 29 CFR 1910.134.

b. Chemical worker gloves and aprons, or other equivalent personal protective clothing determined to be impervious to the particular substance in its conditions of use. (Equipment may be determined to be impervious either by testing under the conditions of use, including the duration of exposure, or by evaluating the specifications supplied by the supplier of the equipment.)

3. Notifying in writing, each employee required to use protective equipment that these chemical substances may present a hazard of liver, kidney, and nervous system toxicity unless the specified protective equipment is used.

EPA is designating the following as significant new uses of P-83-23, P-83-24, and P-83-75:

Manufacture of processing without:

1. Requiring use of the following personal protective equipment for persons involved in any operation where dermal contact may occur:

a. Chemical goggles.

b. Chemical worker gloves and aprons, or other equivalent personal protective clothing determined to be impervious to the particular substance in its conditions of use. (Equipment may be determined to be impervious either by testing under the conditions of use, including the duration of exposure, or by evaluating the specifications supplied by the supplier of the equipment.)

2. Notifying in writing, each employee required to use protective equipment that these chemical substances may present a hazard of liver, kidney, and nervous system toxicity unless the specified protective equipment is used.

IV. Background

The chemical substances subject to this rule were the subject of PMNs designated P-83-23, P-83-24, P-83-49, P-83-75, and P-83-272. The notice submitter claimed the following as confidential business information (CBI): Company identity, chemical identity, production volume, manufacturing process, and use. For purposes of clarity, the substances are referred to in this preamble and § 721.615 by their generic chemical names and PMN numbers.

The Agency proposed a SNUR for these substances which was published in the **Federal Register** of January 3, 1984 (49 FR 99). The background of the PMNs and the reasons for proposing the SNUR are set forth in the preamble to the proposed rule.

Within this preamble and in a document entitled "Response to Public Comments" which has been placed in the public file for this rulemaking, EPA has responded to public comments received during the comment period specified in the preamble to the proposed SNUR. After the close of the comment period, EPA received comments from the Chemical Manufacturers' Association (CMA) and the Synthetic Organic Chemical Manufacturers' Association, Inc. (SOCMA) addressing this SNUR and several others recently proposed by EPA. These comments raised a number of issues about these SNURs and made general suggestions for changes. For example, CMA and SOCMA suggested that (1) hazard communication issues be addressed by referencing regulations which were recently promulgated by OSHA (29 CFR 1910, 49 FR 53280, November 25, 1983), (2) expedited review procedures be provided for the review of alternative types of protective measures rather than the submission of a full SNUR notice with a 90-day review period, and (3) SNUR recordkeeping requirements be simplified

EPA is considering these late comments and may propose amendments to this SNUR in the future to implement some or all of these suggestions. However, because the chemical substances which are identified in this SNUR have been on the TSCA Inventory for some time, EPA is concerned that the significant new uses of these substances could be commenced without EPA review. Accordingly, the Agency has decided to proceed with promulgation of this SNUR now. If EPA determines that changes to this rule are necessitated by the Agency's response to CMA's and SOCMA's comments, appropriate amendments to this rule will be made.

V. Designation of Significant New Uses

During the comment period for the proposed rule, the Agency received a comment that the Agency has failed to comply with the statute's requirment to consider all factors.

To determine what would constitute a significant new use, the Agency considered relevant information about the toxicity of the substances, likely exposures associated with the manufacture and processing of the substances, and other possible uses (including those not identified in the PMNs). In addition, as stated in the preamble to the proposed SNUR, the Agency considered the four factors listed in section 5(a)(2) of TSCA, particularly the reasonably anticipated manner and method of manufacturing and processing and the extent to which these methods affect the magnitude and duration of human exposure to the substances.

Based on these considerations and public comments, EPA is defining the significant new uses of P-83-23, P-83-24, P-83-49, P-83-75, and P-83-272 as they appear in Unit III of this preamble and § 721.615.

EPA believes that the potential levels of exposure associated with the significant new uses of these chemical substances may present a significant risk to workers. EPA's concerns are based on:

1. Acute toxicity data submitted with the PMNs.

2. Summaries of teratology, reproductive, mutagenicity, and acute toxicity studies on a structural analogue (identity confidential) of P-83-23 and P-83-75.

3. Subchronic and chronic feeding studies on the same analogous substance.

4. Available information on pyridines.

The Agency believes that any signifiant exposure to any of the five substances may present a risk to the liver, kidney, and nervous system of humans. Significant exposure to P-83-23 or P-83-75 may also pose a risk to fetal development and the reproductive system. In addition, slight to moderate skin irritation and slight to severe eye irritation or other adverse ocular effects may result from significant exposure to P-83-23, P-83-24, P-83-49, or P-83-272.

The Agency believes that the data described in this preamble and in the preamble to the proposed rule are sufficient to substantiate the conclusion that the significant new uses defined in § 721.615 present potentially significant increases in the magnitude of exposure to P-83-23, P-83-24, P-83-49, P-83-75, and P-83-227. Section 5(a)(2) of TSCA does not require the Agency to make either a "may present" or a "will present" risk finding with regard to satisfying the requirements for a significant new use. The statute imposes the requirement that the Agency provide for a "consideration of all relevant factors." The Agency believes that a reasonable qualitative assessment of these factors was incorporated in the preamble of the proposed rule published in the **Federal Register** of January 3, 1984 (49 FR 99).

One comment stated that the data in the public file do not warrant the degree of dermal or inhalational protection which would have been required by the proposed SNUR. Specifically, the commentor believes that (1) a lesser respirator would be adequate given that companies would likely utilize some sort of ventilation system, (2) gloves and aprons are sufficient to protect against dermal exposure, (3) goggles, rather than faceshields, would provide adequate eye protection, and (4) equipment should be required only for persons directly involved in operations where exposure is likely to occur.

The Agency has reconsidered available information on potential exposures to the subject substances and has modified some of the requirements of the proposed SNUR accordingly. However, the Agency continues to believe that if proper ventilation is not available, more protective respirators are necessary to protect the health of persons conducting operations and in the immediate area of operations where exposure may occur in the absence of sufficient data to evaluate the health effects of the substances.

A comment stated that although the Agency possesses the most complete file of studies on pyridine toxicology extant,

the hazard assessment for this SNUR includes references to pyridine that are out-of-date, overly-general, inapplicable, or unreviewed. In addition, the comment questions the Agency's use of pyridine as an analogue to each of the five substances and states that the presence of the pyridine ring is not dispositive as to effects. The comment further states that the totality of the structure and its toxicity must be considered.

A document which contains toxicity data for pyridine and substituted pyridine compounds became available to the Agency in the middle of February 1984. The Agency reviewed the substances subject to this rule during 1983. Since the proposal of this SNUR, the Agency reconsidered its hazard assessment in light of the information obtained in the February 1984, document on pyridines, and the Agency believes that its prior hazard assessment for these substances is still appropriate. Further, the Agency does not consider any information out-of-date if the studies were properly designed and conducted and if the data are adequate to provide the Agency with sufficient information to make a hazard assessment.

EPA agrees with the comment that assess a hazard for a chemical substance it is best to have toxicological data which reflect complex actions of the whole chemical structure for repeated exposures. However, when such data are not available, the Agency must use different analogues which represent various segments of the chemical structure. It is true that no one analogue can satisfy all the characteristics of a more complex structure. However, the Agency uses the best scientific judgment in making the selection of particular analogues which reflect approximately the characteristics of probable active toxicological moieties of the substance in question. EPA believes that pyridine, especially the ring structure, represents an appropriate analogue for this group of substances.

One comment stated, that in addition to pyridine, another moiety is common to each of the substances subject to this rule and that this second moiety may have greater health concerns than does pyridine.

While the Agency used pyridine as an analogue to the moiety of concern in each of the five subject substances, the Agency's hazard assessment considered, to the extent possible, the potential toxicity of the total molecule of each of the substances. Each of the five substances is a substituted pyridine and it is, therefore, reasonable for the Agency to consider them as pyridine derivatives, and identify them as such in the **Federal Register**.

Several comments questioned the Agency's hazard assessment for acute effects. Although the Agency determined that acute effects may result from exposure to these substances and the controls prescribed in this SNUR will reduce dermal exposure, these controls were chosen to mitigate chronic health effects resulting from low-level, long-term exposure. However, the Agency re-examined its hazard assessment in light of the comments it received and has not altered its position on potential acute effects of P-83-23, P-83-24, P-83-49, P-83-75, and P-83-272. The Agency has responded to individual comments on acute effects in a document entitled "Response to Public Comments" which is available in the public record for this rulemaking.

A comment pointed out that the Agency's hazard assessment document states that the analogue substance on which teratogenic and reproductive effects are based, metabolizes to butanol and P-83-75 in the body and that butanol has been shown to affect developmental and reproductive parameters. Therefore, the comment states that the Agency cannot determine whether effects are due to butanol or whether the analogue substance itself is active.

The Agency agrees that it cannot definitively state that P-83-75 causes these effects. However, the Agency believes that it has a reasonable basis to conclude that P-83-75 may cause the effects of concern. Further, as section 5 of TSCA indicates, a "may present" finding is not required for the promulgation of a SNUR.

A comment questioned the Agency's conclusion that worst case inhalational exposure would be higher for P-83-49 than for P-83-272 because P-83-272 has a lower boiling point, flash point, and a higher vapor pressure than P-83-49.

Despite the lower boiling point, flash point, and higher vapor pressure of P-83-272, the Agency's worst case inhalation exposure estimate is higher for P-83-49. This assessment was based on factors in addition to those mentioned above, which involve the reasonably anticipated manner and method of manufacturing and processing these substances. Due to claims by the PMN submitter that this information is CBI, the Agency cannot discuss these other factors in detail.

A comment argued that manufacture and processing are not uses as intended under section 5(a)(1)(B).

While the statute and the legislative history provide little guidance for defining "significant new use," it is clear that Congress intended to provide the Administrator with flexibility in this area so the Agency could review activities which may result in an increased or different exposure to humans or the environment. The language developed by the House and Senate conferees required that the Administrator consider the reasonably anticipated manner and method of manufacturing, processing, distribution in commerce, and disposal of a substance in determining when a use will be considered significant. Thus, the conferees intended that any potential threats to health or the environment from manufacture, processing, distribution in commerce, or disposal of a substance associated with new activities should be considered by the Administrator when determining the significance of such new activities.

VI. Alternatives

In the proposed SNUR, EPA considered other possible approaches. These alternatives included the promulgation of a section 8(a) reporting rule, and/or a regulation under section 6. For the reasons discussed in the preamble to the proposed rule, the Agency has elected to proceed with the promulgation of a SNUR covering significant new uses of P-83-23, P-83-24, P-83-49, P-83-75, and P-83-272.

VII. Recordkeeping

To ensure compliance with this rule, and to assist enforcement efforts, EPA is requiring under its authority in sections 5 and 8(a) of TSCA, that in addition to the requirements in § 721.17, the following records be maintained for five years after the date of their creation, by persons who manufacture or process P-83-23, P-83-24, P-83-49, P-83-75, or P-83-272.

1. The names of persons required to wear protective clothing and/or equipment.

2. Records of respirator fit tests for each person required to wear a respirator.

3. The names and addresses of persons to whom any of these substances are sold or transferred and the date of such sale or transfer.

The Agency considered omitting recordkeeping requirements, but believes compliance monitoring for this SNUR would be made more difficult without them.

A comment points out that the recordkeeping requirements in the proposed SNUR were too burdensome. The Agency believes that these records are not overly burdensome due to the

fact than many companies already maintain these types of records and because only those persons who manufacture or process these substances must maintain the records.

VIII. Exemptions to Reporting Requirements

The Agency has promulgated exemptions to SNUR reporting requirements under § 721.19. In the case of P–83–23, P–83–24, P–83–49, P–83–75 and P–83–272 the terms of § 721.19 apply without change.

EPA issued its final premanufacture notification rules under 40 CFR Part 720 which were published in the **Federal Register** of May 13, 1983 (48 FR 21722) including § 720.36 which contained detailed rules for the section 5(h)(3) exemption for chemical substances manufactured or imported in small quantities solely for research and development. On September 13, 1983, (48 FR 41132), EPA stayed the effectiveness of § 720.36, among other provisions of the PMN rule, pending further rulemaking to revise the provisions. Because § 720.36 was not in effect when EPA codified § 721.19, the Agency relied on the general definition of "small quantities solely for research and development" in § 720.3(cc) and section 5(h)(3) of TSCA to determine whether activities qualify under this exemption. Upon promulgation of a revised § 720.36, EPA intends to amend § 721.19 to adopt the provisions of the revised § 720.36.

Section 721.19(g) of the general SNUR provisions exempts persons from SNUR reporting when they manufacture or process a substance solely for export and label the substance in accordance with section 12(a)(1)(B) of TSCA. While EPA is concerned about worker exposure during manufacture and processing of the substances, EPA lacks the authority under section 12(a) of TSCA to require reporting of such manufacture or processing for a significant new use. EPA does not yet have sufficient information to make the "will present an unreasonable risk" finding necessary to regulate a substance manufactured or processed solely for export. However, persons must notify EPA of such export under section 12(b) of TSCA (see § 721.7 of the general SNUR provisions). Such notification will allow EPA to monitor manufacture and processing activities which are not subject to significant new use reporting. The term "manufacture solely for export" is defined in the PMN rule (40 CFR 720.3(s)). The term "process solely for export" is defined in § 721.3 of the general SNUR provisions in a similar fashion. Thus a person would be exempt from reporting under this SNUR if the person manufactures (the term manufacture includes import) or processes the substance solely for export from the U.S. under the following restrictions: (1) There is no use of the substance in the U.S.; (2) processing is restricted to sites under the control of the manufacturer or processor, respectively; and (3) distribution in commerce is limited to purposes of export. If a person manufactured or processed the substance both for export and for use in the U.S., such manufacture and processing would not be "solely for export" because manufacture or processing would be for use in the U.S.

IX. Applicability To Uses Which May Have Occurred Before Promulgation of Final Rule

To establish a significant new use rule, the Agency must, among other things, determine that the use is not ongoing. In this case, the chemical substances in question had just undergone premanufacture review. The Agency received no information that the significant new uses are ongoing. Therefore, at this time, the Agency has concluded that these uses are significant new uses.

As indicated in the proposal, EPA has found that the intent of section 5(a)(1)(B) is best served by determining whether a use is a significant new use as of the proposal date of the SNUR. If uses begun during the proposal period were not considered to be significant new uses, it would be almost impossible for the Agency to establish SNUR notice requirements, since any person could defeat the SNUR by initiating the proposed significant new uses before the rule becomes final. This is contrary to the general intent of section 5(a)(1)(B).

Thus, even if the substances were imported, manufactured, or processed for the significant new use between proposal and promulgation of this rule, such activities may not continue after the effective date of this rule. Any person must cease such activity until that person has complied with all SNUR notice requirements.

X. Test Data and Other Information

EPA recognizes that under TSCA section 5, a person is not required to develop any particular test data before submitting a notice. Rather, a person is required only to submit test data in that person's possession or control and to describe any other data known to or reasonably ascertainable by that person. However, in view of the potential health risks that may be posed by significant new uses of P–83–23, P–83–24, P–83–49, P–83–75, and P–83–272, EPA encourages possible SNUR notice submitters to conduct tests that would allow a more reasoned evaluation of each substance's potential to elicit liver, kidney, and nervous system toxicity in humans and, for P–83–23 and P–83–75, reproductive and teratogenic effects in humans. The Agency believes that the results of a 90-day (subchronic) inhalation study in the rodent would adequately characterize possible liver, kidney, and nervous system effects of each of the substances. In addition, the Agency believes that results of rodent teratology and 2-generation reproduction studies would adequately characterize possible teratogenic and reproductive effects of P–83–23 and P–83–75. If a SNUR notice is submitted for a use involving significant exposure without adequate test data, EPA is likely to take action under section 5(e). As an alternative to testing the substances, potential notice submitters may want to consider the use of engineering controls and/or personal protective equipment to reduce exposure to the substances.

EPA encourages persons to consult with the Agency before selecting a protocol for testing the substances. As part of this prenotice consultation, EPA will discuss the test data it believes necessary to evaluate significant new uses of the substances. Data should be developed and submitted in accordance with the TSCA good laboratory practices regulations at 40 CFR Part 792 published in the **Federal Register** of November 29, 1983 (48 FR 53922).

EPA urges SNUR notice submitters to provide detailed information on human exposure that will result from the significant new uses. In addition, EPA urges persons to submit information on potential benefits of the substances and information on risks posed by the substances compared to risks posed by potential substitutes.

One comment stated that, although section 5 of TSCA is an information-gathering provision rather than a regulatory provision, there is neither expectation nor requirement that the original PMN submitter or subsequent SNUR notice submitters develop and submit data.

Section 5(e) orders and SNURs which follow them do, in fact, encourage the development and submission of data from manufacturers and processors. The Agency has proposed few SNURs, yet it has already received data in response to a proposed SNUR. Further, the Agency is using its SNUR authority to gather information regarding the risks posed by exposure to these substances. The proposed SNUR and this final rule, limit manufacturers and processors in their

use of the substances until such time as they develop and submit to the Agency, sufficient information to show that the significant new uses will not present an unreasonable risk to human health. Until such information is obtained, these restrictions will remain in effect.

XI. Economic Analysis

The Agency has evaluated the potential costs of establishing significant new use reporting requirements for P–83–23, P–83–24, P–83–49, P–83–75, and P–83–272. This evaluation is summarized in the preamble to the proposed rule. The final economic analysis of this SNUR and other regulatory options is included in the rulemaking record and is available for public review.

XII. Judicial Review

Judicial review of this final rule may be available under section 19 of TSCA in the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which the person seeking review resides or has its principal place of business. To provide all interested persons an equal opportunity to file a timely petition for judicial review and to avoid so-called "races to the courthouse," EPA has decided to promulgate this rule for purposes of judicial review two weeks after publication in the **Federal Register**, as reflected in "**DATES**" in this document. The effective date has, in turn, been calculated from the promulgation date.

XIII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50515A). A public version of this record from which CBI has been deleted is available to the public from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays, in the OTS Reading Room, Rm. E–107, 401 M St. SW., Washington, D.C.

The record includes basic information considered by the Agency in developing this rule. The record now includes the following:

1. The PMNs for the substances.
2. The **Federal Register** notices of receipt of the PMNs.
3. The proposed SNUR.
4. The economic analysis of this SNUR.
5. Public comments.
6. OMB comments and EPA's response.
7. Response to public comments.
8. The 5(e) order for these substances.

A comment stated that the generic chemical names are too vague to allow adequate review via the public file. In addition, the comment stated that it is difficult to comment due to documents in the public file not being adequately labeled and it is difficult to ascertain which documents relate to the five substances and which relate to analogues of the substances.

The Agency agrees that public comment would be made easier if the Agency released information regarding every aspect of the substances in question. However, trade associations and particular PMN submitters have expressed great concern in the past regarding protection of confidential business information from disclosure. In future rulemaking, the Agency will examine this issue on a case-by-case basis in attempt to balance the competing interests of protective CBI and permitting full public participation.

Regarding the difficulty in determining to what substance the information in the public file relates, the Agency will, in the future, attempt to label each document as accurately as possible while continuing to protect confidentiality claims.

XIV. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "Major Rule" because it does not have an effect on the economy of $100 million or more and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the annual cost of this rule, for the reason explained in Unit XI of this preamble and the proposal for this rule, EPA believes that the cost will be low. In addition, because of the nature of the rule and the substances subject to it, EPA believes that there will be few significant new use notices submitted. Further, while the expense of a notice and the suggested testing, and the uncertainty of possible EPA regulation may discourage certain innovation, that impact may be limited because such factors are unlikely to discourage an innovation which has high potential value. Finally, this SNUR may encourage innovation in safe chemical substances or highly beneficial uses.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this rule will not have a significant economic impact on a substantial number of small businesses. The Agency cannot determine whether parties affected by this rule are likely to be small businesses. However, EPA believes that the number of small businesses affected by this rule would not be substantial even if all the potential new uses were developed by small companies. EPA expects to receive few SNUR notices for these substances.

C. Paperwork Reduction Act

Information collection requirements contained in this rule have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980, U.S.C. 3501 *et. seq.* and have been assigned OMB control number 2070–0012.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: December 19, 1984.

William D. Ruckelshaus,

Administrator.

PART 721—[AMENDED]

Therefore, Chapter I of Title 40, is amended by adding § 721.615 to read as follows:

§ 721.615 Substituted methylpyridine and substituted 2-phenoxypyridine.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The following chemical substances, referred to by their PMN numbers and generic chemical names, are subject to reporting under this section for the significant new uses described in paragraphs (a)(2) and (3) of this section: Substituted methylpyridine (P–83–24, P–83–49, and P–83–272) and substituted 2-phenoxypyridine (P–83–23 and P–83–75).

(2) The significant new uses for P–83–49 and P–83–272 are manufacture or processing without:

(i) Requiring use of the following personal protective equipment for persons involved in any operation where dermal contact and/or inhalation of the substances may occur, and where local exhaust ventilation is present at the site of the operation:

(A) Chemical cartridge respirator, approved by the National Institute for Occupational Safety and Health for protection from organic vapors, and used and fitted according to 29 CFR 1910.134 and 30 CFR Part 11.

(B) Chemical worker gloves and aprons or other equivalent personal protective clothing determined to be impervious to the particular substance in its conditions of use. (Equipment may be determined to be impervious either by testing under the conditions of use, including the duration of exposure, or by evaluating the specifications supplied by the supplier of the equipment.)

(ii) Requiring use of the following personal protective equipment for persons involved in and in the immediate area of any operation where dermal contact and/or inhalation of the substance may occur, and where local exhaust ventilation is not present at the site of the operation:

(A) Full facepiece, positive pressure air-supplied respirator, approved by the Bureau of Mines, Department of the Interior or by the National Institute of Occupational Safety and Health fitted according to procedures established at 29 CFR 1910.134.

(B) Chemical worker gloves and aprons, or other equivalent personal protective clothing determined to be impervious to the particular substance in its conditions of use. (Equipment may be determined to be impervious either by testing under the conditions of use, including the duration of exposure, or by evaluating the specifications supplied by the supplier of the equipment.)

(iii) Notifying in writing, each employee required to use protective equipment that these chemical substances may present a hazard of liver, kidney, and nervous system toxicity unless the specified protective equipment is used.

(3) The significant new uses for P–83–23, P–83–24, and P–83–75 are manufacture or processing without:

(i) Requiring the use of the following personal protective equipment for persons involved in any operation where dermal contact may occur:

(A) Chemical goggles.

(B) Chemical worker gloves and aprons, or other equivalent personal protective clothing determined to be impervious to the particular substance in its conditions of use. (Equipment may be determined to be impervious either by testing under the conditions of use, including the duration of exposure, or by evaluating the specifications supplied by the supplier of the equipment.)

(ii) Notifying in writing, each employee required to use protective equipment that these chemical substances may present a hazard of liver, kidney, and nervous system toxicity unless the specified protective equipment is used.

(b) *Specific requirements.* In addition to the general provisions of Subpart A of this Part, the following specific requirements apply.

(1) *Recordkeeping.* In addition to the requirements of § 721.17, manufacturers, importers, and processors of the chemical substances identified in paragraph (a) of this section must maintain the following records for five years from the date of their creation:

(i) The names of persons required to wear protective clothing and/or equipment.

(ii) Records of respirator fit tests for each person required to wear a respirator.

(iii) The names and addresses of persons to whom any of these substances are sold or transferred and the date of such sale or transfer.

(2) [Reserved].

(Sec. 5, 8, Pub. L. 94–469, 90 Stat. 2012 (15 U.S.C. 2604, 2607)) (Approved by the Office of Management and Budget under OMB control number 2070–0012)

[FR Doc. 84–33738 Filed 12–27–84; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 201

[FIRMR Temp. Reg. 51, Supplement 4]

Telecommunication Acquisitions

AGENCY: Office of Information Resources Management, GSA.

ACTION: Temporary regulation.

SUMMARY: This supplement to the Federal Information Resources Management Regulation (FIRMR) Temp. Reg. 51, provides clarification of GSA action on agency intercity voice telecommunication requirement submissions. It also extends the expiration date of Temp. Reg. 51, including Supplements 2 and 3. The changes to the original FPR Temp. Reg. 51 text were suggested by the Office of Management and Budget in connection with OMB clearance action on Supplement 3 to Temp. Reg. 51 (49 FR 39159, October 4, 1984) and the exercise of OMB's authorities under Executive Order 12046 and the Paperwork Reduction Act. The intended effect is to emphasize least cost to the Government in acquisition actions to meet agency intercity voice telecommunication requirements.

DATES:

Effective date: October 30, 1984.

Expiration date: September 30, 1985.

FOR FURTHER INFORMATION CONTACT: John F. Stewart, Policy Branch (KMPP), Office of Information Resources Management, telephone (202) 566–0194 or FTS, 566–0194.

SUPPLEMENTARY INFORMATION: (1) The changes in this temporary regulation supplement address only GSA actions on agency submissions. Treatment of related agency actions which convey the intent of GSA and OMB will be addressed in future issuances. The views of agencies and other interested parties will be solicited in conjunction with the development and release for comment of these related issuances.

(2) The General Services Administration has determined that this rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Government-wide management regulation that will have little or no net cost effect on society.

List of Subjects in 41 CFR Ch. 201

Government information resources activities, Government procurement.

(Sec. 205(c), 64 Stat. 390; 40 U.S.C. 486(c))

In 41 CFR Chapter 201, the following temporary regulation supplement is added to Appendix A at the end of the chapter.

Federal Information Resources Management Regulation Temporary Regulation 51, Supplement 4

December 19, 1984.

To: Heads of Federal agencies

Subject: Telecommunication acquisitions

1. *Purpose.* This supplement to FIRMR Temp. Reg. 51, formerly designated FPR Temp. Reg. 51, clarifies GSA action on agency intercity voice telecommunication requirement submissions. It also extends the expiration date of Temp. Reg. 51, including Supplements 2 and 3.

2. *Effective date.* October 30, 1984.

3. *Expiration date.* September 30, 1985.

4. *Background.* During the clearance process for Supplement 3 to Temp. Reg. 51 (49 FR 39159, October 4, 1984), the Office of Management and Budget (OMB) suggested a number of clarifications in the original Temp. Reg. provisions that would better reflect GSA and agency actions in satisfying agency intercity voice telecommunication requirements in the competitive environment. Supplement 3 was issued without action on these points because of the desirability of early implementation of the delegations authorized by that action. The

clarifications that relate only to GSA actions are included in this Supplement 4. Treatment of related agency actions which convey the intent of GSA and OMB will be addressed in future issuances. Agencies and interested parties will be provided an opportunity for review and comment. These latter actions will proceed in parallel, but independent of the establishment of integrated text (Phase II) for the FIRMR.

5. *Explanation of changes.*

a. Section 201–4.1302 (identified as § 1–4.1202 in the original FPR Temp. Reg. 51 promulgation) is revised to make it clear that the GSA review of agency intercity voice requirements is based on least overall cost to the Government, with the elements for that determination listed, as follows:

§ 201–4.1302 Telecommunication requirements.

Agency telecommunication requirements shall be submitted to the General Services Administration (GSA) in accordance with procedures outlined in support 201–37.2 unless the agency requirement is exempt under those provisions. If the agency requirement is exempt or if GSA determines that the service, efficiency and the least overall cost to the Government is best achieved through direct agency action, the agency will be authorized to contract to satisfy the requirement and shall follow the procedures specified in § 201–4.1302–2. Costs and other factors that will be considered include all costs of service delivery, administrative and engineering support activities, and service requirements associated with items such as national security, emergency preparedness, connectivity, management and control. Service shall include the satisfaction of national security, emergency preparedness, connectivity, management and control in addition to basic service delivery.

b. Section 201–4.1302–1 (formerly identified as § 1–4.1202–1) is revised to designate the existing text as paragraph (a) and to add a new paragraph (b) to describe GSA actions when an agency submits a requests to use an alternative to the Federal Telecommunications System for voice long distance needs, as follows:

§ 201–4.1302–1 GSA action.

(a) GSA will assess the efficiency, service, and cost of using the Federal Telecommunications System (FTS) and other common user services or systems. If GSA determines that it is in the best interest of the Government to use common user systems, GSA will make the necessary arrangements. GSA will document the file to show the basis for the determination, with primary emphasis on cost considerations. GSA also may elect to provide telecommunications on behalf of the agency where it determines that this action is economical and in the interest of the Government.

(b) If an agency submits a request to GSA to use an alternative to the FTS for some or all of its voice long distance needs, GSA will assess the efficiency, service, and cost of the proposal. GSA will consider the proposal's total costs to the Government, compared to the total costs to the Government in meeting that agency's needs using (1) the FTS, (2) the lowest cost commercial offerings on the public networks, or (3) other alternatives, as applicable. GSA will make a determination for a preferred option within the time periods as specified in §§ 201–37.201–1 and 201–37.201–2, as applicable.

c. Section 201–4.1302–3 is added to provide for OMB review and decision regarding the manner in which certain agency long distance voice telecommunication requirements are to be satisfied, as follows:

§ 201–4.1302–3 Review of proposed determinations by the Office of Management and Budget.

(a) In the absence of mutual agreement between GSA and the agency concerned, proposed GSA determinations with respect to a specific agency long distance voice telecommunication requirement submission to GSA shall be subject to review and decision by OMB. When these matters are submitted to OMB for resolution, the submitting agency (GSA or the agency concerned) shall submit copies of the submission and all relevant data and information to the other party.

(b) The Administrator of General Services has authorized the Office of Management and Budget (OMB) to review and decide, based on economy, efficiency of service, the manner in which agency requirements referred to in paragraph (a) of this § 201–4.1302–3 shall be satisfied.

6. *Agency action.* Pending the issuance of a permanent amendment to the FIRMR, agencies shall follow the policies and procedures in this temporary regulation.

7. *Distribution of this directive.* Because the FIRMR looseleaf edition distribution list has not yet been established, this FIRMR temporary regulation will be distributed to addressees on GSA's FPR and FPMR Subchapters B and F combined publication distribution list. It is suggested that the directive be retained for continuing use until the provisions are incorporated into the FIRMR or are otherwise superseded or canceled.

8. *Submission of comments.* The views of agencies and other interested parties will be solicited in conjunction with the development and release for comment of regulatory provisions for the other clarifications discussed in paragraph 4, Background, at a later date. However, any comments on this Supplement 4 received by the Policy branch (address: General Services Administration (KMPP), Washington, DC 20405) will be considered in future actions.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 84–33710 Filed 12–27–84; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 41046–4171]

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

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Interim notice of 1985 initial specifications.

SUMMARY: As an interim measure, NOAA adopts the 1985 initial fishing specifications for the Bering Sea and Aleutian Islands groundfish fishery which were proposed on November 8, 1984 (49 FR 44655). Those specifications are being adopted on an interim basis to provide an additional 15-day comment period while ensuring the anticipated needs of the U.S. fishing industry are met, and that domestic and foreign fisheries proceed without interruption. A total allocation of 242,975 metric tons (mt) is recommended at this time for foreign fishing.

DATE: Effective January 1, 1985, until a final notice of 1985 initial specifications is effective. Comments are invited on these interim specifications until January 14, 1985.

ADDRESSES: Comments may be mailed to Robert W. McVey, Director, Alaska Region, NMFS, P.O. Box 1668, Juneau, Alaska 99802, or delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska. Copies of the resource assessment document upon which the initial specifications are based may be obtained from the North Pacific Fishery

Management Council, P.O. Box 103136, Anchorage, Alaska 99510; 907–274–4563.

FOR FURTHER INFORMATION CONTACT: Robert W. McVey, 907–586–7221; or Janet Smoker (Fishery Biologist), 907–586–7230.

SUPPLEMENTARY INFORMATION:

Background

The final rule implementing Amendment 1 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) was published in the **Federal Register** on January 4, 1984 (49 FR 396.) Among other actions, the final rule sets forth the procedure by which total allowable catch (TAC), domestic annual harvest (DAH), and total allowable level of foreign fishing (TALFF) amounts are determined annually for each target species and the "other species" category. Consistent with this procedure, NOAA issued a proposed notice (49 FR 44657, November 8, 1984) that solicited public comment on preliminary fishery specifications for TAC amounts for the Bering Sea and Aleutian Islands area target groundfish species and the "other species" category and apportionments of those TACs between DAH and TALFF for the 1985 fishing year.

At its December 5–8, 1984, meeting, the North Pacific Fishery Management Council (Council) reviewed public comments received on the preliminary specifications along with recent analyses of resource surveys and commercial fishery data, and recommended to the Secretary of Commerce (Secretary) numerous changes to those specifications with substantially lower TALFF numbers. Given the magnitude of recommended changes and the considerable public interest generated, the Secretary is seeking additional public comment from industry and other members of the public while we continue to review the Council's recommendations. Comments will be considered in developing the final notice. We anticipate receiving revised recommendations from the Council based on the results of meetings between representatives of the U.S. and Japanese fishing industries that were held in Seattle, December 10 and 11, 1984.

For the reasons stated in the above summary, the Secretary has adopted on an interim basis, the initial proposed specifications set forth below (Table 2, 49 FR 44655, November 8, 1984). However, because NMFS anticipates that the final TALFF specifications will be lower, NMFS is recommending to the State Department that only 242,975 mt be considered at this time for allocation to foreign countries.

TABLE 2.—PROPOSED 1985 TOTAL ALLOWABLE CATCHES (TAC'S) OF GROUNDFISH AND INITIAL APPORTIONMENTS OF TAC'S AMONG DOMESTIC ANNUAL PROCESSING (DAP, JOINT VENTURE PROCESSING (JVP), AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF) IN THE BERING SEA AND ALEUTIAN ISLANDS AREA. ALL FIGURES ARE IN METRIC TONS

Species	Area	Proposed 1985 initial apportionments			
		TAC	DAP	JVP	TALFF
Pollock	Bering Sea (BS)	1,100,000	6,826	274,500	653,674
	Aleutians (AL)	100,000	300	10,000	74,700
Pacific cod		210,000	62,940	40,000	75,560
Yellowsfin sole		288,700	3,076	57,000	185,319
Turbots		50,000	0	2,000	40,500
Other flatfish		139,840	907	22,000	95,957
Pacific ocean perch	(BS)	680	578	0	0
	(AL)	3,800	100	2,310	820
Other rockfish	(BS)	1,120	600	20	332
	(AL)	5,500	5	535	4,135
Sablefish	(BS)	2,600	1,979	100	131
	(AL)	3,360	100	417	2,339
Atka mackerel		37,700	0	32,045	0
Squid		10,000	0	30	8,470
Other species		46,700	1,000	2,800	35,895
Total		[1]2,000,000	78,411	443,757	1,177,832

[1] 15 percent of the total TAC, or 300,000 mt, is apportioned to the reserve, and the remaining TAC is apportioned to DAP, JVP, and TALFF.

Other Matters

This action is taken under 50 CFR 611.93(b) and 675.20 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: December 21, 1984.

Carmen J. Blondin,

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

[FR Doc. 84–33597 Filed 12–26–84; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 49, No. 251
Friday, December 28, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

Federal Employees Health Benefits Program

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is proposing revised regulations to improve the administrative process used by the Federal Employees Health Benefits Program (FEHBP) to resolve disputed health insurance claims. These regulations would strengthen OPM's control over the disputed claims process and would result in more efficient plan and OPM reviews.

DATE: Comments must be received on or before February 26, 1985.

ADDRESS: Written comments may be sent to Lucretia F. Myers, Assistant Director for Pay and Benefits Policy, Compensation Group, Office of Personnel Management, P.O. Box 57, Washington, D.C. 20044; or delivered to the Office of Personnel Management, 1900 E Street, NW., Room 4351.

FOR FURTHER INFORMATION CONTACT: Mary Ann Mercer, (202) 632–4634.

SUPPLEMENTARY INFORMATION: Health benefits plans participating in the FEHBP are required to pay for or provide a health service or supply when OPM decides that the enrollee or family member is entitled to the benefit under the terms of the contract [5 U.S.C. 8902(j)]. Normally, claims for benefits are handled between the plan and the enrollee. However, occasions arise when enrollees challenge the plan's denial of a claim. Section 890.105 of Title 5, Code of Federal Regulations, describes the process used to resolve disputes between enrollees and plans over whether a benefit should be provided.

Under the current regulations, health benefits plans initially adjudicate all enrollees' claims for payment or service. If the plan denies the claim, the enrollee may request that the plan reconsider its denial. If the plan fails to respond within 30 days or upholds the denial, the enrollee may ask OPM to adjudicate the claim. Before making its determination, OPM may request additional information from the enrollee or the plan. Within 30 days of receipt of all information requested, OPM must notify the enrollee and the plan of its findings.

While the proposed regulations retain the basic structure of the plan and OPM review as set out in current regulations, they contain changes that: (1) Close loopholes in the reconsideration process by adding starting and completion dates for plan actions; (2) help enrollees understand the reasons for denial of claims and assure they are aware of their right to OPM review by specifying the information plans must include in denial notices; (3) specify time limits for enrollee requests for OPM review when plans fail to respond to enrollees in a timely manner; (4) eliminate collection and review by OPM of unnecessary information by specifying that OPM will review only that evidence needed to make a decision; and (5) make the process clearer by reorganizing the regulations and making editorial changes.

The proposed regulations establish timeframes for the plan to request the information it needs and to respond to the enrollee after all information is received. The regulations make it clear that within 30 days after receipt of a disputed claim, the plan must take one of the following actions: (1) Affirm the denial in writing to the enrollee; (2) pay the bill or provide the service; or (3) request additional information from the enrollee to make a decision on the claim. Further, when the additional information is received, the plan has 30 days to affirm the denial in writing to the enrollee or pay the bill or provide the service.

The proposed regulations help the enrollee understand the reasons for denial of the claim and assure he/she is aware of the right to OPM review by requiring the plan provide the enrollee notice of: (1) The specific and detailed reasons for the denial; (2) the enrollee's rights to request review by OPM; and (3) the timeframe and conditions for obtaining OPM review.

Existing regulations do not specify time limits for enrollee requests for OPM review when plans fail to respond to enrollees in a timely manner. The proposed regulations allow the enrollee to request OPM review within 90 days from the date of the plan's notice to the enrollee that the denial was affirmed, or 120 days after the date of a timely-filed request for plan reconsideration, if the plan fails to respond to the request.

The provision that OPM review "all original evidence" on a claim has been dropped. Frequently, the dispute involves an interpretation of contract language and it is not necessary to review all documents submitted with the claim. The proposed regulations eliminate collection and review by OPM of unnecessary information by specifying that OPM will review only that evidence needed to make a decision.

Organizational and editorial changes have been incorporated into the regulations for clarity.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations merely amend administrative procedures currently performed by FEHBP plans and OPM.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Claims, Government employees, Health insurance, Retirement.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

PART 890—[AMENDED]

Accordingly, OPM proposes to amend 5 CFR Part 890 as follows:

1. Section 890.101 is amended by redesignating paragraphs (a)(4) through (a)(11) as (a)(5) through (a)(12) and adding a new paragraph (a)(4) to read as follows:

§ 890.101 Definitions; time computations.

(a) * * *

(4) "Claim" means a request for (i) payment of a health-related bill; or (ii) provision of a health-related service or supply.

* * * * *

2. Section 890.105 is revised to read as follows:

§ 890.105 Filing claims for payment or service.

(a) *General.* Each health benefits plan adjudicates claims filed under the plan. An enrollee must initially submit all claims to the health benefits plan in which he or she is enrolled. If the plan denies a claim, the enrollee may ask the plan to reconsider the denial. When the plan affirms its denial or fails to respond as required by paragraph (b) of this section, the enrollee may ask OPM to decide the claim.

(b) *Timeframes for reconsidering a claim.* (1) The plan must reconsider its initial denial of a claim (or a portion of a claim) when an enrollee submits a written request for reconsideration to the plan within 1 year of the date of the notice to the enrollee that the claim was denied.

(2) Within 30 days after the date of receipt of a timely-filed request for reconsideration, the plan must affirm the denial in writing to the enrollee; pay the bill or provide the service; or request additional information needed from the enrollee to make a decision on the claim. When additional information is requested, the plan must, within 30 days after the date the information is received from the enrollee, affirm the denial in writing to the enrollee; or pay the bill or provide the service. If the enrollee does not provide the requested information within 60 days from the date of the plan's notice requesting additional information, the plan must make its decision based on the evidence it has. The plan must then send written notice to the enrollee of its decision on the claim.

(3) If a plan either affirms its denial of a claim or fails to respond to an enrollee's written request for reconsideration within 30 days after the date it received the request or within 30 days after the date it received the information requested, the enrollee may write to OPM and request that OPM adjudicate the claim. The enrollee must submit the request for OPM review within the timeframes specified in paragraph (d)(1) of this section.

(c) *Information required to process requests for reconsideration.* (1) When requesting the plan to reconsider a claim, the enrollee must put the request in writing and give the reason the claim should not have been denied.

(2) If the plan needs additional information from the enrollee to make a decision, it must (i) specifically identify the information needed; (ii) state the reason the information is required to make a decision on the claim; (iii) specify the timeframe (60 days from date of the plan's request) for submitting the information; and (iv) state the consequences of failure to respond within the time limit specified, as set out in paragraph (b)(2) of this section.

(3) When the plan affirms the initial denial, it must provide written notice to the enrollee. This notice must inform the enrollee of (i) the specific and detailed reasons for the denial; (ii) the enrollee's right to request a review by OPM; and (iii) the requirement that requests for OPM review must be received within 90 days after the date of the plan's notice of denial.

(d) *OPM review.* (1) OPM must accept a request for review that is received (i) within 90 days after the date of the plan's notice to the enrollee that the denial was affirmed; or (ii) within 120 days after the enrollee files a timely request for reconsideration by the plan, if the plan fails to respond to the request as provided in paragraph (b)(2) of this section.

(2) In reviewing a claim denied by a plan, OPM may (i) request that the enrollee submit additional information; (ii) obtain an advisory opinion from an independent physician; or (iii) obtain any other information as may in its judgment be required to decide the claim. (OPM's request for an advisory opinion will not identify the enrollee or patient, the plan, or any medical institutions or physicians involved in the claim.)

(3) When OPM requests information from a plan, the plan must release the information within 30 days of the date of OPM's written request unless a different timeframe is specified by OPM in its request. Any evidence submitted by the enrollee or by the plan for review of the denied claim will be held as privileged information and will be reviewed only by persons having official need to see it.

(4) Within 30 days after receipt of the necessary evidence, OPM must give a written notice of its decision to the employee and the plan.

(5 U.S.C. 8913)

[FR Doc. 84-33668 Filed 12-27-84; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-304-84]

Carryforward Elections and Election To Allocate State Ceiling to Facilities for Local Furnishing of Electricity

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to carryforward elections and the election to allocate State ceiling to facilities for local furnishing of electricity. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered by February 26, 1985. The amendments are proposed to be effective generally with respect to obligations issued after December 31, 1983.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-304-84), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Mitchell H. Rapaport of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3740).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend Part 1 of Title 26 of the Code of Federal Regulations. These amendments change the rules relating to carryforward elections under section 103(n) of the Internal Revenue Code of 1954, as added by section 621 of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 915). These amendments also provide rules relating to the election to allocate State ceiling to facilities for local furnishing of electricity under section 644(b) of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 940). For the text of the temporary regulations, see FR Doc. (T.D. 8001) published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the

temporary regulations provides a discussion of the rules. The final regulations, which this document proposes to base on those temporary regulations, would amend Part 1 of Title 26 of the Code of Federal Regulations. Those final regulations are proposed to be issued under the authority contained in sections 103(n) and 7805 of the Internal Revenue Code of 1954 (98 Stat. 915, 26 U.S.C. 103(n); 68A Stat. 917, 26 U.S.C. 7805) and section 644(b) of the Tax Reform Act of 1984 (98 Stat. 940).

Non-Applicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Regulatory Flexibility Act

Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of these proposed regulations is Mitchell H. Rapaport of the Legislation and Regulations 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 regulations, on matters of both substance and style.

Comments and Requests for a Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84-33783 Filed 12-26-84; 9:17 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[LR-144-84]

Limitations on Aggregate Amount of Private Activity Bonds; Public Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Postponement of public hearing on proposed regulations.

SUMMARY: This document provides notice of a postponement of a public hearing on proposed regulations relating to the tax exempt status of private activity bonds. The date for the public hearing has been postponed until further notice.

FOR FURTHER INFORMATION CONTACT: B. Faye Easley of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, ATTN: CC:LR:T, telephone 202-566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: By a notice appearing in the **Federal Register** for Wednesday, December 19, 1984 (49 FR 49310), it was announced that a public hearing on proposed regulations relating to the tax exempt status of private activity bonds was scheduled to be held on Friday, January 11, 1985, beginning at 10:00 a.m. in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. The requests to speak and outlines of oral comments were to be delivered or mailed to the Commissioner of Internal Revenue, ATTN: CC:LR:T (LR-144-84), Washington, D.C. 20224, by Thursday, January 3, 1985. The proposed regulations pertaining to the tax exempt status of private activity bonds appeared in the **Federal Register** for Friday, October 5, 1984 (49 FR 39344).

This document hereby postponed the date for the public hearing until further notice. The date by which requests to speak and outlines of oral comments must be delivered or mailed is also postponed until further notice.

In all other respects the details with respect to the hearing remain the same.

By direction of the Commissioner of Internal Revenue:

George H. Jelly,

Director, Legislation and Regulations Division.

[FR Doc. 84-33786 Filed 12-27-84; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 301

[LR-180-84]

Increased Rate of Interest on Substantial Underpayments Attributable to Certain Tax Motivated Transactions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the increased rate of interest on substantial underpayments attributable to certain tax motivated transactions. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered by February 26, 1985.

The amendments are proposed to be effective for interest accruing after December 31, 1984, on certain underpayments.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-180-84), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Linda M. Kroening, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3238, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend Part 301 of Title 26 of the Code of Federal Regulations. The temporary regulations are designated by a "T" following their section citation. The final regulations, which this document proposes to base on those temporary regulations, would amend Part 301 of Title 26 of the Code of Federal Regulations.

The regulations provide rules relating to the increased rate of interest on substantial underpayments attributable to certain tax motivated transactions. The regulations reflect the addition of section 6621 (d) to the Internal Revenue Code of 1954 by section 144 of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 682). The regulations are to be issued under the authority contained in section 6621 (d) and 7805 of the Code (98 Stat. 682, 26 U.S.C. 6621 (d); 68A Stat.

917, 26 U.S.C. 7805). For the text of the temporary regulations, see FR Doc. (T.D. 7998) published in the Rules and Regulations portion of this issue of the Federal Register. The preamble of the temporary regulations provides a discussion of the rules.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, a Regulatory Flexibility Analysis is not required (5 U.S.C. Chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is Linda M. Kroening of the Legislation and Regulations 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 regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Statistics, Taxes, Disclosure of information, Filing requirements.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84-33781 Filed 12-27-84; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA Docket No. 107MD-6; A-3-FRL-2745-5]

Designation of Areas for Air Quality Planning Purposes; Proposal To Approve the Redesignation of Attainment Status for the State of Maryland

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: EPA is proposing to approve a change that the State of Maryland has requested in the sulfur dioxide (SO_2) air quality designation of Election District Number Eight, Luke, Maryland. The redesignation would classify the area as "better than national standards" for SO_2. This designation is required by Section 107 of the Clean Air Act (CAA). EPA is proposing to approve Maryland's requested change because the agency has found it to be justified by recent air quality diffusion modeling results and monitoring data.

EFFECTIVE DATE: Comments on this proposed action must be submitted on or before January 28, 1985.

ADDRESSES: Copies of Maryland's request for the redesignation, along with associated support materials, are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Management Branch (3AM10), Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106

Maryland Air Management Administration, Maryland Department of Health and Mental Hygiene, 201 West Preston Street, Baltimore, MD 21201

All comments submitted on or before January 28, 1985 will be considered and should be submitted to Mr. James E. Sydnor at the EPA Region III address stated above. Please reference the EPA docket number found in the heading of this notice in any correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. James B. Topsale of Mr. Paul Racette at the address for EPA Region III, or telephone (215) 597-4556.

SUPPLEMENTARY INFORMATION:

Background

On September 12, 1983 the State of Maryland submitted a request to redesignate the attainment status of Election District Number Eight, Luke, Maryland for SO_2 in accordance with the requirements of Section 107(d) of the Clean Air Act. Under section 107(d), the Administrator of EPA had previously determined the status of attainment of the National Ambient Air Quality Standards (NAAQS) for SO_2 in Election District Number Eight, 43 FR 40502; September 12, 1978. EPA determined that the attainment status could not be ascertained with the available data at that time, and therefore designated the district as "cannot be classified." Today, EPA is proposing to approve the redesignation of Election District Number Eight, a part of the Cumberland-Keyser Air Quality Control Region, from "cannot be classified" to "better than national standards." This action is based on recent modeling and air quality monitoring data.

Modeling data submitted for SO_2 was based on a Westvaco Corporation diffusion model called the Luke Mill Model (LUMM). EPA compared the results of the LUMM model with the results of an EPA guideline model, SHORTZ, that has been approved for rough terrain areas such as that which exists in the vicinity of the Luke paper mill. Both models were examined under a protocol comparing and "ranking" the various components of each model. Under the protocol, the LUMM model was judged to be the more accurate in predicting ambient SO_2 concentrations in the Luke vicinity. This evaluation was based on the August 1981 "Interim Procedures for Evaluating Air Quality Models" manual produced by EPA's Office of Air Quality Planning and Standards.

The LUMM model was used to predict SO_2 concentrations in the area surrounding Luke, Maryland including the Election District Number Eight area. The predicted concentrations are based on allowable emission rates that are being established for the Westvaco Corporation paper mill in a revision to the Maryland State Implementation Plan (SIP), which was published on December 20, 1984 (49 FR 49457). This revision will appear in a separate notice in the Federal Register (AM047MD). The revision calls for allowable emission rates of 66 tons/day and 17.0 tons/three hours. These emissions rates, when utilized in the LUMM model, predict that no violations of the SO_2 standards will occur at any receptor site in the model area. The 66 tons/day emission rate predicts that the highest annual average will be 54 $\mu g/m^3$ and that the 24-hour highest second highest SO_2 concentration will be 306 $\mu g/m^3$. The 17 tons/3-hour emission rate predicts that the 3-hour highest second highest SO_2

concentration will be 1254 $\mu g/m^3$. The three predicted values do not exceed the annual primary standard (80 $\mu g/m^3$), the 24-hour primary standard (365 $\mu g/m^3$), and the 3-hour secondary standard (1300 $\mu g/m^3$). Since the highest predicted concentrations of SO_2 are in compliance with the standards, it can be concluded that the entire modeled area is in compliance with the standards. The conclusion is based on the proposed emission rates and on the current rate of 49 tons/day.

The current rate was established in a revision to the Maryland SIP on April 25, 1980, 40 FR 27933. The 49 tons/day figure is also utilized with the LUMM model, and predicts concentrations lower than those predicted with the 66 tons/day and 17 tons/3-hour figures. Accordingly, the LUMM model concludes that with either the new or old emission standards the Election District Number Eight is in compliance with the NAAQS for SO_2.

Additionally, monitoring data was collected in accordance with EPA requirements from three monitors located in the area of influence, two placed in the Election District and one placed adjacent to the Election District in Garrett County, Maryland. The monitoring data from Maryland demonstrates that no violations of the ambient SO_2 standards occurred from December, 1979 to November, 1981. An additional 8 monitors were sited adjacent to the Election District in the Piedmont magisterial District of West Virginia, on property owned by the Westvaco Corporation to which the general public does not have access. Although these monitors recorded levels above the SO_2 NAAQS, they do not represent ambient air (see, 40 CFR 50.1(e) (1983)) and were utilized only to support the development and performance evaluation of the LUMM model.

Since completing construction of the new stack at the Westvaco Corp. Mill, portions of EPA's stack height regulations, which formed the basis for Westvaco's stack modifications, were overturned by the U.S. Court of Appeals for the D.C. Circuit [*Sierra Club* v. *EPA*, 719 F.2d 436 (D.C. Cir., 1983) cert. denied, 52 U.S.L.W. 3929 (U.S. July 2, 1984)]. In response, EPA proposed revised stack height regulations on November 9, 1984 (49 FR 44878). The stack heights credit used in establishing the emission limitations and, thus, the ambient attainment status of Election District Number Eight, is consistent with this proposal.

EPA Actions

Based on these air quality diffusion modeling results and the monitoring data, EPA proposes to approve Maryland's redesignation request for the Luke Election District Number Eight with respect to SO_2. The public is advised that any comments on this proposed action must be submitted on or before January 28, 1985.

General

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

Under 5 U.S.C. (b), the Administrator has certified that the redesignation does not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

(Sec. 107 Clean Air Act (42 U.S.C. 7404))

Dated: November 19, 1984.

Thomas P. Eichler,

Regional Administrator.

[FR Doc. 84-33745 Filed 12-27-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 773

[OPTS-47002C; FRL 2724-4]

Chlorinated Benzenes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this notice, EPA announces three decisions concerning the rulemaking proceeding initiated in July 1980 (45 FR 48524) to require health effects testing of the chlorinated benzenes pursuant to section 4(a) of the Toxic Substances Control Act (TSCA). First, the Agency is finalizing a preliminary decision to withdraw certain portions of the proposed test rule [see 48 FR 54836 (Dec. 7, 1983)]. Secondly, as a result of a recent court suit, the Agency cannot accept the negotiated testing program submitted by the Chlorobenzene Producers Association (CPA). A decision whether to require reproduction effects testing of monochlorobenzene (MCB), orthodichlorobenzene (*o*-DCB), and paradichlorobenzene (*p*-DCB) (addressed by the CPA testing program) will be announced in the Agency's final action on the chlorobenzene proposed test rule. Thirdly, the Agency is announcing that any rulemaking on chlorobenzenes' health effects testing will be conducted in a single phase rule (see Unit IV).

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Room 542 East Tower, 401 M Street, SW., Washington, D.C. 20460, Toll Free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator—202-544-1404).

SUPPLEMENTARY INFORMATION: EPA is finalizing its decision published on December 7, 1983, to withdraw portions of its proposed test rule to require health effects testing of the chlorinated benzenes.

I. Background

On October 12, 1977 (42 FR 55026), the Interagency Testing Committee (ITC) designated monochlorobenzene and the dichlorobenzenes for health and environmental effects testing consideration. On October 30, 1978 (43 FR 50630), the ITC also designated tri-, tetra- and pentachlorobenzenes for health and environmental effects testing consideration. The Agency responded to the ITC's health effects testing recommendations by issuing a proposed health effects test rule for both groups of chlorinated benzenes in the **Federal Register** of July 18, 1980 (45 FR 48524).

On December 7, 1983 (48 FR 54836), EPA issued a proposed rule-related notice and request for comments on a proposed negotiated testing agreement for reproductive effects testing of certain chlorinated benzenes, and a tentative decision to withdraw a number of the health effects testing requirements the Agency previously had proposed. Only the Chlorobenzene Producers Association (CPA) submitted comments on the rule-related notice.

The Agency has also published a proposed rule and an advance notice of proposed rulemaking for environmental effects testing of these chlorinated benzenes [see 49 FR 1760 (Jan. 13, 1984)]. This notice addresses only those health effects decisions discussed in EPA's December 7, 1983, notice.

II. Decision To Withdraw Portions of Proposed Rule

The Agency believes that the information described in its December 1983 **Federal Register** notice is (1) sufficient to reasonably determine or predict the risks to humans exposed to the chlorinated benzenes for those health effects for which testing requirements were proposed to be withdrawn and (2) demonstrates that the number of persons exposed to pentachlorobenzene is sufficiently small such that the findings under TSCA

section 4(a) cannot be made. The CPA agreed with this assessment, and no public comments were received that opposed these conclusions. Therefore, EPA is hereby withdrawing those portions of the proposed test rule that would have required the following health effects testing of the chlorinated benzenes: (1) structural teratogenicity (developmental toxicity) testing for MCB, *o*-DCB, and *p*-DCB, and 1,2,4-trichlorobenzene (1,2,4-TCB); (2) subchronic effects testing of MCB, *o*-DCB, *p*-DCB, and 1,2,4-TCB; and (3) oncogenicity and reproductive effects testing of pentachlorobenzene (see Table).

SUMMARY OF THE REQUIRED HEALTH EFFECTS TESTS INCLUDED IN THE JULY 18, 1980 PROPOSED RULE AND RATIONALE FOR DECISIONS NOT TO PURSUE PORTIONS OF THIS TESTING THROUGH RULEMAKING

	Oncogenicity	Structural teratogenicity	Reproductive effects	Subchronic
Monochlorobenzene	...	WX [3]	X [4]	WX [3]
Orthodichlorobenzene	...	WX [3]	X [4]	WX [3]
Paradichlorobenzene	...	WX [3]	X [4]	WX [3]
1,2,4-Tri-	X [4]	WX [3]	...	WX [3]
1,2,4,5-Tetra-	X [4]	X [4]	X [4]	X [4]
Pentachlorobenzene	WX [1]	...	WX [1]	...

X = Testing proposed July 18, 1980.
... = Testing not proposed July 18, 1980.
W = Proposed testing being withdrawn in this notice.
[1] Lack of sufficient TSCA exposure to support testing; this exposure does not include that resulting from FIFRA uses of the chemical.
[3] Adequate data submitted subsequent to proposal or appropriate testing in progress.
[3] Sufficient data available to reasonably predict low risk at anticipated exposure levels.
[4] Remains under consideration for inclusion in final test rule.

III. Decision Not To Adopt Negotiated Testing Agreement

In its December 1983 notice, EPA announced its intention to withdraw that portion of the proposed rule that would require reproductive effects testing of MCB, *o*-DCB and *p*-DCB. This preliminary decision was based on the tentative acceptance of a negotiated testing program submitted by the CPA which addressed the reproductive effects testing of these chlorinated benzenes. The Agency believed that the CPA testing program, including any follow-up testing determined to be necessary based on the initial test results, would have provided sufficient data to reasonably determine or predict the reproductive effects of MCB, *o*-DCB, and *p*-DCB. The CPA submitted comments which both supported this conclusion and argued that the tentative decision to accept the negotiated testing program should be finalized.

In late 1983, however, the Natural Resources Defense Council (NRDC) and the Industrial Union Department of the American Federation of Labor-Congress of Industrial Organizations (AFL–CIO) filed an action under TSCA section 20 which challenged, among other things, EPA's utilization of negotiated testing agreements in lieu of initiating rulemaking under TSCA section 4(a) for four ITC-designated chemical substances [*NRDC and AFL–CIO* v. *EPA*, 83 Civ. 8844 (S.D.N.Y. Dec. 6, 1983)]. In an August 23, 1984 Opinion and Order, the district court found that in EPA's responses to chemicals designated by the ITC, negotiated agreements may not be adopted by EPA in lieu of requiring testing through section 4(a) test rules [see *NRDC and AFL–CIO* v. *EPA*, 83 Civ. 8844, slip op. at 18 (S.D.N.Y. August 23, 1984)]. In accordance with this opinion, EPA has decided not to adopt the CPA testing program. Therefore, that portion of the original proposal concerning reproductive effects testing of MCB, *o*-DCB and *p*-DCB will be addressed in the final Agency action on the chlorinated benzenes proposed health effects test rule (see Table and Unit IV, below).

IV. Development of Final Rule

Having decided to withdraw certain portions of the test rule proposal and not to adopt the CPA testing program, the Agency will now be proceeding with the rulemaking process for the remaining portions of the chlorinated benzenes health effects testing proposal: (1) Oncogenicity testing of 1,2,4-TCB; (2) certain health effects testing of 1,2,4,5-tetrachlorobenzene; and (3) reproductive effects testing of MCB, *o*-DCB and *p*-DCB (see Table). Any final rule concerning these testing requirements will be promulgated in a single phase, such that the rule will include test standards and deadlines for submission of test data. In the proposed rule, EPA set forth proposed reporting requirements and data submission deadlines and proposed that the testing should be done in accordance with the applicable proposed test standards (with possible chemical-specific modifications) [see 45 FR 48565 (July 18, 1980)]. The Agency will base any final test standards for the chlorinated benzenes test rule on the proposed standards and the record compiled in this rulemaking.

EPA held a public meeting on September 25, 1984 to discuss the oncogenicity testing of 1,2,4-TCB and the health effects testing of 1,2,4,5-tetrachlorobenzene. Public comments were submitted and a transcript of that meeting is available in the public docket of this rulemaking proceeding. In accordance with the Final Order and Judgment in *NRDC and AFL–CIO* v. *EPA*, the Agency expects to take final action on the remaining portions of the chlorinated benzenes proposed health effects test rule by June 1986.

V. Public Record

EPA has established a public record for this rulemaking proceeding [docket number OPTS–47002C]. This record includes:

(1) **Federal Register** notices designating the chlorinated benzenes to the priority list (42 FR 55026 and 43 FR 50630) and all comments received on the chlorinated benzenes.

(2) **Federal Register** notices of EPA's proposed health effects test rule on chlorinated benzenes (45 FR 48424) and all comments received on the proposed testing.

(3) **Federal Register** notices (48 FR 54836) requesting comment on the negotiated testing program and decision to withdraw proposed test rule, and comments received.

(4) Communications consisting of letters, contact reports of telephone conversations, and meeting summaries.

(5) Proposed test standards for oncogenicity, structural teratogenicity, reproductive effects and subchronic effects [44 FR 44054 and 27334] and comments submitted on those standards which may be found in public dockets #OPTS–46005 and 46003.

(6) Published and unpublished data.

(7) Transcript of September 25, 1984 Public Meeting.

The record, containing the information considered by the Agency in developing this decision, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday except legal holidays, in Room E–107, 401 M St., SW., Washington, D.C. 20460. The Agency will supplement this record periodically with additional relevant information received.

(Sec. 4, Pub. L. 94–469, 90 Stat. 2003; 15 U.S.C. 2601)

Dated: December 19, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-33750 Filed 12-27-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6625]

Revision of Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Dayton, Rockingham County, Virginia.

Due to recent engineering analysis, this proposed rule would revise the proposed determinations of base (100-year) flood elevations published in the **Federal Register** at 49 FR 40939 on October 18, 1984, and hence would supersede those previously published proposed rules.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in each community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Dayton Municipal Building, Dayton, Virginia.

Send comments to: Honorable Marion I. Eberly, Mayor of the Town of Dayton, Municipal Building, P.O. Box 215, Dayton, Virginia 22821.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0701.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the Town of Dayton, Rockingham County, Virginia, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

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

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

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base (100-year) flood elevations are:

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Cooks Creek.	At downstream corporate limits	*1,202
	Approximately 200 feet upstream of State Route 701 (second crossing).	*1,208
	At northwest corporate limits	*1,221
Sunset Heights Branch.	At confluence of Cooks Creek	*1,203
	Approximately 240 feet upstream corporate limits.	*1,206

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

Issued: December 12, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84-33708 Filed 12-27-84; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 67

[CC Docket Nos. 78-72 and 80-286]

MTS and WATS Market Structure; and Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board.

AGENCY: Federal Communications Commission.

ACTION: Order Inviting Comments on Implementation of Alternative Access Charge Tariffs.

SUMMARY: This Order requests comments concerning implementation of alternative access charge tariffs for recovery of carrier common line costs and procedures for Joint Board study of proposals for experimental tariffs for the recovery of non-traffic sensitive costs. Comments are being requested to obtain information and views concerning these issues. This will assist the Commission in developing implementation rules for alternative tariffs and procedures for Joint Board review of proposals for experimental tariffs.

DATE: Comments are to be filed by January 11, 1985. Replies are to be filed by January 23, 1985.

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

FOR FURTHER INFORMATION CONTACT: Claudia Pabo or William Kirsch, Common Carrier Bureau (202) 632-6363.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 67

Communications common carriers telephone.

Order Inviting Comments

In the matter of MTS and WATS market structure; Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board; CC Docket No. 78-72; CC Docket No. 80-286.

Adopted: December 17, 1984.

Released: December 18, 1984.

By the Chief, Common Carrier Bureau for the Federal-State Joint Board

I. Introduction

A. Summary

1. The Chief, Common Carrier Bureau, hereby requests comments on a number of issues related to implementation of the optional alternative tariff provisions for recovery of interstate carrier common line costs [1] recommended by the Federal-State Joint Board at its meeting on November 15, 1984. The Bureau also requests comments on procedures for Joint Board review of proposed experimental tariff filings for recovery of interstate non-traffic sensitive costs.[2] While the Commission has not yet acted on the Joint Board's recommendations, the Bureau is requesting comments at this time so that interested local exchange companies will be able to move forward rapidly with alternative tariff provisions if the Commission adopts the Joint Board's recommendations in this regard.

[1] Carrier common line costs include customer premises equipment as well as inside wiring and local loop costs not recovered through subscriber line charges. These costs also include the Universal Service Fund and the National Exchange Carrier Association's operating expenses.

[2] *See* para. 3 *infra* for a discussion of the Joint Board's recommendation concerning experimental tariff filings.

B. Background

2. On November 15, 1984, the Joint Board recommended that the Commission implement limited subscriber line charges for residential and single line business subscribers. Under the Joint Board proposal a $1.00 monthly subscriber line charge for these customers would be implemented effective June 1, 1985. This charge would be increased to $2.00 per month effective June 1, 1986. The Joint Board recommended that the basic subscriber line charge for residential and single line business customers be frozen at $2.00 per month. It also recommended that a further Joint Board proceeding be instituted in late 1986 to examine the effectiveness of subscriber line charges and the optional alternative tariff provisions in preventing bypass, promoting economic efficiency, and preserving universal service. The purpose of this proceeding would be to recommend what, if any, further steps should be taken by the FCC.

3. In addition, the Joint Board recommended that local exchange telephone companies, with the concurrence of state regulatory officials or the Joint Board, be given the flexibility to implement optional alternative interstate tariff provisions for the recovery of carrier common line costs in order to combat localized bypass problems. The Joint Board proposed that the Commission allow a uniform monthly surcharge up to a maximum of $.35 on the subscriber line charge for all customers in the relevant study area to fund any revenue shortfall resulting from the optional alternative tariff filings.[3] The Joint Board also recommended procedures for implementing the alternative tariff provisions designed to ensure that they do not undermine the nationwide averaging of interstate non-tariff sensitive costs (NTS) costs for purposes of the carrier common line charge.[4]

4. In recommending that local exchange companies be given the option of developing alternative tariff provisions for the recovery of carrier common line costs, the Joint Board recognized that there were a number of questions concerning the implementation of such tariffs which should be examined further. As a result, it stated that it would request further comments on these issues in early December in order to allow implementation of alternative tariff provisions at the earliest possible date, assuming that the Commission adopted its recommendations in this area.

II. Issues

5. As previously indicated, there are a number of issues concerning the implementation of alternative tariff provisions for the recovery of carrier common line costs which require further consideration. In order to assist interested parties in formulating their comments, a list of issues concerning implementation of the alternative tariff provisions is set out below. Where appropriate, a brief review of relevant background information concerning the issue is also included. Accordingly, we request interested parties to address the following questions:

1. Filing Procedures and Cost Support Data

(a) The Joint Board recommendation does not specify whether the optional alternative tariff provisions for the recovery of carrier common line costs should be filed as exception rates or rate elements within the local exchange company's basic access charge tariff or as a separate tariff. Should the local exchange companies have the option of choosing either of these approaches? If not, which approach should be used?

(b) The Joint Board recommendation provides for the submission of local exchange company proposals for alternative tariffs to the state commission, the Joint Board and the FCC. The local exchange company is required to obtain state commission or Joint Board concurrence before filing alternative tariff provisions with the FCC. What guidelines should be adopted by the Commission concerning the form of the alternative tariff proposals and the supporting material to be submitted to the state commission, the Joint Board and FCC? Should the proposal to be filed with the state commission, the Joint Board and the FCC include illustrative tariff pages showing proposed rates? Should the local exchange company be required to submit cost data in support of its proposal? Should the local exchange company be required to demonstrate the existance of a bypass threat? If so, what documentation should the local exchange company include?

(c) Traffic projections will be used in determining the level of the subscriber line surcharge to cover any revenue shortfall produced by these alternative tariff provisions as well as to implement the measures designed to ensure that the alternative tariffs do not undermine the averaging of NTS costs for the purpose of carrier common line rates. Should the Commission adopt guidelines concerning the development of these projections? If so, what provisions should the guidelines include? Would a requirement for periodic reconciliations, if errors in the local exchange company's projections affect the level of its contribution to the NECA carrier common line pool, eliminate the need for guidelines? What safeguards should be adopted to prevent possible abuses in light of the fact that revenue generated by the stimulation of interstate traffic due to alternative tariff provisions goes to reduce the level of the subscriber line surcharge?

(d) The Joint Board recommended that the alternative tariff provisions filed with the FCC be reviewed according to normal FCC tariff review procedures. Part 61 of the Commission's rules specifies the support data which must be submitted to the FCC with a tariff filing.[5] Will the data required by Part 61 of the Commission's rules, combined with the information submitted with the initial proposal, be adequate to allow Commission review of these filings? If not, what other information should be required in connection with the tariff filing? Should any of the requirements for supporting material contained in Part 61 of the Commission's rules be eliminated or modified for purposes of alternative tariff filings? What effect would any changes required by the FCC have on prior state commission or Joint Board approval of alternative tariff proposals? Would the proposal have to be resubmitted to the state commission?

(e) Should the local exchange carriers be allowed to file alternative tariff provisions with the FCC (assuming state commission or Joint Board concurrence) at any time during the access charge year? If not, what limitations should be placed on the timing of alternative tariff filings?

(f) What measures could be taken to limit the administrative burdens on local exchange carriers and state and federal regulators related to implementation of optional alternative tariff provisions for the recovery of carrier common line costs?

[3] The Joint Board noted that some of the alternative tariff provisions might take the form of volume discounts.

[4] For the text of the Joint Board's recommendation concerning optional alternative tariff provisions see *Recommended Decision and Order*, CC Docket Nos. 78-72 and 80-286, CC No. 1001 at paras. 35-43, 49 Fed. Reg. 48325 at paras. 35-43, (December 12, 1984).

[5] The Commission recently adopted revisions to Part 61 of the Commission's rules. *Report and Order in Amendment of Parts 1 and 61 of the Commission Rules*, CC Docket No. 83-992, FCC 84-353 released October 9, 1984, 47 FR 40658 (October 18, 1984).

2. Effectiveness of Alternative Tariffs in Alleviating Pressures for Bypass

(a) The Joint Board concluded that large volume users would have to realize cost savings in order for alternative rates or tariff structures to be fully effective in preventing bypass of the local network. As a result, the Joint Board recommended that the Commission adopt measures to ensure that the alternative tariff provisions actually reduce the impetus for bypass by high volume toll users in the relevant study area. There appear to be at least two approaches for designing alternative tariff provisions for recovery of carrier common line costs. Under the one approach, the local exchange carriers would file alternative access charge rates or rate elements for the recovery of carrier common line costs. In order for such alternative tariffs effectively to prevent bypass of the local network, the long distance carriers would have to reflect these alternative access charge provisions in their long distance rates to the public. Another possible approach involves billing credits or offsets to high volume toll users instead of changes in the access charges paid by the interexchange carriers. How should the Commission ensure that alternative tariff provisions actually reduce the impetus for bypass by high volume toll users? Assuming that changes in carrier's carrier access charge rates or structures are used, are any FCC actions necessary to ensure a reduction in the pressure for bypass by high volume toll customers served by the foreborne carriers? [6]

(b) If alternative tariff provisions are implemented through changes in the interstate access charges paid by the interexchange carriers, should the interexchange carriers be required to notify the FCC concerning how they intend to reflect, in their rates to the public, any access charge savings they experience?

(c) To what extent can local exchange companies measure terminating interstate access minutes? If there are measurement problems in this regard, should alternative tariff provisions include terminating interstate switched access traffic?

[6] Foreborne carriers are non-dominant common carriers which the Commission does not require to file tariffs or facilities applications. *Sixth Report and Order, Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities*, CC Docket No. 79-252, FCC 84-566, released December, 1984.

3. Effect on Interstate Service Competition

(a) The Commission is committed to ensuring full and fair competition in the provision of interexchange telecommunications services. Alternative tariff provisions must be consistent with this and other basic FCC policy objectives. What guidelines should the Commission adopt concerning alternative tariff provisions to ensure that full and fair interexchange service competition is protected? How should non-premium switched access charge rates paid by the OCCs be reflected in alternative tariff mechanisms? Could alternative tariff provisions reflecting a carrier common line access charge volume discount adversely affect interstate service competition? Would structuring the alternative tariff provisions to include a billing credit for large volume users, applicable to all long distance toll billings, alleviate possible adverse competitive effects? Would a system of billing credits (funded through the subscriber line surcharge) contravene the prohibition on rebates contained in section 203 of the Communications Act?

4. Resale

(a) Could resale undermine the effectivenes of alternative tariff provisions designed to combat bypass? How could alternative tariff provisions be structured to alleviate any possible adverse efects in this regard?

We encourage interested parties to address any additional issues which they identify concerning the implementation of the alternative tariff provisions.

6. The Bureau also requests comments concerning the development of procedural guidelines for Joint Board review of experimental tariff proposals for the recovery of the interstate allocation of NTS costs. The Joint Board envisions the experimental tariff proposals as allowing more scope for state flexibility than the alternative tariff provisions for recovery of carrier common line costs. For example, experimental tariffs are not limited to the recovery of carrier common line costs and may go beyond a targeted response to a localized bypass problem. The Bureau asks that interested parties comment on what procedural guidelines should be adopted by the Commission for Joint Board review of experimental tariff proposals.

7. We believe that guidelines must be adopted early in 1985 to facilitate the implementation of alternative and experimental tariff provisions, assuming Commission approval of the Joint Board recomendations on these points. In light of this, we ask interested parties to file comments concerning the issues discussed above no later than January 11, 1985. Replies are to be filed by January 23, 1985.

III. Ordering Clauses

8. Accordingly, interested parties ARE DIRECTED to file comments concerning these issues with the Secretary, Federal Communications Commission no later than January 11, 1985. Reply comments are to be filed with the Secretary by January 23, 1985.[7] All comments and replies are to be served on the Joint Board members and staff listed in Attachment A.

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

Albert Halprin,

Chief, Common Carrier Bureau, Federal Communications Commission.

ATTACHMENT A

Joint Board Members

Chairman Mark S. Fowler, Federal Communications Commission, Room 814, 1919 M Street, NW., Washington, D.C. 20554

Commissioner Henry M. Rivera, Federal Communications Commission, Room 822, 1919 M Street, NW., Washington, D.C. 20554

Commissioner Mimi Weyforth Dawson, Federal Communications Commission, Room 826, 1919 M Street, NW., Washington, D.C. 20554

Commissioner Marvin R. Weatherly, Alaska Public Utilities Commission, Suite 100 420 L Street, Anchorage, Alaska 99501 (Express Mail or Courier Service)

Chairman Edward F. Burke, Rhode Island Public Utilities Commission, 100 Orange Street, Providence, Rhode Island 02903

Commissioner Edward O. Larkin, New York Public Service Commission, 400 Broome Street, New York, New York 10013

Commissioner Edward B. Hipp, North Carolina Utilities Commission, Box 991, Raleigh, North Carolina 27602

Federal State Joint Board Staff

Kathleen Whiteaker, Chairman, Federal State Joint Board Staff, Alaska Public

[7] This action is taken by the Chief, Common Carrier Bureau pursuant to delegated authority. *Memorandum Opinion and Order, Amendment of Part 67 of the Commission's Rules*, CC Docket No. 80-286, FCC 80-692, released December 5, 1980, 45 F.R. 82281 (December 15, 1980). Due to the extremely short period of time available for resolution of these matters, the Joint Board staff will make its recommendations directly to the FCC after informal coordination with the Joint Board members.

Utilities Commission, 420 L Street, Suite 100, Anchorage, Alaska 99501 (Express Mail or Courier Service)
Paul Popenoe, Jr., California Public Utilities Commission, 350 McAllister Street, San Francisco, California 94102
Timothy J. Devlin, Deputy Director, Auditing and Financial Analysis Dept., Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32301
Elton Calder, Georgia Public Service Commission, 244, Washington Street, SW., Atlanta, Georgia 30334
Robert E. Osborn, Iowa State Commerce Commission, State Capitol, Des Moines, Iowa 50319.
Guy E. Twombly, Maine Public Utilities Commission, State House, Station 18, Augusta, Maine
Ronald Choura, Michigan Public Service Commission, 6545 Mercantile Way, P.O. Box 30221, Lansing, Michigan 48909
Allan Bausback, New York Public Service Commission, Empire State Plaza, Albany, New York 12223
Hugh L. Gerringer, Public Staff—NCUC, Communications Division, Box 991, Raleigh, North Carolina 27602
Jim Lanni, Rhode Island Public Utilities Commission, 100 Orange Street, Providence, Rhode Island 02903
Gary A. Evenson, Director, Communications Bureau, Utility Rates Division, Public Service Commission, P.O. Box 7854, Madison, Wisconsin 53707
Claudia R. Pabo (4 copies), Room 544, Policy and Program Planning Division, Common Carrier Bureau, Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554

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BILLING CODE 6712-01-M

47 CFR Part 69

[CC Docket No. 78-72; Phase I; FCC 84-604]

MTS and WATS Market Structure

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking seeks comments and data upon four sets of issues. (1) The extent to which the existing waiver from the dedicated and common transfer function access charge rules should be extended, modified, or assimilated in whole or in part in modifications to the Commission's access charge rule. (2) Whether the private line surcharge rules should be continued, modified, or deleted. (3) Whether the Commission should modify those rules that preclude exchange carriers from mixing average schedule and cost data in supporting access charges tariffs. (4) Whether the Commission should alter that portion of its rules that relate to the computation of multi-party subscriber line charges.

EFFECTIVE DATES: Comments on those issues that relate to the interim party line charges and the local transport waiver issues may be filed on or before January 17, 1985. Reply comments may be filed within ten (10) days thereafter. Comments on all the other issues may be filed on or before April 29, 1985, and reply comments may be filed within thirty (30) days thereafter.

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

FOR FURTHER INFORMATION CONTACT: Kent R. Nilsson (202) 632-6363.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR PART 69

Access charges.

Notice of Proposed Rulemaking FCC 84-604

In the matter of MTS and WATS market structure; CC Docket No. 78-72; Phase I.

Adopted: December 4, 1984.
Released: December 28, 1984.

By the Commission.

I. Summary

1. This Notice seeks comments upon four sets of issues: (1) whether the Commission should change its rules for computing multi-party subscriber line access charges; (2) whether the Commission should preclude exchange carriers from using average schedule data in supporting interstate access charges if (a) they are affiliated with an exchange carrier that uses cost data, or (b) they use cost study data for some access charge elements; (3) whether the waiver from the dedicated and common transport function access charge rules should be extended, modified, or assimilated in whole or in part in modifications to the Commission's access charge rules; and (4) whether the private line surcharge rules should be continued, modified, deleted, or replaced.

II. Discussion

A. Court Remand Issues

2. In affirming the *Access Charge Order*,[1] the United States Court of Appeals for the District of Columbia Circuit remanded several issues for further consideration.[2] The first of these concerned the application of customer line charges to party line service. Our Rules provide that such charges are to be computed by multiplying the single-line rate by a fill ratio. The latter number is calculated on the basis of "the average level of subscription or 'fill', in each class of party-line service, such as two-party, or six-party lines, rather than individually tallying the number of subscribers to each party line.[3] In essense, the Court held that we had not adequately considered claims, advanced principally by the Rural Telephone Coalition ("RTC"), that under our rules, party-line customer line charges are uneconomically subsidized by single-line customer line charges.[4] The Court's opinion,[5] requires that we undertake an additional examination of the rule for computing party-line rates in light of the contentions that (1) the computation of party-line customer line charges does not reflect the costs of providing party line service; and (2) the Commission's decision would have the practical effect of providing an artificial (i.e. not cost based) economic incentive for single-line subscribers to shift to party-line service, thereby inducing unnessary, wasteful expenditures.[6]

[1] *MTS and WATS Market Structure* ("*Access Charge Order*"), CC Docket NO. 78-72, Phase I, 93 FCC 2d 241 (1983) *modified on reconsideration*, FCC 83-356, 48 F.R. 10319, 5 RR2d 615 (released August 22, 1983) (*First Reconsideration Order*"), *further modified on reconsideration*, FCC 84 84-36, 49 F.R. 7810, 55 RR2d 785 (released February 15, 1984) ("*Second Reconsideration Order*"), *aff'd in part, remanded in part, Nat'l Assn. of Regulatory Utility Comm'rs. v. FCC* ("NARUC v. FCC"), 737 F.2d 1095 (D.C. Cir. 1984), *petition for cert. pending*, 53 U.S.L.W. 3070 (filed July 18, 1984).

[2] *NARUC v. FCC*, 737 F.2d 1095, 1125-29.

[3] *Id.* at 1126 (citation ommitted).

[4] *Id.* at 1127. The Court also noted that our *First Reconsideration Order* had not been responsive "to the core problem identified by the RTC: as a general rule the cost of party line access per subscriber will not be recovered by that subscriber's access charges, even when that party-line cost less than a single-subscriber line." *Id.* at 126. *See* § 69.104(c) of the Commissions Rules, 47 CFR 69.104(c) (1983).'

[5] *Id.* at 1126-27.

[6] In its brief to the Court, the Rural Telephone Coalition stated that the "conversion of existing single party plant to party line plant [would] cost more than building single line plant in the first place, [and would also] provide false incentives for party line service in direct conflict with the broader goal of the Communications Act—to ensure adequate telephone service for all Americans" Brief of the Rural Telephone service for all Americans." Brief of the Rulral Telephone Coalition in *NARUC v F.C.C.* at 20. *See also* § 69.104(c) of the Commission's rules, 47 CFR 69.104(c) (1983).

3. Persons who advocate a higher charge for party-line users may believe that access charge should be designed to encourage conversion from party-line to single-line service. A uniform charge for party-line to single-line subscribers would not be inconsistent with that objective. Such a course would arguably further the Section 1 objective of promoting the provision of "adequate facilities" if conversion to single line service will create a more efficient Nationwide communications system.

4. Adequacy of facilities, however, is but one of the goals that is expressed in the Communications Act. The use of a uniform rate would arguably discriminate against party-line subscribers if the per subscriber cost for a party-line subscriber does not approximate the per subscriber cost for a single-line subscriber. We accordingly invite interested persons to provide additional data with respect to the costs of serving single-line and party-line customers. We also invite comment and data to assist us in determining the extent to which the application of single-line end user charges to party-line subscribers would actually encourage a transition to single-line service for party-line subscribers.

5. Adequacy of facilities, however, is but one of the goals that is expressed in the Communications Act. The use of a uniform rate would arguably discriminate against party-line subscribers if the per subscriber cost for a party-line subscriber does not approximate the per subscriber cost for a single-line subscriber. We accordingly invite interested persons to provide additional data with respect to the costs of serving single-line and party-line customers. We also invite comment and data to assist us in determining the extent to which the application of single-line end user charges to party-line subscribers would encourage a transition to single-line service for party-line subscribers.

6. Although the rural Telephone Coalition has suggested that the Commission delete § 69.104(c) and "leave the determination and development of an appropriate policy for computing [party line] rates to individual companies and the ECA," [7] we do not believe that a vacuum in the party-line portion of the Commission's access charge policy is desirable. While flexibility that permits adjustments for anomalous circumstances may have merit, we are not persuaded that the concerns that led this Commission to adopt an access charges policy of general applicability should be abandoned with respect to party-line service.

7. Even if a party-line rate should be somewhat lower than a single-line rate in a system of subscriber line charges that reflects most non-traffic sensitive costs, there may be no reason to distinguish between party-line and single-line customers for purposes of assessing initial charges of $2.00 or less. Such charges would not recover the full costs that are attributable to either single-line or party-line customers. In order to enable us to make a decision with respect to interim charges for party-line subscribers that could be implemented in access charge tariffs that take effect on June 1, 1985, we have decided to establish a comment cycle with respect to interim party-line charges that is much shorter than the cycle we are establishing for most questions that are discussed in this Notice.

8. The second set of issues remanded by the Court concerns the rules governing the election by small telephone companies of "Average Schedule Company" status.[8] The Court raised two concerns about these rules. The Court first questioned the reasonableness of that portion of our rules that prohibits an exchange company from electing average schedule status if it is affiliated with a cost company. The Court expressed concern as to whether the Commission had adequately assessed the administrative expenses that would be borne by small local exchange carriers that would be forced to abandon their average company status simply because of an affiliation with a cost company. In this regard, the Court questioned the reasonableness of the inference that such affiliation, without more, is a reliable indicator of the ability of a company to bear the expenses of cost studies. In adopting our Rule, we were guided by the perception that affiliates of commonly owned exchange carriers collectively possessed sufficient resources to perform those cost studies that would be required for computing interstate access charges. In addition, permitting holding companies to select the companies in their corporate "families" that would be cost, and those that would be average schedule, would foster incentives that would run counter to our objective of developing cost-based access charges.[9] We thus seek comments and data that will permit us to assess the actual costs of exchange carrier compliance with the average schedule portion of the Commission's access charges rules.

9. The Court also required further consideration of our decision that exchange carriers elect either average schedule or cost study status, without permitting them to elect to use average schedule treatment for some functions and cost studies for others.[10] In this regard, the Court stated: "[a]ccording to the RTC, many of the small exchange carriers which elect to use the average schedule . . . use the average schedule to compute every element of their costs except the expense of connecting local central offices to toll offices, or 'line haul' costs. Because line-haul cost studies are relatively less expensive and less complicated than procedures necessary to identify other types of costs, a large number of smaller exchange companies prefer to conduct their own "rather than rely on the average schedule." [11] The Court concluded that the Commission had not adequately addressed RTC's argument that forcing exclusive reliance on the average schedule could gravely affect companies with exceptionally high line-haul costs.

10. In our access charge orders [12] we have expressed continuing concern with the long term implications of local exchange bypass, and the need to "deload" toll through reductions in interstate rates for local exchange access. Permitting local exchange carriers to elect average schedule treatment for some service functions and cost for others creates incentives that hold the prospect of inflating local exchange revenue requirements. Permitting carriers to elect average schedule treatment ("AST"), when AST results in returns that exceed costs, and costs when cost treatment yields returns that exceed AST, would tend to create a revenue requirement that would diverge from costs and be contrary to our broader objective of "deloading" interstate toll.[13] Nevertheless, the Court

[7] Brief of the Rural Telephone Coalition in *NARUC v. FCC* at 20.

[8] Average Schedule companies utilize rate elements that are based upon composite industry data that may not accurately reflect the cost characteristics of companies that elect average schedule treatment.

[9] In this regard, we believe that it is reasonable to infer that a company would elect average schedule status if the proceeds from such an election would exceed the compensation associated with electing cost study treatment. The existence of "average" rates necessarily implies that one or more carriers that were included inthe averaging of composite data had costs that were below the average.

[10] *NARUC v. FCC, supra*, at 1129.

[11] *Id.* at 1127.

[12] *See* note 1, *supra*.

[13] This prospect becomes even cloudier when the mismatch is examined that exists among the rate

Continued

noted that it may be possible that "the newly reorganized categories or 'elements,'. . . of access costs can be harmonized with the established industry practice in this area, or that the average schedules can themselves be adjusted to reflect the new access cost elements identified by the Commission.[14] Accordingly, we seek further comments and data in light of the Court's opinion. The principal alternatives, as we perceive them, are: (1) Leaving the rule in its present form; (2) altering the rule to permit partial average selection; or (3) altering the rule to permit such partial selection only with respect to certain costs, such as line-haul costs.

Local Transport Charges

11. In the *Access Charge Order*, we adopted comprehensive rules for recovering costs of local exchange carrier ("LEC") transmission and switching facilities that are used by interexchange carriers to route interstate traffic to and from LEC end offices ("Class 5 offices"). A LEC may transport an interexchange carrier's traffic between the LEC's facilities and the interexchange carrier's facilities solely through dedicated trunks or through a combination of jointly used (or common) trunking and dedicated trunks. To recognize the differences between those two alternatives for moving traffic, the *Access Charge Order* allocated transport costs between two access rate elements, Dedicated Transport and Common Transport. Under that *Order*, the costs of the dedicated facilities and equipment used to provide conditioning and interface arrangements between the local carrier's and the interexchange carrier's facilities were allocated to Dedicated Transport. The *Order* also provided that Common Transport would include the costs of the jointly used trunking and access tandems upon which interchange carriers might alternatively rely to complete the transport of traffic between their facilities and an end office. The rate structure that we established reflected the nature of the costs that were incurred in the provision of those transport services. Dedicated Transport charges were based upon the number of voice-grade channels provided to the interexchange carrier ("IXC") and other non-traffic sensitive parameters reflecting the cost of the facilities provided.[15] A usage and distance sensitive rate structure was prescribed for the Common Transport element.[16] However, as we noted in the *Waiver Order*,[17] the *Modification of Final Judgment* ("MFJ")[18] required that until September 1, 1991:

> Charges for delivery or receipt of traffic of the same type between end offices and facilities of interexchange carriers within an exchange area, shall be equal, per unit of traffic delivered or received, for all interexchange carriers; provided, that the facilities of an interexchange carrier within five miles of an AT&T class 4 switch shall, with respect to end offices served by such class 4 switch, be considered in the same subzone as such class 4 switch.

MFJ, App. B at para. B(3). On March 17, 1983, AT&T and the Bell System Operating Companies requested that the Commission waive the requirement that they file cost-based rates for transport facilities because that requirement conflicted with the *MFJ* requirement of "equal charge per unit of traffic delivered or received."[19] On June 28, 1983, waivers were granted which will terminate on June 1, 1985.[20]

12. At the time we granted the AT&T petition, the Plan of Reorganization that had been submitted by AT&T to implement the *Modification of Final Judgment*[21] had not been approved by the Federal District Court for the District of Columbia. The emergency nature of AT&T's petition was grounded upon the time and personnel constraints that AT&T had encountered in arranging for the filing of access charge tariffs and supporting documentation[22] that would comply with the requirements of the *Modification of Final Judgment* and our *Access Charge Order*.[23] Because of the difficulties that would be encountered in the preparation of access charge tariffs in light of prospective changes, we concluded that a temporary waiver of the Commission's rules would be in the public interest.[24]

13. We now propose to re-examine the bases for that waiver, and thereafter determine: whether the waiver should be extended, and if so, for what period; whether the waiver should be restricted in scope, and if it should be so restricted, in what manner; whether the Commission's access charge rules for Dedicated or Common Transport functions should be modified; and finally, whether some combination of waiver provisions and rule modifications would be desirable to harmonize the objectives we have expressed in this proceeding[25] with the requirements contained in the *MFJ*. Simply put, the tension, that is posed between the Commission's existing access charge rules for Dedicated and Common Transport and the provisions of the *MFJ* with respect to equal charges per unit of traffic delivered or received, is whether the Commission should impose its cost based pricing requirements for Dedicated and Common Transport upon interexchange carriers that access the Bell Operating Companies prior to the expiration date of the equal charges per unit of traffic delivered or received provision of the *Modification of Final Judgment*.[26] Although we believe that our Dedicated and Common Transport access charge rules are probably the correct long term solution, we also recognize that the "equal charges" provision of the *MFJ* is an integral component of the provisions that were contemplated by the parties thereto, as well as by the reviewing Court.[27]

While the applicable provisions of the Communications Act are not, as a matter of law, displaced either by the *MFJ* or the U.S. District Court's determinations with respect thereto, we believe that it is desirable to afford parties an opportunity to submit comments upon the implications of: (1) Not renewing the existing waiver; (2) renewing the existing waiver through September 1, 1986; (3) continuing the waiver on a temporary basis while we conclude our analysis of this matter; or (4) continuing the existing waiver until the date specified in the *MFJ* for the termination of the equal charges per unit

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elements that are defined in our access charge rules and the elements that are incorporated in average schedule rates.

[14] *Id.* at 1129 (citation omitted).

[15] *See* 47 CFR 69.112

[16] *See* 47 CFR 69.111

[17] *In the Matter of American Tel. and Tel. Co. Petition for Waiver of §§ 69.1(b), 69.3(e), 69.4(b)(7) and (8), 69.101, 69.111 and 69.112 of the Commission's Rules and Regulations ("Waiver Order")* FCC 83-287 (released June 28, 1983).

[18] *Modification of Final Judgment* entered in *United States v. American Telephone and Telegraph Co.*, 552 F.Supp. 131 (D.D.C. 1982), *aff'd sub. nom. Maryland v. United States*, 103 S.Ct. 1240 (1983).

[19] *See Waiver order, supra*, at para. 4.

[20] *See Waiver order, supra*, at para. 86.

[21] Plan of Reorganization, filed in *United States v. Western Elec. Co. & AT&T*, C.A. NO. 82-0192 (D.D.C. filed Dec. 16, 1982).

[22] AT&T also expressed concern on behalf of itself and the BSOCs with respect to the amount of time that would be available to convert billing records and implement changes in network planning and forecasting techniques. AT&T Emergency Petition for Waiver at paras. 4-6 (filed Mar. 17, 1983).

[23] The Modification of Final Judgment imposed several requirements upon the BSOCs that pertained to the structure and computation of access charges. *Access Charge Order, supra*, at paras. 202-03.

[24] *See Waiver Order, supra*, at paras. 9-12.

[25] *See* para. 1, n.1.

[26] *See United States v. American Telephone and Telegraph Co.*, 552 F.Supp. 131, 233-34 (1982).

[27] *Id.* at 199-200.

of traffic provision of the *MFJ*.[28] We are inviting interested persons to submit comments on those alternatives at the same time that comments are submitted on interim party-line charges. If we conclude that the waiver should be extended on a temporary basis, interested persons will, of course, be permitted to submit additional comment with respect to other waiver options or possible changes in the Transport rules when comments are submitted on other issues discussed in this Notice. If any comments were to advocate any change to the Commission's existing rules for Dedicated or Common Transport, we would urge that those comments also contain an analysis of any collateral changes in the Uniform System of Accounts or the Commission's separations rules [29] that would be either necessary or desirable in light of the basis for each suggested change.

C. Private Line Surcharge

14. In previous access charge orders, we have attempted to address the difficult policy questions that are associated with what has become known generically as the "leaky PBX" problem.[30] Our response to this problem in the *First Reconsideration Order* was to establish a surcharge of $25.00 on private lines with the capacity to leak interstate traffic into the local exchange.[31] We affirmed this surcharge approach in the *Second Reconsideration Order*, while creating an exemption for customers that certify to their exchange carriers that their private lines are not connected to a PBX or other device capable of connecting a local exchange line with a private line.[32] Also, in the *Second Reconsideration Order* we announced our intention to re-examine the surcharge approach.[33] Since that time our experience with administering the private line surcharge portions of our access charge rules has caused us to question the efficacy of that approach. We thus seek to develop a fresh record that will permit us to ascertain the extent to which a better policy may be devised and effectively implemented.

15. To aid us in this re-evaluation, we would encourage parties to provide a full array of options for consideration, including proposals to "fine-tune", increase, decrease, alter substantially, replace, or eliminate the surcharge approach to addressing the leaky PBX problem.

16. As an initial matter, we note that as the interstate share of non-traffic-sensitive local exchange costs are shifted from toll rates to customer-line charges, the economic incentives that underlie the "leaky-PBX" problem will diminish. We thus seek comments that would suggest mechanisms that would "phase out" the private line surcharges, or an appropriate portion of the surcharge, as customer line charges are "phased in." In addition, we request data that will shed light on the expenses that are associated with administering the current surcharge rule.[34] We also seek comments of the efficacy of extending prescribed surcharges (whether as a flat, lump sum charge, or as a per minute charge that is based upon estimated usage) to private lines supplied by an interexchange carrier that do not use telephone company special access lines for origination and determination.[35] We would propose to assess such surcharges upon the interexchange carrier.

17. As we have expressly recognized,[36] the surcharge is not a perfect solution to the leaky PBX problem. Actual measurement of all such leakage (with corresponding charges to the end user that owns or leases the PBX) would result in more accurate charges. Although we have received some comment with respect to actual measurement, we do not feel satisfied that we have the most complete record that is possible in this regard. Accordingly, we request additional comment that focuses upon proposals and techniques for implementating actual measurement. We also seek comments that focus upon the costs of measurement, the principles that should apply in the computation of charges that are based upon actual measurement, and the techniques that should be employed in effecting measurements.

18. Comments are also sought upon the development of a "sliding scale", that would impose surcharges that were based on the subscriber's usage pattern (*e.g.*, light usage, medium usage, heavy usage). We thus seek information that would enable us to determine an optimal structure for classifying usage (and users), as well as information that would permit us to ascertain whether reliable measurement devices and/or techniques exist, or can be developed, for imposing such charges.

III. Procedural Matters

19. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments or pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff that addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation upon the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must serve a written summary of that presentation on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation or summary described above must state on its face that the Secretary has been served and must indicate by docket number the proceeding to which it relates. *See generally* § 1.1231 of the Commission's Rules, 47 CFR § 1.1231. All relevant and timely comments and reply comments will considered by the Commission. In reaching its decision, the Commission may take into account

[28] Parties may also wish to advance proposals that would seek to circumscribe the scope of the waiver in subsequent time periods. In this regard, it would be helpful if parties seeking to advance such proposals would relate the provisions of those proposals to the public policy considerations that respectively underlie the *MFJ* and the Commission's access charge rules.

[29] *See* 47 CFR 3101–33.81 (1983). *See generally In the Matter of Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board* (CC Docket No. 80–286), FCC 83–564 (released Feb. 15, 1984).

[30] The leaky PBX problem and our efforts in addressing it are summarized in the *Second Reconsideration Order, supra* at paras. 107–139.

[31] *First Reconsideration Order, supra*, at paras. 75–90. Section 69.115 of the Commission's Rules, 47 CFR 69.115 (1983).

[32] *Second Reconsideration Order, supra*, at para. 128.

[33] *Id.* at para. 124.

[34] In this regard, we seek further comments and data on the costs that are imposed upon telephone companies in determining whether interstate private lines are connected to devices that are capable of "leaking" interstate private line traffic through local exchange facilities, and administering the self-certification provision that is contained in § 69.115(e)(6) of the Commission's Rules, 47 CFR 69.115(e)(6).

[35] Subsection 69.11(d) permits, but does not require, telephone companies to impose surcharges upon end users who use such lines.

[36] *Second Recon. Order* at paras. 116–122.

information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

20. In accordance with the provisions of 47 CFR § 1.419(b), an original and six copies of all comments, replies, pleadings, briefs, and other documents filed in this proceeding shall be furnished to the Commission. Members of the public who wish to express their views by participating informally may do so by submitting one or more copies of their comments, without regard to form, as long as the docket number is clearly stated in the heading. Copies of all filings will be available for public inspection during regular business hours in the Commission's Docket Reference Room (Room 239) at 1919 M Street, NW., Washington, D.C.

21. We have previously certified that the Regulatory Flexibility Act of 1980 is not applicable to the issues that are raised in this proceeding. *See* 48 FR 10356 (March 11, 1983).

22. Accordingly it is ordered That comments in response to this Notice of Proposed Rulemaking that address issues other than interim party-line charges and the local transport waiver issues may be filed within one hundred and twenty days from the publication date of this Notice in the **Federal Register**, and that reply comments may be filed on or before thirty days thereafter.[37]

[37] The Commission may elect to modify any rule that is related to the issues that have been discussed, in this Notice. The information that is provided in response to this Notice will also be used in assessing the desirability of continuing existing waivers or granting future waivers of Commission rules that relate to these matters. In the interest of administrative efficiency, parties with common points of view are encouraged to file joint comments.

23. It is further ordered, That comments in response to this Notice of Proposed Rulemaking that address the interim party-line charges and the local transport waiver issues may be filed on or before January 14, 1985, and that reply comments may be filed on or before January 24, 1985.

24. It is further ordered, That the Secretary shall cause this Notice of Proposed Rulemaking to be published in the **Federal Register.**

25. It is further ordered, That the Secretary shall transmit a copy of this Notice to the Counsel for Advocacy of the Small Business Administration.

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

William Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-33798 Filed 12-27-84; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 49, No. 251
Friday, December 28, 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

Office of the Secretary

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), the Office of Grants and Program Systems announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board.
Date: February 11–12, 1985.
Time: 8:30 a.m.–5:00 p.m., February 11–12, 1985.
Place: Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, Virginia.
Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.
Comments: The public may file written comments before or after the meeting with the contact person below.
Purpose: The Board will be preparing a report assessing the President's proposed FY 1986 budget for agricultural research and extension agencies.

Contact Person for Agenda and More Information

Edgar L. Kendrick, National Agricultural Research and Extension Users Advisory Board; Room 324–A, Administration Building, U.S. Department of Agriculture, Washington, D.C. 20250; telephone (202) 475–5720.

Done in Washington, D.C., this seventeenth day of December 1984.

Edgar L. Kendrick,

Administrator, Office of Grants and Program Systems.

[FR Doc. 84–33732 Filed 12–27–84; 8:45 am]

BILLING CODE 3410–MT–M

Forms Under Review by Office of Management and Budget

December 21, 1984.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, ATTN: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

EXTENSION

• Farmers Home Administration

7 CFR 1930–B, Management and Supervision of Applicants and Borrowers
FmHA 431–1; –2, –4, 432–1, –2, –10, 1930–1, –2, –3, –4
Recordkeeping; On occasion; Monthly
Individuals or households; Farms; Businesses or other for-profit; Small businesses or organizations; 522,500 responses; 2,532,805 hours; not applicable under 3504(h)
Ron Thelen (202) 447–4822

• Farmers Home Administration

Application for Loan and Guarantee (Business and Industry)
FmHA 1980–1
On occasion
Individuals or households; State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 300 responses; 21,000 hours; not applicable under 3504(h)
Tom Campbell (202) 475–3812

NEW

• Soil Conservation Service

Soil Survey Program Evaluation (Data Collection Worksheet)
One time collection
State or local governments; 51 responses; 51 hours; not applicable under 3504(h)
Liu Chuang (202) 382–9076

Jane A. Benoit,

Acting Departmental Clearance Officer.

[FR Doc. 84–33733 Filed 12–27–84; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments; University of North Carolina, 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 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 § 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.: 85–018. Applicant: University of North Carolina, Department of Orthodontics, Chapel Hill, NC 27514. Instrument: Reflex

Metrograph. Manufacturer: Ross Instruments, Ltd., United Kingdom. Intended use: Quantitate dimensional changes on dental casts as a result of treatment. Application received by Commissioner of Customs: December 11, 1984.

Docket No.: 85–033. Applicant: Oklahoma State University, College of Veterinary Medicine, Stillwater, OK 74078. Instrument: Electron Microscope, Model JEM–100CXII. Manufacturer: JEOL, Ltd., Japan. Intended use: Experiments to determine the normal and abnormal structure of plant and animal cells as well as their content of various elements and the change in elements under different conditions. Educational purposes—To teach theory and practical aspects of tissue preparation for the operation of both the transmission and scanning electron microscope. Application received by Commissioner of Customs: November 26, 1984.

Docket No.: 85–034. Applicant: Shriners Hospital for Crippled Children, 3101 S.W. Sam Jackson Park Road, Portland, OR 97201. Instrument: Spectropolarimeter, Model J–500A with Accessories. Manufacturer: Japan Spectroscopic Co., Ltd., Japan. Intended use: Experiments to obtain circular dichroism spectra of the macromolecules, to study their thermal stability and to measure time resolved changes in chiroptical properties. Application received by Commissioner of Customs: November 27, 1984.

Docket No.: 85–035. Applicant: Virginia Commonwealth University, Medical College of Virginia, 1101 E. Marshall Street, Box 709, MCV Station, Richmond, VA 23298–0001. Instrument: Electron Microscope, Model JEM–1200 EX with SEG–10. Manufacturer: JEOL, Ltd., Japan. Intended use: Study of the structure of human and experimental animal specimens. The objectives of the investigations to be conducted will be centered on: defining synaptic input of known physiological significance, assessing blood-brain barrier cellular integrity in various disease states, defining the subcellular axonal changes occurring with injury and describing and characterizing those subcellular events associated with exocrine secretion. In addition the article will be used in the training of post-doctoral fellows requiring fine structural techniques in their research investigations, and by doctoral candidates in other disciplines of the basic sciences. Application received by Commissioner of Customs: November 26, 1984.

Docket No.: 85–036. Applicant: Harrington Arthritis Research Center at Saint Luke's Hospital, 1800 E. Van Buren, Phoenix, AZ 85006. Instrument: Electron Microscope, Model JEM–1200 EX with Accessories. Manufacturer: JEOL, Japan. Intended use: Study of numerous materials and phenomena related to arthritis treatments and biological responses associated with these treatments. The materials to be studied include skeletal implants manufactured from cobalt-chrome alloy, titanium alloy or composite materials, and the physiological structures surrounding the implant including bone, ligaments and soft tissue. The experiments will be conducted in efforts to advance the state-of-the-art in arthritis treatment. Application received by Commissioner of Customs: November 26, 1984.

Docket No.: 85–037. Applicant: UCLA, 405 Hilgard Avenue, Los Angeles, CA 90024. Instrument: Electron Microscope, Model JEM–100CXII with Side Entry Goniometer and Accessories. Manufacturer: JEOL, Japan. Intended use: Study of human monocytes infected with bacteria that multiply inside them. Studies will be undertaken of how the bacteria are phagocytized by the monocytes, how they form a specialized phagosome in which they reside in monocytes, and how they inhibit the phenomenon of phagosome-lysosome fusion. Investigations will be conducted to increase the understanding of intracellular parasitism with parasitic diseases which afflict hundreds of millions of people around the world. Application received by Commissioner of Customs: November 26, 1984.

Docket No.: 85–038. Applicant: New Mexico Institute of Mining & Technology, Department of Geoscience, Socorro, NM 87801. Instrument: SO_2 Remote Sensor Correlation Spectrometer. Manufacturer: Barringer Research Ltd., Canada. Intended use: The instrument will be used to make remote measurements of SO_2 in volcanic plumes during studies of the eruptive nature of volcanoes and their degassing behavior. Application received by Commissioner of Customs: November 26, 1984.

Docket No.: 85–039. Applicant: University of Chicago, Operator of Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439. Instrument: C80 Heatflux Calorimeter and Accessories. Manufacturer: Setaram Corp., France. Intended use: Measurement of the heat given off when a surface active agent contacts the surface of coal. The objective of the investigations is to understand the surface of coal so that different coal materials can be selectively tagged with specific surfactants. Application received by Commissioner of Customs: November 26, 1984.

Docket No: 85–040. Applicant: University of Florida, Gainesville, FL 32611. Instrument: Electron Loss Spectrometer, Model ELS 22 with Accessories. Manufacturer: Leybold-Heraeus GmbH, West Germany. Intended use: Studies of metallic and semiconducting elements and compounds, in particular, materials which are involved in heterogeneous catalysis, electrochemistry and thin film semi-conducting devices will be examined. The electronic, chemical and vibrational properties of the surfaces and interfaces of samples with and without adsorbates and thin film overlayers will be characterized. The objectives of the experiments conducted will be understanding of the physics and chemistry of the surfaces and interfaces of metal and semiconductor materials, such as the deposition of thin layers and super lattice materials by Molecular Beam Epitaxy. The instrument will also be used for the training of M.S. and Ph.D. students during the course of their thesis research. Application received by Commission of Customs: November 26, 1984.

Docket No.: 85–041. Applicant: University of Illinois, Urbana Champaign Campus, 506 South Wright Street, Urbana, IL 61801. Instrument: Scanning Tandem Fabry-Perot Interferometer. Manufacturer: Dr. J.R. Sandecock, Switzerland. Intended use: Measurement of the velocity of elastic waves at the surfaces of metal and semiconductor crystals prepared by epitaxial techniques as thin layers on a substrate. The instrument will also be used to measure the Raman light scattering spectra of opaque materials such as metals and semiconductors. Examples of excitations to be studied include electronic "gap" excitations in superconductors and folded phonons in semiconductor superlattices. Application received by Commission of Customs: November 26, 1984.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Leonard E. Mallas,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84–33704 Filed 12–27–84; 8:45 am]

BILLING CODE 3510–DS–M

Color Television Receivers From Korea; Final Results of Administrative Review of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Final Results of Administrative Review of Antidumping Duty Order.

SUMMARY: On September 12, 1984, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on color television receivers from Korea. The review covers three of the four known manufacturers and/or exporters of this merchandise to the United States currently covered by the order, and generally the period October 19, 1983, through April 30, 1984.

We gave interested parties an opportunity to comment on the preliminary results. Based on the comments received we have changed our final results from those presented in our preliminary results of review.

EFFECTIVE DATE: December 28, 1984.

FOR FURTHER INFORMATION CONTACT: Olympia M. DeRosa or David R. Chapman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On September 12, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 35819) the preliminary results of its administrative review of the antidumping duty order on color television receivers from Korea (49 FR 18336, April 30, 1984). In accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act"), the Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of color television receivers, complete or incomplete, from Korea. The order covers all color television receivers regardless of tariff classification. The merchandise is currently classifiable under item numbers 685.1125, 685.1126, 685.1127, 685.1128, 685.1129, 685.1135, 685.1144, 685.1148, 685.1155, 685.1456, 685.1458, 685.1460, and 685.1463 of the Tariff Schedules of the United States Annotated. The review covers three of the four known manufacturers and/or exporters of Korean color television receivers to the United States currently covered by the order, and generally the period October 19, 1983, through April 30, 1984.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the September preliminary results, as provided by section 353.53(d) of the Commerce Regulations. After receipt of those comments, we extended our original deadline for final results from October 31, 1984, to December 15, 1984, further verified certain items in Korea at Gold Star and Samsung and in the United States at all three companies, announced revised preliminary results, and asked for further comments. We received the following comments from petitioners (Independent Radionic Workers of America; International Brotherhood of Electrical Workers; International Union of Electronic, Electrical, Technical, Salaried and Machine Workers, AFL-CIO-CLC; Industrial Union Department, AFL-CIO), General Electric Co., Zenith Electronics Corporation, and the respondents, Samsung Electronics Co., Gold Star Co., and Daewoo Corp. (Many additional comments by the respondents concerned mathematical or clerical errors or oversights. We have corrected such errors or oversights wherever possible but have not addressed them specifically in this notice.) We also received comments from General Electric, petitioners, Gold Star, and Samsung after our deadline for the second comment period. Such comments are untimely and we have not considered them in reaching these final results.

Comment 1: Zenith, General Electric, and the petitioners argue that the Department erred when it removed from foreign market value the full amount of indirect taxes imposed upon the home market merchandise. Section 772(d)(1)(C) of the Tariff Act directs the Department to add those taxes to the United States price. In the fair value investigation, the Department agreed substantially with their position that section 772(d)(1)(C) calls for an addition to United States price, not a subtraction from foreign market value, of an amount equal to the tax that would have been imposed by the Korean government upon the export transaction were it not for the incident of exportation. The Department also agreed that it ought to make a supplemental adjustment to eliminate any tax effect on adjustments for differences in circumstances of sale and differences in physical characteristics. The Department left open the question of whether an additional adjustment ought to be made to eliminate any multiplier effect of the tax on the absolute margin of dumping. Rather than proceeding as the statute requires, however, the Department in its final determination declared that it was unable to determine the taxable value under Korean law of export transactions, and it therefore stripped from the home market price the tax levied upon the home market merchandise, on the bases of administrative convenience and tax neutrality.

The Department's resort to administrative convenience during the fair value investigation might be defended on the grounds that stripping taxes from the foreign market value results in the same percent dumping margin as adding to the United States price the tax that would have been assessed upon the export transaction. Since the *ad valorem* margins established during the fair value investigation are never used as assessment rates but serve only as a basis for cash deposits of estimated antidumping duties on later entries of merchandise, no harm occurs from resorting to a method that produces the same percent margin as the statutory methodology. However, failure to use the statutory methodology in a section 751 review will result in an underassessment of the absolute dollar amount.

Petitioners and General Electric submit that the Department has more than sufficient information with which to calculate the taxes the Korean government would have imposed upon the export transaction. The Department should use the transaction price of the exported merchandise less costs included in that price which are incidental to exportation. Thus, the taxable value of a purchase price transaction sold FOB Korean port should be the FOB price less inland freight and the cost of any packing material used to place the merchandise in condition for exportation. The taxable value of an exporter's sales price ("ESP") transaction should be the U.S. customs value of the imported merchandise less inland freight in Korea and any other expenses included in that value which are associated with its importation.

Zenith, General Electric and the petitioners also argue that the adjustment should be limited by the amount of tax collected on the home market merchandise which is passed through to home market purchasers. The Department clearly agrees with the domestic industry's argument but, because of the Department's inability to develop a method to quantify

passthrough, has assumed full passthrough.

Department's Position: We agree that in section 772(d)(1)(C) Congress called for the addition of such taxes to the United States price, using the export sale in determining the tax basis. If there is a dumping margin in the total absence of taxes in either market, such an addition is not tax neutral. There is a multiplier effect on the margin. We believe that adding to the United States price the taxes on the home market sales, while neutralizing the multiplier effect on the absolute margin, serves to reduce the tax-absent *ad valorem* margin. We also believe that, if there are differences in circumstances of sale or in merchandise, petitioners' proposed supplemental adjustment to foreign market value is needed to eliminate the possibility of creating margins solely through the tax adjustments. Such adjustment would reduce but not eliminate the multiplier effect if there were a pre-existing margin. We have not resolved the question of whether there should be an adjustment to foreign market value for the tax differential itself.

From our review of the Korean tax laws, we have been unable to establish what the appropriate tax basis would be for the exported merchandise. In the absence of knowing what the tax addition to United States price should be, we cannot calculate the differential. Therefore, as best information, we are making the adjustment by deducting these taxes from the price of the home market merchandise. Deducting from the home market price is the only tax neutral adjustment for both the *ad valorem* and absolute margin.

With regard to passthrough of the tax in the home market to purchasers, we still believe it is impossible to measure. The differing treatment of direct vs. indirect taxes under GATT and U.S. law arose from the assumptions that indirect taxes were shifted fully forward to purchasers while direct taxes were absorbed by sellers. By the late 1960's, however, academic literature and U.S. government reports cast substantial doubt on the veracity of these assumptions. It is clear that the Congress in 1974 was aware of these doubts. In light of the public debate, it is only reasonable to conclude that the Congress, in its addition to section 772(d)(1)(C) of the "but only to the extent" language, intended that we measure absorption and limit the addition to the tax passed through. However, it is impossible to do so. The degree of shifting depends upon, among other things, the demand for the product, actions of the monetary authorities, the stage of the business cycle and the degree of competition among the producers of the product. In short, the Department would have to know the shape and position of the supply and demand curves for a product in the absence of tax to determine the price that would then exist. The Department would have to know these facts for each point in time at which a sale chosen for comparison to a U.S. sale occurred. We have not yet received any meaningful proposal concerning quantification of passthrough nor, to our knowledge, did the Treasury Department at any time after passage of the 1974 amendments. Consequently, we have assumed full passthrough.

Comment 2: Zenith, petitioners and General Electric argue that the Department erred when it adjusted foreign market value for after-sale rebates and discounts or rebates which are not available to all purchasers at wholesale. Specifically, Gold Star's cash discount and Samsung's prompt payment discount are not available to all purchasers at wholesale. Samsung's volume rebate is an after-sale rebate. After-sale rebates do not qualify as reductions from the foreign market price under section 773(a)(1) of the Tariff Act because such rebates do not affect price-setting in the home market. In addition, reductions in price must be available to all purchasers at wholesale pursuant to section 771(14) of the Tariff Act.

Zenith argues further that discounts and rebates can only be considered as reductions of price (not as adjustments to foreign market value) because they are agreed-upon price reductions rather than expenses incurred by the manufacturers.

Department's Position: We disagree with the U.S. industry. The allowance of discounts and rebates has been a long-standing administrative practice. *See* the Department's final results of its first administrative review regarding Japanese television receivers (46 FR 30163 (1981)). Further, whether or not fixed at the time of sale, rebates represent a reduction in the price paid by the customer and must be deducted in calculating foreign market value.

Comment 3: Petitioners and General Electric continue to argue that we should cap duty drawback on United States price by the amount of import duties paid on parts contained in such or similar merchandise sold in the home market.

Zenith instead argues that the Department should account for the differential in import duties through an adjustment to foreign market value for differences in physical characteristics. Zenith argues that the Department essentially used this methodology in *Bicycles from Taiwan*, 48 FR 31688. 31691 (1983).

Department's Position: In our fair value final determination, we interpreted section 772(d)(1)(B) as requiring no cap. We also disagree with Zenith. We do not believe we can make an adjustment under § 353.16 of the Commerce Regulations without an actual difference in physical characteristics. Where such a difference exists, using the best information available, we have reduced the amount of the claimed difference by the amount of the duties and taxes included in the home market materials.

Comment 4: Zenith urges the Department to undertake an analysis of the respondents' cost of production information in arriving at the final results of this review. For the September 1984 preliminary results, the Department performed no cost of production analysis.

Zenith's cost of production analysis reveals that the respondents submitted inconsistent sets of cost data—a higher set for adjustments to foreign market value and a lower set for cost of production. Either the adjustment data are correct and respondents have been selling below cost, or the cost of production data are correct and respondents' foreign market values are substantially higher than claimed. The respondents cannot have it both ways.

For example, for many home market models, Samsung claimed a greater amount of adjustable selling expenses than total claimed cost of production expenses. Since the latter include non-selling expenses, the overstatement of claimed selling expense adjustments may be much greater.

Department's Position: We have selectively tested home market prices of the respondents against their costs of production. In our calculation of foreign market value, we have disregarded sales below cost of production. If a claimed expense was truly a selling expense but overstated, we have used our more refined calculation of that expense in our calculation of cost of production. We agree that, when we deny a claim becuase it was not a selling expense, we nonetheless should include the claimed amount in our cost of production analysis.

Comment 5: Zenith opposes strenuously the Department's use of the verification process as a "fine tuning" mechanism which allows correction of deficiencies in the limited sample of

items chosen for verification. The Department should not have given respondents multiple opportunities to "pass" verification and should judge the fundamental reliability of claims as a whole. Otherwise verification will not act as a deterrent to overreaching by respondents. The Department has "pruned the diseased boughs of those trees it chose to inspect, but has shown no inclination to consider the possibility that the entire forest is infected."

Petitioners and General Electric echo Zenith's argument. Respondents in this review failed in many instances to meet their legal burden of establishing the existence and amount of claimed adjustments. The record of verification is replete with inconsistencies and inadequate documentation.

As a matter of policy, moreover, the Department must reject these unproven claims. Otherwise, the purpose of verification would be defeated and respondents could mask dumping margins by clouds of obfuscation.

Department's Position: We believe that further verification was valid in this review. In our judgment, the initial comments raised questions which were unresolvable without reexamining the companies' basic documents. We agree with Zenith that piecemeal correction of deficient claims is an inadequate response to the finding of those deficiencies. We have judged the significance of the deficiencies and, where appropriate, applied a "best information" substitution.

Comment 6: Zenith notes that the Samsung November 1984 verification report itemizes problems with claimed home market indirect selling expenses. Samsung in its "others" category include expenses for "overtime meals," "daily office watch," "lodging," and "others" including "sewage" costs. Those expenses are not selling expenses but are overhead expenses. The "communications" and "travel" categories, also included in the indirect selling expenses claim, involve communications with and travel to foreign markets, including the United States. Samsung apparently maintained that such expenses were for market research for application to Korea. However, there does not appear to be any documentation establishing those expenses as properly and entirely allocable to the home market. Therefore, the Department should also deny these categories of the claim.

Department's Position: We have accepted the expenses in the "others" category as indirect selling expenses. We verified that these costs are incurred by the home market sales department in the support of the home market sales effort. The supporting data for the domestic sales department's overseas travel indicated that the travel was for training, for marketing information, or for research by individuals in the domestic sales department related to the functioning of credit sales systems similar to Samsung's home market *Sin Yong Pan Mae* ("SYPM") program. Although such activities could benefit markets other than the domestic market, the Department has no evidence that it does.

Comment 7: Zenith contests Samsung's claimed United States export selling expenses incurred in the home market. Zenith submits that, in view of the repeated indications in the November verification report that Samsung's calim does not encompass all such expenses applicable to United States sales, the Department cannot reasonably accept the post-verification corrected claim as entirely accurate or reliable. Samsung has an incentive to understate its claim and, indeed, the Department found the claim understated for the few elements chosen for verification. As a result, the Department should reject the entire claim. At a minimum, the category of "commission," which Samsung excluded from the claim, should be added to the claimed amount.

Samsung, by contrast, argues that the Department made a number of incorrect adjustments (or double-counted adjustments), thus increasing the United States selling expenses. These included selling costs for black-and-white televisions, travel costs not incurred on U.S. sales, export license fees, fees incurred in defending the antidumping case (adjustments for which could create dumping margins where none exist otherwise), and a portion of claimed commissions. The majority of the commission expenses added to United States selling expenses by the department are exchange commissions. Exchange commissions are included in the company's accounting ledger under the heading "Export-Related Commissions" because they are handled by the international department. These commisions, however, are not related to exports. The export transaction ends when Samsung receives payment in the foreign currency. In particular, Samsung maintains U.S. dollars in a separate account and uses them to purchase imported materials. The exchange of foreign currency is separate from the export transaction itself, and should not be included as an export selling expense.

Department's Position: We agree with Zenith that our verification demonstrated Samsung had not reported all of its export selling expenses. because we discovered unreported selling expenses, we can adversely assume that other unreported selling expenses exist. Consequently, we have used the best information available to calcuate export selling expenses.

We agree with Samsung that the selling costs for black-and-white televisions should not be included and have endeavored to remove them.

We have decided that exchange commissions are properly a United States selling expense. Even though these occur after the export of the merchandise, the exchange commissions take place because a transaction in a foreign currency has occurred. They are linked to particular payments resulting from particular sales.

Samsung did not report legal fees specifically related to the antidumping proceeding, although some were discovered at verification. In the absence of complete data we need not address the issue of whether the adjustment for such expenses can create or inflate dumping margins unfairly. We have treated all legal fees as U.S. selling expenses as best information available.

We have also eliminated any over-counting of these expenses.

Comment 8: Zenith notes that, during the course of Gold Star's second Korean verification, the company gave the Department five different explanations of its customer coding system. Those explanations are in various degrees inconsistent with one another. More critically, it now appears that the company's customer *class* codes are also suspect, in that certain customers included in one customer class are not special end users, as previously claimed. Rather, they are department stores purchasing for resale. Now that the Department has uncovered evidence that the higher-priced sales to that customer class include, to some unknown extent, sales to retail outlets, it is, at the very least, incumbent upon the Department to include sales to that customer class in its foreign market value calculations.

Department's Position: Because of conflicting statements by Gold Star as to its customer class and customer coding systems, we have used included in our calculations of foreign market value the three categories of customers which we believe include retailers.

Comment 9: Zenith states that the verification reports show that Gold Star and Samsung frequently purchase parts from related entities. The Department must verify that the prices of such parts are consistent with arms-length transactions between unrelated parties

before permitting any claims for differences in physical characteristics.

The Department cannot simply accept respondents' statements about the reliability of those parts prices. It is important to determine whether the purchases are at arms-length prices because the Department already knows that at least one respondent pays a higher price for parts for home market sets than for export sets.

Department's position: We agree with the domestic industry that we must carefully examine prices of parts supplied by related companies before using them in our calculations. One company failed to provide any data to substantiate the arms-length nature of those sales and, for that company, we have therefore denied any adjustments for differences in physical characteristics where related parties supplied the parts.

Comment 10: In the September preliminary results, the Department calculated home market credit expenses according to an imputed credit formula. The Department determined each company's average monthly balance of accounts receivable, total sales, and the appropriate interest rate on short-term borrowing during the period under review. It then calculated the average duration of accounts receivable, the fraction of the year represented by that average duration, and then multiplied that fraction by the interest rate to determine the percent adjustment for credit expenses.

Petitioners and General Electric contend that this imputed credit formula is inconsistent with the law. The antidumping law permits adjustments for actual costs and expenses. Imputed credit, in contrast, is a hypothetical figure encompassing internally-generated financing as well as actual borrowings. The adjustment should be limited to actual interest paid on actual borrowings directly related to home market sales.

If, however, the Department continues to use the imputed credit formula, it should modify that formula. The formula yields the highest possible theoretical credit expenses. The Department assumes that the companies must finance immediately all of their accounts receivable to maintain continuous operations. But financing operations include lags in the manufacturers' payment of short-term liabilities—accounts payable and periodic tax payments—as well as in such continuing obligations as payroll. The companies do not pay until some date after accrual of the short-term liability. Their true financing needs arise only during the average lag between their payment of obligations and receipt of payments.

A satisfactory alternative formula would be to impute interest earned as well as incurred. The Department should assume that the companies *earn* interest between the time of purchase of inputs and payment for them. The Department should deduct the amount of interest hypothetically earned during the average age of accounts payable from the amount of interest hypotherically incurred during the average age of accounts receivable. The Department's adjustment in the revised preliminary results of Gold Star's credit expense for the average lag between payment of taxes and receipt of payment should also be applied to the other manufacturers. The same adjustment should be applied to the proposed adjustment for accounts payable.

Department's position: Our practice of calculating credit expenses is similar to that used by many businesses. Section 773(a)(4)(B) of the Tariff Act, regarding differences in circumstances of sale, addresses only adjustments surrounding the sale of merchandise, not production costs or ancillary income. We have modified our credit formula for all three companies to account for the average time between payment of taxes and the receipt of payment.

Comment 11: Petitioners and General Electric argue that the Department understated the amount of U.S. selling expenses incurred in the home market by the parent companies, specifically expenses such as order processing, customs clearance, shipping, and insurance.

Department's Position: We agree that certain parent expenses, such as order processing, customs clearance, etc., are equally applicable to purchase price sales as well as to exporter's sales price sales. The antidumping statute does not, however, give us the authority to deduct these expenses in the calculation of purchase price.

Comment 12: Petitioners and General Electric state that, in the case of Gold Star, the Department's July verification revealed inclusion of spare parts in shipments to certain U.S. customers. However, the Department's revised preliminary results do not appear to reflect this additional value. Adjustment for the inclusion of the spare parts would reduce the per unit value of the finished televisions.

Department's Position: We agree. We have deducted the total cost of the spare parts from the total value of each shipment where such parts were included.

Comment 13: Petitioners and General Electric comment that the financial statements of both Samsung Electronics America ("SEA") and Gold Star Electronics International ("GSEI"), the U.S. subsidiaries, indicate that each is subsidized by its parent company. In its initial submission, Samsung Electronics Company ("SEC"), the parent firm, indicated that SEA acts as the parents' agent in arranging purchase price transactions in the United States. Further, SEA's financial statement states that SEA had an account receivable from its parent for commissions, reimbursement of interest, advertising and warranty expenses. GSEI's financial statement also reports accounts receivable from its parent. The statement explains that GSEI, on behalf of the parent, performs activities such as advertising, warranty and repair services, and payment collection from U.S. customers. Thus, the parent companies are paying U.S. costs incurred by the affiliate. Further, the affiliates receive commissions for serving as agents in purchase price transactions.

As a consequence, the parent is absorbing costs which would otherwise be incurred by the subsidiary. Because neither company has allocated these receivables to exporter's sales price or purchase price transactions, the Department should allocate them to both.

Department's Position: We have deducted, as indirect selling expenses, the amounts shown in the firms' financial statements as receipts by the subsidiaries from the parent firms to cover expenses incurred in the U.S. by the subsidiaries.

Comment 14: Petitioners and General Electric contend that Gold Star's limited volume and low prices of nineteen-inch television receivers sold in Korea make the nineteen-inch sales inappropriate for comparison with United States sales of nineteen-inch receivers.

Gold Star's Korean prices for nineteen-inch sets were substantially less than those for fifteen and seventeen-inch sets and the volume of the smaller screen sizes was much greater. Indeed, fifteen and seventeen-inch mechanically-tuned televisions had higher prices than nineteen-inch remote control models.

Petitioners and General Electric argue that Gold Star's U.S. nineteen-inch sales should be compared with its home market sales of smaller receivers with appropriate adjustments for differences in physical characteristics.

Petitioners and General Electric point out that, for Samsung in the revised preliminary results, the Department used a nineteen-inch model as the basis

of comparison, notwithstanding that there were extremely few units of that model sold in the home market. By contrast, a substantially identical nineteen-inch home market model had far greater sales than the model used and an average selling price that was significantly higher. A seventeen-inch remote control model also had a higher volume of sales and average unit price. All three home market models are substantially identical except for the screen size of the seventeen-inch model.

Samsung argues that the Department selected several inappropriate home market comparison models that are physically less similar to the correspondng U.S. models than those suggested by Samsung.

Department's Position: We have decided to base the comparisons on the weighted average of sales of two nineteen-inch models for each manufacturer. We believe the second model for each to be merely a developmental variation of the first model. Our use in the revised preliminary results of only the second models was inappropriate. There are sufficient sales of nineteen-inch receivers in Korea to form a basis for comparison and it is not clear that those sales constitute the establishment of an artifical market.

Comment 15: General Electric argues that Samsung must have overstated its claim for differences in physical characteristics due to the special power supply circuit and cabinet material used in the home market models. In particular, General Electric determined that most of the parts used in the circuit were imported and argues that the parts should not be priced higher than world market prices.

Department's Position: We have reviewed Samsung's data and have concluded that its claim for the full differences in the acquisition prices of the circuits is unsatisfactory. The examples examined at verification contained identical parts in the home market and export models. We are using General Electric's data as a "best information" substitute to make the adjustment. For the cabinet, we are accepting with some modification Samsung's verified data.

Comment 16: Petitioners and General Electric insist that, if the Department uses its imputed interest and imputed credit formulas in calculating United States price, it should ensure that it uses the period from data of sale, rather than date of shipment, to date of actual payment, rather than date of presentation of payment documents. The Department should do so for both purchase price and ESP sales.

In addition, because the verification at GSEI revealed unreported loans, and a higher actual interest rate than that reported, the Department should use the higher-than-reported prime rate to establish GSEI's credit expense.

Department's Position: We use as the starting time for all of our interest and credit expense calculations the date of shipment rather than the date of sale because the posting to the accounts receivable occurs on the date of shipment. We agree with the domestic industry that the date of actual payment should be the ending point.

We are using for the GSEI interest rate the weighted-average rate that we found during our verification.

Comment 17: Peititioners and General Electric argue that verification discrepancies in GSEI's data should require use of best information for the affected items. For instance, GSEI's failure to document that payments to customers for subsequent advertising were for more than televisions should require the Department to attribute all advertising payments to color televisions. Color televisions are the most competitive, highly-advertised products sold by Gold Star in the United States and GSEI probably devotes a disproportionate share of its advertising budget to them.

Gold Star counters that it submitted its dealer cooperative ("co-op") advertising on a customer-specific basis, as requested by the Department. For each customer, Gold Star allocated those expenses between color televisions and other products.

Gold Star argues that it does not routinely receive physical evidence of dealer co-op advertisements from its customers. For a new customer, or if GSEI has reason to think the funds are not being spent on advertising Gold Star products, GSEI is more likely to request physical evidence. For well established customers, GSEI has no need to associate dealer co-op rebates with particular ads.

For the majority of customers, GSEI was able to gather physical evidence of the actual co-op advertisements, dividing the expense between color televisions and other products based on examination of the physical evidence. For other customers, some either had no sales of color televisions, or Gold Star allocated its claim entirely to color televisions. For the remainder, Gold Star determined the amount attributable to color televisions by examination of all invoices. If an invoice showed a dealer co-op deduction, that deduction was assigned to the products on the invoice based on their value.

Gold Star urges that it should not be repsonsible for producing evidence that is not part of its records and that is beyond its control. The company made persistent efforts to get physical evidence from the customers. In many cases the customers replied that they did not have the evidence themselves.

Department's Position: Where a firm cannot substantiate the nature or relevance of a selling expense to the transaction under consideration, we use the best information available to determine the extent of any adjustment to United States price or home market price. In this case GSEI could not substantiate whether co-op advertising was for individual products or a multitude of products, or whether it was in effect a rebate on all products or a rebate on color televisions alone. Consequently, we used the best information available to determine the appropriate adjustment.

Comment 18: Daewoo asserts that the Department erred in calcuating Daewoo's warranty claim. Vehicle maintenance should be treated as a direct selling expense because it varies with the number of service calls and therefore with the number of products sold. The costs for additional technicians caused by Daewoo's expansion in Korea during the period also should be treated as a direct selling expense. While technicians' salaries normally are indirect expenses, in Daewoo's case these expenses would not have occurred except for the anticipated increase in warranty work.

Samsung argues that the Department failed to make a circumstance-of-sale adjustment for the labor component of its home market warranty expenses. Samsung has demonstrated the direct nature of this expense and presumes that a clerical error has been made.

Department's Position: We disagree that vehicle maintenance expenses are directly related. Analogous to servicemen's salaries, there is a certain amount of vehicle maintenance that must occur regardless of the use of the vehicle. It is not a true variable cost and therefore it is not a direct selling expense.

We also disagree that the cost of new employees should be a direct selling expense. It is normal for businesses' work forces to expand and contract, but such changes do not change the basic nature of the expense.

We consider such labor to be a fixed expense that does not vary with the number of sets sold. The respondents incur such labor costs regardless of the number of sales.

Comment 19: Daewoo argues that the Department understated allowable advertising amounts. For multiproduct advertising the Department is unreasonable in its practice of requiring physical measurement of the actual size of dozens or hundreds of distinct ads to form the basis for allocation. This would require hundreds of hours of measurement to produce an allocation result which would not differ significantly from an allocation based on sales volume.

Zenith points out that there is no necessary connection between the sales revenue produced by each product and the cost of the ad for that product in multiproduct advertising. The Department should allocate multiproduct advertising costs by measuring the space accounted for by each product.

Department's Position: We believe that allocation based on space is reasonable. We are interested in establishing the cost of Daewoo of color television advertising. If Daewoo produces an ad which advertises four items equally, we believe it reasonable that one quarter of the cost of the ad was incurred in advertising each.

Comment 20: Samsung argues that sets returned as defective and resold by SEA should be excluded from calculations of United States price. Such sales are not "in the ordinary course of trade." SEA sells these sets at greatly reduced prices, mostly to one bulk customer.

While some sets may not be defective, they were returned as defective and they must be sold as second quality merchandise. The Department's policy paper states that, whenever possible, the Department should not use "sales of obsolete, end of model year, or clearance merchandise in either the calculation of United States price of foreign market value" because such sales are not in the normal course of trade. Resales of sets returned as defective also are not in the ordinary course of trade.

Furthermore, the Department has already included those sets in calculating a return loss cost to SEA. To include them again would amount to a double deduction. If the Department does use these resales, it should compare them with similar damaged set sales in the home market. Samsung argues that the Department should exclude non-commercial sales in the calculation of its weighted average margin.

Department's Position: Samsung did not demonstrate that its "returned" sets in either market were defective or indeed were returns. Therefore we have included the resale of those sets in our calculations.

There is no issue of double-counting between our inclusion of these sales and our adjusting for return loss because Samsung clearly incurs costs when it resells televisions it had previously sold. These expenses are incurred during the selling process. As such they are properly deducted from ESP as indirect selling expenses.

Without information on whether the goods involved in both markets were damaged, we might inadvertently compare undamaged goods sold in the United States with damaged set sales in the home market. Such a comparison would be inappropriate.

Comment 21: The Department reduced by 30 percent Daewoo's differences in physical characteristics claim for parts found only in the home market set. Daewoo argues that use of the 30 percent figure is arbitrary and erroneous because the 30 percent figure is a rough average for duties and taxes on all components imported directly from abroad. Daewoo demonstrated at verification that it purchases the power transformer and another significant power supply part, the switch, from independent Korean manufacturers. Thus, the duty element is much smaller than 30 percent, since the domestic manufacturers add both labor and materials. The Department cannot reasonably adhere to the 30 percent duty figure for any power supply parts, particularly the transformer.

Samsung argues that it had already excluded duties and therefore the Department twice deducted these amounts. The 30 percent adjustment factor used by the department is far higher than the average duties. Samsung also states that 30 percent is totally inappropriate for wooden cabinets which it purchased locally.

Department's Position: As a general proposition we have adhered to our use of the 30 percent. We do not agree that the figure derived by Daewoo accurately reflects the duty and tax component. It was an estimate based on duty drawback on U.S. set parts rather than duty paid on home market parts.

We also are not satisfied that Samsung adjusted its home market parts costs for the duty paid content.

Comment 22: Daewoo argues that the Department should allocate general expenses to color television sales using a period longer than the review period in order to avoid the distortions inherent in a review period covering only six months. Color television sales are not constant from month to month and tend to peak before Christmas, to lag in January and February, and tend to pick up again in March and April. The Department should also include Daewoo's Korean March sales campaign rebate in this review.

Department's Position: We examined this time period at the request of the Korean manufacturers. We are required by section 773 of the Tariff Act to make selling expense adjustments to foreign market value based on expenses incurred by the sellers on the reviewed sales.

Comment 23: All three companies argue that the Department used too low an interest rate in calculating credit expenses. Samsung and Gold Star argue that we used the lowest of any rate they pay on short-term borrowings and that they made available after the July verification their higher actual credit costs.

Daewoo also argues that the Department's adjustment for credit was in error because: (1) the price upon which the Department calculated the credit expense was a net unit price while credit should be calculated based on the gross unit price (including defense, value-added, and luxury taxes); (2) in calculating the average length of credit extensions, the Department should include the time of payment of installment sales between the dealer and end users; and (3) the Department reduced credit costs by an adjustment representing slight delays in the payment of taxes.

Department's Position: We have decided to use the ten percent bank rate applicable in Seoul for all three companies because of verification problems. As for including the installment sales payment time, we believe that would be inappropriate because we are examining the upstream sale between Daewoo and the dealer, not that between the dealer and the end user.

Comment 24: Daewoo argues that the Department's denial of Daewoo's bad debt losses as indirect selling expenses is at odds with all relevant prior decisions. The Department's requirement that there be actual write-offs is specious. Daewoo incurs the losses when the dealers go bankrupt and do not pay. Moreover, since Daewoo has been in the electronics business for less than a year and a half, it is being penalized for not being in business long enough to benefit from Korean tax law concerning bad debt write-offs.

Department's Position: We do consider bad debt losses, when written off in accordance with the statutory requirements of the country concerned, to be indirect selling expenses. Here, while Daewoo by statute cannot yet

write off its bad debt, the company is receiving some adjustment. The debt remains as accounts receivable and thereby is part of our credit calculation.

Comment 25: Daewoo is mystified by the Department's denial of its claim for verified differences in the costs of packing. The major difference is the holes (handles) cut on two sides of the home market box, which increase the price of the domestic packing. The difference is a manufacturing cost, not a materials cost, and thus is not subject to duty.

Department's Position: We agree.

Comment 26: Daewoo argues that the Department should not have denied all of Daewoo's home market indirect selling expenses. The only wages, salaries, and other costs in Daewoo's expense claim were the wages and salaries of the domestic sales division. Other items which appear in headquarters-wide accounts, for sales department communication, transportation, supplies, books, training and depreciation were expenses which directly relate to sales. The domestic sales division directly paid for all but the last two groups.

Since the domestic sales division occupies a portion of Daewoo's headquarters space, it consumes a portion of the total utilities, depreciation, insurance, repair and other costs. These are expenses of the domestic sales division even though they are not paid separately by that division. Daewoo's approach was to allocate most of these latter expenses by the ratio of the number of employees in the domestic sales division, to the number of employees in the full headquarters operation.

The Department should also include the expenses of the credit sales section of the domestic sales division. There is no justification for rejecting those expenses. The credit sales section is an integral part of the domestic sales division. Its employees, like those involved in selling or after-sale service, are directly related to Daewoo's selling costs.

Department's Position: We have now allowed the wages and salaries of the domestic sales division. As a general rule we do not allow allocation of headquarters-wide general and administrative expenses to the sales function. A respondent must demonstrate actual expenses incurred by the selling division. Daewoo's demonstration is adequate and we have made the appropriate allocations.

We have also now used the expenses of the credit sales section.

Comment 27: Daewoo argues that the Department should not impose its ESP offset cap to limit indirect selling expense adjustments in the home market to the amount of indirect selling expenses in the U.S. market. The general validity of the ESP offset has been affirmed by the courts and is not at issue in this case. However, the Court of International Trade has held that the offset cap is arbitrary and beyond the Department's authority. *See Silver Reed America, Inc.* v. *United States*, 581 F. Supp. 1290, 1294–95 (CIT 1984). The case is currently on appeal to the Court of Appeals for the Federal Circuit.

The ESP offset cap is particularly unfair to Daewoo, which has recently entered the market and experienced abnormally high selling expenses during the period of review. It is ironic and inconsistent that, despite the Department's applying the ESP offset cap in its price-to-price calculations, it applies no such limit when calculating indirect selling expenses for its cost of production analysis.

Department's Position: As Daewoo noted, we are appealing the decision by the Court of International Trade and will continue to use the ESP offset cap unless we lose our appeal. Although Daewoo is new to the television market, it acquired the production facilities, sales and distribution networks, and inventory of Taihan Electric Wire Co., Ltd., both in Korea and in the United States. The models Daewoo produced during the period were the same as, or directly derivative from, Taihan's models during the fair value investigation period. Daewoo's high selling expenses are due to its seeking to rapidly expand the market share it acquired from Taihan rather than because it is a true new entrant. Furthermore, it would be inconsistent for us to use the cap for some firms and not for others. The Department applies no limit on home market indirect selling expenses in cost of production because we are concerned there with comparison to home market prices, not with United States prices and their selling expenses.

Comment 28: Samsung argues that the *Sin Yong Pan Mae* ("SYPM") rebates are a direct selling expense. Because of the Department's use of the ESP offset cap, treating SYMP rebates as an indirect selling expense will effectively deny Samsung any adjustment for those rebates. Samsung argues that the program is designed to encourage dealers to sell on credit, and to reimburse them for the added costs and risks they bear in doing so. Samsung grants the dealers a rebate when they sell to consumers on a credit basis. The rebate amount is posted directly as a credit to the dealer's account, thereby reducing the net return to Samsung.

The rebate is recorded in Samsung's books on a model-by-model basis. In its claim, Samsung divided the total rebate granted for each model during the period by the total sales of each model and applied the resulting percentages to the price of each set sold.

Samsung contends that the Department has consistently allowed direct adjustments to home market price for sales rebates and discounts paid on an after-sale basis. Moreover, the Department regularly allows adjustments for rebates calculated on an average basis as a percentage adjustment to price.

The method used by Samsung was accepted by the Department during the fair value investigation. Further, in *Smith-Corona Group* v. *United States*, 713 F.2d 1568, 1579–81 (Fed. Cir. 1983), the Court of Appeals held that after-sale rebates are allowable deductions from home market price, and that their allocation as percentage adjustments does not deprive them of their direct relationship to the sales under consideration.

The Department did grant Samsung's claims as direct selling expenses for a number of discounts in the United States, including volume discounts, advertising discounts, freight discounts, and cash discounts. Those discounts, in fact, are allocated on the basis of sales of all products. The Department's decision for the home market rebates is inconsistent with its decision on the United States discounts.

One of the other respondents indicates that it had claimed a "factoring" discount for consumer-financed sales. That program appears to be almost an exact duplicate of Samsung's SYPM program, with the exception that Samsung sells its sets to independent dealers rather than through franchised stores. The verification report for the other company noted that those discounts were calculated on an average basis. Nonetheless, Samsung believes the Department approved that program as a direct selling expense.

Daewoo has a program comparable to Samsung's. The rebate in Daewoo's case is triggered by a subsequent action of the dealer—the sale on certain credit terms to end users. It is designed as an incentive to encourage the dealer to make a proportion of his sales on a credit basis. The dealer remains fully liable to Daewoo for the payments, and payments when received are credited to the dealer's account. Daewoo argues that its credit sales rebates fully satisfy all of the Department's criteria. The rebates are directly related to the sales of color television sets. The rebate is

actually paid or credited to unrelated purchasers (the dealers). Finally, the terms of the rebate are fixed or determinable, not only at, but well before, the time of sale. The dealer knows at all times the precise amount of the available rebate for each of the products that Daewoo sells.

Daewoo notes that the Department analyzed an after-sale discount directly related to installment sales in the first administrative review of the Japanese television dumping case. In that case, two companies claimed an incentive discount to dealers to promote installment sales. The Department denied the adjustment solely on the grounds that it was an intracompany transfer of funds.

Zenith opposes any treatment of these programs as selling expenses. In Samsung's November 1984 verification, the Department discovered new facts about the SYPM program such as the concept of "additional dealer markup" and the fact that Samsung discounts the note from the end user through related companies. Thus the Samsung Group may be realizing, by way of intracorporate transfers, a higher return on such sales than is reflected on the books of Samsung Electronics.

Petitioners and General Electric argue that SYPM sales should be disregarded in determining foreign market value. If the dealer sells a receiver to an end user under an installment program, the dealer is removed completely from the transaction. The dealer receives the first installment, and later a "rebate" and an amount termed "additional dealer mark-up," in the form of credits to Samsung's accounts receivable for that dealer. Samsung receives a promissory note from the end user *in the amount of the sales price to the end user* less the first installment, which obligates the end user to pay Samsung, not the dealer, the remaining installments. Samsung usually discounts the note with a financial institution, and receives both the purported "selling price" to the dealer and the "additional dealer mark-up."

Petitioners and General Electric conclude that SYPM sales represent no more than a consignment in which the dealer receives a commission for arranging the sale. Samsung handles all other aspects of the transaction. Samsung, not the dealer, discounts the promissory note, is the obligee on the note itself, and receives the vast majority of proceeds from the sale.

Alternatively, the purported "selling price" to the dealer, without adjustment for "credit sales rebates" or "additional dealer mark-up," should be used as the basis for foreign market value.

If the Department determines to grant the credit sales rebate adjustment, its formula should reflect the interest Samsung earned by discounting the note.

Finally, dealer sales and the credit sales rebates involve two different levels of trade. It would be wrong to accept the rebate claims and deduct them from dealer prices to determine foreign market value. The "rebate" has no bearing on the price to dealers—which is the basis of foreign market value—because it applies only to transactions between dealers and end users.

Department's Position: We are satisfied that the companies incur expenses on credit sales that they do not incur on normal sales. Therefore, we have allowed the credit sale rebate for both Samsung and Daewoo as an indirect selling expense.

However, we cannot treat those rebates as direct selling expenses. Because the rebate is triggered by and occurs at the time of sale from the dealer to the end user, the rebate could occur at any time subsequent to the sale from the manufacturer to the dealer. Because in our review we are examining the sales from the manufacturers to the dealers during the review period, we cannot tie the claimed rebates during the period, collectively or individually, to those manufacturers' sales during the period.

Contrary to Samsung's assertion, we did not allow a factoring discount for another manufacturer.

Comment 29: Samsung claims that the Department, in its revised preliminary results, erroneously excluded from Samsung's indirect selling expense claim SYPM credit sales expenses directly incurred in operating, planning, and administering this sales program.

Department's Position: We agree and have included them in the indirect selling expenses.

Comment 30: Daewoo and Samsung argue that the Department's denial of inventory carrying costs in the home market is inconsistent with the objectives of the statute to provide an accurate comparison between costs in the home market and in the United States. Under current practice, the Department is including in the United States indirect selling expenses imputed interest from the date of export to the date of sale in the United States to the first unrelated purchaser. A substantial portion of that period is inventory carrying cost time in the United States. If the Department uses such inventory costs to reduce the United States price, it should treat inventory carrying costs as a reduction on the home market side, as part of indirect selling expenses.

Gold Star argues that the Department double-counted the cost for the period between date of export payment and date of sale by the U.S. subsidiary. The adjustment to ESP for "D/A interest" already accounted for the cost. Under the terms of a D/A contract, GSEI purchases merchandise from the parent and then has a certain amount of time to pay for the goods. The Department considers D/A interest as the measure of the cost of the parents' interest expense from the date of export to the date of payment by GSEI. Alternatively, the Department could use the larger of the D/A or imputed interest expenses. This would account for the different interest rates applicable to each period.

Department's Position: In order to eliminate double-counting, we are revising our calculations to exclude all D/A interest expenses. We disagree that we are inconsistent in not adjusting for interest expenses incurred during the pre-sale inventory period in the home market while reducing United States price by the interest cost incurred from date of shipment to date of sale. From both United States price and foreign market value we deduct the cost for the period from date of shipment from warehouse in the home market to date of payment from the unrelated customer.

Comment 31: Petitioners and General Electric argue that discrepancies in GSEI's ocean freight cost between models of identical size justify, in the absence of explanatory evidence, using the largest ocean freight expense claim for each model size. Daewoo contends that the Department used ocean freight costs that were too high. In essentially all cases Daewoo received a documented rebate from the ocean shipping companies.

Department's Position: We have adjusted the deduction for ocean freight to reflect the results of our verification. We agree with Daewoo and have reduced the ocean freight deducted from United States price.

Comment 32: Daewoo contends that it has been disadvantaged by the Department's late consideration of the issue of sales at less than cost of production. Daewoo's verified home market costs of production demonstrate that there were no sales at less than cost of production.

As a first issue in the calculation of Daewoo's cost of production, the Department should use a weighted average method in determining manufacturing costs. This approach is mandated by the Department's final determination in the fair value

investigation of carbon steel pipes and tubes from Korea (49 FR 9936, March 16, 1984). Faced with precisely the same dual pricing structure as is used by Korean television component manufacturers, the Department determined that where there are different costs associated with producing merchandise for export as compared with merchandise produced for domestic sale and the merchandise is physically identical, the Department should use the average cost of producing that merchandise. There is, consequently, no justification for the Department's use of only the cost of producing merchandise sold domestically in calculating cost of production.

Second, the Department should apply in a consistent manner its policy of using for cost of production the same data it uses for foreign market value. Specifically, where we denied a packing adjustment, we should reduce the cost of production by a like amount. Similarly, if indirect selling expenses in the home market are "capped" by the amount of those expenses in the U.S. market, the same limitation should apply to indirect selling expenses included in the cost of production.

Also, in calculating the cost of production, the Department should exclude internal taxes, in particular the Defense Tax, from the materials costs, as required by section 773(e)(1)(A) of the Tariff Act, regarding constructed value. The Korean pipe and tube case clearly indicates that customs duties are not "internal taxes" and thus are properly included in a cost of production analysis (49 FR at 9937), but concedes the propriety of excluding internal taxes, such as the Defense Tax.

Finally, even if some of Daewoo's home market sales are below cost of production, those sales should nevertheless be included in the foreign market value. Section 773(b) of the Tariff Act states that sales at less than cost are to be disregarded only if they:

(1) have been made over an extended period of time and in substantial quantities, *and*

(2) are not at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade.

Daewoo's sales determined to be below cost result from the extraordinary start-up expenses incurred immediately after Daewoo Electronics acquired the assets of Taihan Electric Wire Co. in March 1983. During most of the period of review Daewoo was seeking to establish itself as a new entrant in the consumer electronics market in Korea. As AT&T's current saturation advertising campaign in the United States with respect to microcomputers indicates, a household name in one industry is not automatically a leader in a different industry.

A major aspect of Daewoo's start-up costs is the extraordinary indirect selling expenses, reflecting Daewoo's strengthening of Taihan's weak dealer network and service centers, bringing accounts receivable under control, and providing the sales and service support for expanded sales.

Daewoo's financial data demonstrate that advertising costs, even allowing for seasonal fluctuations, have been drastically reduced. Also, general selling and administrative expenses have been substantially reduced as a percentage of total sales. This confirms the temporary, start-up nature of the costs for the period of review. By mid-1984, Daewoo was in a position to recover all of its costs within a period that is relatively short given the nature of the industry, and that is, in any event, a "reasonable period of time."

Zenith strenuously disagrees. Zenith states that, from March 1983 through February 1984, Daewoo was not a newcomer to the Korean economy. On the contrary, in 1982, Daewoo was, on the basis of sales, number one in Korean foreign trade and number 37 in the Korean machinery industry. The seven months of the period of review in the home market were the last seven months of essentially a year-long period of operation. If, after a year of operation, Daewoo was still selling below cost in its home market, those home market sales cannot logically be excused on some theory of necessity in order to establish the Daewoo name.

Department's Position: We have found that certain of all three respondents' home market sales were made at prices below the cost of producton and have disregarded them in our calculation of home market price.

While we generally agree that the use of average costs in calculating cost of production is appropriate, the use of average material costs when suppliers engage in dual pricing, as in this case, does not properly reflect the actual cost of meterials for home market production. We are required to examine home market sales to determine if those sales are at prices equal to or above their cost of production. Failure to include all applicable costs incurred for home market sales would cause us to skew the results of our comparison toward finding more sales at or above the cost of production than actually exist.

We disagree that we should not include in our cost of production calculation any adjustments we denied for policy or technical reasons. If an adjustment is not recognized as applicable in an antidumping foreign market value calculation, that is not equivalent to saying that there is no expense. We also disagree that there should be any cap on indirect selling expenses in a cost of production calculation.

We disagree that we are inconsistent when we include internal taxes in our cost of production calculation while we would not in constructed value calculations. The purposes of the two provisions are different. The materials costs, including duties and taxes, included in the cost of production are those that the manufacturer pays to produce and sell the merchandise for *home market* consumption. The internal taxes are remitted or refunded by reason of the *exportation* of the finished article.

We disagree with Daewoo that its below-cost sales should be included in the foreign market value calculations.

While the Department may take into consideration start-up costs in comparing cost of production to prices, we believe that it would not be appropriate in this case. As Daewoo noted, it acquired the physical facilities of Taihan Electric Wire Co., Ltd. Any so-called start-up costs were the result of the intensive marketing campaign Daewoo pursued in order to increase market share in Korea. It is not unusual for a company to launch a marketing campaign. We do not ignore surges of such expenses that result from similar campaigns by established firms in the market. We also note that Daewoo claims an adjustment under section 353.15 for advertising costs that are the same as the high costs reported for the cost of production. We could not declare the cause of the below cost sales, the selling expenses, to be extraordinary and simultaneously continue to use them in full to reduce foreign market value in price-to-price calculations.

Comment 33: Samsung contends that the duty drawback actually received during the period was higher than the adjustment the company previously calculated on the basis of the standard parts list. Becuse of increased demand during the period Samsung argues that it was required to use certain imported parts rather than the locally sourced parts (made from imported components) indicated on its standard parts list. The verification report is incorrect in saying Samsung provided no original documentation to support this claim.

Zenith points out that Samsung may be claiming duty drawback for more

than section 772(d)(1)(B) of the Tariff Act permits. The November verification report indicates that a portion of the Samsung drawback claim is based on a fixed rate refund by the Korean government which does not specifically depend on the amount of import duty originally imposed. To the extent that the fixed rate portion of a respondent's drawback exceeds the actual amount of duty imposed, it cannot qualify for adjustment to United States price. The Department should require Samsung to demonstrate that a fixed rate drawback does not exceed the amount of duty imposed on the affected imported materials. On the assumption that the fixed rates apply to Gold Star and Daewoo as well, the Department should require those companies to make the same demonstration.

Zenith also argues that Samsung's November verification report makes clear that Samsung's drawback claim includes drawback received for component parts which could not have been incorporated in color televisions exported to the United States. According to the report, the Korean government permits a drawback claimant to substitute in his claim "duties paid on importations of similarly priced similar articles for those actually exported." To the extent that Samsung (and possibly the other respondents) resorted to this type of drawback, the Department should deny their claims for adjustments to United States price.

Finally, Zenith contends that apparently the Korean government permits drawback claims for more than the amount imposed on those articles eventually exported in order to compensate for imported parts which, although normally subsequently exported, were destroyed or became waste in the production process. It clearly is not within the allowable drawback adjustment to United States price permitted by the statute. Such adjustment encompasses only drawback due to exportation to the United States.

Petitioners and General Electric agree with Zenith that the duties and taxes rebated and added to the United States price must be the amount actually paid or accrued and must also be the amount rebated or waived upon actual exportation of the merchandise to the United States.

Department's Position: While Samsung claims that the amount of drawback we allowed was lower than the amount it actually received on color television receivers during the period, Samsung had exports of color television parts on its drawback applications in addition to exports of color televisions. We could not use the application amounts because we could not remove the drawback on parts from the total.

Further, although Samsung states that the difference between the actual drawback and the calculated drawback was for certain imported parts when the locally sourced standard list parts (made of imported components) were not available, if offered no documentary evidence other than a worksheet which merely allocated the differential between paid drawback and calculated drawback to all models. Finally, Samsung stated at the November verification that this actually concerned only tubes for thirteen-inch models but wished us to allocate over all models.

Samsung is incorrect in stating that the Department was provided original documentation supporting its underclaim on thirteen-inch tubes. The applications merely show the export of thirteen-inch tubes, not whether the tubes were originally imported or whether only the parts for such tubes were imported.

Concerning the fixed rate drawback payments, there was no amount on the drawback applications showing the duties and taxes paid on the imported parts. Samsung stated that there was no need because, with fixed-rate drawback, the Korean government requires no proof of duties and taxes paid. Without such information, however, we cannot measure the amount truly characterized as a rebate. We have therefore denied that portion of the claim.

Concerning substitution of similarly-priced similar parts for the actual parts used in the sets exported to the United States, we agree with Samsung that, over time, overstated or understated amounts would compensate for each other.

Concerning duty drawback for wastage, we agree with the domestic industry and we have deducted an amount from the drawback claim to compensate for the wastage factor.

Finally, we agree with Zenith that these issues properly apply also to Gold Star and Daewoo. We have therefore adjusted their claims.

Comment 34: Samsung argues that the Department erred in allocating certain home market adjustments for credit, sales promotion, warranty, indirect warranty, advertising, and volume rebates. The adjustments were calculated on the basis of gross sales amounts. By applying a percentage based on gross sales to a net price, the Department substantially understated the absolute size of the adjustments.

Department's Position: We agree and have adjusted the calculations accordingly.

Comment 35: Samsung argues that the Department used an improper denominator in calculating Samsung's home market bad debt expenses. It divided the total amount of bad debt by the total sales amount for all products in the home market. That total sales amount, however, includes sales to distributors as well as other special sales not covered by the administrative review. Because the foreign market value calculations are based on sales to distributors, and because the bad debt expense reported by Samsung was also based only on sales to distributors, the Department should use as a denominator the total sales amount for all products to distributors.

Department's Position: We have used the same denominator for the bad debt expense as we have for all other indirect selling expenses, *i.e.*, total home market sales of all products in the period.

Comment 36: Samsung argues that its sales to one customer should not be included in calculating the margin. The shipments to the customer are either sales not covered during the review period because the final price has not yet been established or they are sales at the price established in the contract—that is, the foreign market value as subsequently determined by the Department.

Because of the then pending antidumping investigation, SEA had refused to sell color televisions to that customer for less than "fair value." SEA and the customer agreed that the customer would pay a fixed interim deposit amount on delivery of the sets and later would pay "an amount equal to the 'foreign market value' . . . minus the 'United States price,' " both as subsequently calculated by the Department.

That agreement was a good faith effort by Samsung to comply fully with both the spirit and the letter of the antidumping law. The interim price mechanism was the only means of achieving this result, given the inherent uncertainties in predicting the Department's subsequent calculations of foreign market value. To penalize that effort will discourage other companies from complying with the antidumping law. The only alternatives open to companies such as Samsung which are negotiating a major contract during the pendency of a fair value investigation would be to guess. If their estimate of the final Department number is too low, they will be penalized with margins; if too high, their price may be commercially unreasonable.

The Department suggested that the shipments should be included in the

review at the deposit price because that is the price that would apply if they were not subject to the order. The contract provides:

> If sets . . . under this agreement do not become subject to an antidumping duty order . . . the price for . . . the sets . . . shall be the deposit price. (Paragraph 2b)

It is nonsensical, however, to include the shipments in the order at a price which applies only if they are not included in the order. These shipments should be (1) disregarded in calculating the margin or (2) included in the next administrative review.

Department's Position: As a general proposition, we believe that the arrangement is administratively impossible for the Department to monitor effectively. Moreover, it would prejudice the rights of domestic interested parties to challenge the results of our administrative reviews. At the time of the review we could not presume a different price than the deposit price because we could not verify actual payment of the higher price that had not yet occurred. Once a review is concluded, the review is over and the administrative record is closed. Therefore, even if we could verify the supplemental increase in price as part of our next review, that verification would not be part of the record of the prior review period. Further, parties wishing to challenge our final results must do so within 30 days of the publication of those final results. They would be forced to give up their opportunity to challenge the not yet occurred verification.

As for the suggestion that we disregard those sales in our calculations, the statute compels us to calculate the foreign market value for those sales, not to substitute a surrogate foreign market value relating to other U.S. sales. Further, if we followed such a policy, all U.S. sales would quickly be placed on this basis and we would have no other foreign market values available if we excluded this type of sale.

Finally, with regard to including these entries in the next review on the ground that the final price is not yet set, deferral would accomplish nothing. We are charged with calculating foreign market value on the date of U.S. sale. Therefore, if the companies used the foreign market value calculated by the Department in its first review to set the supplemental payment in the second review period, the Department would be compelled to compare the final payment to the foreign market value pertaining to the second review period.

Comment 37: Samsung argues that its technical service expenses should be treated as direct selling expenses. They are after-sale service fees for color television repairs paid to various agents. They are clearly related to individual sales.

Department's Position: Company translations on some verification documents raised the possibility that the payments were not to unrelated service agents but to related service agents. If there is a relation, then the payments are analogous to warranty labor (discussed in Comment 18). Though we clearly stated the problem in the verification report, Samsung has not subsequently addressed it.

Comment 38: Samsung argues that the Department should not have denied a direct selling expense adjustment for newspaper advertising expenses on the ground that the claim included expenses not applicable to the sales in question. The Department decided that two of the Korean language advertisements were for computers rather than for color televisions. Actually, the advertisements promote a picture tube which is the main component of Samsung's color televisions. The ad shows a picture tube and a computer to show that the tube is designed by computers.

The Department rejected certain other home market newspaper advertisements because they were for models not chosen as comparison models. Samsung mentioned particular screen sizes to show the range of television sizes available. In any event, the Department should allow model-specific advertising for non-comparison models because it is advertising for the products in question.

Furthermore, Samsung does not maintain records which would enable model-specific advertising allocation. Product-by-product allocation should be sufficient. At the very least, a portion of the claim should be granted.

Department's Position: There is no mention of color televisions in the advertisement. The advertisement is for a computer designed picture tube. The ad promotes the producer of the picture tube, Samsung Electron Devices Ltd., and not Samsung Electronics Co., Ltd., the manufacturer and seller of televisions, and promotes exports of picture tubes. We conclude that the advertisements do not promote the sale of color televisions to home market customers. We allow advertising expenses that reference our comparison models. We are required to determine that claimed adjustments under section 353.15 are directly related to the merchandise used in our calculation of foreign market value. Where an individual comparison model is advertised, we allow the full cost of the ad as an adjustment to that model. If it is a multi-product or multi-model advertisement we use reasonable allocation methods to determine the appropriate adjustment for the comparison models. Where the advertisement refers only to non-comparison models, we do not consider the cost of the ad a selling expense pertaining to the comparison model used in our calculation of foreign market value.

Comment 39: Samsung argues that the Department should allow expenses for certain outdoor signs containing public service messages as a direct selling expense because they promote the sale of Samsung's products.

Department's Position: These signs are not advertisements for color televisions. Therefore, we cannot consider them appropriate advertising selling expense adjustments to the home market selling prices of color televisions.

Comment 40: Gold Star urges the Department to use model type averages for U.S. warranty charges instead of model-specific amounts. Adjustments based on model types more accurately reflect commercial realities, particularly given the short review period. Model-specific data is susceptible to short-term distortions.

The Department rejected the use of model-specific warranty rates in the final fair value determination. Gold Star submitted in its response for this review figures for four basic model types: 13-inch rotary, 13-inch remote, 19-inch rotary, and 19-inch remote. The submission also provided model-specific figures that were the basis for these categories.

Nonetheless, the Department subsequently requested and Gold Star provided *ad valorem* warranty rates for each specific model entered and sold during the period. Gold Star calculated the rates by dividing actual warranty expenses during the period October 1983 through March 1984 by sales during the previous six months. The six-month lag represented the average time between sale and repair for sets incurring warranty costs. Any given set, of course, could have been sold anywhere from days to years before its repair.

Large model-to-model fluctuations would be expected to arise for two reasons: unusually low or high repairs during the six month review period, and unusually low or high sales in the previous six months. The figures, particularly for sales, have little to do with the actual quality of the sets. Neither factor would be a problem in the long run, and even the normal review period of one year would reduce such distortions considerably.

Department's Position: As a general rule we use data that is as specific as possible in our calculations of United States prices. If an expense is incurred on a specific sale, a specific model, in a particular time period, or on a particular shipment, we will assign those expenses to the sale, model, time period, or shipment on which they were incurred.

Warranty expenses differ from other allowable expenses in that the expense may occur years after that sale was made. The Department, and the Treasury Department before it, have accepted a company's warranty expense for the period of review or investigation in lieu of the actual expenses incurred on the sales in question. This acts as a best information replacement for the actual expenses.

Gold Star has given us model-specific warranty data. We recognize that model-specific data over a short time period may, as Gold Star argues, vary widely from the experience for the same models over their life span. A newly introduced model may not incur any warranty expenses for months after the first sales. A model reaching the end of its sales life may incur heavy warranty costs but have few sales in the period we review.

Nonetheless, we have decided not to use Gold Star's proposal. An average for all models within a model type over a short period can easily understate the average warranty expense for specific models over the full life of those models.

Comment 41: Gold Star argues that the Department used in the denominator of several home market calculations a total sales figure composed of sales by the domestic sales division, specialized sales division, and five divisions that do not sell consumer products. Gold Star maintains that the five additional division' sales should be excluded. The five divisions' expenses are not included in any of the numerators. Numerator and denominator are calculated inconsistently.

Gold Star believes that the Department has used the expanded denominator because some selling expenses for the five divisions are originally incurred by the domestic sales division and are later transferred to the other divisions' accounts. Gold Star notes that the domestic sales division often is best able to perform a particular function for the other divisions; the accounts later segregate these instances by transfers to the other divisions. The Department checked a large number of transferred items as well as domestic sales division items during verification and found no indication that any expenses were left in the domestic sales division that should have been transferred out.

Department's Position: We disagree. We concluded as a result of the verification that selling expenses for the other divisions were included in the accounts of the domestic sales division. We could not link the transfers out of the domestic sales division's accounts to any particular expenses incurred by the domestic sales division on behalf of the other divisions nor could we determine that expenses incurred on their behalf were not retained.

Comment 42: For Gold Star, in both the preliminary and revised preliminary results, we disallowed three indirect selling expense categories (recorded in the accounts of the domestic sales division) in the home market: retirement, travel, and entertainment, each ostensibly because of a "verification issue." Gold Star argues that the verification reports describe no discrepancies or inconsistencies between the submitted figures and company books, within the books, or in any other aspect of these three items.

Department's Position: We denied retirement because it was a booked reserve rather than an actual expense. The acutal expense during the period is unknown. We denied the travel and entertainment categories because they included production expenses or export expenses.

Comment 43: Gold Star argues that, if the Department decides to exclude certain expense items from its home market indirect selling expense claim, the Department should also exclude those categories of indirect selling expenses from ESP adjustments.

Department's Position: We disagree. If we deny a portion of a company's home market indirect selling expense claim, we do so because those expenses were not properly quantified or not proven to be selling expenses. The statute directs us to deduct all U.S. expenses from exporter's sales price and does not indicate that we should reward a failure to prove a home market claim by adding back a portion of the U.S. expenses.

Comment 44: Gold Star claims that the Department erred in deduction from ESP any United States selling expenses incurred in the home market. Neither the statute nor the Department's regulations authorize such a deduction. Section 772 of the Tariff Act allows deductions only for expenses incurred in the United States for movement charges.

Department's Position: We disagree. Gold Star incurs the expenses in selling to the United States. An equitable calculation reduces the sales prices to each market by the amounts of the selling expenses incurred on those sales.

Comment 45: Samsung argues that the Department's inability to use Samsung's revised computer tape submitted on November 23, 1984, results in distortions. The Department's short-cut methods pending the functioning of that tape significantly overstate certain [illegible]d adjustments, in particular that for volume rebates. Use of the new tape will correct the errors. Otherwise the Department should correct the errors manually.

Department's Position: Samsung supplied the Department with the new computer tape over three weeks after the November 1, 1984 deadline. The tape was not formatted properly and the Department could not use it. Samsung was aware of the formatting requirements and had submitted a previous tape that was usable. Even if the tape in question were usable, the Department has serious doubts about using it iat such a late date. The tape was submitted after the verification in November. Samsung claimed that it reflected the verification changes. If we had used that tape, we would not have had any opportunity to corroborate that claim. Manual correction by use of a new average number based on the verification would distort the customer-specific nature of the claim.

Final Results of Review

As a result of the comments received, we have revised the margins for all three companies and we determine that the following margins exist for the period:

Manufacturer/exporter	Period	Margin (percent)
Daewoo	10/19/83-4/30/84	14.88
Gold Star	10/19/83-4/30/84	7.47
Samsung	10/19/83-4/25/84	12.23

The Department shall determine, and the Customs Service shall assess, antidumping 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 above margins shall be required for these firms. For any future shipments from a new exporter not covered in this review, whose first shipments occurred after April 30, 1984, and who is unrelated to any reviewed firm, a cash deposit of 14.88 percent shall be required. These deposit

requirements are effective for all shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

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 Adminstration

[FR Doc. 84-33705 Filed 12-27-84; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Oceanic and Atmospheric Administration Commerce.

The Mid-Atlantic Fishery Management Council will meet January 16–17, 1985, at the Tidewater Inn, Easton, MD; telephone: (301) 822–1300, to discuss squid, mackerel and butterfish quotes for the upcoming fishing year; the Surf Clam and Ocean Quahog, Striped Bass, and Swordfish Fishery Management Plans; joint venture applications and policy, as well as other fishery management and administrative matters. The Council may go into closed session to discuss personnel and/or national security matters.

The meeting may be lengthened or shortened depending upon progress of the agenda. A detailed agenda will be made available to the public about January 4, 1985. For further information, contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115-Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: December 21, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84-33723 Filed 12-27-84; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

The Pacific Fishery Management Council will meet in Portland, OR on January 9–10, 1985. On January 9, after a short closed session to discuss litigation and U.S./Canada negotiations, the Council will determine a course of action to follow in resolving the dilemma caused by the programmatic budget shortfall, consider applications for foreign and joint venture fisheries, and consider the report and recommendations from its committee on the function of Council entities and procedures of the Council. On January 10, the Council will consider proposed amendments to the Magnuson Fishery Conservation and Management Act.

The Council committees on Legislation, budget, salmon economic study, and foreign fishing will meet on January 8 at the same location to consider agenda items. Detailed agendas for all meetings will be available for the public about December 21.

All meetings are open to the public except for the scheduled closed session of the Council on January 9. For further information, contact Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 S.W. Mill Street, Portland, OR 97201; telephone: (503) 221–6352.

Dated: December 21, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84-33724 Filed 12-27-84; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China, Effective on January 1, 1985

December 24, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1985. For further information contact Jane Corwin, International Trade Specialist, (202) 377–4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983 between the Governments of the United States and the People's Republic of China establishes specific limits for Categories 314, 315, 331, 333, 334, 335, 337, 338, 339, 340, 341, 342, 345, 347/348, 350, 351, 363, 443, 445/446, 447, 448, 631, 634, 635, 636, 640, 641, 645/646, 647 and 648, produced or manufactured in China and exported during 1985. The limits for Categories 347/348, and 635 have been reduced to account for carryforward used in 1984.

Merchandise in Categories 331, 340, 341, 635 and 641 exported during 1984 which exceeded the 1984 limits will be permitted entry for consumption, or withdrawal from warehouse for consumption, in the first five months of 1985 in amounts not to exceed twenty percent per month of the 1985 base limit for each category. Merchandise in Categories 336 and 639, exported during the December 30, 1983 through December 29, 1984 period will not be permitted to exceed twenty percent per month of the limits established for those categories during that twelve month period. Imports in Categories 331, 336, 340, 341, 635, 639 and 641, exported in the aforementioned restraint periods, plus merchandise exported in 1985, will not together be permitted to exceed the base limits previously cited.

The agreement also provides a consultation mechanism for categories of textile products which are not subject to specific ceilings and for which levels may be established during the year. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, in accordance with the terms of the bilateral agreement, to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile products in the designated categories, produced or manufactured in the People's Republic of China and exported during the twelve-month period beginning on January 1, 1985 in excess of the indicated restraint limits.

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July

16, 1984 (49 FR 28754), and November 9, 1984 (49 FR 44782).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

December 24, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977, and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Orders 11951 of January 6, 1977 and 12188 of January 2, 1980, you are directed to prohibit, effective on January 1, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, and man-made fiber textile products in the following categories, produced or manufactured in China and exported during 1985, in excess of the levels of restraint indicated below:

Category	12-month level of restraint
314	15,913,500 square yards.
315	157,600,000 square yards.
331	3,725,444 dozen pairs.
333	57,330 dozen.
334	216,649 dozen.
335	293,810 dozen.
337	914,414 dozen.
338	822,669 dozen of which not more than 589,174 dozen shall be in TSUSA numbers 379.0240 and 379.4050.
339	959,352 dozen.
340	638,223 dozen.
341	484,577 dozen.
342	174,158 dozen.
345	86,528 dozen.
347/348	1,799,232 dozen.
350	98,123 dozen.
351	319,725 dozen.
363	20,034,450 numbers.
443	9,946 dozen.
445/446	260,151 dozen.
447	70,606 dozen.
448	18,871 dozen.
631	704,114 dozen pairs.
634	412,044 dozen.
635	399,773 dozen.
636	331,462 dozen.
640	1,135,163 dozen.
641	935,584 dozen.
645/646	637,001 dozen.
647	812,233 dozen.
648	1,045,332 dozen.

In carrying out this directive, entries of cotton, wool and man-made fiber textile products in the foregoing categories which have been exported on and after January 1, 1984 and extending through December 31, 1984, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during that twelve-month period. In the event the limits established during the aforementioned restraint period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive, with the exceptions noted below.

Merchandise exported in 1984 in Categories 331, 340, 341, 635, and 641, or, in the case of Categories 336 and 639, exported during the period which began on December 30, 1983 and extended through December 29, 1984, shall be permitted entry into the United States for consumption, or withdrawal from warehouse for consumption, in the following amounts during each month of the January through May 1985 period:

Category	Amount to be entered per month
331	745,089 dozen.
336	14,454 dozen.
340	127,645 dozen.
341	96,915 dozen.
635	85,713 dozen.
639	126,328 dozen.
641	187,117 dozen.

The amount of 1984 shipments entered in 1985 in the foregoing categories, exported during the previously cited restraint periods, plus goods exported during 1985 which are entered for consumption or withdrawn from warehouse for consumption in the United States, shall not together exceed the limits established for such goods during 1985.

The 1985 limits are subject to adjustment in the future according to the provisions of the bilateral agreement of August 19, 1983 between the Governments of the United States and the People's Republic of China, which provide, in part, that: (1) With the exception of Category 315, certain specific limits may be exceeded by not more than 5 or 7 percent of its square yard equivalent total, provided that the amount of the increase is compensated for by an equivalent square yard equivalent decrease in one or more other specific limits in that agreement year; (2) subject to consultations, specific limits may be incresed for carryover and ccrryforward up to 10 percent of the applicable category limit in any agreement year according to the terms specified in the agreement; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement, referred to above, will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), and November 9, 1984 (49 FR 44782).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-33775 Filed 12-27-84; 8:45 am]

BILLING CODE 3510-DR-M

Establishing Import Limits for Certain Cotton Textile Products Produced or Manufactured in Indonesia

December 21, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1974, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 28, 1984. For further information contact James Nader, International Trade Specialist (202) 377-4212.

Background

On October 25, 1984, pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 13 and November 9, 1982, as amended, between the Governments of the United States and the Republic of Indonesia, a CITA directive was published in the **Federal Register** (49 FR 42973), which established an import restraint limit for men's and boys's other coats in Category 334 produced or manufactured in Indonesia and exported during the ninety-day period which began on September 28, 1984 and extended through December 27, 1984. The notice also stated that the Government of the Republic of Indonesia is obligated under the bilateral agreement, if no mutually satisfactory solution is reached on a level for this category during consultations, to limit its exports during the prorated twelve-month period which began on September 28, 1984 and extends through June 30, 1985 to 15,400 dozen.

The notice also stated that merchandise in the category which is in excess of the ninety-day limit, if it is allowed to enter, may be charged to the limit established for the prorated twelve-month period.

The United States Government has decided, inasmuch as no mutually satisfactory solution has been agreed concerning this category, to control imports at the prorated twelve-month limit. The limit may be adjusted to include prorated swing and carryforward.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as

amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), and November 9, 1984 (49 FR 44782).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

December 21, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 13 and November 9, 1982, as amended, between the Governments of the United States and the Republic of Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 28, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 334, produced or manufactured in Indonesia and exported during the period which began on September 28, 1984 and extends through June 30, 1985 in excess of 15,400 dozen.[1]

Textile products in Categories 334, which have been exported to the United States during the ninety-day period which began on September 28, 1984 shall be subject to this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), and November 9, 1984 (49 FR 44782).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-33702 Filed 12-27-84; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to reflect any imports exported after September 27, 1984.

Withdrawing Calls on Categories 442 and 637 from the People's Republic of China

December 21, 1984.

On May 8 and May 24, 1984 notices were published in the **Federal Register** (49 FR 19570 and 21974) announcing that the Government of the United States had requested the Government of the People's Republic of China to enter into consultations concerning exports to the United States of apparel products in Categories 442 (wool skirts) and 637 (playsuits), produced or manufactured in China. The purpose of this notice is to announce that the United States Government has concluded that there is no need to control imports in these categories at this time. Should it become necessary to discuss them with the Government of the People's Republic of China at a later date, further notice will be published in the **Federal Register**. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements cancels the import control limits established for these categories by directives dated May 3 and May 21, 1984.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

December 21, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs
Department of the Treasury
Washington, D.C. 20229

Dear Mr. Commissioner: This directive cancels and supersedes those portions of the directives of May 3 and May 21, 1984 concerning imports of wool and man-made fiber textile products in Categories 442 and 637, produced or manufactured in China and exported during the designated restraint periods.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-33703 Filed 12-27-84; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of the Strategic Defense Initiative Advisory Committee

Under the provisions of Pub. L. 92-463, Federal Advisory Committee Act, notice is hereby given that the Strategic Defense Initiative Advisory Committee has been found to be in the public interest in connection with the performance of duties imposed on the Department by law.

The Strategic Defense Initiative (SDI) was established by Presidential directive to conduct research on technologies which could lead to effective defenses against ballistic missiles. The ultimate goal of the SDI is to determine the feasibility of eliminating the threat posed by nuclear ballistic missiles and increasing the contribution of defensive systems to U.S. and allied security. The SDI Organization will undertake a comprehensive program to examine and evaluate key technologies associated with concepts for defense against ballistic missiles. The SDI will be carefully coordinated with other defense programs. The basic approach will be to consider layered systems that can be deployed in such a way as to increase the contribution of defenses to deterrence and move the United States toward its ultimate goal of a thoroughly reliable defense. The program will also provide a hedge against Soviet options for near-term deployment of limited ballistic missile defenses.

December 24, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-33726 Filed 12-27-84; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Academic Advisory Board to the Superintendent, United States Naval Academy; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Academic Advisory Board to the Superintendent, United States Naval Academy, will meet on January 30, 1985, in Rickover Hall, Room 301, United States Naval Academy, Annapolis, Maryland. The meeting will commence at 8:00 a.m. and terminate at 4:30 p.m.

The purpose of the meeting is to advise and assist the Superintendent of the Naval Academy concerning the education of midshipmen. To accomplish this objective, the Board will review academic policies and practices of the Naval Academy and will submit their proposals to the Superintendent to aid him in improving educational standards and in solving Academy problems. The meeting will be open to

the public for observation to the extent that space is available.

For further information concerning this meeting contact: Major D. L. Smith, USMC, Military Secretary to the Academic Advisory Board, Office of the Academic Dean, United States Naval Academy, Annapolis, Maryland 21402, Telephone No. (301) 267–2500.

Dated: December 24, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 84–33097 Filed 12–27–84; 8:45 am]

BILLING CODE 3810–01–M

Chief of Naval Operations; Executive Panel Advisory Committee; SLCM Defense Task Force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee SLCM Defense Task Force will meet January 15–16, 1985, from 9 a.m. to 5 p.m. each day, at 2000 North Beauregard Street, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review technological aspects of cruise missile defense. The entire agenda for the meeting will consist of discussions of key issues regarding the Navy's policy and technical responses to Soviet SLCM deployments and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Thomas E. Arnold, Executive Secretary of the CNO Executive Panel Advisory Committee, 2000 North Beauregard Street, Room 392, Alexandria, Virginia 22311. Phone (703) 756–1205.

Dated: December 21, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84–33698 Filed 12–27–84; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Floodplain/Wetlands Involvement of the Strategic Petroleum Reserve Seaway Complex Distribution Enhancements

AGENCY: Strategic Petroleum Reserve, Department of Energy.

ACTION: Floodplain/wetlands assessment and opportunity for comment.

SUMMARY: The Strategic Petroleum Reserve (SPR) proposes to construct at most a 53-mile long, 42-inch buried crude oil pipeline from existing facilities of the SPR Seaway Complex, Brazoria County, Texas, to an existing commercial crude oil terminal in Texas City, Galveston County, Texas. This project would involve activities within a floodplain/wetlands area. The floodplain/wetlands assessment is provided below. Public comments or suggestions on the SPR's activities in this floodplain/wetlands area are invited. Comments received will be incorporated in an Environmental Assessment which is in preparation.

DATE: Written comments should be received at the address below before January 14, 1985.

ADDRESS: Address comments to: Ms. Melissa Smith, SPR Project Management Office, Department of Energy, 900 Commerce Road East, New Orleans, LA 70123, Phone: (504) 734–4387.

FOR FURTHER INFORMATION CONTACT:

1. Ms. Melissa Smith at the above address.
2. Mr. Walter H. Delaplane, Jr., Strategic Petroleum Reserve, Department of Energy, FE–421, 1000 Independence Ave., SW., Washington, DC 20585, Phone: (202) 252–4730

SUPPLEMENTARY INFORMATION: The Strategic Petroleum Reserve (SPR) of the U.S. Department of Energy (DOE) proposes to construct at most a 53-mile long, 42-inch diameter buried pipeline to transport crude oil from existing facilities of the SPR Seaway Complex in Brazoria County, Texas to an existing commercial crude oil terminal in Texas City, Texas (Figs. 1–4). Figure 1 provides a regional overview and a key to the more detailed maps. Figures 2 and 3 illustrate the entire Bryan Mound to Texas City route, and Figure 4 provides detailed information on the Freeport, Texas vicinity.

BILLING CODE 6450–01–M

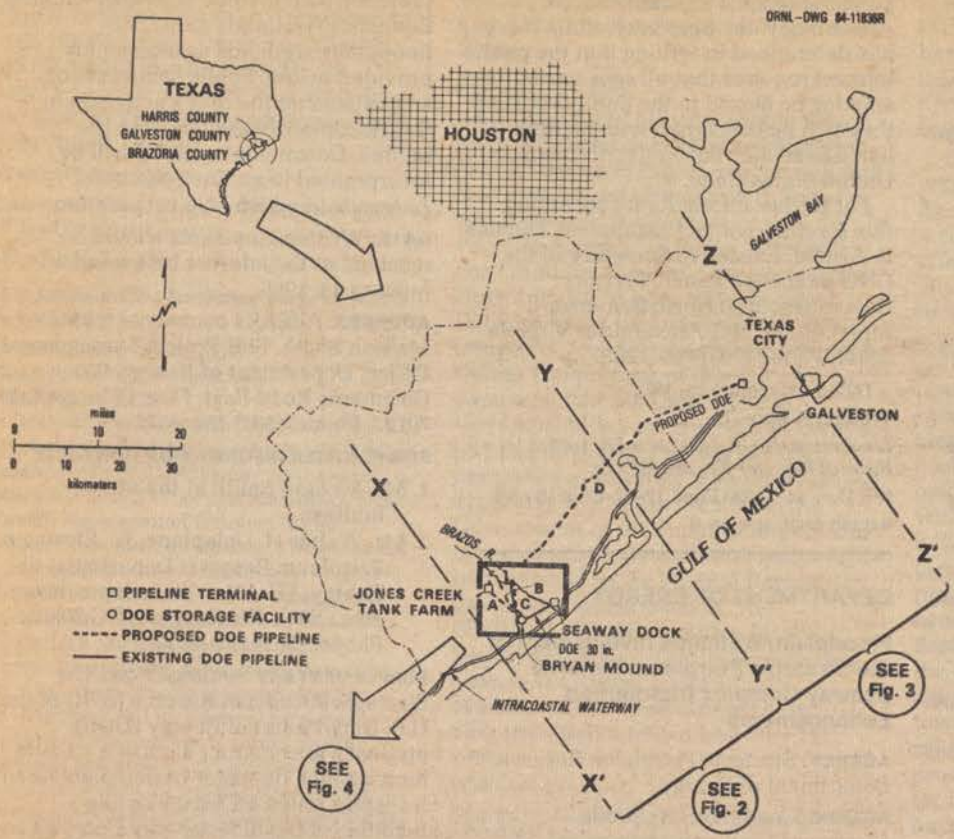

Fig. 1. Regional Overview and Map Key

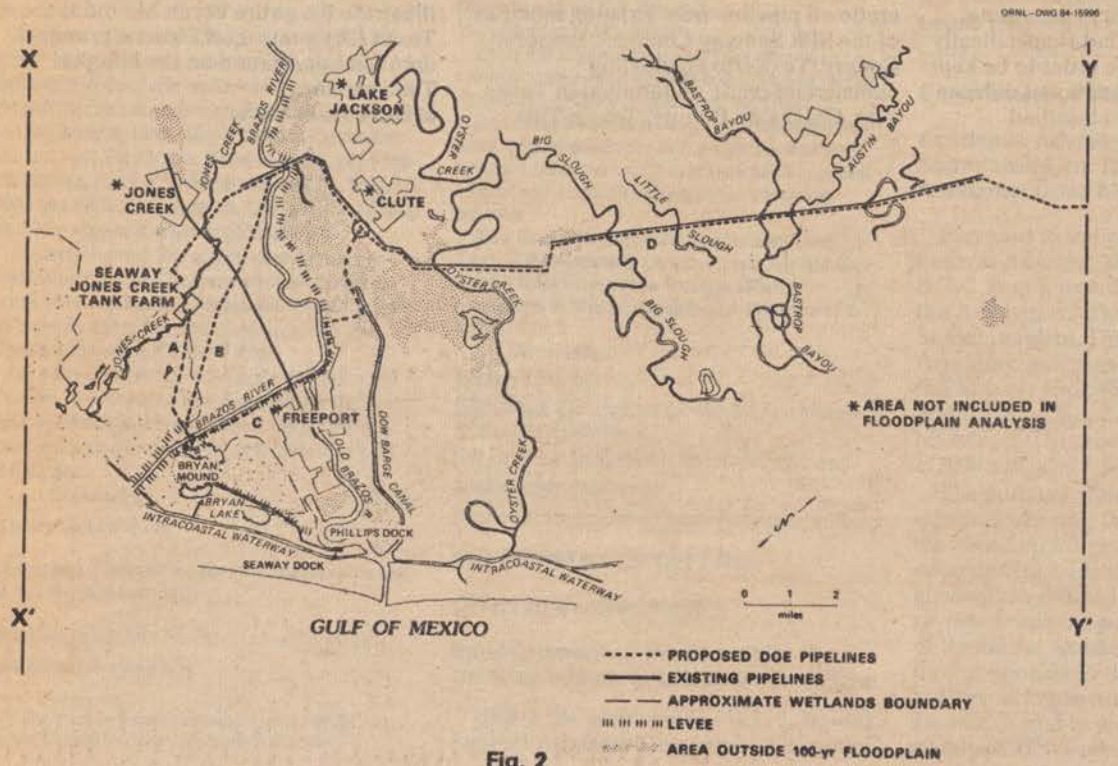

Fig. 2

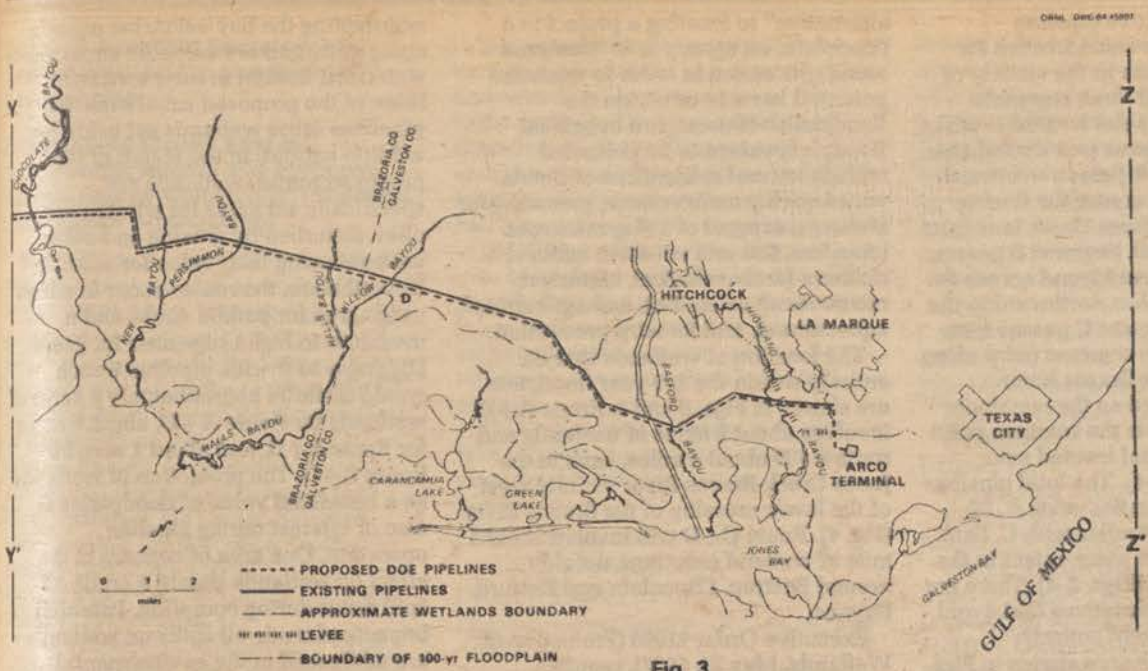

Fig. 3

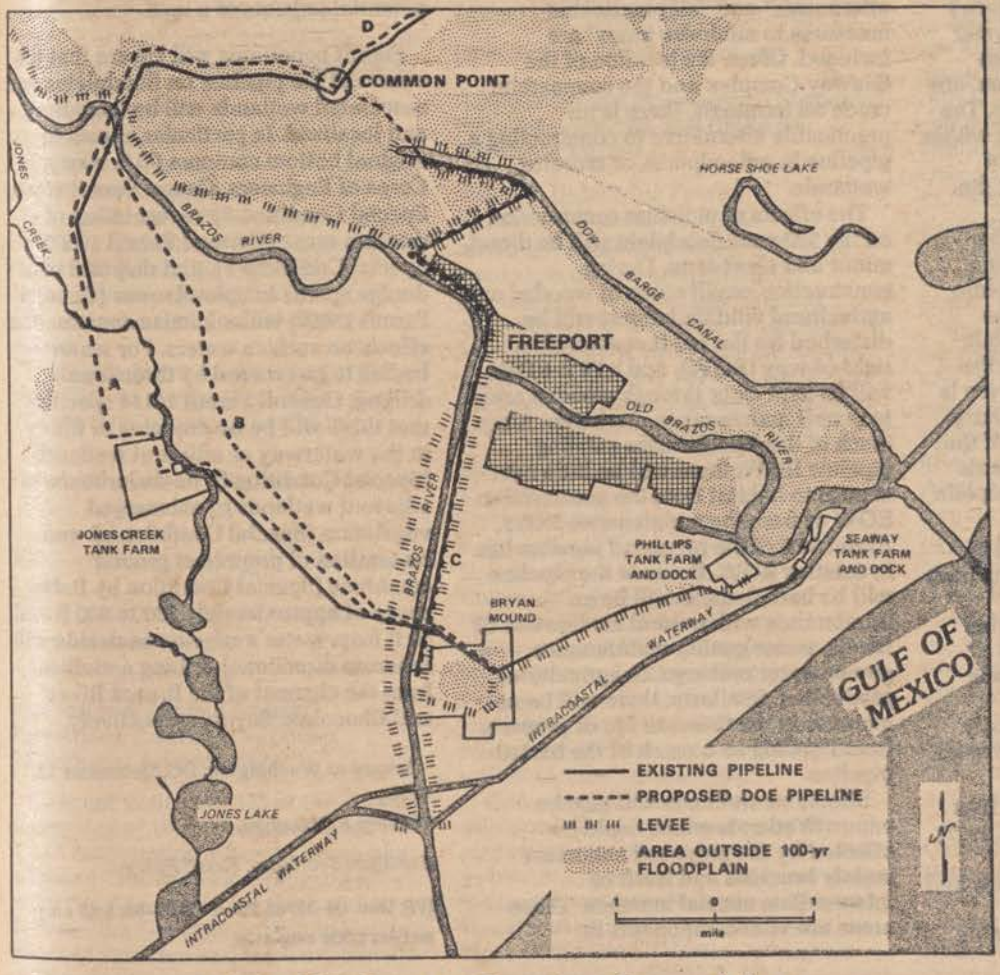

Fig. 4. SPR Seaway Complex, Freeport Area

BILLING CODE 6450-01-C

Three subalternative pipeline segments are under consideration for the origin of the route in the vicinity of Freeport, Texas. All three segments meet at a common point located south of the city of Clute, Texas (see circled area in Fig. 4). Segment A passes westward from Bryan Mound across the Brazos River, through the Jones Creek tank farm to the common point. Segment B passes westward from Bryan Mound across the Brazos River, and then northward to the common point. Segment C passes from Bryan Mound to the common point along the east bank of the Brazos River. Segment D is defined as the remainder of the route; i.e., from the common point to the ARCO terminal located near Texas City (Figs. 2–4). The total pipeline length would be 53 miles using A, 50 miles with B, and 48 miles with C. Each of the segments is to some extent in the 100-year floodplain (Figs. 2–4). There are no viable action alternatives that avoid floodplain involvement entirely.

Virtually all of the area shown in Figs. 2 and 4 are in the 100-year floodplain. Exceptions are Bryan Mound, the area east and north of Freeport, the area south of Clute and areas around Jones Creek. Isolated areas between Oyster Creek and Big Slough, and between Austin Bayou and Chocolate Bayou, are also out of the 100-year floodplain. The floodplain classifications of areas within city and village boundaries are not included in Figs. 2 and 4. In Fig. 3, the pipeline route leaves the 100-year floodplain shortly after crossing the Brazoria/Galveston county line, and remains out of the 100-year floodplain for a distance of about 5 miles. The route stays in the 100-year floodplain until turning to the south to reach the ARCO terminal. One road on a levee is crossed before the pipeline route turns to the south. Approximately 80% of the total route (using any of the segments A–C) lies within the 100-year floodplain (Figs. 2 and 3).

The floodplain areas delineated in Figs. 2 and 3 are subject to flooding from high rainfall and storm surges associated with hurricanes and other coastal storms. The environments characterizing the floodplain include urban/industrial land, fluvial woodlands, coastal prairie (primarily used as range and pasture), and coastal wetlands.

According to Executive Order 11988 (Floodplain Management, May 24, 1977), Federal agencies "shall consider alternatives to avoid adverse effects and incompatible development in the floodplain." If there is no "practicable alternative" to locating a project in a floodplain, an agency is to "design or modify its action in order to minimize potential harm to or within the floodplain." Natural and beneficial floodplain values to be protected include natural moderation of floods, water quality maintenance, groundwater recharge, support of living resources (marshes, fish and wildlife), cultural richness (archaeological, historical, recreational, scientific), and agricultural, aquacultural, and forestry production.

The location of wetlands that lie entirely within the 100-year floodplain are shown in Figs. 2 and 3. Route A+D involves about 5 miles of wetlands and route B+D about 4 miles, each in the Jones Creek-Brazos River vicinity west of the lower crossing of the Brazos River (Fig. 4). Route C+D will involve about 1 mile of wetland crossings, notably around Bastrop, Chocolate and Basford Bayous.

Executive Order 11990 (Protection of Wetlands, May 24, 1977), requires Federal agencies to avoid construction in wetlands (e.g., coastal marshes) unless "there is no practicable alternative" and "all practicable measures to minimize harm" are included. Given the location of the Seaway Complex and the commercial crude oil terminals, there is no practicable alternative to constructing a pipeline in a floodplain, or crossing wetlands.

The effects of pipleline construction on the 100-year floodplain will be direct, minor and short-term. During construction, small areas of wooded and agricultural wildlife habitat will be disturbed for the 100 ft construction right-of-way (ROW), and a 75 ft ROW will be kept clear through wooded areas to permit maintenance thereafter. Since much of the pipeline uses existing pipeline ROW, there will be little net change to habitat from the construction ROW or from the maintenance ROW. About 90% of the proposed pipeline lies in existing ROW. Because the pipeline will be buried, there will be no interference with natural moderation of floods, water quality maintenance, groundwater recharge, or agricultural production. Similarly, there will be no increase in the threat to life or property from flooding as a result of the buried pipeline.

Effects on wetlands will also be minor. Wetlands which could be affected by the proposed action are mainly brackish and fresh or intermediate coastal marshes. These areas are vital components in maintaining the bay-estuarine aquatic ecosystem, and are valuable aquatic and waterfowl habitat in their own right. None of the proposed subalternative pipelines cross wetlands set aside for wildlife habitat. In the region of the proposed routes, wetlands not specifically set aside for wildlife are often disturbed by grazing and other uses, reducing their value for wildlife. Nevertheless, the routes occur in a high usage area for puddle ducks and a moderate to high usage area for geese. Digging a 10 ft wide pipeline trench would disturbe approximately 6 acres of wetlands for Route A+D, about 4 acres for Route B+D, and about 1 acre for Route C+D. The protection of wetlands as a beneficial value of floodplains is also of interest during pipeline operation. One area of concern is the effect on wetlands should a crude oil spill occur during operation. Potential impacts of crude oil spills on wetlands are addressed in the environmental assessment. Pipeline inspection and maintenance and implementation of a spill contingency plan will reduce the potential impacts of a spill.

Permit conditions will ensure that the effects of the pipeline on floodplains and associated wetlands will be temporary and localized. In particular, return to original bottom contours (U.S. Army Corps of Engineers, Genral Permit 15800, Special Condition 3), revegetation of riparian areas (General Permit 15800, Special Condition 7), and disposal of dredge spoins in upland areas (General Permit 15800) will minimize construction effects on surface waters. For water bodies to be crossed by directional drilling, General Permit 14114 specifies that there will be no dredging or filling in the waterway or adjacent wetlands (Special Condition f), no disturbance to adjacent wetlands or submerged vegetation (Special Condition g), and restoration of preproject ground conditons (Special Condition h). Buffer zones of approximately 200 to 300 ft and 50 ft from water's edge on each side will separate directional drilling activities from the channel of the Brazos River and Chocolate Bayou, respectively.

Issued at Washington, DC, December 19, 1984.

William A. Vaughan,

Assistant Secretary, Fossil Energy.

[FR Doc. 84–33762 Filed 12–27–84; 8:45 am]

BILLING CODE 6450–01–M

Office of Assistant Secretary for International Affairs and Energy Emergencies

International Atomic Energy Agreements; Austria and European Atomic Energy Community; Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Austria Concerning Civil Uses of Atomic Energy, as amended, and the Additional Agreement Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval of the following retransfer: RTD/EU(AT)-17, from the Technical University, Graz, Austria to Kfa Julich, the Federal Republic of Germany, of 1.612 Kilograms of uranium, containing 1.5 Kilograms of U-235 (93.07% enrichment). This material was originally loaned to the university for experimental purposes, and is now to be returned to Kfa for use in AVR fuel elements.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: December 21, 1984.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-33764 Filed 12-27-84; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreement; Canada; Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Canada Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale: To Atomic Energy of Canada, Ltd., 9.292 Kilograms of uranium, enriched to 97.5% in U-233, for fabrication of uranium-thorium oxide fuel pins, for use in physics experiments in the ZED-2 experimental reactor.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: December 21, 1984.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-33765 Filed 12-27-84; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

[BPA File Nos. WP-85 and TR-85]

Additional Field Hearings on Proposed Rate Adjustments and Close of Comment Period

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice. BPA requests that all comments and documents which become part of the Official Record compiled in the process of adjusting wholesale power rates contain the file number designation WP-85. Those comments pertaining to transmission rates should be designated TR-85.

SUMMARY: On September 6, 1984, BPA published in the **Federal Register** its "Proposed Wholesale Power Rate Adjustment, Public Hearings, and Opportunities for Public Review and Comment" (49 FR 35177) and its "Proposed Transmission Rate Adjustment, Public Hearings, and Opportunities for Public Review and Comment" (49 FR 35212). BPA conducted the eight field hearings referred to in those notices during the period October 16-29, 1984.

BPA now proposes to conduct eight additional field hearings during the period January 15-24, 1985, to offer the public an opportunity to comment on its revised proposed wholesale power and transmission rate adjustments near the close of the formal portion of the rate hearings held in Portland. BPA Area and District staff will preside at these field hearings, and all comments will be transcribed and made part of the Official Record in the proceeding.

Registration for the hearings will be at 7 p.m., and the hearings will begin at 7:30 p.m. Dates and locations are:

January 15, Eugene, Oregon; City Council Chambers, 777 Pearl Street

January 15, Missoula, Montana; Village Red Lion Motor Inn, 100 Madison Street

January 16, Portland Oregon; Viscount Hotel, Mt. Hood Room, 1441 NE. 2nd

January 21, Jackson, Wyoming; The Virginian Motel, Buffalo Room, 750 W. Broadway

January 22, Spokane, Washington; Cavanaugh's River Inn, Shoreline Room A, N. 700 Division Street

January 23, Seattle, Washington; Seattle Center, Conference Room H, Upper Level, Center House

January 24, Burley, Idaho; Burley Inn, 800 N. Overland Avenue

January 24, Richland, Washington; Federal Building, 825 Jadwin Avenue

DATES: BPA also indicated, in the previously published notices, its intent to announce in a future **Federal Register** the final date comments would be accepted for consideration in the final rate adjustment proposals. Written comments must be received by the Public Involvement office in Portland, Oregon, no later than 5 p.m., February 21, 1985, in order to be considered in the evaluation of the Record. Potential commenters should allow sufficient time for mail delivery to ensure this deadline is met.

(Dates for the announced rate field hearings are as listed in the Summary seciton of this notice.)

ADDRESSES: Written comments should be submitted to the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen S. Johnson, Public Involvement Office, at the address listed above. Telephone numbers, voice/TTY, for the Public Involvement office are: 503-230-3478 in Portland; toll-free 800-452-8429 for Oregon outside of Portland; 800-457-6048 for Washington, Idaho, Montana, Utah, Nevada, Wyoming, and California. Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Steet, 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. Wayne R. Lee, 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, 406–329–3060.

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 V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6226.

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, 208–334–9137.

Issued in Portland, Oregon on December 18, 1984.

Peter T. Johnson,

Administrator.

[FR Doc. 84–33832 Filed 12–27–84; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Energy Research Advisory Board, Infrastructure Subpanel of the Energy R&D Strategy Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: Infrastructure Subpanel of the Energy R&D Strategy Panel of the Energy Research Advisory Board (ERAB)

Date & Time: January 29, 1985—8:30 a.m.–5:00 p.m.

Place: U.S. Department of Energy, 1000 Independence Avenue, SW., Room 4A–110, Washington, D.C. 20585

Contact: William L. Woodard, U.S. Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–5444

Purpose of the Parent Board: To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department. The Infrastructure Subpanel is a subgroup of the Energy Research Advisory Board. The Board has been charged with overall responsibility for assessing the proper scope and balance of energy R&D programs which are expected to have a payoff around 2020. The Subpanel's specific charge is to assess the infrastructure which will be needed to bring research results to the marketplace in that timeframe.

Tentative Agenda:

- Status of Staff Reports
- Discussion of Steering Committee Meeting
- Task Assignments
- Future Meeting Schedule
- Public comment (10 minute rule)

Public Participation: The meeting is open to the public. Written statements may be filed with the Subpanel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William L. Woodard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Subpanel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on December 17, 1948.

Charles E. Cathey,

Deputy Director, Science and Technology Affairs Staff, Office of Energy Research.

[FR Doc. 84–33761 Filed 12–27–84; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-2744-3]

Environmental Impact Statements; Availability

Responsible agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements filed December 17, 1984 through December 21, 1984 Pursuant to 40 CFR 1506.9.

EIS No. 840573, Final, SCS, OK, Campbell Creek Watershed and Flood Protection Plan, Funding, Kingfisher County, Due: January 28, 1985, Contact: Roland Willis (405) 624–4360.

EIS No. 840574, Draft, IBR, AZ, Tucson Aqueduct Phase (B) C/O/M, Colorado River, Feature of Central Arizona Project, Pima County, Due: February 16, 1985, Contact: Cecil Ouellette (702) 293–8560.

EIS No. 840575, Final, FHW, TN, TN–22/ North Martin Bypass Improvement, Illinois Central Gulf Railroad to the Ralston Community, Obion and Weakley Counties, Due: January 28, 1985, Contact: Edward Oakley (615) 251–5394.

EIS No. 840576, Final, BLM, MT, Powder River Resource Area, Resource Mgmt. Plan, Due: January 28, 1985, Contact: Ray Brubaker (406) 232–4331.

EIS No. 840577, Draft, USA, TX, Camp Bullis, Combat Assault Landing Strip, Operations, Bexar County, Due: February 11, 1985, Contact: Chris Ingram (504) 766–3300.

EIS No. 840578, Draft, BLM, NV, Mt. Hope Molybdenum, Open Pit Mine/ Ancillary Facilities, Operation, Land Acquisition and Right-of-Way and Plan Approval, Eureka County, Due: March 8, 1985, Contact: James Fox (702) 635–5181.

EIS No. 840579, Final, USN, CA, Naval Station Treasure Island, Additional Ship Homeporting, San Francisco County, Due: January 28, 1985, Contact: Doug Moore (415) 877–7546.

EIS No. 840580, Draft, FHW, WA, Monroe/Lincoln Couplet Construction, Main Avenue to Wall/ Monroe Streets, Spokane County, Due: February 26, 1985, Contact: P.C. Gregson (206) 753–2120.

Amended Notices:

EIS No. 840558, Draft, COE, WI, Green Bay Harbor Confined Disposal Facility, C/O/M, Brown County, Due: February 4, 1985, Contact: Florence Bissell (313) 226–3510, Inadvertently omitted from 12–21–84 Federal Register.

EIS No. 840559, Draft, EPA, FL, Southwest Orange County Wastewater Facilities, Construction, Southwest Orange County, Due: February 14, 1985, Contact: Robert Cooper (404) 881–3776, Inadvertently omitted from 12–21–84 Federal Register.

EIS No. 840560, Report, COE, MI, Sault Ste. Marie Federal Facilities, O/M, Soo Locks Closure, Chippewa County, Contact: Richard Makinen (202) 272–0121. Inadvertently omitted from 12–21–84 Federal Register.

EIS No. 840561, DSuppl, FHW, VT, Burlington Southern Connector Construction, I–189/ Shelburne Road (US 7) to Battery and King Streets, Chittenden County, Due: February 4,

1984, Contact: George Jensen (802) 223-5294. Inadvertently omitted from 12-21-84 Federal Register.

EIS No. 840537, Final, BIA, AZ, Firebird Stadium Construction, Maricopa County, Due: January 28, 1985, Published FR 12-7-84—Review period reestablished.

Dated: December 24, 1984.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 84-33736 Filed 12-27-84; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2744-4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 10, 1984 through December 14, 1984 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act, as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the Federal Register dated October 19, 1984 (49 41108).

Draft EISs

ERP No. DR-BLM-J02007-WY, Rating LO, N. Fork Well Oil and Gas Exploration, Permit, Shoshone NF, WY. Summary: EPA believes the preferred alternative, with additional information and analyses, is environmentally acceptable, provided the possibility of adverse effects on the grizzly bear and bald eagle is satisfactorily resolved. Other concerns relate to maintenance of instream flows, impacts to non-big game wildlife indicator species, and compliance monitoring plans.

ERP No. D-COE-E05095-AL, Rating EC2, Coffeeville Lock and Dam Hydropower Facility, Construction, AL. Summary: EPA's review revealed that effective mitigation of the environmental losses incurred by raising the flood pool is the most important remaining issue. U.S. Fish and Wildlife Service Habitat Evaluation Procedure determined that approximately 3,500 acres of lands will be required to satisfactory mitigate the inundation losses. EPA expressed concern about how this mitigation will be accomplished.

ERP No. D-COE-L36097-WA, Rating EC2, Mt. St. Helens Sediment Control and Flood Reduction Plan, WA. Summary: EPA finds the DEIS does not contain sufficient information to fully evaluate the environmental impacts associated with the construction of a sediment control structure on the North Fork of the Toutle River. EPA requests that downstream dredged material disposal options be evaluated in the EIS. EPA recommends compensation for wetland habitats destroyed by dredged material disposal and supports the inclusion of fish passage facilities in the project.

ERP No. D-FHW-L40140-OR, Rating LO, SE Hubbard Road Extension, Construction, 122nd Ave. to US 212, OR. Summary: No serious environmental impacts are expected from implementation of the project. It was suggested that possible water quality impacts from secondary development be discussed in the FEIS.

ERP No. D-NPS-L61159-AK, Rating LO, Squirrel River, Wild and Scenic Study, Designation, AK. Summary: EPA expressed no objections to the proposed action.

ERP No. D-NPS-L61160-AK, Ration LO, Lower Sheenjek River, Wild and Scenic Study, Designation, AK. Summary: EPA expressed no objection to the proposed alternative.

ERP No. D-UMT-K54016-CA. Rating LO, San Jose Multimodal Transportation Terminal, Construction and Development, CA. Summary: EPA recommended that the FEIS disucss the project's compliance with the Executive Order 11988 on Floodplain Management and suggested that the selected alternative be one of the sites that is not located within the 100 year floodplain.

Final EISs

ERP No. F-BLM-J65128-UT, Cedar, Beaver, Garfield and Antimony Planning Unit, Resource Mgmt. Plan, UT. Summary: The FEIS contains substantive revisions which respond to concerns raised on the DEIS regarding the consequences of certain BLM land uses such as grazing, off-road vehicle recreation, and mineral development. Implementation of the plan will require additional site-specific information on resource conditions and land management needs.

ERP No. F-BLM-K65089-NV, Lahontan Resource Area, Resource Mgmt. Plan, NV. Summary: The FEIS adequately responds to comments made on the DEIS.

ERP No. F-NPS-E60142-FL, Loxahatchee River, Wild and Scenic Study, Designation, FL. Summary: EPA supports the recommended proposal.

Dated: December 24, 1984.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 84-33737 Filed 12-27-84; 8:45 am]

BILLING CODE 6560-50-M

[OECM-2744-7]

Administrative Settlement Between EPA, State of Alabama, and Chemical Waste Management, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Notice of Administrative Settlement.

SUMMARY: This publication provides public notice of an administrative Agreement entered into by the U.S. Environmental Protection Agency ("EPA"), the State of Alabama ("State") and Chemical Waste Management, Inc. ("CWM") which, in part, provides for settlement of claims under the Toxic Substances Control Act ("TSCA"), 15 U.S.C. 2601 *et seq.*, and the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6902 *et seq.*, among the parties regarding CWM's Emelle, Alabama facility.

Contact Person

For further information, contact Mr. Arthur Varela, Office of Enforcement and Compliance Monitoring, LE-134P, U.S. EPA, 401 M Street, SW., Washington, D.C., 20460, telephone (202) 475-8687.

Background

On January 24, 1984, EPA filed an administrative Complaint alleging that CWM violated 40 CFR 761.65(a) and CWM filed an Answer denying the allegations and asserting defenses. On March 23, 1984, EPA and CWM executed a proposed Settlement Agreement to resolve the January 24, 1984 enforcement actions. On May 23, 1984, the State was permitted to intervene in this case before action on this Settlement Agreement by the EPA Judicial Officer. The matter was then assigned to Administrative Law Judge Thomas P. Yost for disposition. In the course of further negotiations to settle this pending action, the parties agreed to expand the settlement to include other matters. CWM filed an application for approval of a new TSCA PCB landfill cell on June 11, 1984. On November 6, 1984, the Regional Administrator of EPA Region IV filed Findings of Fact regarding application of 40 CFR

761.75(b)(3) to CWM's TSCA PCB landfill operations. On December 19, 1984, EPA filed an amended complaint alleging violations of RCRA; CWM filed an Answer denying these allegations and asserting defenses; and Judge Yost signed an order approving the settlement.

Purpose

To provide notice of the provisions of the Settlement Agreement and Order in this case.

Discussion

While EPA is not required to publish notice of administrative Settlement Agreements and Orders in the **Federal Register**, it is doing so in this instance because of the attention that has been given to this matter. This Settlement Agreement in part contains the following terms: settlement of EPA claims under TSCA and RCRA; payment of civil penalties of $600,000; PCB reporting requirements; a schedule for the disposal of PCBs stored at CWM's Emelle facility; RCRA groundwater monitoring and compliance requirements; environmental audit and compliance officer program; waste impact/hydrogeological study; and, amended approval of and technical requirements for landfill operations pursuant to 40 CFR 761.75.

Review of the Record

The record for this case is found in docket number TSCA–84–H–03 located through either the:

Headquarters Hearing Clerk, U.S. EPA, 401 M Street, SW., Washington, D.C. 20460, Telephone: (202) 382–4865

or:

Region IV Hearing Clerk, EPA Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, Telephone: (404) 881–2681

Review of the record may be obtained by personal inspection or by mail. Written requests for a copy of the Consent Agreement and Order accompanied by a check to "U.S. EPA" in the amount of $8.00 to cover the costs of copying should be addressed to either Hearing Clerk at the addresses noted above. Some of the material in the record is restricted as confidential business information under section 14 of TSCA, 15 U.S.C. 2613 and 40 CFR Part 2.

DATES: The parties executed the Settlement Agreement on December 18 and 19, 1984 which was approved by Judge Yost on December 19, 1984.

Dated: December 20, 1984.

Courtney M. Price,

Assistant Administrator for Enforcement and Compliance Monitoring.

[FR Doc. 84–33756 Filed 12–27–84; 8:45 am]

BILLING CODE 6560–50–M

[AD–FRL–2744–6]

Control Techniques Guideline Document VOC Emissions From Air Oxidation Processes in the Synthetic Organic Chemical Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of final control techniques guideline (CTG) document.

SUMMARY: The final CTG document for control of volatile organic compound (VOC) emissions from air oxidation processes in the synthetic organic chemical manufacturing industry (SOCMI) is available. This document provides guidance to States in determining reasonably available control technology (RACT) for VOC emissions from air oxidation processes.

ADDRESSES: Copies of the final CTG document may be obtained by contacting the Environmental Research Library (MD–35), (919) 541–2777, Environmental Protection Agency, Research Triangle Park, North Carolina 27711. Please refer to "Guideline Series—Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry, EPA–450/3–84–015. Comments received on the draft CTG document are attached as an appendix to the final CTG document and are also availale for public inspection and copying between 8:30 a.m. and 4:00 p.m., Monday through Friday, at the Chemicals and Petroleum Branch, Room 730, Environmental Protection Agency, 411 West Chapel Hill Street, Durham, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Rosensteel, (919) 541–5671, Chemicals and Petroleum Branch (MD–13), Emission Standards and Engineering Division, Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: On March 5, 1984 (49 FR 8077), the EPA announced the availability for public review of the draft CTG document for VOC emissions from air oxidation processes in the synthetic organic chemical manufacturing industry. The CTG document presents the Agency recommendation of reasonably available control technology (RACT) requirements for air oxidation processes. The recommended RACT has not changed since the draft CTG was published for comment. In general, the recommended RACT would require certain affected air oxidation facilities to reduce VOC emissions by 98 weight percent or to 20 parts per million by volume (ppmv), whichever is less stringent. The air oxidation facilities requiring such VOC emission reductions would be those that are below a cost-effectiveness cutoff level expressed as a total resource effectiveness (TRE) index value of 1.0.

Air oxidation processes are present in synthetic organic chemical manufacturing plants and include all reactions in which air, or air enriched with oxygen, is the oxidizing agent. There are 36 or more chemicals made by the air oxidation process. A common feature of air oxidation processes is that they all involve venting large quantities of nitrogen gases containing VOC to the atmosphere. However, the quantity of VOC emissions and both the overall cost and cost effectiveness of control vary considerably depending on the chemical and the process. Total resource effectiveness or "TRE" is a measure of the cost effectiveness of controlling air oxidation streams with a 98 percent efficient combustion device (thermal oxidation). An equation for estimating the TRE value for individual vent streams from air oxidation facilities is included in the RACT recommendation. The equation, which is described in the CTG document, incorporates several vent stream characteristics that affect cost effectiveness. These include flowrate, hourly VOC emissions, corrosive properties, and net heating value. The TRE equation is not affected by inflation. A TRE index of 1.0 is equivalent to a cost effectiveness of $1,600/Mg (1980 dollars) of VOC emission reduction. Thus, for facilities with a process vent steam or combination of process vent streams having a TRE index value that exceeds the recommended cutoff level of 1.0 (equivalent to $1,600/Mg), a 98 percent VOC emissions reduction is not required. Air oxidation processes that already are controlled by combustion devices would not have to meet the 98 percent requirement until the combustion device is replaced for other reasons; in other words it is recommended that no plant be required to upgrade or replace an existing combustion device.

Six comment letters were received from industry representatives and trade

groups as a result of the EPA request. All comments contained in these letters were considered before the final CTG document was prepared, and responses to these comments were provided in Appendix F. Many comments were received requesting clarifications on the applicability of the RACT requirements. These clarifications have been added in Appendix F.

Several commenters suggested that the RACT requirements be relaxed by lowering the $1,600/Mg cost-effectiveness cutoff used to determine whether VOC emissions would have to be reduced by 98 percent or to 20 ppmv. However, the RACT requirements were not changed. It is not likely that any facility will actually incur a cost effectiveness near the $1,600/Mg level. The reasons for this are: (a) Less expensive combustion control techniques are likely to be used, thus reducing the costs and cost effectiveness incurred by individual facilities; and (b) relatively less expensive product recovery devices may be used to decrease emissions and thus raise TRE values above the cutoff so that VOC emissions would not have to be reduced by 98 percent or to 20 ppmv. The RACT cutoff was established assuming that thermal incinerators will be used to reduce VOC emissions by 98 weight percent. However, many facilities will opt to use boilers, process heaters, flares, or catalytic oxidizers. When these devices are used, the costs of control will be significantly reduced over the cost of thermal incineration. Furthermore, the RACT requirements do not require VOC emissions to be reduced by 98 percent if a TRE index greater than 1.0 is maintained. The EPA believes that some facilities having a TRE index below the 1.0 cutoff (equivalent to $1,600/Mg) will upgrade product recovery to reduce VOC and raise their TRE values above 1.0. This will also significantly reduce the costs of control incurred by the industry. To study the potential impacts of requiring air oxidation facilities to control VOC emissions using thermal incinerators, the Agency developed a statistical profile of facilities which is assumed to represent all existing air oxidation facilities. An analysis of these facilities indicated that the maximum cost effectiveness incurred by any facility in the statistical profile required to reduce VOC emissions by 98 percent or to 20 ppmv would be about $1,000/Mg. This analysis shows that facilities in the statistical profile with cost-effectiveness values greater than $1,000/Mg would be able to upgrade product recovery to achieve a TRE greater than 1.0.

Two commenters requested that the requirements be changed so that combustion by catalytic oxidation can be used. One commenter contended that a catalytic oxidizer at his plant achieves only 95 percent control. In fact, the recommended RACT would not require replacement of this existing combustion device to achieve the 98 percent requirement. However, studies performed by the EPA Office of Research and Development indicate that a catalytic oxidation device applied to a stream very similar to the stream at the commenter's facility can achieve a VOC destruction efficiency of 98 percent.

Several comments were received claiming that incinerator costs were underestimated and the TRE equation was not accurately predicting the cost-effectiveness values for facilities. The commenters suggested that additional equipment needed to be added to the algorithms and some cost factors needed to be revised. Upon evaluating these comments, several revisions were made to ensure that the algorithms would predict costs that are representative of the costs that will be incurred by most air oxidation facilities. The items that were changed included ductwork length, natural gas price, labor factors, and other utility factors.

The CTG document is part of the third group of CTG documents published to assist the States in determining RACT for various stationary sources of VOC emissions. These documents provide State and local air pollution control agencies with an initial information base for proceeding with their own analysis of RACT for specific source categories of VOC emissions located within areas where an extension was granted for the attainment of the national ambient air quality standard for ozone. The CTG documents review existing information and data concerning the technology and cost of various control techniques to reduce VOC emissions.

This CTG is not a "rule" as defined by the Administrative Procedure Act (5 U.S.C. 551 et seq.). It is a "rule" for purposes of Executive Order 12291 because it is designed to implement an EPA policy. Under Executive Order 12291, the EPA must judge whether a rule is "major" and, therefore, subject to the requirements of a regulatory impact analysis. The CTG documents are not "major rules" because they do not impose any new requirements. This notice and the final CTG document were submitted to the Office of Management and Budget (OMB) for review. Any comments from the OMB to the EPA and any EPA responses to those comments are available for public inspection.

Dated: November 16, 1984.

John C. Topping,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 84-33757 Filed 12-27-84; 8:45 am]

BILLING CODE 6560-50-M

[A-4-FRL-2744-5]

PSD Permit for Transgulf Pipeline Co., Kissimmee, FL

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that a Prevention of Significant Deterioration (PSD) permit extension has been granted to the Transgulf Pipeline Company. This action extends the effective date of their permit (PSD-FL-013) until February 14, 1986, for the commencement of construction of a petroleum products storage and bulk loading terminal in Kissimmee, Florida.

DATES: This extension is effective as of November 20, 1984, and grants an 18-month permit extension beginning August 14, 1984, and expiring on February 14, 1986.

ADDRESSES: Copies of the PSD permit, permit application, preliminary and final determinations, and justification for the permit extension granted on November 20, 1984, are available for public inspection upon request at the following locations:

Environmental Protection Agency, Region IV, Air Management Branch, Air, Pesticides, and Toxics Management Division, 345 Courtland Street, NE., Atlanta, Georgia 30365

Bureau of Air Quality Management, Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301

FOR FURTHER INFORMATION CONTACT: Michael Brandon of the EPA—REGION IV, Air Management Branch at the Atlanta address given above, telephone 404/881-7654 (FTS: 257-7654).

SUPPLEMENTARY INFORMATION: On August 18, 1981, the EPA—Region IV Regional Administrator issued a Prevention of Significant Deterioration (PSD) construction permit to Transgulf Pipeline Company which became effective on February 14, 1983. The permit would have expired on August 14, 1984 (18 months from the effective date), if construction had not commenced or if an extension had not

been granted. On May 15, 1984, Transgulf Pipeline Company requested an 18-month extension to commence construction of the aforementioned terminal. Adequate justification for this request was submitted by the company. On November 20, 1984, EPA—Region IV granted an extension validating the

Transgulf Pipeline Company PSD permit through February 14, 1986, for commencement of construction. All the terms and conditions of the August 18, 1981, PSD permit are in full force and effect.

If construction does not commence within 18 months after the effective date (August 14, 1984), or if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time, the federal PSD permit PSD-FL-013 shall expire and authorization to construct shall become invalid.

(Sections 160-169 of the Clean Air Act (42 U.S.C. 7470-7479))

Dated: December 13, 1984.

John A. Little,

Acting Regional Administrator.

[FR Doc. 84-33758 Filed 12-27-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51551; FRL-2745-6]

Certain Chemicals; Premanufacture Notices; Receipts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-six PMNs and provides a summary of each.

DATES: Close of Review Period:

PMN 85-301—March 13, 1985.

PMN 85-302, 85-303, 85-304, 85-305, 85-306, 85-307 and 85-308—March 14, 1985.

PMN 85-309, 85-310, 85-311, 85-312, 85-313, 85-315, 85-316, 85-317, 85-318, 85-319, 85-320, 85-321, 85-322, 85-323, 85-324 and 85-330—March 17, 1985.

PMN 85-325, 85-326, 85-327, 85-328 and 85-329—March 18, 1985.

PMN 85-331, 85-332, 85-333, 85-334, 85-335, 85-336 and 85-337—March 19, 1985.

Written comments by:

PMN 85-301—February 11, 1985.

PMN 85-302, 85-303, 85-304, 85-305, 85-306, 85-307 and 85-308—February 14, 1985.

PMN 85-309, 85-310, 85-311, 85-312, 85-313, 85-315, 85-316, 85-317, 85-318, 85-319, 85-320, 85-321, 85-322, 85-323, 85-324 and 85-330—February 15, 1985.

PMN 85-325, 85-326, 85-327, 85-328, and 85-329—February 16, 1985.

PMN 85-331, 85-332, 85-333, 85-334, 85-335, 85-336 and 85-337—February 17, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS-51551]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M St., SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room-107 at the above address.

PMN 85-301

Manufacturer. Confidential.

Chemical. (G) Urethane acrylate.

Use/Production. (G) One and two binder resin for abrasive articles. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal, a total of 3 workers.

Environmental Release/Disposal. No release. Less than 2 to 5 kg/batch incinerated.

PMN 85-302

Importer. Confidential.

Chemical. (G) Polyol acetal.

Use/Import. (G) Polymer additive. Import range: Confidential.

Toxicity Data. Acute oral: >3.0 g/kg.

Exposure. Confidential.

Environmental Release/Disposal. Minimal release.

PMN 85-303

Manufacturer. Confidential.

Chemical. (G) Aliphatic polyester urethane.

Use/Production. (S) Industrial, commercial and consumer coating and adhesive. Prod. range: 20,000-40,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 4 workers, up to 4 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. No data submitted.

PMN 85-304

Manufacturer. Confidential.

Chemical. (G) Alkyl diol, toluene diisocyanate, alkene ester, adipic acid resin.

Use/Production. (G) A formulation component for open, nondispersive use. Prod. range: 2,000-12,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacrure and processing: dermal, a total of 16 workers.

Environmental Release/Disposal. 0.01 to 2 kg released to land. Disposal by landfill.

PMN 85-305

Manufacturer. Confidential.

Chemical. (G) Substituted silyl epoxide.

Use/Production. (G) Sealant additive. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 85-306

Manufacturer. Confidential.

Chemical. (G) Substituted silyl epoxide.

Use/Production. (G) Sealant additive. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 85-307

Manufacturer. Confidential.

Chemical. (G) Substituted alkyl silyl urea.

Use/Production. (G) Sealant additive. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 85-308

Manufacturer. Confidential.

Chemical. (G) Substituted alkyl silyl urea.

Use/Production. (G) Sealant additive. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 85–309

Manufacturer. Confidential.
Chemical. (G) Di-substituted phenol.
Use/Production. (G) Intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 85–310

Manufacturer. Confidential.
Chemical. (G) Tri-substituted phenol.
Use/Production. (G) Intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 85–311

Manufacturer. Confidential.
Chemical. (G) Polyurethane.
Use/Production. (G) Additive for an industrial coating. Prod. range: 12,600–66,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 46 workers, up to 8 hrs/da, up to 13 da/yr.
Environmental Release/Disposal. 6 to 122 kg/batch released to land. Disposal by incineration and approved landfill.

PMN 85–312

Manufacturer. Confidential.
Chemical. (G) Complex polyether—amine.
Use/Production. (G) Resin for an industrial coating. Prod. range: 20,000–150,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 27 workers, up to 8 hrs/da, up to 24 da/yr.
Environmental Release/Disposal. 2 to 122 kg/batch released to land. Disposal by incineration and approved landfill.

PMN 85–313

Manufacturer. Confidential.
Chemical. (G) Substituted alkanol adduct of a long chain diisocyanate.
Use/Production. (G) A component of formulation for open, non-dispersive use. Prod. range: 3,000–6,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 14 workers.
Environmental Release/Disposal. 0.01 to 2.0 kg/batch released to land. Disposal by landfill.

PMN 85–315

Manufacturer. Quaker Chemical Corporation.
Chemical. (G) Substituted benzotriazole.
Use/Production. (S) Industrial corrosion inhibitor in slushing fluid. Prod. range: Confidential.
Toxicity Data. Acute oral: Male and female—<5.0 g/kg; Irritation; Skin—Mild/slight, Eye—Corrosive.
Exposure. Manufacture and processing: dermal, a total of 6 workers, up to 5 hrs/da.
Environmental Release/Disposal. 5 kg released to air with 10 kg to water. Disposal by publicly owned treatment works (POTW).

PMN 85–316

Importer. Confidential.
Chemical. (G) Aryl aklenyl aryl nitrile.
Use/Import. (G) Textile dyeing auxiliary. Import range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Slight, Eye—Non-irritant; Ames Test: Negative.
Exposure. Processing: dermal, a total of 2 workers, up to 27 hrs/yr, 107 batches/yr at 15 min/batche.
Environmental Release/Disposal. No data submitted.

PMN 85–317

Manufacturer. BASF Wyandotte Corporation.
Chemical. (S) Phosphine oxide, diphenyl(2,4,6-trimethyl-benzoyl)—.
Use/Import. (S) Industrial catalyst for ultra-violet curable lacquers. Import range: Confidential.
Toxicity Data. Acute oral: male and female— >5,000 mg/kg; Irritation: Skin—Slight, Eye—Non-irritant; Ames Test: Non-mutagenic.
Exposure. Processing: dermal, a total of 1 worker, up to 10 min/da.
Environmental Release/Disposal. Disposal by landfill.

PMN 85–318

Manufacturer. American Hoechst Corporation.
Chemical. (S) 1-isopropylthio-beta-D-galactopyranoside.
Use/Production. (S) Additive for fermentation processes. Prod. range: Confidential.
Toxicity Data. Acute oral: 5 g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant.
Exposure. No data submitted.
Environmental Release/Disposal. No release. Disposal by incineration.

PMN 85–319

Manufacturer. American Hoechst Corporation.
Chemical. (S) Pentaacetyl-beta-D-galactopyranoside.
Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 5 workers, up to 2 hrs/day, up to 1 da/yr.
Environmental Release/Disposal. No release to water. Diposal by POTW.

PMN 85–320

Manufacturer. The Upjohn Company.
Chemical. (G) Polyamide.
Use/Production. (S) Industrial electrical and mechanical goods. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal and inhalation, a total of 3 workers, up to 8 hrs/da, up to 54 da/yr.
Environmental Release/Disposal. Less than 20 kg released to land. Disposal by sanitary landfill.

PMN 85–321

Manufacturer. The Minnesota Mining and Manufacturing Company.
Chemical. (G) Substituted phenol/formaldehyde resin.
Use/Production. (G) Surface treatment non-dispersive use. Prod. range: Confidential.
Toxicity Data. Acute oral: Male—>12.99 g/kg, Female Between 5.19 and 12.99 g/kg; Irritation: Skin—Non-irritant, Eye—Mild; Ames Test: Non-mutagenic; Skin sensitization: Not a sensitizer; COD—0.85 g/g; BOD_5: 0.029 g/g; BOD_{10}: 0.038 g/g; BOD_{20} day: 0.039 g/g; LC_{50} 96 hr (Fathead minnow): 5.1 mg/1; Yeast assay: Non-recombinogenic.
Exposure. Confidential.
Environmental Release/Disposal. Less than 20 lbs released to water. Disposal by navigable waterway.

PMN 85–322

Manufacturer. Lithium Corporation of America.
Chemical. (S) 2-Propanamine, N-(1-methylethyl)-, lithium salt.
Use/Production. (S) Reagent for pharmaceutical, agricultural products and fine chemicals synthesis and polymerization reagent. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

PMN 85–323

Manufacturer. Confidential.
Chemical. (G) Bis(substitutedalkyl)disulfide.
Use/Production. (S) Industrial intermediate. Prod. range: 15,000–20,000 kg/yr.
Toxicity Data. Acute oral: Male—3,948 mg/kg, Female—4,385 mg/kg,

Combined—4,161 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Not mutagenic.

Exposure. Manufacture and processing: dermal, a total of 6 workers, up to 1 hr/da, up to 300 da/yr.

Environmental Release/Disposal. Trace release to air and water with trace to 3.1 kg to land. Disposal by incineration.

PMN 85–324

Manufacturer. Confidential.

Chemical. (G) Substituted heteromonocyclic phenol.

Use/Production. (S) Industrial intermediate. Prod. range: 30,000–40,000 kg/yr.

Toxicity Data. Acute oral: >5.0 g/kg; Irritation: Skin—Slight, Eye-Irritant; Ames test: Not mutagenic.

Exposure. Manufacture and processing: dermal, a total of 10 workers, up to 2 hrs/da, up to <365 da/yr.

Environmental Release/Disposal. Trace release to less than 20 kg to land. Disposal by incineration.

PMN 85–325

Importer. Marubeni America Corporation.

Chemical. (S) Cobaltate (1-)[N-[8[[5-(aminosulfonyl)-2-hydroxyphenyl]azo]-7-hydroxy-1-naphthalenyl]acetamidato (2-)]-[3-[4,5-dihydro-4-[(2-hydroxy-5-nitrophenyl)azo]-3-methyl-5-oxo-1H-pyrazol-1-yl]benzene-sulfonamidato (2-)]-, sodium (9CI).

Use/Import. (S) Commercial dye for polyamide fibers. Import range: 10,000 kg/yr.

Toxicity Data. Acute oral: >5,000 mg/kg.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

PMN 85–326

Importer. Marubeni America Corporation.

Chemical. (S) Chromate(1-), [3-[4,5-dihydro-4-[(2-hydroxy-5-nitrophenyl)azo]-3-methyl-5-oxo-1H-pyrazol-1-yl] benzene-sulfonamidato(2)] [4-hydroxy-3-[(2-hydroxyl-1-naphthalenyl)azo] benzenesulfonamidato(2-)]-hydrogen (9CI).

Use/Import. (S) Commercial dye for polyamide fibers. Import range: 10,000 kg/yr.

Toxicity Data. Acute oral: >5,000 mg/kg.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

PMN 85–327

Manufacturer. Confidential.

Chemical. (G) Isocyanate terminated polyether prepolymer.

Use/Production. (G) Isocyanate component of a two component polyurethane elastomer. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 85–328

Manufacturer. Confidential.

Chemical. (G) Substituted paracyclophane.

Use/Production. (S) Monomer for polymeric coating of electronic circuitry. Prod. range: Confidential.

Toxicity Data. Acute oral: 5 g/kg; Acute dermal: 8 g/kg; Irritation: Skin—Minimal, Eye—Moderate; Inhalation: Low.

Exposure. Manufacture: dermal, a total of 3 workers, up to 8 hrs/da, up to 50 da/yr.

Environmental Release/Disposal. Release to water. Disposal by POTW.

PMN 85–329

Manufacturer. Confidential.

Chemical. (G) Silylated amino ester.

Use/Production. (G) Intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Essentially non-irritating; Ames Test: Negative; LC_{10} 48 hr (Daphnia magna): 211 parts per million (ppm); LC_{50} 48 hr (Daphnia Magna): 325 ppm; LC_{90} 48 hr (Daphnia Magna): 501 ppm.

Exposure. Manufacture: dermal, a total of 2 workers, up to 2 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. Less than 0.1 to 55 kg released. Disposal by incineration.

PMN 85–330

Importer. Confidential.

Chemical. (S) Alkyl aryl ethoxylate sulfate, sodium salt.

Use/Import. (S) Industrial dispersing agent. Import range: Confidential.

Toxicity Data. Acute oral: Male and female – <5,000 mg/kg; Irritation: Skin—Slight, Eye—Non-irritant; Ames test: Non-mutagenic.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

PMN 85–331

Manufacturer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Acrylic polymer imine reaction product.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. Irritation: Eye—Moderate; Skin sensitization: Not a sensitizer.

Exposure. Manufacture: dermal, a total of 2 workers.

Environmental Release/Disposal. Confidential. Disposal by incineration and landfill.

PMN 85–332

Manufacturer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Acrylic copolymer.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential

Toxicity Data. Irritation: Eye—Moderate; Skin sensitization: Not a sensitizer.

Exposure. Manufacture: dermal, a total of 1 worker.

Environmental Release/Disposal. Confidential. Disposal by incineration and landfill.

PMN 85–333

Manufacturer. Confidential.

Chemical. (G) Polyurethane acrylate.

Use/Production. (G) U-V curable resin for clear finishes. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 5 workers.

Environmental Release/Disposal. Confidential.

PMN 85–334

Manufacturer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Aromatic dinitro compound.

Use/Production. (G) Site-limited intermediate. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 85–335

Manufacturer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Aromatic diamine.

Use/Production. (G) Monomer. Prod. range: Confidential.

Toxicity Data. Irritation: Skin—Not a skin irritant, Eye—Moderate; Ames test: Mutagenic.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 85–336

Manufacturer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Polyimide precursor.
Use/Production. (G) Composite thermoplastic laminating tape. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 85–337

Manufacturer. E. I. du Pont de Nemours and Company, Inc.
Chemical. (G) Fiber reinforced polyimide.
Use/Production. (G) Composite thermoplastic laminating tape. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

Dated: December 21, 1984.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 84–33754 Filed 12–27–84; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59180; FRL–2745–7]

Pesticides; Certain Chemicals; Test Marketing Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the Federal Register of May 13, 1983 (48 FR 21722. This notice, issued under section 5(h)(6) of TSCA, announces receipt of two applications for exemptions, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by: January 14, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS–59180]" and the specific TME number should be sent to: Document Control Officer (TS–793), Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–201, 401 M Street, SW., Washington, DC 20460 (202–382–3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW., Washington, DC 20460 (202–382–3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address.

TME 85–12

Importer. Confidential.
Chemical. (G) Tetrafunctional silane.
Use/Import. Confidential. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

TME 85–13

Manufacturer. Uniroyal, Incorporated.
Chemical. (G) Isocyanate terminated polyurethane prepolymer.
Use/Production. (G) Used for customer evaluation of the end product. Prod. range: 45,000 kg/4 months.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 3 workers, up to 4 hrs/da, up to 20 da.
Environmental Release/Disposal. No data submitted.

Dated: December 21, 1984.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 84–33753 Filed 12–27–84; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59177A; FRL 2744–8]

Toxic Substances; Certain Chemicals; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME–85–8. The test marketing conditions are described below.

EFFECTIVE DATE: December 19, 1984.

FOR FURTHER INFORMATION CONTACT: Daniel Dickson, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611C, 401 M. St. SW., Washington DC 20460 (202–382–3380).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–85–8. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volumes must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–85–8. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced and must make these records available to EPA upon request.

2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

TME 85–8

Date of Receipt: November 16, 1984.
Notice of Receipt: November 30, 1984 (49 FR 47113).
Applicant: Confidential.

Chemical: (G) Vegetable Oil Polymer with Alkane Diols.
Use: (G) Binder Component for an Industrially Applied Coating.
Production Volume: 8700 kilograms.
Number of Customers: Confidential.
Worker Exposure: Confidential.
Test Marketing Period: Two months.
Commencing on: December 19, 1984.
Risk Assessments: No significant health or environmental concerns were identified. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.
Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: December 19, 1984.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 84-33751 Filed 12-27-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59176A; FRL 2745-1]

Toxic Substances; Certain Chemicals; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-85-6. The test marketing conditions are described below.

EFFECTIVE DATE: December 19, 1984.

FOR FURTHER INFORMATION CONTACT: Daniel Dickson, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611C, 401 M St. SW., Washington DC 20460, (202-382-3380).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-85-6. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volumes must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-85-6. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced and must make these records available to EPA upon request.
2. The applicant must maintain daily records of the number of workers exposed and the duration of exposure.
3. The applicant must maintain records of determinations that the gloves are impervious to the TME substance.
4. The applicant must maintain records of persons who wear impervious gloves and chemical safety goggles during the manufacturing and processing of the TME substance.
5. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.
6. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.
7. The applicant must maintain records of dates of shipments of wastes and the identity of sites to which they have been shipped.

TME 85-6

Date of Receipt: November 14, 1984.
Notice of Receipt: November 26, 1984 (49 FR 46483).
Applicant: Confidential.
Chemical: (G) Oxazolidone.
Use: (G) Intermediate.
Production Volume: Confidential.
Number of Customers: Confidential.
Worker Exposure: Confidential.
Test Marketing Period: One year.
Commencing on: December 19, 1984.
Risk Assessment: Based on analogy to structurally related substances, the Agency identified potential developmental toxicity and carcinogenicity concerns. However, under the conditions outlined above and the restrictions below, the estimated worker exposure to the test market substance will not be significant. Therefore, the test market substance will not pose an unreasonable risk to human health. Wastes resulting from manufacturing and processing will be incinerated or landfilled. Therefore, the test market substance will not pose an unreasonable environmental risk.
Additional Restrictions: The workers are required to wear impervious gloves and chemical safety goggles during operations that involve the manufacturing and processing of the substance.

The gloves must be determined by the applicant to be impervious to the TME substance under the conditions of exposure, including the duration of exposure. The applicant shall make this determination either by testing the gloves under the conditions of exposure or by evaluating the specifications provided by the manufacturer of the gloves. Testing or evaluation of specifications shall include consideration of permeability, penetration, and potential chemical and mechanical degradation of the gloves by the TME substance and associated chemical substances.

Wastes resulting from manufacturing and processing must be incinerated or landfilled in compliance with RCRA (Resource Conservation and Recovery Act) and State and Local Regulations.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: December 19, 1984.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 84-33749 Filed 12-27-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Advisory Committee for the 1985 ITU World Administrative Radio Conference on the Use of the Geostationary Satellite Orbit and the Planning of the Space Services Utilizing It (Space WARC Advisory Committee); Main Committee Meeting

December 20, 1984.

The next meeting of the Space WARC Advisory Committee is scheduled for Wednesday, January 16, 1985. The principle objective of the meeting will be to review and adopt the Second Report of the Committee. Details regarding the time, place and agenda of the meeting are provided below:

Chairman: S.E. Doyle (916) 355–6941
Vice Chairman: R.F. Stowe (703) 442–5022
Time: 9:30 A.M.–5:00 P.M.
Location: Federal Communications Commission, 1919 M Street, NW., Room 856, Washington, D.C. 20554

Agenda:

(1) Adoption of Agenda
(2) Review of Minutes
(3) Consideration and adoption of the Second Report of the Committee
(4) Other Business
(5) Adjournment

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84–33694 Filed 12–27–84; 8:45 am]

BILLING CODE 6712–01–M

[Docket No. 84–1258; File No. BPH–831027AJ]

Applications for Consolidated Hearing; Carolyn L. Bogue, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant and City/State	File No.	MM Docket No.
A. Carolyn L. Bogue, Cordell, OK.	BPH–831027AJ	84–1258
B. L. M. Jack Beasley *et al.*, d.b.a. Big Chief Broadcasting of New Cordell, Cordell, OK.	BPH–840105BB	84–1259

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1963. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, A
2. Comparative, A, B
3. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632–6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84–33692 Filed 12–27–84; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket No. 84–1184 et al., File No. BR–22 et al.; FCC 84–544]

RKO General, Inc. (KHJ) et al.; Memorandum Opinion and Order

In re applications of:

RKO General, Inc. (KHJ) Los Angeles, CA.	MM Docket No. 84–1184; File No. BR–22.
For Renewal of License	
Los Angeles Broadcasting Co., Los Angeles, CA.	MM Docket No. 84–1185; File No. BP–830512BJ.
Future Broadcasting, Inc., Los Angeles, CA.	MM Docket No. 84–1186; File No. BP–800924AC.
Valley Radio, Los Angeles, CA.	MM Docket No. 84–1187; File No. BP–830506AD.
South Jersey Radio, Inc., Hawthorne, CA.	MM Docket No. 84–1188; File No. BP–830511AE.
Douglas Reed Mathis, Los Angeles, CA.	MM Docket No. 84–1189; File No. BP–830511AC.
Cozzin Communications Corp., Beverly Hills, CA.	MM Docket No. 84–1190; File No. BP–830512AY.
First City Communications, Inc., Los Angeles, CA.	MM Docket No. 84–1191; File No. BP–830512BE.
Hobart Broadcasting, limited partnership, Los Angeles, CA.	MM Docket No. 84–1192; File No. BP–830512AS.
Stephen E. Powell, Los Angeles, CA.	MM Docket No. 84–1193; File No. BP–830512AW.
Yvonne B. Burke et al. d.b.a. Mandeville Communications Co., Los Angeles, CA.	MM Docket No. 84–1194; File No. BP–830512AV.
RKO General, Inc. (KRTH–FM) Los Angeles, CA.	MM Docket No. 84–1195; File No. BRH–25.
For Renewal of License	
Marisol Broadcasting, Ltd., a limited partnership, Los Angeles, CA.	MM Docket No. 84–1196; File No. BPH–830512CZ.
Los Angeles Broadcasting Co., Los Angeles, CA.	MM Docket No. 84–1197; File No. BPH–830512BD.
Radio Radio, Inc., Los Angeles, CA.	MM Docket No. 84–1198; File No. BPH–830512BE.
South Jersey Radio, Inc., Los Angeles, CA.	MM Docket No. 84–1199; File No. BPH–830512BZ.
Dick Clark Broadcasting, Inc., Los Angeles, CA.	MM Docket No. 84–1200; File No. BPH–830512CD.
Cozzin Communications Corp., Los Angeles, CA.	MM Docket No. 84–1201; File No. BPH–830512BC.
Stephen E. Powell, Los Angeles, CA.	MM Docket No. 84–1202; File No. BPH–830512BO.
Valley Radio, Los Angeles, CA.	MM Docket No. 84–1203; File No. BPH–830506AG.
Spanish Radio for Los Angeles, Inc., Los Angeles, CA.	MM Docket No. 84–1204; File No. BPH–830512AE.
First City Communications, Inc., Los Angeles, CA.	MM Docket No. 84–1205; File No. BPH–830512BI.
Belvedere Broadcasting, limited partnership, Los Angeles, CA.	MM Docket No. 84–1206; File No. BPH–830512BS.
Future Broadcasting, Inc., Los Angeles, CA.	MM Docket No. 84–1207; File No. BPH–800924AA.
Women in Broadcasting Corp., Los Angeles, CA.	MM Docket No. 84–1208; File No. BPH–830512BR.
Emma D. McFarlin and Gisele H. Sanchez d.b.a. Los Angeles Minority Women Broadcasting Co., Los Angeles, CA.	MM Docket No. 84–1209; File No. BPH–830512CX.
San S. Choi et al. d.b.a. Los Angeles Metro Broadcasters, Los Angeles, CA.	MM Docket No. 84–1210; File No. BPH–830512CG.
Yvonne B. Burke et al. d.b.a. Mandeville Communications Co., Los Angeles, CA.	MM Docket No. 84–1211; File No. BPH–830512CV.
For Construction Permit	

Adopted: November 8, 1984.
Released: December 20, 1984.

By the Commission.

1. The Commission has under consideration the license renewal application of RKO General, Inc. (RKO) for Stations KHJ and KRTH–FM, Los Angeles, California [1] and the above-

[1] We have designated the license renewal application of RKO's Station KHJ-TV, Los Angeles, California, as the forum for inquiring into the impact of RKO's disqualification as the licensee of WNAC-TV, Boston, Massachusetts on its overall basic and comparative qualifications to remain a licensee elsewhere. See our Memorandum Opinion and Order adopted this date, RKO General, Inc. (WHBO-TV), FCC 2d (1984), for a full discussion of this matter.

captioned mutually exclusive applications to operate on the same channel with identical facilities.[2] In addition, we have before us motions for leave to amend and accompanying amendments filed by RKO, Future Broadcasting, Inc. (Future), Mandeville Communications Company (Mandeville), Spanish Radio for Los Angeles, Inc. (Spanish) [3] and South Jersey Radio, Inc. (South Jersey),[4] petitions to dismiss directed against the Los Angeles Broadcasting Co. and Marisol Broadcasting, Ltd. applications and relating pleadings. In view of the matters already being considered in the KHJ-TV case, note 1 *supra*, and in view of the fact that those matters may have a bearing upon the ultimate resolution of this case, we believe that it would be premature to commence any consideration of either RKO's qualifications or the comparative elements of the applicants' proposals, pending the outcome of the KHJ-TV case. Accordingly, in the interest of managing and ordering our docket of adjudicatory proceedings so as to permit the most efficient and effective utilization of Commission resources, we direct the parties to deal first with any petitions to enlarge issues and/or basic qualifying issues that involve the mutually exclusive applicants (i.e., applicants other than RKO) who seek construction permits to operate on the channel(s) now held by RKO. Upon completion of all appropriate proceedings, including such evidentiary hearings as may be warranted, relating to these questions concerning the mutually exclusive applications for construction permits, the presiding Administrative Law Judge should so inform the Commission and await guidance from the Commission before setting the date for filing any proposed findings and conclusions or going forward with any further proceedings. In other cases involving multiple license owners, we have assigned all of the proceedings to a single Administrative Law Judge for the purpose of considering the impact of common qualifications questions on each of the owner's stations, *e.g., Intercontinental Radio, Inc.*, 88 FCC 2d 819 (1981). Here, we have already made provision for consideration of the questions concerning RKO's overall qualifications by a single ALJ in the Los Angeles, California, KHJ-TV proceeding. Thus, the procedures used in cases such as *Intercontinental, supra*, are unnecessary for the instant proceeding. Indeed, the *Intercontinental* approach, if applied here, involving substantial numbers of comparative hearings and competing applicants presided over a single Judge, will inevitably delay resolution of these matters. Instead, we believe that the interests of administrative efficiency will be better served by providing for assignment of a presiding Administrative Law Judge for this proceeding by the Chief Administrative Law Judge in accordance with his regular and ordinary rotational procedures.

2. *The Los Angeles Broadcasting Company (Broadcasting) applications.* In both its AM and FM applications, Broadcasting principals, Delores Gardner and Frances Murrietta, are listed as general manager of KJLH–FM, Compton, California, and account executive, KIIS–FM, Los Angeles, California, respectively. Both principals are also listed as proposed full-time employees of the station sought here. Given the conflicting nature of the two responsibilities, it seems logical to presume that they will resign from their former positions before assuming the latter. This presumption should be confirmed by appropriate amendments.[5]

3. In its FM application, Broadcasting, in response to question 3(a), section II, page 2 of FCC Form 301, indicates that it is in compliance with section 310 of the Communications Act of 1934, as amended, relating to interests of aliens and Foreign governments. Applicant's exhibit 1 indicates that one of its principals, Martha Lorena Alfaro, holds a 5% interest in the applicant and is a citizen of Nicaragua. In Table 1, section 2, page 3 of Item 301, applicant indicates that Martha Lorena Alfaro is both an officer (Secretary/Treasurer) and a member of the board of directors. Section 310 states, in pertinent part, that no broadcast radio station license will be issued to any corporation of which any officer or director is an alien. Martha Lorena Alfaro is both an officer and member of the board of directors which is in contravention of section 310(b)(3) of the Communications Act. Accordingly, Broadcasting shall submit an amendment to the presiding Administrative Law Judge indicating its compliance with section 310 of the Communications Act.

4. Broadcasting has not responded to questions 4(a) and 4(b), section II, page 2, FCC Form 301 (FM application) concerning civil, criminal or administrative proceedings. Applicant shall amend its application by filing its responses with the presiding Administrative Law Judge.

5. In section V–8, page 11, Form 301 (FM application), Broadcasting indicates that it will utilizing the facilities of KRTH(FM). A review of applicants engineering exhibit, however, indicates that the antenna site ground elevation above mean sea level (5683) is at variance with the ground elevation of the KRTH antenna site (5730 feet). Broadcasting shall correct this discrepancy by submitting the correct data to the presiding Administrative Law Judge.

6. *The Future application.* Future's principal, Denise Smith, is listed in both its AM and FM applications as director of promotion and public service for stations KGFS and KUTE, Los Angeles, California. Ms. Smith is also a proposed full-time employee of the station sought here. Given the conflicting nature of the two responsibilities, it seems logical to presume that Ms. Smith will resign from the former positions before assuming the latter. This presumption should be confirmed by appropriate amendment.[6]

7. In both its AM and FM applications, several of Future's principals have committed themselves to the divestiture of all ownership interests in other broadcast stations and media of mass communications should the instant application be granted. These commitments are reflected in the ordering clauses of this Memorandum Opinion and Order.

8. Section 73.1125 of the Commission's Rules requires that the main studio of an FM station be located within the city of

[2] Marisol Broadcasting, Ltd. and Radio Radio, Inc. propose to relocate the KRTH antenna to another site.

[3] Since the "B" cut-off date (March 29, 1984), RKO has filed several petitions for leave to amend and accompanying amendments to its application. Future, South Jersey, Mandeville and Spanish have filed petitions and amendments as well. The purpose of these amendments is to update information previously submitted to the Commission. We have reviewed the motions and amendments and find that in each case good cause exists for accepting the amendments for 1.65 purposes only.

[4] For the reason set forth in *RKO General, Inc. (WHBQ–TV), supra*, concerning a similar pleading filed by South Jersey, we will grant the motion and accept the amendment.

[5] In the event that Delores Gardner and Frances Murrietta intend to hold their respective positions in KJLH–FM and the station proposed here, that presiding Administrative Law Judge may wish to consider the validity of such an arrangement under our cross interest policy. It is noted that on March 29, 1984, RKO filed a petition to dismiss the Broadcasting FM application. The basis for the RKO petition was its allegation that Broadcasting's application was in violation of the Commission's cross-interest policy in view of the conflicting nature of the indicated responsibilities of Delores Gardner and Frances Murrietta. In light of the foregoing, the RKO petition is dismissed.

[6] In the event that Denise Smith intends to hold positions in both KGFS/KUTE and the station proposed here, the presiding Administrative Law Judge may wish to consider the validity of such an arrangement under our cross interest policy

license, but that on a showing of good cause may be located outside that community. Future in its AM and FM applications states that its main studios will be at a location to be determined, with no indication that the determination would be limited to sites within the city of license. Under these circumstances, the applicant will be required to file with the presiding Administrative Law Judge, within 20 days of the release of this Order, either an amended response to the above-referenced item and/or, if applicable, a showing of good cause should it propose to locate its main studio outside the city of license, or an appropriate issue will be specified by the Judge.

9. *The Valley Radio (Valley) application.* In its AM application, Manuel Cabranes, a principal of Valley, has committed himself to the divestiture of all ownership interest in AM station KWNK, Simi Valley, California should the instant application be granted. This commitment is reflected in the ordering clauses of this Memorandum Opinion and Order.

10. Valley, in its FM application, has committed itself to the divestiture of all ownership interest in a construction permit should the clauses of this Memorandum Opinion and Order.

11. *The South Jersey application.* The AM application of South Jersey proposes to serve the community of Hawthorne, California, with the facilities employed by RKO to serve Los Angeles. While the applicant has established compliance with all coverage requirements for its specified community, it has not proposed a main studio location consistent with the requirements of § 73.1125 of our Rules. An appropriate amendment is called for under these circumstances.

12. *The Douglas Reed Mathis (Mathis) application.* The Mathis application was submitted on our prior Form 301, with a certification of financial qualification substituted for the detailed showing required by the Form. This certification, however, does not conform precisely to the wording contained in our present Form 301. This difference in certifications must be corrected by appropriate amendment.

13. Applicants for new broadcast stations are required to give local notice of the filing of their applications in accordance with § 73.3580 of the Commission's Rules. They must then file proof of such notice or certify that they have or will comply with the public notice requirement. We have no evidence, however, that Mathis, has done either. If he has not already done so, the applicant will be required to give local public notice and to file a statement that he has complied with the local public notice.

14. *The COZZIN Communications Corporation (COZZIN) application.* Like South Jersey, COZZIN proposes to serve a community other than Los Angeles with RKO's AM facility. The applicant, however, has not established compliance with either our coverage [§§ 73.24(j) and 73.182(f)] or main studio location (§73.1125) requirements for its specified community of license. An appropriate amendment is necessary.

15. *The Stephen E. Powell (Powell) application.* The Powell AM application was not complete when filed in that Powell's applications for other facilities now operated by RKO were not listed. Given the public nature of this information, no motive to conceal or misrepresent is apparent. Hence, we will specify no issues in this regard. Powell should amend its application here to reflect all pending proposals, however.

16. *The Mandeville application.* In both its AM and FM applications, two of Mandeville's principals, Arlene Audrey Beasley and Donald J. Moore, have committed themselves to the divestiture of all connection with or ownership interest in other broadcast stations and media of mass communications should the instant application be granted. These commitments are reflected in the ordering clauses of this Memorandum Opinion and Order.

17. *The Marisol Broadcasting, Ltd. A Limited Partnership (Marisol) application.* Marisol will not be able to provide a 3.16 mV/m signal to the entire city of Los Angeles as required by § 73.315(a) of the Commission's Rules. 0.87% of the land area of Los Angeles is not covered by the Marisol 3.16mV/m contour, hence Marisol requests a waiver of § 73.315(a). In support of its waiver request, Marisol refers to the irregular boundaries of Los Angeles, and states that its proposed site is the only site that would provide a 3.16 mV/m signal over the entire city of Los Angeles and which is acceptable to the Federal Aviation Administration and local zoning authorities. Marisol also states that the shortfall in coverage is de minimus. Under these circumstances we have determined that Marisol has submitted facts and circumstances which persuade us that grant of a waiver of § 73.315(a) would be in the public interest.

18. Line 13, section V–B, page 2, FCC Form 301 requires that applicants submit map(s) [7.5 minute U.S. Geographic Survey topographic quadrangles, if available] of the proposed antenna location. Marisol has not submitted the required showing. Accordingly, Marisol shall amend its application by filing a map(s) with the presiding Administrative Law Judge.

19. Marisol fails to provide data relative to the area and population within its predicted 1mV/m contour as required by question 10(d) of section V–8 of FCC Form 301. To remedy this deficiency, Marisol will be required to provide the presiding Administrative Law Judge with the required information. Upon receipt of such data the Administrative Law Judge can determine whether it is necessary to consider any variations in coverage within the context of the comparative issue.

20. *The Marisol application and RKO petition to dismiss.* On March 29, 1984, RKO filed a petition to dismiss the Marisol application. The basis for the RKO petition is its contention that the Marisol application was not filed in accordance with § 73.3564(a) of the Commission's Rules which provides that an application must be complete, or substantially complete, before it will be accepted for filing. Specifically, RKO states that Marisol's applicaiton was signed and dated May 10, 1983, but that the engineering portion (sections V-B, V-G and engineering statement) was not signed and dated until May 11, 1983. Since the engineering portion on its face was not executed until May 11, 1983, it is RKO's contention that the certification by one of Marisol's principals on May 10, 1983 that the application (which encompasses the technical section) was true, complete and correct was not possible since the engineering portion was executed a day later. It is RKO's assertion that, as a consequence, the engineering portion never became part of the application. In its "Opposition to Petition to Dismiss and Petition for Leave to File Amendment Nunc Pro Tunc," filed April 10, 1984, Marisol requests that we accept *nunc pro tunc* its amendment of certification that the statements contained in its application, including its engineering statement, "were true, complete and correct to the best of my knowledge and belief, and were made in good faith, as of May 12, 1983 when the application was filed . . ." Formal FCC applications, in the present case, FCC Form 301, must be properly executed. Notwithstanding the above discrepancy in the dates of the application and the engineering portion thereof, the application filed by Marisol was "substantially complete" in accordance with § 73.3564. In the absence of the instant proferred amendment, in view of the fact that the discrepancy could have been corrected by a minor amendment, we would have required Marisol to

submit the properly dated certification within 30 days of the release of this Order. Accordingly, the RKO petition to dismiss is denied.

21. *The Dick Clark Broadcasting, Inc. (Clark) application.* In Section V-B, page 11, FCC Form 301, Clark indicates that it will be utilizing the facilities of KRTH(FM). A review of Clark's engineering exhibit, however, reveals that its specified antenna site ground elevation above mean sea level (5690 feet) is at variance with the ground level specification for the KRTH antenna site (5730 feet). Clark shall correct this discrepancy by submitting the correct data to the presiding Administrative Law Judge.

22. The guidelines to the Model EEO Program, paragraph IV, section VI, page 3, FCC Form 301, provide that applicant specify the recruitment sources that it proposes to use in recruiting minority and female applicants. Clark has not indicated specific recruitment sources in its EEO program relative to employment referral services and educational institutions. Applicant shall amend its application by submitting specific sources of recruitment to the presiding Administrative Law Judge.

23. *The Los Angeles Metro Broadcasters (Metro) application.* Applicant in response to question 3(a) section II page 2 of FCC Form 301, indicates that it complies with section 310 of the Communications Act of 1934, as amended, relating to interests of aliens and Foreign governments. Applicant's exhibit II–1 indicates that Ryeon Kwu Yoo, a general partner and holder of a 20 percent interest in applicant, is a citizen of the Republic of Korea. Section 310, in pertinent part, is interpreted as providing that no broadcast radio station license will be issued to any organizational entity in which an alien has an active part in the management thereof. In the instant case, Ryeon Kwu Yoo is a general partner and citizen of the Republic of Korea, which is in contravention of section 310(b)(3) of the Communications Act. Accordingly, Metro shall submit an amendment to the presiding Administrative Law Judge indicating compliance with section 310 of the Communications Act.

24. *The Spanish application.* Several Spanish principals have committed themselves to the divestiture of all ownership interests in other broadcast stations, exclusive of any interest which may be acquired through the various RKO proceedings, and media of mass communications should the instant application be granted. These commitments are reflected in the ordering clauses of this Memorandum Opinion and Order.

25. The Spanish application indicates that a principal, Herbert M. Levin, is a defendant in a pending antitrust action. As we lack at this time sufficient information to assess the impact of the litigation on the applicant's qualification to be a licensee, we will specify no issues or conditions. Spanish should keep the presiding Administrative Law Judge informed of any changes in the status of the suit and he in turn may take such action as he deems appropriate in light of this information.

26. The guidelines to the Model EEO Program, paragraph IV, section VI, page 3, FCC Form 301, provide that applicant specify the recruitment sources that it proposes to use in recruiting minority and female applicants. Neither Metro nor Spanish have indicated specific recruitment sources in its EEO program. Applicants shall amend their applications by submitting specific sources of recruitment to the presiding Administrative Law Judge.

27. Except as indicated by the issues specified below, all applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. Although some of the applications are for different communities, all would serve the same area. Therefore, in addition to determining pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient, and equitable distribution of radio service, a contingent comparative issue will be specified.

28. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a Consolidated Proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to the AM applicants: (a) The areas and populations which would receive primary aural service from the proposals and the availability of other primary service to such areas and populations, and (b) in light thereof and pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

2. To determine with respect to the AM applicants, in the event it is concluded that a choice among the applicants should not be based solely on considerations relating to section 307(b), which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine with respect to the FM applicants which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

29. It is further ordered, That the petitions for leave to amend filed by RKO, Future Broadcasting, Inc. Mandeville Communications Company and Spanish Radio for Los Angeles, Inc. are granted for the purposes of § 1.65 of the Commission's Rules.

30. It is further ordered, That the motion for leave to amend filed by South Jersey Radio Inc. is granted and the accompanying amendment is accepted *nunc pro tunc.*

31. It is further ordered, That Los Angeles Broadcasting Company shall clarify the proposed broadcast interests of its principals Delores Gardner and Frances Murrietta to the presiding Administrative Law Judge within 20 days after this Order is released.

32. It is further ordered, That Los Angeles Broadcasting Company shall submit an amendment to the presiding Administrative Law Judge indicating its compliance with section 310 of the Communications Act, as amended, within 20 days after this Order is released.

33. It is further ordered, That Los Angeles Broadcasting Company shall amend its application by submitting its responses concerning civil, criminal or Administrative proceedings to the presiding Administrative Law Judge within 20 days after this Order is released.

34. It is further ordered, That Los Angeles Broadcasting Company shall submit an amendment to the presiding Administrative Law Judge correcting the discrepancy in its antenna site ground elevation above mean sea level figures within 20 days after this Order is released.

35. It is further ordered, That Future Broadcasting, Inc. shall clarify the proposed broadcast interests of its principal Denise Smith to the presiding Administrative Law Judge within 20 days after this Order is released.

36. It is further ordered, That in the event of a grant of the Future Broadcasting, Inc. application, the construction permit shall be conditioned as follows:

Prior to the commencement of operation of the station authorized herein, permittee shall certify to the Commission that the following have divested all other interests in and connections with media of mass communications: Arnold Mills, Vickie Carr, N. Arthur Astor, Lawrence N. Daniels and Future Broadcasting, Inc.

37. It is further ordered, That Future Broadcasting, Inc., shall establish compliance with § 73.1125 of the Commission's Rules with the presiding Administrative Law Judge within 20 days after this Order is released.

38. It is further ordered, That in the event of a grant of the Valley Radio AM application, the construction permit shall be conditioned as follows:

Prior to the commencement of the operation of the station authorized herein, permittee shall certify to the Commission that the following has divested himself of, and severed all connections with, standard broadcast station KWNK, Simi Valley, California: Manuel Cabranes.

39. It is further ordered, That in the event of a grant of the Valley Radio FM application, the construction permit shall be conditioned as follows:

Prior to the commencement of the operation of the station authorized herein, permittee shall certify to the Commission that the following has divested itself of, and severed all connections with, standard broadcast station KWNK, Simi Valley, California: Valley Radio.

40. It is further ordered, That South Jersey Radio, Inc. shall establish compliance with § 73.1125 of the Commission's Rules with the presiding Administrative Law Judge within 20 days after this Order is released.

41. It is further ordered, That Douglas Reed Mathis shall submit a complete certification of financial qualification to the presiding Administrative Law Judge within 20 days after this Order is released.

42. It is further ordered, That Douglas Reed Mathis shall comply with the local notice provision of § 73.3580 of the Commission's Rules and shall advise the Administrative Law Judge within 20 days after this Order is released.

43. It is further ordered, That COZZIN Communications Corporation shall establish compliance with §§ 73.24(j), 73.182(f) and 73.1125 of the Commission's Rules within 20 days after this Order is released.

44. It is further ordered, That Stephen E. Powell shall file the amendment specified herein with the presiding Administrative Law Judge within 20 days after this Order is released.

45. It is further ordered, That in the event of a grant of the Mandeville Communications Company application, the construction permit shall be conditioned as follows:

Prior to the commencement of the operation of the station authorized herein, permittee shall certify to the Commission that the following have divested themselves of, and severed all connections with, standard broadcast station, KFI, Los Angeles, California and FM broadcast station KOST, Los Angeles, California: Arlene Audrey Beasley. Prior to the commencement of operation of the station authorized herein, permittee shall certify to the Commission that the following have divested all other interests in and connections with Coastal Communications Company, applicant for FM construction permit Newark, New Jersey: Donald J. Moore.

46. It is further ordered, That Marisol Broadcasting, Ltd. shall submit the maps required by Line 13, Section V–B, page 2, FCC Form 301 to the presiding Administrative Law Judge within 20 days after this Order is released.

47. It is further ordered, That Dick Clark Broadcasting, Inc. and Los Angeles Metro Broadcasters shall file the amendments specified herein with the presiding Administrative Law Judge within 20 days after this Order is released.

48. It is further ordered, That Spanish Radio For Los Angeles, Inc. shall file the amendment specified herein with the presiding Administrative Law Judge within 20 days after this Order is released.

49. It is further ordered, That in the event of a grant of the Spanish Radio for Los Angeles, Inc. FM application, the construction permit shall be conditioned as follows:

Prior to the commencement of operation of the station authorized herein, permittee shall certify to the Commision that the following have divested all other interests in and connections with media of mass communications, exclusive of any broadcast interest which may be acquired through the various RKO renewal proceedings: Julio Rumbaut, Norma Martinez de Arizala Levin, Jose B. Valdes, and Herbert M. Levin.

50. It is further ordered, That the RKO pertitions to dismiss ARE DENIED.

51. It is further ordered, That the Marisol Broadcasting, Ltd. request for waiver of § 73.315(a) of the Commission's Rules is granted.

52. It is further ordered, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, NW, Washington, D.C. 20554.

53. It is further ordered, That the Initial Decision in this proceeding shall consider the findings in Docket No. 16679 (KHJ–TV) as to RKO's basic or comparative qualifications.

54. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants shall, pursuant to § 1.221(c) of the Commision's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

55. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 74.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

56. Finally, copies of this Memorandum Opinion and Order shall be sent Certified Mail-Return Receipt to the parties to this proceeding by the Secretary of the Commission.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84–33693 Filed 12–27–84; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket No. 84–1148 et al.; File No. BR–1403 et al.; FCC 84–543]

RKO General, Inc., et al; Memorandum Opinion and Order

In re Applications of:

RKO General, Inc. (WGMS), Bethesda, MD.	MM Docket No. 84–1148; File No. BR–1403.
For Renewal of License	
Potomac Broadcasting Corp., Bethesda, MD.	MM Docket No. 84–1149; File No. BP–830510AK.
South Jersey Radio, Inc., Bethesda, MD.	MM Docket No. 84–1150; File No. BP–830511AD.
Cozzin Communication Corp., Chevy Chase, MD.	MM Docket No. 84–1151; File No. BP–830512AC.
Bethesda Broadcasting Corp., Bethesda, MD.	MM Docket No. 84–1152; File No. BP–830512AD

Great Music Stereo Broadcasters, Inc., Bethesda, MD.	MM Docket No. 84–1153; File No. BP–830512AE.
First City Communications Inc., Bethesda, MD.	MM Docket No. 84–1154; File No. BP–830512AF.
Kent B. Amos et al. d.b.a. Spring Communications, Bethesda, MD.	MM Docket No. 84–1155; File No. BP–830512BB.
Stephen E. Powell, Bethesda, MD.	MM Docket No. 84–1156; File No. BP–830512BD.
Washington Metropolitan Broadcasters, Inc., Bethesda, MD.	MM Docket No. 84–1157; File No. BP–830512BF.
Suburban Communications, Limited Partnership, Bethesda, MD.	MM Docket No. 84–1158; File No. BP–830512BH.
Washington's Good Music Station, Inc., Bethesda, MD.	MM Docket No. 84–1159; File No. BP–830512BU.
TNR Broadcasting Group, Bethesda, MD.	MM Docket No. 84–1160; File No. BP–830512BV.
Classical Arts Committee, Bethesda, MD.	MM Docket No. 84–1161; File No. BP–830512BW.
RKO General, Inc. (WGMS–FM), Washington, DC.	MM Docket No. 84–1162; File No. BPH–789.

For Renewal of license

Potomac Broadcasting Corp., Washington, DC.	MM Docket No. 84–1163; File No. BPH–830510AM.
W. Ronald Smith, Washington, DC.	MM Docket No. 84–1164; File No. BPH–830511AI.
Washington Metropolitan Broadcasters, Inc., Washington, DC.	MM Docket No. 84–1165; File No. BPH–830512AB.
South Jersey Radio, Inc., Washington, DC.	MM Docket No. 84–1166; File No. BPH–830512AI.
Washington's Good Music Station, Inc., Washington, DC.	MM Docket No. 84–1167;; File No. BPH–830512AK.
Classical Arts Committee, Washington, DC.	MM Docket No. 84–1168; File No. BPH–830512AL.
TRN Broadcasters Group, Washington, DC.	MM Docket No. 84–1169; File No. BPH–830512AM.
Quality Broadcasters of Washington, D.C., Inc., Washington, DC.	MM Docket No. 84–1170; File No. BPH–830512BJ.
National Capital Radio Corp., Washington DC.	MM Docket No. 84–1171; File No. BPH 830512BO.
Cozzin Communication Corp., Washington DC.	MM Docket No. 84–1172; File No. BPH 830512BT
Ming Broadcasting, Ltd., Washington DC.	MM Docket No. 84–1173; File No. BPH 830512BV.
First City Communications, Inc., Washington DC.	MM Docket No. 84–1174; File No. BPH 830512BW.
Donnie Simpson Enterprises, Inc., Washington DC.	MM Docket No. 84–1175; File No. BPH 830512CH.
United Minority Womens Communcations Co., Washington DC.	MM Docket No. 84–1176; File No. BPH 830512CJ.
Stephen E. Powell, Washington DC.	MM Docket No. 84–1177; File No. BPH 830512CK.
Riggs Radiocasters Ltd., a limited Partnership, Washington DC.	MM Docket No. 84–1178; File No. BPH 830512CL.
Great Music Stereo Broadcasters, Inc., Washington DC.	MM Docket No. 84–1179; File No. BPH 830512CM.
Classical Broadcasters, limited partnership, Washington DC.	MM Docket No. 84–1180; File No. BPH 830512CO.
Bethesda Broadcasting Corp., Washington DC.	MM Docket No. 84–1181; File No. BPH 830512CO.
Kent B. Amos et al d.b.a. Spring Communications, Washington DC.	MM Docket No. 84–1182; File No. BPH 830512CT.
Affirmative Broadcasting Co., Washington DC.	MM Docket No. 84–1183; File No. BPH 830512DI.

For Construction Permit

Adopted: November 8, 1984.
Released: December 17, 1984.

By the Commission.

1. The Commission has under consideration the license renewal applications of RKO General, Inc. (RKO), for stations WGMS(AM), Bethesda, Maryland and WGMS–FM, Washington, District of Columbia [1] and the above-captioned mutually exclusive applications to operate on the same channels. In addition, we have before us motions for leave to amend and accompanying amendments filed by RKO [2], South Jersey Radio, Inc. (South Jersey) [3], Bethesda Broadcasting Corporation (Bethesda), Great Music Stereo Broadcasters, Inc., Classical Arts Committee, Quality Broadcasters of Washington, D.C., Inc., (Quality) and Ming Broadcasting, Ltd. In view of the matters already being considered in the KHJ–TV case, note 1 *supra*, and in view of the fact that those matters may have a bearing upon the ultimate resolution of this case, we believe that it would be premature to commence any consideration of either RKO's qualifications or the comparative elements of the applicants' proposals, pending the outcome of the KHJ–TV case. Accordingly, in the interest of managing and ordering our docket of adjudicatory proceedings so as to permit the most efficient and effective utilization of Commission resources, we direct the parties to deal first with any petitions to enlarge issues and/or basic qualifying issues that involve the mutually exclusive applicants (i.e., applicants other than RKO) who seek construction permits to operate on the channel(s) now held by RKO. Upon completion of all appropriate proceedings, including such evidentiary hearings as may be warranted, relating to these questions concerning the mutually exclusive applications for construction permits, the presiding Administrative Law Judge should so inform the Commission and await guidance from the Commission before setting the date for filing any proposed findings and conclusions or going forward with any further proceedings. In other cases involving multiple license owners, we have assigned all of the proceedings to a single Administrative Law Judge for the purpose of considering the impact of common qualifications questions on each of the owner's stations, *e.g., Intercontinental Radio, Inc.*, 88 FCC 2d 819 (1981). Here, we have already made provision for consideration of the questions concerning RKO's overall qualifications by a single ALJ in the Los Angeles, California, KHJ–TV proceeding. Thus, the procedures used in cases such as *Intercontinental, supra*, are unnecessary for the instant proceeding. Indeed, the *Intercontinental* approach, if applied here, involving substantial numbers of comparative hearings and competing applicants presided over by a single Judge, will inevitably delay resolution of these matters. Instead, we believe that the interests of administrative efficiency will be better served by providing for assignment of a presiding Administrative Law Judge for this proceeding by the Chief Administrative Law Judge in accordance with his regular and ordinary rotational procedures.

2. *The COZZIN Communications Corporation (COZZIN) application.* COZZIN proposes to serve with its AM station the community of Chevy Chase, Maryland, using the Rockville, Maryland, facilities employed by RKO to serve Bethesda, Maryland. While the applicant has established compliance with all coverage requirements for its specified community, it has not proposed a main studio location consistent with the requirements of Section 73.1125 of our Rules. An appropriate amendment will be required.

[1] We have designated the license renewal application of RKO's Station KHJ–TV, Los Angeles, California, as the forum for inquiring into the impact of RKO's disqualification as the licensee of WNAC–TV, Boston, Massachusetts on its overall basic and comparative qualifications to remain a licensee elsewhere. See our Memorandum Opinion and Order adopted this date, RKO General, Inc. (WHBQ–TV), FCC 2d (1984), for a full discussion of this matter.

[2] Since the "B" cut-off date, RKO has filed several petitions for leave to amend and accompanying amendments to its renewal application. Other applicants filed similar petitions and amendments as well. The purpose of these amendments is to update information previously submitted to the Commission. We have reviewed the motions and amendments and find that in each case good cause exists for accepting the amendments for Section 1.65 purposes only.

[3] For the reasons set forth in *RKO General, Inc. (WHBQ–TV), supra*, concerning a similar pleading filed by South Jersey, we will grant the motion and accept the amendment.

3. *The Bethesda application.* Two applicants have petitioned the Commission to deny Bethesda's petition for leave to amend. The Comments on Petition for Leave to Amend filed by Potomac Broadcasting Corporation (PBC) and Objection to Petition for Leave to Amend filed by RKO are essentially petitions to specify issues. Since the Commission's *Report and Order in re Revised Amendment of Part I of the Commission's Rules,* 72 FCC 2d 202, 45 RR 2d 120 (1979), directed the deletion of all issue pleadings in pending cases, the matters sought to be raised in these pleadings have not been considered. Accordingly, an opportunity to raise allegations contained therein will be afforded the parties post-designation pursuant to § 1.229 of our Rules.

4. *The Spring Communications (Spring) application.* As originally filed, Spring's application indicated that in the event of a grant of either of its applications, Candace Shannon Lewis would resign from her position and terminate all connections with WKYS–FM, Washington, D.C. and that Donald J. Moore would divest all interest and connections with Coastal Communications Company. Spring further indicated that affidavits would follow by amendment. No affidavits have been received. However, since affidavits are not required, appropriate conditions will be specified.

5. *The Stephen E. Powell (Powell) and Donnie Simpson Enterprises, Inc. (Simpson) applications.* The Powell and Simpson applications were not complete when filed in that applications for other facilities now operated by RKO were not listed. Given the public nature of this information, no motive to conceal or misrepresent is apparent. Hence, we will specify no issues in this regard. Both should amend their applications here to reflect all pending proposals, however.

6. Donnie Simpson is a member of the Board of Directors of Simpson and husband of its 100% owner. He also is the program director and morning drive personality for WKYS–FM Washington. Therefore, an issue will be specified to determine whether these relationships conflict with the Commission's cross-interest policy.

7. *The Washington Metropolitan Broadcasters, Inc. (Metropolitan) application.* In the event of a grant here, the applicant's five principals have agreed to sever all employment connections with other broadcast outlets. Therefore, appropriate conditions will be specified.

8. *The Washington's Good Music Station (Good) application.* In the event of a grant to Good, Ellen S. Straus has promised to resign her position as an officer and director of both Straus Communications Inc. and Straus Communications of Virginia, Inc. and terminate any involvement in any broadcast entity in which her husband, R. Peter Straus, has or might have an interest. Moreover, her husband will not have any involvement in any broadcast entity in which she has an interest. Therefore, appropriate conditions will be specified.

9. *The TNR Broadcasting Group (TNR) application.* TNR indicates that it will employ five or more fulltime employees at both proposed AM and FM facilities. However, the applicant has failed to submit an EEO program for each application as required by § 73.2080 of the Commission's Rules and FCC Form 396A. Therefore, TNR will be required to submit its proposed EEO program to the presiding Administrative Law Judge.

10. *The Quality application.* In the event of a grant of this application, the applicant has indicated that Janet Dewart will divest herself of all interest and connections with District Cablevision, Inc. Therefore, an appropriate condition will be specified.

11. *The National Capital Radio (National) application.* In the event of a grant to National, T. Conrad Monts has indicated that he will divest himself of all interest and connection with San Diego Television Corporation. Charles L. Sanders has indicated that he will sever all connections with WYCB(AM), Washington, D.C. Therefore, appropriate conditions will be specified.

12. *The Classical Arts Committee (Classical Arts) application.* This applicant has not established its financial qualifications in that only one of the two necessary certifications has been made. An appropriate issue will therefore be specified.[4]

13. Anthony W. Rose, Jr. owns 45% of Classical Arts. He is also a sales executive at WKYS-FM, Washington, D.C. Therefore, an issue will be specified to determine whether the applicant would be in conflict with the Commission's cross-interest policy.

14. Several pleadings were filed against Classical Arts' applications and amendments. Quality filed an Opposition to Petition for Leave to Amend. Potomac filed Comments on Petition for Leave to Amend. RKO filed a Petition to Dismiss and an Objection to Petition for Leave to Amend. These pleadings are essentially petitions to specify issues. Since the Commission's *Report and Order in re Revised Amendment of Part I of the Commission's Rules,* 72 FCC 2d 202, 45 RR 2d 1220 (1979), directed the deletion of all issues pleadings in pending cases, the matters sought to be raised in these pleadings have not been considered. Accordingly, an opportunity to raise any allegations contained therein will be afforded the parties post-designation pursuant to § 1.229 of our Rules.

15. RKO also filed a Motion To Strike Unauthorized Pleading against Classical Arts. RKO claims that Classical Arts' "Clarification of Application" filed on June 7, 1984 was not authorized by the Commission. RKO is incorrect since the clarification was filed by Classical Arts and by several other applicants in response to a request from the Commission staff. The motion will be denied.

16. *The W. Ronald Smith (Smith) application.* Smith has submitted an application which is not acceptable. WGMS-FM is a "grandfathered" station with respect to its facilities, and is subject to the requirements of § 73.213 of the Commission's Rules. Smith has applied for the same transmitter site for which WGMS-FM was granted a modified construction permit on September 19, 1973. However, Smith has proposed greater ERP and HAAT than were approved for WGMS–FM. The applicant is short-spaced to station WHDG in Havre de Grace, Maryland. He is proposing a move from the present site of WGMS's "grandfathered" facilities to a location two miles away. Under § 73.213, paragraph (f)(2)(ii), the applicant may apply for facilities up to the maximum for the mileage bracket into which he would fall after the move of the transmitter site, as specified in § 73.213(a). The maximum facilities authorized for Class B to B, first adjacent, 65 to 79 miles, are 20 kW at 500 ft., and the applicant requests 22.5 kW at 701 ft. WGMS presently has facilities of approximately 13 kW at 480 ft. in the direction toward WHDG, while the applicant proposes 22.5 kW at 653 ft. in the direction of WHDG. Since Smith's application exceeds Commission requirements, it would under the usual circumstance be returned. However, due to the unique circumstances of this proceeding and to avoid further delay to all parties, Smith will be required to submit a corrective amendment to the presiding Administrative Law Judge within 20 days of the release of this Order. No comparative advantage will be allowed. However, if this amendment

[4] In the event that the applicant has misunderstood Section II of the application form to provide alternative rather than complimentary certifications, it may properly resolve the issue by submitting an amended Section III with both certifications marked "yes".

constitutes a major change amendment, the application will be dismissed by the presiding Administrative Law Judge.

17. *The Ming Broadcasting, Ltd. (Ming) application.* In the event of a grant to Ming, the applicant has indicated that that James A. Gammon and his wife Joanne Gammon will divest themselves of all interests in and connection with WRCI-FM, Midland, Michigan. A condition will be specified.

18. *The Affirmative Broadcasting Company (Affirmative) application.* Affirmatie filed its model EEO program as required by Section 73.2080 of the Commission's Rules. However, the applicant failed to complete Section III, Policy Dissemination. Therefore, Affirmative will be required to file that section with the presiding Administrative Law Judge.

19. Except as indicated by the issues specified below, all applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. Although some of the applications are for different communities, all would serve the same area. Therefore, in addition to determining pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient, and equitable distribution of radio service, a contingent comparative issue will be specified.

20. Accordingly, IT IS ORDERED, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether Classical Arts Committee is financially qualified to construct and operate as proposed.

2. To determine whether, in light of the evidence adduced concerning the matters set forth above in paragraph 13, a grant of Classical Arts Committee's application would conflict with the Commission's cross-interest policy.

3. To determine whether, in light of the evidence adduced concerning the matters set forth above in paragraph 6, a grant to Donnie Simpson Enterprise, Inc.'s application would conflict with the Commission's cross-interest policy.

4. To determine with respect to the AM applicants:

(a) The areas and populations that would receive primary service from each proposal and the availability of other primary aural services to such areas and population; and

(b) In light thereof and pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient, and equitable distribution of radio service.

5. To determine with respect to the AM applicants, in the event it is concluded that a choice among the applicants should not be based solely on considerations relating to section 307(b), which of the proposals would, on a comparative basis, best serve the public interest.

6. To determine with respect to the FM applicants which of the proposals would, on a comparative basis, best serve the public interest.

7. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

21. It is further ordered, That the motions for leave to amend and the amendments filed by RKO General, Inc.; Bethesda Broadcasting Corporation; Great Music Stereo Broadcasters, Inc.; Classical Arts Committee; Quality Broadcasters of Washington, D.C., Inc.; and Ming Broadcasting Ltd. ARE ACCEPTED for the purposes of Section 1.65 of the Commission's Rules only.

22. It is further ordered, that the motion for leave to amend filed by South Jersey Radio, Inc. IS GRANTED and the accompanying amendment IS ACCEPTED *nunc pro tunc.*

23. It is further ordered, That COZZIN Communications Corporation shall demonstrate compliance with § 73.1125 of the Commission's Rules with the presiding Administrative Law Judge within 20 days after this order is released.

24. It is further ordered, That the Motion to Strike Unauthorized Pleading filed by RKO General, Inc. (See paragraph 15 above.) is hereby denied, and the following petitions are hereby dismissed:

a. Comments on Petition for Leave to Amend filed by Potomac Broadcasting Corporation (See paragraph 3 above.);

b. Objection to Petition for Leave to Amend filed by RKO General, Inc. (See paragraph 3 above.);

c. Opposition to Petition for Leave to Amend filed by Quality Broadcasters of Washington, D.C., Inc. (See paragraph 14 above.);

d. Comments on Petition for Leave to Amend filed by Potomac Broadcasting Corporation (See paragraph 14 above.);

e. Petition to Dismiss and Objection of Petition for Leave to Amend filed by RKO General, Inc. (See paragraph 14 above.); and

25. It is further ordered, That in the event of a grant of the application of Spring Communications, the construction permit shall be conditioned as follows:

Prior to the commencement of operation of the station authorized herein, permittee shall certify to the Commission that Candace Shannon Lewis has terminated employment and severed all connections with WKYS-FM Washington, D.C. and that Donald J. Moore has divested all interests and connections with Coastal Communications Company.

26. It is further ordered, That Stephan E. Powell and Donnie Simpson Enterprises, Inc. shall file the amendments specified in paragraph 5 above with the presiding Administrative Law Judge within 20 days after this Order is released.

27. It is further ordered, That in the event of a grant of the application of Washington Metropolitan Broadcasters, Inc., the construction permit shall be conditioned as follows:

Prior to commencement of operation of the station authorized herein, permittee shall certify to the Commission that all principals of the permittee have severed all employment and any other interests and connections with any other broadcast station in Washington, D.C.

28. It is further ordered, That in the event of a grant to Washington's Good Music Station, the construction permit shall be conditioned as follows:

Prior to commencement of operation of the station authorized herein, permittee shall certify to the Commission that Ellen S. Straus has resigned her positions as an officer and director of both Straus Communications, Inc. and of Straus Communications of Virginia, Inc. and does not have any involvement in any broadcast entity in which her husband R. Peter Straus has or might have an interest and her husband does not have any involvement in any broadcast entity in which she has an interest.

29. It is further ordered, That TNR Broadcasting Group shall submit Section VI information for both its applications in accordance with the requirement of § 73.2080(c) of the Commission's Rules to the presiding Administrative Law Judge within 20 days of the release of this Order.

30. It is further ordered, That W. Ronald Smith shall file the amendment specified in paragraph 16 with the presiding Administrative Law Judge

within 20 days of the release of this Order.

31. It is further ordered, That in the event of a grant of the application of Quality Broadcasters of Washington, D.C., Inc., the construction permit shall be conditioned as follows:

Prior to commencement of operation of the station authorized herein, permittee shall certify to the Commission that Janet Dewart has divested herself of all interest and connections with District Cablevision, Inc.

32. It is further ordered, That in the event of a grant of the application of National Capital Radio Corporation, the construction permit shall be conditioned as follows:

Prior to commencement of operation of the station authorized herein, permittee shall certify to the Commission that T. Conrad Monts has divested himself of all interest and connection with San Diego Television Corporation and Charles L. Sanders has severed all connections with WYCB(AM), Washington, D.C.

33. It is further ordered, That in the event of a grant of the application of Ming Broadcasting, Ltd., the construction permit shall be conditioned as follows:

Prior to commencement of operation of the station authorized herein, permittee shall certify to the Commission that James A. Gammon and his wife Joanne Gammon have divested themselves of all interests in and connection with WRCI-FM, Midland, Michigan.

34. It is further ordered, That Affirmative Broadcasting Company shall submit a completed Section III, Policy Dissemination, of the Model EEO Program in accordance with § 73.2080 of the Commission's Rules within 20 days of the release of this Order.

35. It is further ordered, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., NW., Washington, D.C. 20554.

36. It is further ordered, That the Initial Decision in this proceeding shall consider the findings in Docket No. 16679 (KHJ-TV) as to RKO's basic or comparative qualifications.

37. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

38. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 74.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

39. Finally, copies of this Memorandum Opinion and Order shall be sent Certified Mail-Return Receipt Requested to the parties to this proceeding by the Secretary of the Commission.

Federal Communications Commission.

William J. Tricarico,

Secretary.

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[CC Docket No. 83-1145, Phase I and Phase II, Part I; FCC 84-524]

Investigation of Access and Divestiture Related Tariffs; Memorandum Opinion and Order

Adopted: November 8, 1984.

Released: November 9, 1984.

By the Commission.

1. In this order we find the Special Access tariff provisions pending before the Commission are unlawful because the rate structures and/or the rates are unreasonable and unsupported.[1] Most of the Speical Access tariffs now before the Commission were filed March 15 and 19, 1984, in response to the Commission's *ECA Tariff Order* [2] and the Common Carrier Bureau's *Non-ECA Tariff Order.*[3] Pursuant to the Bureau's Waiver Order in this proceeding, six exchange carriers filed their Special Access tariff provisions after March 19, 1984.[4] This order also resolves a number of other matters relevant to Speical Access, including the "copycat private line tariffs filed by the BOCs, the General Telephone System Companies (GTE), and United Intermountain Telephone Company (United) in October 1983;[5] the June 26, 1984 application for review of the Bureau's *Interim Special Access Prescription Order* filed by AT&T;[6] and the August 9, 1984 proposal of the Ameritech Operating Companies to phase-in Special Access rates.

I. Background and Procedural History

2. Special Access is a variety of services and facilities included in the Commission's Access Charge Plan so that the divested BOCs may offer them under access tariffs, as mandated by the Modification of Final Judgment (MFJ).[7] Special Access services include segments of interstate or international private lines, ranging from telegraph grade and voice grade to high capacity analog and digital channels.

3. With limited exceptions, neither the Access Charge Plan nor the MFJ require changes in the rates, rate structure or provisions currently applied to Special Access services. The BOC tariffs must, however, implement the MFJ with respect to LATA boundaries. The BOC tariffs must also implement the MFJ by offering services to AT&T on the same terms as other interexchange carriers. Further, the local exchange carrier tariffs must apply the Special Access Surcharge developed by the Commission to recover a reasonable contribution to the interstate revenue requirement for unmeasured access service traffic which "leaks" into the local exchange by means of PBXs or other switching devices.

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[1] A list of the seventy-five filing carriers and the corresponding transmittal and tariff numbers appears in Appendix A.

[2] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, FCC 84-51, released February 17, 1984 (*ECA Tariff Order*). Pursuant to that order the Commission directed the National Exchange Carrier (NECA) to file a revised access tariff by March 15, 1984.

[3] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, Mimeo No. 2802, released March 7, 1984. In that order the Bureau directed the seventy-four "non-NECA" local carriers, (Bell Operating Companies (BOCs) and independent telephone companies which are not participating in all NECA "pools"), to file revised access tariffs no later than March 19, 1984.

[4] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, Mimeo No. 2964, released March 16, 1984; Matanuska, Orchard Farm, Walnut Hill, Citizens, Fidelity and Bourbeuse Telephone Companies and Anchorage Telephone Utility filed access tariffs after the March 19 deadline. *See* appendix A.

[5] A list of the copycat tariffs and corresponding transmittal numbers appears in Appendix E. The proposed copycat private line tariffs set forth rates and terms under which jurisdictionally-interstate private line services would be provided. The BOC's copycat tariffs would apply only to service reordered within one of the local access and transport areas (LATAs) that were delineated in the American Telephone and Telegraph Company (AT&T) divestiture proceeding.

[6] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, Mimeo No. 4453, released May 25, 1984.

[7] *United States* v. *AT&T*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983).

4. In September and October 1983, the exchange carriers filed Special Access tariff provisions to become effective January 1, 1984. After an initial review of the access and divestiture-related tariffs revealed signficant issues of lawfulness, the Commission suspended the tariffs until April 3, 1984, and initiated an investigation.[8] In its lengthy February 17 and March 7, 1984 *ECA and Non-ECA Tariff Orders*, the Commission identified Special Access as an area of primary concern. The Commission found that: (1) the proposed Special Access rate structure was unreasonable, discriminatory, and violative of Commission decisions and policies; (2) the proposed Special Access nonrecurring charges were unlawful; (3) the Commission had inadequate information upon which to judge the overall allocation of costs to Special Access; and (4) additional information was necessary to understand the bases and justification for the proposed rate changes. By letter dated February 24, 1984, the exchange carriers were asked to provide information and justification regarding the development of Special Access rates.

5. In March 1984, NECA and most of the exchange carriers filed revised access tariffs which were scheduled to become effective April 3, 1984. We stated that we would carefully review the proposed filings within the notice period to determine if they might be permitted to become effective without further delay.[9] Two dozen parties petitioned the Commission for reconsideration and/or stay of the proposed expedited schedule for filing and review of the revised Special Access tariffs.

6. In its March 27 *Access Tariff Order*,[10] the Commission deferred the revised access tariffs until June 13, 1984 and established a bifurcated pleading cycle for Special and Switched Access. The Commission requested interested parties to file comments on the Special Access tariff provisions by April 16, 1984 and required replies by April 30, 1984. The same pleading cycle was established by the Commission in its March 28 *Access Tariff Order* [11] for comments on whether the Docket No. 20099 Settlement Agreement continues to be in the public interest.

7. In its May 15, 1984 *Access Tariff Order*,[12] the Commission allowed the Switched Access tariffs to become effective on May 25, but noted that it was continuing its review of the Special Access tariff provisions. The Commission concluded in the May 15 order that it would prescribe interim Special Access arrangements only if the carriers could not work out such arrangements themselves. On May 23, AT&T petitioned the Commission to establish interim Special Access tariffs to replace the existing interim arrangements which were due to expire May 25, 1984. Despite finding serious shortcomings in AT&T's petition and its proposals, on May 25 the Common Carrier Bureau prescribed adjustments to the existing interim contractual arrangements between AT&T and the exchange carriers to avoid any possibility that service could lapse because of disagreement as to the rates to be charged. The May 25 *Interim Special Access Prescription Order* also clarified that the application of the Special Access Surcharge would be deferred temporarily. On June 26, 1984, AT&T filed an application for review of the May 25 order arguing that it is unjustly discriminatory to require AT&T to pay more for Special Access facilities than the OCCs pay. On October 19, 1984, Pacific Bell and Nevada Bell petitioned the Commission to maintain the interim Special Access arrangements until Special Access tariffs become effective.

8. Continued scrutiny of the Special Access filings and comments disclosed that although the tariffs had been greatly revised, significant questions of lawfulness remained: the proposed rate structures are complex and not clearly set forth; the rate development appears to have gaps and relies on the same cost data and projections found deficient in earlier orders; and many commenters assert that the revised tariffs would impose even greater rate increases than the earlier, unlawful provisions. Accordingly, on June 8, 1984, the Common Carrier Bureau suspended the effective date of the Special Access tariff provisions for five months until November 13, 1984, "to consider in a consolidated fashion the industry-wide effects of the various rate structures proposed." [13] The Bureau concluded that suspension was necessary to enable it to address the significant questions of lawfulness raised by the commenters and its own review. NECA was also requested to submit a proposal to the Commission to implement the Special Access Surcharge independently of other Special Access tariff provisions.

9. NECA filed proposed Special Access Surcharge tariff provisions on June 26, to become effective August 10, 1984. The Common Carrier Bureau identified a number of deficiencies with the proposed implementation of the surcharge and in an August 10 order deferred the effective date until August 25 and required specific amendments to the tariff provisions.[14] On August 17, NECA filed revised Special Access Surcharge provisions which became effective August 25. In order adopted August 24 and released September 5, the Bureau denied a petition for reconsideration of its August 10 Special Access Surcharge order and denied petitions to reject or suspend NECA's August 17 surcharge proposal.[15] The NECA Special Access Surcharge provisions, which are in Section 3 of ECA Tariff FCC No. 1, apply to all exchange carriers because all exchange carriers concur in that section of NECA's tariff.

10. On August 9, 1984, the Ameritech Operating Companies filed a petition with the Commission which proposed a phase-in of Special Access rates. Comments on Ameritech's proposal were filed September 5 and replies were filed September 12. Both the notion of a phase-in of Special Access tariff rates generally, and Ameritech's proposal in particular, are discussed below.

11. In a letter dated September 12, 1984, from the Chief of the Common Carrier Bureau, NECA was asked to provide further information regarding its proposed Special Access rates and rate structure. NECA's reply to the Bureau letter was filed October 10, 1984. NECA's response and the accompanying illustrative tariff pages propose a new Special Access rate structure and new rate levels.

II. The Pending Special Access Tariffs

12. In reviewing the pending Special Access tariff provisions, we seek to

[8] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, FCC 83-470, released October 19, 1983, *recon. denied*, FCC 83-568, released December 29, 1983.

[9] *ECA Tariff Order* at 23.

[10] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, FCC 84-104, released March 27, 1984.

[11] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, and MTS and WATS Market Structure, CC Docket No. 78-72, Phase I, FCC 84-106, released March 28, 1984 at n. 8.

[12] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, and MTS and WATS Market Structure, CC Docket No. 78-72, Phase I, FCC 84-201, released May 15, 1984.

[13] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, Mimeo No. 4741, released June 8, 1984.

[14] National Exchange Carrier Association (Transmittal No. 11), Mimeo No. 5955, released August 10, 1984.

[15] National Exchange Carrier Association (Transmittal No. 15), Mimeo No. 6379, released September 5, 1984.

ensure that the exchange carriers impose only reasonable, cost-supported rates. We wish to eliminate any rate structure characteristics which would allow the exchange carriers to charge different rates for the same service. In the absence of justification for departure from them, and a showing that the tariff is just, reasonable, and nondiscriminatory, we also seek to ensure compliance with the Private Line Guidelines enunicated by the Commission in CC Docket No. 79-246.[16] Those rate structure guidelines, which require a consistent, building block tariff, should greatly reduce the burdens of regulatory review because they shift to customers and the marketplace much of the discretion to assemble services.

13. With these policy goals in mind, we have identified a number of serious problems with the Special Access provisions now before us. Our own review as well as the comments filed concerning the Special Access tariffs have identified the following major problem areas: the proposed rate structures, the proposed rate levels, the variation in the rates proposed by different exchange carriers, and deficiencies in the cost support and demand data provided. Each of these major issues are addressed in the sections of this order which follow. In Appendix B of this order we discuss miscellaneous other issues presented by the tariffs. The carriers have the burden of proof in this investigation, pursuant to section 204(a) of the Communications Act,[17] and we have determined that they have not met that burden. The exchange carriers have failed to establish that their proposed tariffs are just and reasonable and we therefore find the proposed Special Access tariffs unlawful.

A. Rate Structure Issues

1. The NECA Rate Structure

14. The rate levels and the rate structure proposed were the most controversial aspects of the March-filed Special Access provisions. Although NECA's March filing resolves many of the structural problems we discussed in the February 17, 1984 *ECA Tariff Order*, several important problems remain. Western Union Telegraph Company (Western Union) asserts that the $69 million increase in its access costs over the first access tariff filing appears to be primarily attributable to structural changes proposed in the March filing.[18] The rate structure proposed by NECA (and by most of the exchange carriers) is challenged as unjustified, unreasonably discriminatory and unlawful.[19] Many commenters contend that the revised rate structure has flaws at least as serious as those which plagued the previous filing. The new structure, several commenters argue, does not answer the concerns expressed by the Commission in the *ECA and Non-ECA Tariff Orders* and is simply a reshuffling of the previous rate elements. The rate structure is also challenged as unclear and violative of the Commission's Private Line Guidelines. As discussed below, however, the structure proposed by NECA in its October 10, 1984 illustrative tariff pages appears to rectify the major problems of the currently pending tariff provisions. As Western Union stated in a letter to the Commission dated October 25, 1984:

> [T]he structural changes reflected in the October 10 submission represent significant improvements over the March 15, 1984 rate structure. These revisions foster the goal of a more cost-oriented rate structure by disaggregating two- and four-wire channels and metallic, telegraph-grade and voice-grade channels, and relating interoffice channel charges more directly to distance and related cost factors.[20]

15. The Special Access rate structure proposed by NECA in September 1983 had four rate elements: (1) access connection, (2) special transport, (3) features and functions, and (4) special access line. After the Commission found in the *ECA Tariff Order* that the September structure was "unreasonable, discriminatory, and violative of Commission decisions and policies," NECA proposed a revised rate structure. Five Special Access rate elements are proposed by NECA in its March filing: (1) local channel; (2) connecting channel; (3) channel mileage; (4) channel interface; and (5) optional features and functions. In addition to the five rate elements proposed, NECA's March-filed Special Access tariff also provides for eight channel types: (1) narrowband, (2) voice grade, (3) program audio, (4) video, (5) wideband analog, (6) wideband digital, (7) digital data, and (8) high capacity. The tariff states that the eight channel types are differentiated by transmission specifications, bandwidth, speed (*i.e.* bit rate), and spectrum. (ECA Tariff FCC No. 1, Section 7.1.1.)

16. The proposed NECA tariff defines the first rate element of the March structure, the local channel, as a channel between two customer premises or between a customer premises and a telephone company hub where multiplexing is performed. One local channel charge applies per two-point service and per customer premises connected to a hub. (ECA Tariff FCC No. 1, Section 7.1.2(a).)

17. The proposed connecting channel element is described in NECA's tariff as a channel between a customer premises and a telephone company hub where bridging is performed. The bridging performed may be a bridging of three or more customer premises in a multipoint arrangement or a bridging of two program audio or video service connecting channels, one of which is provided on a full-time basis and the other on a part-time or occasional basis, as requested by the customer. One connecting channel charge applies per customer premises connected to a bridging hub. (ECA Tariff FCC No. 1, Section 7.1.2(b).)

18. The third rate element, channel mileage, is stated to provide for the actual physical transmission facilities between (1) two customer premises, (2) a customer premises and a telephone company hub, or (3) two telephone company hubs. Channel mileage charges are applied as a flat rate per mileage band. (ECA Tariff FCC No. 1, Section 7.1.2(c).) Mileage is measured between serving wire centers, using the vertical and horizontal (V & H) coordinate method. No channel mileage charge is applied if the distance between serving wire centers is eight or fewer miles. For example, if the serving wire center for a customer premises and the serving wire center for a telephone company hub were nine miles apart, local or connecting channel charges (depending on whether the hub performed multiplexing or bridging), plus channel mileage charges would apply. In contrast, if the serving wire centers were seven miles apart, no channel mileage charge would be applicable.

19. The fourth NECA rate element, channel interface, defines the technical characteristics associated with the type

[16] Private Line Rate Structure and Volume Discount Practices, CC Docket No. 79-246, FCC 84-147, released April 24, 1984. The guidelines, as codified in Section 61.40 of the Commission's Rules, 47 CFR 61.40, set forth five general standards for private line tariffs. The guidelines are intended to simplify the tariff review process and allow a maximum of competition and arbitrage with minimal barriers to market entry.

[17] 47 U.S.C. 204(a).

[18] Western Union comments at 46.

[19] Most of the Special Access tariffs pending before the Commission have the same rate structure and rate elements as NECA, or are very similar to NECA's. Although the discussion in this section of the order refers to the "NECA structure," we wish to make it clear that our findings also apply to those tariffs which have a structure like NECA's.

[20] Western Union October 25, 1984 letter at 1 (footnote omitted). Western Union did, however, also raise objections to the October 10 submission. Western Union argues that: (1) the rates for features and functions should be further disaggregated; (2) the rate relationship for two- and four-wire facilities is not justified; and (3) there are questions remaining about the revenue requirement and rate development calculations.

of signaling and type of facilities presented for connection to the access service at each point of termination. One channel interface charge applies per local channel or connecting channel. (ECA Tariff FCC No. 1, Section 7.1.2(d).)

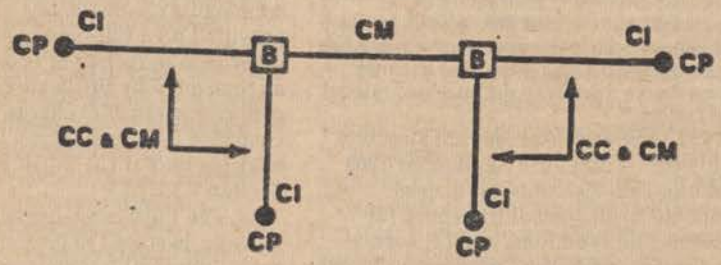
20. Optional features and functions, the fifth element of the March structure, may be added to a Special Access service to improve its quality or utility to meet specific communications requirements. Examples of optional features and functions set forth in NECA's tariff are multiplexing, bridging and conditioning. (ECA Tariff FCC No. 1, Section 7.1.3(e).) Pricing diagrams for a two-point and a multipoint circuit appear below:

Two-Point Service

Example: Two-point service connecting 2 customer premises which are 15 miles apart. No optional features and functions ordered.

Multipoint Service

Example: Multipoint service connecting 4 customer premises via 2 customer specified bridging hubs.



LC - Local Channel
CP - Customer Premises
CC - Connecting Channel
CM - Channel Mileage
B - Bridging
CI - Channel Interface

21. In contrast to the March NECA structure, NECA's October 10 illustrative rate structure appears to comply with the Commission's private line rate structure guidelines and would not have overlapping and differently priced rate elements. The October 10 structure would also unbundle transport more than the pending filing. Two basic rate elements and a third optional category are proposed in NECA's October 10, 1984 illustrative tariff: (1) channel termination, (2) channel mileage, and (3) optional features and functions. The first element, channel termination, provides for the communications path between a customer's designated premises and the serving wire center for that premises. One channel termination charge would apply per customer designated premises and no interoffice channel mileage is bundled into the rate. The second element, channel mileage, provides for the transmission facilities between the serving wire centers associated with two customer designated premises, between a serving wire center associated with a customer designated premises and a telephone company hub or between telephone company hubs. The third rate element category proposed is the optional features and functions element, which includes capabilities such as bridging, optional signaling, conditioning, transfer arrangements, and multiplexing.

22. One serious flaw in NECA's March structure is the existence of two differently priced rate elements for a basic channel. As noted above, NECA's tariff provides for a local channel between two customer premises or between a customer premises and a hub where multiplexing is performed. The tariff, however, also provides for a connecting channel between a customer premises and a hub where bridging is performed. Although the two channels appear to have similar functional and physical characteristics and differ only as to their use, the connecting channel for narrowband services is priced at $50.89 and the local channel is priced at $82.99 (NECA Tariff FCC No. 1 Sections 7.5.1 (A), (B) and 7.5.2 (A), (B)). This multiplicity of prices for comparable services is unreasonable and violates the Commission's Private Line Guidelines which state that a carrier should use a single, integrated rate structure for the same or comparable services.[21] The tariff also fails to state clearly what a "hub" is or when a connecting channel rather than a local channel applies and thus violates the guideline which requires that all rate elements involving the same service functions carry the same name and definition.[22] Further, the tariff fails to meet the guideline that requires simple and easy to understand rate structures and associated terms and conditions.[23]

23. The existence of two elements for a similar function and the lack of clarity of the March NECA tariff structure also violate the Commission's Rules. Section 61.55(f) of those Rules, 47 CFR 61.55(f), requires that all tariffs contain clear and explicit terms regarding rates and regulations * * * so as to remove all doubt as to their proper application." Section 61.55(g) of the Commission's Rules, 47 CFR 61.55(g), also requires that "all rules, regulations, exceptions and conditions are to be clearly stated."

[21] Guideline Number 1, FCC 84-147 at 4.
[22] Guideline Number 4, FCC 84-147 at 19.
[23] Guideline Number 5, FCC 84-147 at 21.

Further, Section 61.55(h) of the Commission's Rules, 47 CFR 61.55(h), requires that all charges be stated in a simple or systematic manner. NECA's March tariff structure is so complex and stated so unclearly that several sophisticated telecommunications customers reported they would have difficulty determining what rates and rate elements applied to them, or in making basic network planning decisions.[24]

24. Several multipoint users contend that the March tariff's local channel/connecting channel structure is unreasonably discriminatory. The tariff requires that users of a two-point circuit use one local channel (and, if needed, channel mileage). In contrast, multipoint users must procure at least three connecting channels (and, if needed, channel mileage). The rates for both the local channel and connecting channel elements. However, include the revenue requirement associated with the first eight miles of transport. Thus, bundled in each of the three or more connecting channels that a multipoint user obtains is the revenue requirement associated with zero to eight mile mileage band.[25] The problems created by bundling transport into the channel charges is exacerbated for multipoint users because those users must obtain at least three channel elements. This bundling of transport costs, some commenters argue, forces short-haul multipoint users to pay repeatedly for mileage which they neither use nor need.[26]

25. The proposed mileage charges are the most criticized aspect of the March rate structure. Two principal arguments are raised by the commenters regarding the manner in which transport costs are recovered under the March structure. First, as noted above, many commenters argue that the proposal to bundle the first eight miles of transport into those rate elements is unreasonable. Several parties contend that excessive rates for short channels result from this bundling-in of the first eight miles of transport.[27] NECA's third rate structure would appear to ameliorate the concerns of those parties by further unbundling transport revenue requirements from basic channel rates.

26. Many commenters also raise a second challenge to the manner in which distance-related costs are recovered under NECA's March tariff filing. The commenters argue that NECA's proposal to charge a flat rate for each of the six proposed mileage bands is irrational and inconsistent with costs. Under the March structure, a channel mileage charge of $126.77 would apply to voice grade services with serving wire centers 26 to 50 miles apart; a charge of $144.42 would apply if the serving wire centers were 200 miles apart, but a a charge of $224.57 would apply if they were 201 miles apart.[28] The per mileage charge under the March filing is thus a peculiar step function which, the commenters argue, is unjustified and unrelated to actual cost.[29] Further, as is discussed more fully in connection with NECA's cost support and demand data, some commenters argue that the channel mileage costs have been overstated.[30]

27. NECA's October 10, 1984 illustrative tariff pages would modify the way in which transport costs are recovered and, it seems, would substantially assuage the concerns expressed by the commenters. Pursuant to NECA's third rate structure, transport costs would be further unbundled from the basic channel elements. Additionally, mileage bands would be narrowed and channel mileage charges would be assessed as a flat mileage band rate plus a per mile rate. NECA asserts that the "interoffice channel mileage bands" in the third rate structure are separated according to "technological and cost factors." [31] The NECA October 10 filing also reflects changes in the development of channel mileage rates, for example, removal of remote WATS extensions from Special Access.[32]

28. Another controversial aspect of NECA's March rate structure which would apparently be remedied in the October 10 structure, is the bundling of two- and four-wire facilities. The March proposal, which would eliminate the traditional practice of pricing two-wire facilities at less than four-wire facilities, was sharply criticized by a number of commenters. Western Union and dow Jones, for example, contend that the exchange carriers have ignored the cost differences between these two types of facilities and have failed to justify their proposal to bundle the rates. The Press parties and the American Newspaper Publishers Association (ANPA) argue that the proposed bundling of two- and four-wire facilities discriminates against the users of two-wire, one-way services such as newswire services, and would require them to subsidize users of higher cost facilities. Seventy-nine percent of the private line facilities of AT&T are four-wire, argues Western Union, while eighty-eight percent of the facilities Western Union leases from the former BOCs are two-wire. Western Union contends that the two- and four-wire bundling would, in effect, require it to subsidize AT&T and would have serious anti-competitive implications. Although Western Union argues that AT&T would benefit under the proposal, AT&T also challenges the bundling of two- and four-wire facilities, *albeit* on other grounds. AT&T contends that the proposed bundling would cause inefficient use of plant because customers would be encouraged to order the higher quality four-wire connection regardless of whether they needed it.[33]

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[24] *See, e.g.*, Networks comments at 2 n.1, 13 n.1, Appendix II; J.C. Penney Company Inc. comments at 4–5; Allnet comments at 5; AT&T comments at B–3; Hughes Television Network comments at 21.

[25] The proposed flat local channel rate of $82.99, for example, would recover the revenue requirements associated with NECA's September special access line element, access conneciton element and the first eight miles of special transport. Access Service Exchange Carrier Association, Volume I, Description and Justification at 2–11, 4–17.

[26] *See, e.g.*, Press parties comments at 22–24.

[27] *See, e.g.*, Western Union comments at 49–51; Ad Hoc comments at 4, 7–8; Allnet comments at 16; Networks comments at 18–19; SBS comments at 31.

[28] ECA Tariff FCC No. 1, Section 7.5.2(D).

[29] *See, e.g.*, Bunker Ramo-Eltra Corporation (BRE) comments at 7–8; Aeronautical Radio, Inc. (ARINC) comments at 17–20; Press parties comments at 31; AT&T comments at 19–20; Allnet comments at 19–23; American Financial Services Association (AFSA) comments at 5; Networks comments at 19–21.

[30] For example, Ad Hoc argues that channel mileage costs have been overstated substantially as a result of misallocation to Special Access of interoffice outside plant investments attributable to wide area tele-communications service (WATS) remote access lines. Ad Hoc comments at 5, 21–28. Ad Hoc also states that channel mileage rates may be overstated even further because of a possible over-allocation of Category G Private Line Outside Plant (OSP) to Special Access. Ad Hoc comments at 5, 28–31.

[31] NECA October 10 response at 3; *see also* response at 9.

[32] The Commission's *Switched Access Tariff Order*, Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83–1145, Phase I, FCC 84–168, released April 27, 1984, required NECA and other exchange carriers to price WATS access lines entirely under the Switched Access tariff schedule, rather than pricing a portion of those lines (remote WATS extensions) under the Special Access schedule. On May 31, 1984, NECA requested a waiver of Section 69.305 of the Commission's Rules, 47 CFR 69.305, to the extent required by that order. NECA's petition for waiver was granted by the Common Carrier Bureau in MTS and WATS Market Structure Inquiry, CC Docket No. 78–72, Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83–1145, Mimeo No. 6929, released October 1, 1984.

[33] AT&T comments at 20–21. In contrast, Satellite Business Systems (SBS) argues that the use of a single rate that does not distinguish between two- and four-wire facilities more precisely matches industry engineering and provisioning practices and does not create artificial incentives to order inferior facilities.

29. Pursuant to NECA's October 10 illustrative tariff pages, two- and four-wire telegraph and voice grade offerings would be unbundled. The proposed separate charges for two- and four-wire channels would be consistent with existing tariff structures which differentiate between full and half duplex channels, such as telegraph service under AT&T's Tariff F.C.C. No. 260. Additionally, NECA's third rate structure would integrate the service and rate element categories contained in the BOC's Other Common Carrier (CC) Facilities tariffs and the customer interstate private line tariffs, AT&T's Tariff FCC Nos. 260, 267 and 270. The October 10 structure would also disaggregate voice, metallic and telegraph services. This unbundling of metallic facilities coupled with the differentiation between two- and four-wire channels should go far in mitigating the detrimental customer impact predicted by customers such as Western Union.

30. The channel interface element proposed in the March NECA filing was sharply criticized by the commenters, particularly multipoint users.[34] The channel interface charges proposed account for a large portion of the tremendous rate increases forecasted by multipoint users under the March filing. It appears, however, that the major issues regarding the channel interface element would be resolved under the NECA October 10 illustrative tariff filing. Pursuant to the March proposal, the number of channel interface charges applied depends on the number of local channels or connecting channels procured, rather than the number of terminations. As a result, a two-point customer pays one channel interface channel because he has only one local channel. In contrast, a three-point customer must pay three channel interface charges because he has three connecting channels; a four-point customer must pay four channel interface charges because he has four connecting channels.[35] The commenters argue that, in effect, a channel interface charge covers two terminations for two-point circuits but covers only one termination for multipoint circuits. Multipoint users contend that they would be forced to purchase twice the number of interfaces needed and twice the number required under NECA's first proposed rate structure. The March structure, the commenters argue, is therefore unreasonably discriminatory and imposes on multipoint users a rate burden far in excess of what is required by the complexity of multipoint circuits.

31. Under NECA's October 10 structure, standard channel interfaces would be included in the channel termination element. Two-point and multipoint circuits would be treated alike because one channel termination charge would apply per customer designated premises regardless of how many designated premises there were. This revision would therefore seem to rectify the major problem of the March channel interface element.

32. A separate issue regarding the channel interface element of the March-filed NECA tariff is the inclusion of channel service units (CSUs) and other network channel terminating equipment (NCTE) in the tariff rates. Pursuant to the Commission's *Direct Connection Order* in CC Docket No. 81-216,[36] CSUs and NCTE must be unbundled from basic transmission services, and, in the case of AT&T and the BOCs, must be offered through a separate organization. CSUs and NCTE installed, or in carrier inventory, before November 18, 1983 remain in the "embedded" rate base and may be provided under tariff. Other CSUs and NCTE must not be provided under tariff. The March NECA tariff, however, fails to distinguish between "embedded" CSUs and NCTE and post-November 18, 1983 CSUs and NCTE. The October 10 NECA illustrative tariff pages would specify that only CSUs and NCTE in the exchange carrier's inventory as of November 18, 1983 will be provided under tariff. (Illustrative Tariff Sections 7.5.8(F), 7.5.9(E)). The illustrative tariff would also unbundle CSUs and NCTE and impose separate charges for providing them.

33. As discussed above, NECA's October 10 illustrative tariff would seem to remedy the major structural defects of the March tariff. The October 10 structure is simpler than the March structure and applies the same basic rate elements to all customers. We anticipate that if NECA and the "non-NECA" exchange carriers file cost-supported tariffs similar in structure to the October 10 filing we may be able to review the tariffs quickly and allow them to take effect. If all the exchange carriers file a similar structure, the Commission's task of reviewing the tariff will be simpler and, if cost-justified, the tariffs might become effective without delay. We have not yet had comments on the October 10 structure, however, and we are not prescribing that structure. Carriers who wish to file a different structure, but one which is nonetheless simple, integrated and justified, may do so.

2. The Rochester Telephone Corporation Rate Structure

34. The Special Access rate structure proposed by Rochester Telephone Corporation (Rochester) in its March 19, 1984 filing is similar in many respects to the NECA filing, and appears ambiguous and unclear in several ways. Like the March NECA rate structure, Rochester's structure has five elements: local channel, connecting channel, channel mileage, channel interface, and optional features and functions. The Rochester rate elements, like the NECA elements, are not defined clearly and appear to overlap. Further, the Rochester tariff applies the rate elements inconsistently.

35. The tariff definition of the first element, the local channel element, is unclear. It states that a local channel is "a channel between a customer premises or between a customer premises and a Telephone Company serving wire center. One Local Channel charge applies per customer premises connected to a Telephone Company serving wire center." We must either assume that the term "customer premises" was inadvertently repeated or that words are missing from the sentence.

36. Next, the second rate element, the connecting channel, is defined as a channel between wire centers. The application of the connecting channel element in Rochester's tariff is confusing and is inconsistent with the tariff definition of that element. According to the tariff definition, one connecting channel element should apply between the telephone company serving wire centers. No connecting channel element appears in the tariff's pricing diagram, however. The application of the connecting channel element in Rochester's tariff also indicates that it is much like the problematic connecting channel element of NECA's tariff.

37. The third basic element, channel mileage, is defined as the basis for charging connecting channels. The tariff states that channel mileage charges are applied as a flat rate per mile for all connecting channels. In the rate section of the tariff, however, the channel mileage charge is set forth on a one-quarter mile basis. It also appears that for certain uses, presumably when the

[34] *See, e.g.*, AFSA comments at 4-5; Dow Jones comments at 11-14; Press parties comments at 25-30; BRE comments at 6-7.

[35] NECA Tariff FCC No. 1, Sections 7.1.2(D), 7.1.3 (A), (B).

[36] Petitions Seeking Amendment of Part 68 of the Commission's Rules Concerning Connection of Telephone Equipment, Systems and Protective Apparatus to the Telephone Network, Third Notice of Proposed Rulemaking, CC Docket No. 81-216, 94 FCC 2d 5 (1983), *recon. denied*, FCC 84-145, released April 27, 1984.

connecting channel is less than one-quarter mile, no charge would apply. Also, although Section 7.5.3 states that channel mileage charges apply "per ¼ mile per channel," it also sets forth charges for mileage bands which are labelled "0 to 5" and "each 5 miles over 5." This is highly confusing and there appear to be two separate, overlapping rate elements.

38. As to actual pricing of circuits, multipoint channels seem to entail connections to bridging hubs even though the rate elements comprehend connections only to customer premises and wire centers. Additionally, although there is extensive discussion in the tariff regarding multiplexing features and associated multiplexing hubs, the tariff does not state how such hubs are treated for pricing purposes, *i.e.*, whether any hubs are customer premises or wire centers. Since the tariff states that Centrex Service is treated as a customer premises, even though it could be located at a wire center, one could surmise that the same would be true for multiplexing functions specified by the customer because in both cases customer-designated, dedicated functions are performed for the customer at a telephone company central office. The proposed tariff does not resolve such ambiguities concerning the pricing of features and functions and could therefore create significant confusion and administrative burdens.

39. We note that Section 7.4.5 of the tariff sets forth mileage measurement rules for interoffice channels, but no such element can be found in the tariff. Further, it does not appear that a basis is set forth in the tariff for calculating mileage for connecting channels and channel mileage.

40. For these reasons, we find Rochester's rate structure is ambiguous, unreasonable and unlawful. Rochester is directed to refile a Special Access tariff which complies with our orders in this proceeding, the Commission's Rules and, in the absence of a showing under Section 61.40(b) of the Commission's Rules, 47 CFR 61.40(b), the Private Line Guidelines.

3. GTE Telephone Operating Companies Rate Structure

41. The rate structure proposed by the GTE Telephone Operating Companies (GTE) is similar to the NECA proposal. We find that it is ambiguous and unclear in violation of § 61.55 of the Commission's Rules, 47 CFR 61.55, and constitutes an unreasonable ratemaking practice in violation of section 201(b) of the Communications Act, 47 U.S.C. 201(b).

42. The central flaw of GTE's rate structure is that the application of rate elements is unclear. It appears that rate elements may overlap. The special transport element is described as an interconnection between customer-designated premises' serving wire centers or between a serving wire center and a hub office. One example in the tariff of a hub office is a location where multiplexing is performed at the request of the customer. Thus, according to the tariff, a special transport element alone is sufficient to connect a serving wire center to the hub office. The tariff states, however, that a special access line is required wherever a customer-designated premises is connected to a wire center. Since a premises is defined in the tariff as any building or buildings on continuous property, not separated by a public highway, it becomes clear that a hub office where multiplexing is performed at the customer's request is, in fact, a customer-designated premises. It would be unreasonable to apply both special transport and special access line charges to the connection between a serving wire center and a hub office. This double charging, however, appears to be one possible reading of the tariff.

43. Additionally, the tariff states with respect to multipoint channels, that in certain cases special transport is required between a serving wire center and a bridging wire center. Section 5.1.2(B) of the tariff provides that special transport would connect a serving wire center to a bridging wire center. As noted above, however, the definition of special transport, limits its use to connections between serving wire centers on the one hand, and a serving wire center and a hub office on the other. Similarly, with respect to multipoint circuits, a special access line is required by the tariff to connect a "wire center serving location bridged to customer designated premises." This does not appear to conform to the definition of special access line which clearly limits its use to connections between customer-designated premises and the wire center serving the customer premises.

44. For these reasons, we find GTE's Special Access tariffs unlawful. GTE is therefore required to refile Special Access provisions which comply with our orders in this proceeding and, in the absence of compliance with Section 61.40(b) of the Commission's Rules, 47 CFR 61.40(b), the Private Line Guidelines.

4. The Central Telephone Company of Florida Rate Structure

45. The Special Access rate schedule proposed by the Central Telephone Companies (Centel),[37] as in the case of GTE and Rochester, appears to represent a good faith effort to comply with the *ECA and Non-ECA Tariff Orders*. Nonetheless, this proposal too is replete with ambiguity, making reasonable application of the proposed rates highly problematic. To begin with, the first rate element, the channel charge, is defined as a channel "between the IC Premises and the end user premises or another IC Premises when located in the same exchange." (Section 5.1.1(A).) This definition appears to preclude end user to end user service, as required by our February 17, 1984 *ECA Tariff Order*. The tariff definition of an "IC" in Section 2.6 is unclear as to whether an end user might be the same as an "IC." [38] A distinction is drawn in the tariff definition of the channel charge element between an end user and an IC, and we therefore must presume that this distinction imposes use restrictions on Special Access.

46. The second rate element, the interexchange channel charge, is described as providing the "physical transmission facilities connection between exchange areas and is in addition to the Channel Charge for a circuit." (Section 5.1.1(B).) This description is confusing and ambiguous. First, the tariff does not clarify the difference between an exchange and a wire center. Moreover, in the rest of the tariff wire centers, rather than exchange areas, are used to calculate rates. It is also unclear how the interexchange channel interconnects with the facilities covered by channel charge element, unless it is assumed that the term "exchange area" is synonomous with the term "IC premises." Under the definitions provided, there is no common point at which the interexchange channel meets the channel charge element. As an additional point of confusion, Section 5.4 describes mileage measurements for a special rate element. There is no definition in the tariff of a special transport element, however, and it

[37] This discussion of the Centel structure specifically addresses the structure proposed by the Central Telephone Company of Florida. Eight other Central Telephone Companies filed Special Access tariffs. The tariffs filed by the Merchants and Farmers Telephone Company and the Centel companies of Illinois, Minnesota, Nevada, North Carolina, Ohio, Texas and Virginia were compared to the Centel of Florida tariff. These comparisons revealed very few differences among the tariffs, none of which were of major significance. Therefore, our analysis of the Centel of Florida tariff applies to all Centel tariffs.

[38] The definition in Section 2.6 states that an IC is an entity providing service either for its own use or for end users.

appears that this term may have been replaced by the interexchange channel. Nevertheless, the interexchange channel seems to be a flat-rated element not dependent on mileage calculations.

47. We also note that bridging service wire centers are involved in some manner in pricing multipoint channels. The bridging points, however, do not appear in the tariff. Additionally, it is unclear from the pricing description in Section 5.1.4(B) how bridging serving wire centers and customer-designated locations are interconnected since the tariff rate elements are not defined in terms of wire centers. The multipoint description given in the tariff does not provide customers with enough information to determine the pricing of such a ciruit.

48. For these reasons, we find Centel tariffs unlawful, and violative of Section 61.55 of the Commission's Rules, 47 CFR 61.55 and 201(b) of the Communications Act, 47 U.S.C. 201(b), because of the unreasonable ratemaking practices used. Accordingly, Centel is required to refile Special Access provisions.

B. Rate Level and Cost Support Issues

49. In this section of the order we discuss topics relating to the carriers' cost support, for example the general rate level, variations in rates between companies or company "study areas" (states), methods of rate development and specific questions concerning the estimation and allocation of costs and usage.

50. The proposed Special Access rates are based on adjustments to the cost and demand data presented in the previous Special Access filings. Generally, the Special Access revenue requirements of the various exchange carriers have been adjusted downward from the previous filings, primarily due to the requirement in the *Second Reconsideration* [39] that the costs of closed-end WATS service be removed from Special Access and assigned to the common line category. For example, NECA's Special Access revenue requirement decreased from $1,447,017,000 to $1,267,323,000. While the Special Access demand quantities have been reworked in accordance with the revised pending rate structures, most exchange carriers claim they are based on projections contained in the previous filing. As many of the commenters observed, however, the result of the decreased revenue requirement and reworked demand quantities is not necessarily lower rates for service to a particular customer. In fact, many commenters, for example, AT&T, RCA, SBS, Western Union and Westinghouse, indicate that at least some of the proposed rates for Special Access service they use would increase over the previous filing.[40]

1. Rate Levels

51. One of the most controversial aspects of the proposed Special Access tariffs is the general level of proposed rates and charges. In the February 17, 1984 *ECA Tariff Order*, we described the dramatic rate increases that interstate customers other that AT&T would experience under the proposed Special Access provisions. We noted that the BOCs did not dispute the rate increases calcuated by the commenters. A similar situation prevails for the March rates. Nearly every commenter objects to the rate levels proposed.[41] NECA itself documents sizable rate increases. For example, NECA pieced together certain of its Special Access services and certain services proposed in AT&T's Private Line Tariff No. 3 in order to "price-out" typical end-to-end private line configurations. NECA calculates changes of up to 65 percent over AT&T's Tariff No. 260. Similarly, NECA documented increases in typical stand-alone access services of up to 444 percent over the current OCC Facilities Tariffs.

52. Many OCCs have filed comments in which they try to gauge the effect that such increases would have on their provision of services to the general public. Western Union, for example, estimates increases in Special Access expenses of 403 percent or nearly a quarter of a billion dollars. Western Union estimates that, as a result, it would be forced to raise its Telex and TWX rates by 40 percent with an ensuing subscriber drop-off of 50 percent.[42]

53. Although there is general agreement that the price of private line local channels would increase under the proposed tariffs, the parties disagree over whether the proposed increases are justified. Western Union claims that the proposed Special Access rates exceed the "BSOC–6" rates proposed in 1978, the BOC's OCC facility charges proposed in 1982, and the currently effective intrastate private line tariffs for similar facilities. According to Western Union, the BOCs' proposed rates in 1982 which they claimed were fully compensatory but which were significantly lower than the currently proposed Special Access rates. Western Union claims, however, that the Commission rejected those rates as not cost justified. Most OCCs argue that NECA and the other exchange carriers have egregiously overstated their Special Access costs and understated their demand.

54. NECA argues that the proposed rate increases accurately reflect the cost of Special Access service. First, NECA asserts that 1983 Bell System interstate end-to-end private line service should have been priced 18 percent higher ($700 million in additional revenue requirement) to compensate for a shortfall from the allowed rate of return of 12.75 percent. Further, NECA asserts, there have been historical subsidies, exacerbated during the last decade, in which long-haul private line service subsidized short-haul private line service within the Bell System and which were reflected in artificially low rates for OCC facilities. The proposed Special Access rates merely rectify this inequity, NECA claims. Finally, NECA asserts that Part 69 of the Commission's Rules direct a portion of common line costs to be recovered through a surcharge on Special Access lines and also allocate substantial message station equipment costs to private line users which they have never before borne.[43]

55. In their joint reply comments of April 30, Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company (US West) contend that "when analyzed carefully, the magnitude of the proposed rate increase is quite reasonable." As an example, US West claims that Pacific Northwest Bell's (PNB's) proposed rates for voice grade Special Access service demonstrate a basic parity with its intrastate private line rates in Washington,[44] and concludes:

[39] MTS and WATS Market Structure, CC Docket No. 78–72, Phase I, FCC 84–36, released February 15, 1984.

[40] Also, one factor which influences the level of proposed monthly recurring charges, besides the size of the Special Access revenue requirement or the magnitude of demand, is the level of nonrecurring charges (NRCs). In our February 17 *ECA Access Order* we directed the exchange carriers to lower their NRCs and use "slightly modified recurring charges" to recover that portion of the revenue requirement no longer recovered by NRCs. *ECA Access Order* at A–18 to A–19.

[41] Local Area Telecommunications, Inc. and the exchange carriers which filed reply comments, however, argued that the proposed rates are reasonable and fully justified.

[42] Western Union comments at 3, 9.

[43] NECA Cost Support, Vol. I, Section 3.

[44] US West reply at 12. US West indicates that the voice grade rates that PNB proposed, without the Special Access Surcharge, are only twenty-nine percent above current intrastate private line rates in Washington and that when certain overhead costs disallowed by the Washington State Public Utility Commission are added to intrastate private line rates, the disparity narrows to eleven percent.

It is natural to expect that there would be substantial increases in the rates for special access facilities. As described above, the present rates have been in effect for nearly ten years, and these rates were below cost even at the time they went into effect. Obviously, these rates should increase substantially—even dramatically.

US West comments at 10–11.

56. We agree that OCC facilities have been substantially underpriced. Rates for OCC facilities were last set in 1974. Yet as, ITT notes in its comments, inflation has caused a 97 percent increase in the Consumer Price Index since that time. In addition, as discussed above, NECA notes that there are other important factors necessitating that cost-based Special Access rates embody substantial increases over current Docket No. 20099 rates. As we shall discuss in detail below, however, we believe that the rates proposed by the exchange carriers are unjustifiably high. We have discovered serious flaws in both the allocation of the interstate revenue requirement to Special Access and the estimation of Special Access demand quantities.[45]

2. Rate Variation

57. Another major concern of the commenters is the company-to-company or state-to-state variations in rates for the same Special Access service. Most commenters describe widely divergent rates for the particular Special Access services they required. Many commenters, for example, AT&T, ITT, HTN, the Networks, Westinghouse and Western Union, believe that the variation in rates is excessive and indicative of non-cost based pricing.[46]

Local exchange companies, in their replies, defended the variations in rates on three basic grounds. First, they claim, a key reason rate variations seem excessive is that the commenters focus on rate variations for individual components of Special Access service, such as local channels of C-conditioning, rather than pricing-out fully configured circuits. If the components were combined into a fully configured service, the exchange carriers argue, the variation in rates would substantially diminish.[47]

58. Second, the local carriers claim that rate variations simply reflect cost variations. The exchange carriers list a number of factors that could lead to wide variations in costs. GTE summarized these factors as follows:

> The type of technology employed greatly influences costs. In addition, different characteristics of the serving areas affect the cost. One of these characteristics is geographic variations. The GTOCs serve the mountains of West Virginia, the plains of Illinois and the Los Angeles metropolitan area; the varied geography produces widely varied costs. A second serving area variable is the size of operating territory owned and the related population density. These factors influence service demand because of the concentration of customers and the physical length of facilities owned. The economies of microwave over cable facilities, for example, are not available without sufficient distance and route density.

GTE reply at 4–5.

59. Third, Bell Atlantic explains that Part 69 of the Commission's Rules [48] may lead to anomalous variations in rates:

> The requirement in Part 69 that overhead costs be fully allocated in calculating specific prices may lead to apparent price anomalies. Where demand for a particular element is relatively low, for example, the share of overhead expense allocated to each unit is likely to be higher than in a company with relatively higher demand.

Bell Atlantic reply at 3.

60. We have no doubt that there may be wide, yet legitimate, disparities among rates for fully configured services. The carriers, however, have offered no explanation for the astounding rate disparties among individual rate elements. In that respect the currently proposed tariffs are no different than the previous ones. In the *ECA Tariff Order*, we pointed out some of these disparities[49] and concluded: "the [Special Access] rates for carriers ostensibly using the same methodology vary drastically for the same services and facilities. These differences are so great as to forfeit the credit which might be placed in any of the rates."[50]

61. It is not possible to evaluate whether these excessive rate variations are due to mistakes in allocative procodures, faulty unit cost studies or incorrect estimates of demand. To the extent that the problem is caused by faulty demand estimates, we hope that the corrections described by NECA In its October 10 Letter will alleviate the problem.[51] It is also important that unit cost studies and allocative procedures be accurate. Interstate customers must have the opportunity to lease unbundled facilites at cost-based prices.

62. Due to the persistence of this problem we will require that any exchange carrier that has proposed exceptionally high or low rates for specific rate elements carefully review its rate development studies. To the extent that they find anomalous proposed rates have been based on defective studies or estimates, the studies or estimates should be corrected and the results incorporated into the new filing. We realize that it may not be possible to completely redevelop defective cost or demand studies by the next filing date. We will therefore consider minimizations or corrections of inappropriate rate disparities even if the minimizations or corrections are not based on complete information. We expect exchange carriers, however, to propose rates based on complete information as soon as possible. Carriers making revisions based on incomplete information should specify when they expect more accurate studies to be completed. We intend to scrutinize the justification for any extremely high or low rates which an exchange carrier proposes in the next filing.

3. The Special Access Revenue Requirement

63. The underlying methodology by which carriers developed cost data for the pending filings is identical to that of the previous filings, and was extensively described in the Commission's February 17, 1984 and May 15, 1984 *Access Tariff Orders*. Here we will merely recapitulate the conclusions reached there. Corporate planners in each major exchange company projected "best estimates" of revenue requirement and

[45] While NECA estimates that 1983 end-to-end private lines services experienced a shortfall of approximately eighteen percent, its estimates of increases in various end-to-end private line configurations range from forty-two to sixty-five percent over current AT&T Tariff No. 260 rates. The Special Access Surcharge is not included in NECA's comparison and the inclusion of message-station equipment mandated by Part 69 of the Commission's Rules is not sufficient to explain the discrepancy. On an end-to-end basis, the private line services that NECA provides in conjunction with AT&T appear to be overpriced. In the *ECA Tariff Order* we stated, "it is apparent that additional information will be necessary in [order] to understand the bases and justification for the proposed rate changes. The magnitude of the increases makes it clear that the telcos are proposing to radically change the manner in which local private lines are priced and provided. While we recognize that even large percentage increases may be justifiable in those instances where rates have not changed over a long period of rising costs, the present filings provide virtually no information on these matters." Para. 48.

[46] For instance, AT&T states that the transport charge proposed by Central Telephone of Illinois for a seventeen mile voice grade private line channel is $6.84, whereas GTE of Minnesota's is $1,097.86. Western Union points out that the rates proposed for C-type conditioning vary from $1.31 per month (Ohio Bell) to $48.62 per month (Pacific Bell). The Networks allude to the fact that channel interface rates for video service vary between Wisconsin Bell's rate of $8.93 and Pennsylvania Bell's rate (in Delaware) of $1,818.47.

[47] US West reply at 9; Bell Atlantic reply at 3. *See also* Western Union comments at 15; Networks comments at 25; AT&T comments at 4.

[48] 47 CFR Part 69.

[49] *ECA Tariff Order* at para. 45

[50] *Id.* at para. 82.

[51] *See Demand* section below.

usage for the 1984 test year. The BOCs called these revenue requirement estimates "Budget Views." The Budget View was then separated and distributed to Part 69 access categories, including Special Access, to form the basis for most access rates. Although such a "top down" methodology is generally acceptable, we found this particular instance of it unsupported and requested further data on the Budget View.[52]

64. In the May 15, 1984 *Switched Access Cost Order*,[53] we undertook a comprehenisive evaluation of the industry's interstate revenue requirement prior to its split into Switched and Special Access portions. Upon careful review of additional data submitted by NECA as Volume V of the March tariff filing, we concluded that the Budget View methodology supporting the revenue requirement was seriously flawed. Therefore, we adopted an allowable revenue requirement for Switched Access by making a downward adjustment of the interstate revenue requirement and flowing through the appropriate share to Switched Access. The industry-wide downward adjustment was $367 million or 1.71 percent.[54] Therefore, the Commission disallowed 1.71 percent of the Switched Access revenue requirement. In the *Switched Access Cost Order*, however, the Commission made no specific finding in regard to flowing through the downward adjustment to the Special Access portion of the revenue requirement.

65. As noted above, on October 10, 1984, NECA filed additional Special Access information in response to a letter from the Chief of the Common Carrier Bureau.[55] NECA's response contains revised cost and demand data. In addition to adjustments mandated by the Commission, and certain demand-related cost adjustments, discussed below, NECA requests an upward revision of its 1984 Special Access revenue requirement to reflect "true-ups" based on actual June and July operating results for the BOCs participating in the NECA pool.[56] The amount of the proposed upward revision is $139 million.

66. The March Special Access revenue requirement proposed for the BOCs which belong to NECA's traffic-sensitive pool is $1,196,327,000. The $139 million proposed in the October response therefore represents a significant increase in the revenue requirement. NECA is making this proposed revision based on its first few months of carrier operations and in an environment where major statistical errors have recently come to light.[57] In addition, a few months of "start-up" operating statistics may not be indicative of long-term trends and may not provide a firm basis on which to extrapolate full test-year results, as required by Section 61.38(b)(2) of our Rules. Consideration of these new costs at this late stage of our investigation would require additional time and comment. As a result, it might be necessary to suspend the Special Access provisions again. Therefore, in the interest of expediting an already lengthy proceeding, we encourage exchange carriers that wish to increase their proposed revenue requirement to do so in a separate filing. If carriers propose revised revenue requirements in the next filing, however, we will consider them. Given the possibility that operating "actuals" will prove higher than the original carrier estimates for Special Access, we will not flow through the 1.7 percent reduction in revenue requirement we made in the May 15, 1984 *Switched Access Cost Order*.

67. A number of commenters contend that, contrary to the intention of our *Second Reconsideration*, the exchange carriers have retained dedicated access line extension (DALE) costs in Special Access.[58] In the *Second Reconsideration* we revised our access rules to remove the closed-ends of WATS lines from the Special Access category and to treat them as ordinary subscriber lines assignable to the common line access category via the subscriber plant factor (SPF). As a result, we amended Section 69.304 of the Commission's Rules[59] (customer outside plant) to include WATS access lines in the common line element. DALEs are portions of the WATS closed-end line that extend between the customer's serving office and the WATS screening office. Therefore, DALEs are considered carrier outside plant (OSP) rather customer OSP. Only some WATS subscriber lines require extensions, however. Although it was the Commission's intent to exclude all WATS closed-end costs from Special Access, we neglected to change Section 69.305 (Carrier OSP) to require that the DALEs be removed from Special Access and assigned to Switched Access. As a result, the pending tariffs include DALEs in computing the Special Access channel mileage element.

68. In our April 27 Order, we specified that WATS closed-ends, including DALEs, be priced in their entirety as Switched Access.[60] The cost support for the pending Special Access tariffs, however, includes DALE costs. NECA, for example, has included $135 million in DALE costs in its Special Access revenue requirement. Therefore, we require that all exchange carriers reallocate all DALE costs and usage from Special Access to Switched Access.

69. Several commenters also criticize the merit of assigning a portion of Category 5 message station equipment[61] to Special Access.[62] Prior to our companion *Third Reconsideration* order (Part I) adopted today, our Rules required that all Category 5 message station equipment be apportioned between Special Access and common line on the basis of relative number of equivalent lines in use.[63] The *Third*

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[52] *ECA Tariff Order* at para. 8; Letter to NECA, February 24, 1984.

[53] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I; MTS and WATS Market Structure, CC Docket No. 78-72, Phase I, FCC 84-201, released May 15, 1984.

[54] The downward adjustment can be computed from the *Switched Access Cost Order* as follows. The BOC 1983 Interstate Revenue Requirement (without customer premises equipment (CPE) phase-out) was imputed to be $14.006 million. The commission allowed nine percent growth, bringing the figure to $15,267 million and added on CPE for an allowed BOC revenue requirement of $16.115 million. The proposed BOC revenue requirement, excluding improper allocation of CPE, was $16,396 million, for a difference of $281 million or 1.71 percent. Since the BOC revenue requirement was estimated as 76.6 percent of the industry total, the total disallowance was $367 million.

[55] In its October 24 letter, NECA provided additional information.

[56] The BOC's participating in the NECA traffic-sensitive pool, of which Special Access is a part, include Cincinnati Bell, Indiana Bell, Mountain Bell, New England Telephone, New York Telephone, Pacific Telephone-Nevada, South Central Bell, Southern Bell, Southern New England Telephone, and Southwestern Bell.

[57] NECA has discovered major omissions in its estimation of demand,as discussed in the *Demand* section below.

[58] *See, eg.*, Ad Hoc comments at 5; RCA comments at 7; SBS comments at 10-20; Western Union comments at 41-45.

[59] 47 CFR 69.304.

[60] In the Matter of Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, FCC 84-188, released April 27, 1984 at 6-1. As noted above, on October 1, 1984, NECA was granted a waiver of Section 69.305 so that NECA could reallocate DALE costs from Special to Switched Access in compliance with the April 27 order. Although this waiver does not directly affect non-NECA exchange carriers, by the action we are taking today, we in effect extend the waiver to non-NECA carriers and direct that all DALE costs be treated under Switched Access.

[61] For purposes of our discussion here, Category 5 message station equipment includes surrogate CPE and inside wiring connected to equipment used (wholly or in part) for message telephone service. *See* MTS and WATS Market Structure, CC Docket No. 78-72, Phase I, FCC 84- , adopted November 8, 1984 *(Third Reconsideration (Part I))* at n. 4.

[62] *See e.g.*, Dow Jones comments at 6; RCA comments at 21; Western Union comments at 34-36.

[63] 47 CFR 69.303(c, d), 69.401(b).

Reconsideration (Part I), discusses in detail the allocation of Category 5 message station equipment to Special Access. In that order we amend Section 69.303(c) of the Rules, 47 CFR § 69.303(c), to restrict the proportion of Category 5 message station equipment allocated to Special Access. Section 69.303(c) now requires basing the assignment of Category 5 message station equipment to Special Access on the number of equivalent lines subject to the Special Access Surcharge, rather than the number of Special Access lines. Since the lines subject to the surcharge are a subset of the total number of Special Access lines, the allocation of Category 5 message station equipment costs to Special Access should decline. Therefore, in accordance with *Third Reconsideration (Part I)*, we require all exchange carriers to remove the requisite amount of Category 5 message station equipment costs from the Special Access revenue requirement.

70. Furthermore, the revenue requirement associated with Category 5 message station equipment should be recovered only from those equivalent lines subject to the surcharge. Each equivalent Special Access line subject to the surcharge shall be assessed an amount equal to the quotient of the revenue requirement associated with Category 5 message station equipment which is allocated to Special Access divided by the number of equivalent lines subject to the surcharge. For purposes of this computation, the "number of equivalent lines subject to the surcharge" shall be equal to the number of equivalent lines used to allocate the revenue requirement associated with Category 5 message station equipment to Special Access.

71. An additional problem with the pending filings is that certain message costs have been assigned erroneously to Special Access. In our October 1983 *USOA Order*,[64] the Commission reclassified outside wire [65] from Station Connections account 232 to various OSP accounts. As a result, message station equipment no longer includes any outside wire dollars that can be allocated to Special Access under Section 69.303(c) of the Commission's Rules. The exchange carriers, however, have allocated message outside wire costs to Special Access.[66] These costs must be removed from the Special Access revenue requirement.

72. A similar problem is the allocation of Company Used ("Official") Station Apparatus and Large PBX cost. In our November 1983 *USOA Order*,[67] we reclassified Official Station Apparatus and Large PBXs from Station Equipment accounts 231 and 234 to account 262, a new account called "Other communications equipment." Nevertheless, the exchange carriers have erroneously allocated Official Station Appartus and Large PBX costs to special access. These too must be removed from the Special Access revenue requirement.

4. Demand

73. A number of commenters assert that the exchange carriers underestimated demand and thereby overstated Special Access rates.[68] Comparing its own records with information contained in the carriers' September and March cost support filings, Western Union concluded that at least some Bell Operating Companies underestimated key demand quantities, for example, access connections, facility interface combinations. Other Common Carrier special access lines (SALs) and "non-leaky" SALs.[69]

74. Ad Hoc also criticize's the exchange carriers' demand calculations. It calls the Commission's attention to the possibility that certain "copycat" demand quantities are incorrectly omitted from Special Access demand quantities while the associated cost of copycat interexchange trunking (Category G outside plant) is included, thereby overstating channel mileage rates. "Copycat" services include intrastate private lines that are jurisdictionally interstate ("contaminated" private lines) and interstate intraLATA private lines, and certain permitted interstate interLATA private lines (Corridor service).[70]

75. SBS criticizes Cincinnati Bell's use of the Trunk Integrated Record Keeping System (TIRKS) in estimating the number of voice grade circuits and cites New York Telephone's documentation which indicates that TIRKS records are significantly outdated.[71]

76. In their replies, several BOCs dispute Western Union's contentions regarding demand. Southwestern Bell, Pacific Bell and US West each defends its demand estimation process and asserts that Western Union made faulty comparisons.[72] Also, Cincinnati Bell and NYNEX each defends its use of TIRKS.[73]

77. As part of its October 10 response, NECA filed workpapers which significantly increase many disputed demand estimates. The rate structures NECA proposes includes a "channel termination" rate element. Demand for channel termination is simply the sum of access connection counts and special access line counts. These show an aggregate increase of twenty-three to twenty-seven percent for narrowband, voice grade and audio programming channels. There are also significant changes, including some decreases, in the termination counts for other access services and in the estimation of channel mileage demand. In short, the demand estimates were thoroughly reworked in NECA's October 10 submission.[74]

78. NECA explains that these modifications are necessary for several reasons. First, "several jurisdictions inadvertently included costs for [interstate/intraLATA] services without associated demand." NECA Letter at 10. Second, a review of actual billing records (CABS) indicated that the TIRKS methodology does not, in fact, provide reliable demand estimates.[75] Third, DALE channel mileage counts were removed from Special Access along with DALE costs.[76]

79. The demand revisions submitted by NECA come very late in this proceeding. Yet, their potential impact on rates is so significant, that we would be remiss not to consider them in this investigation. It is likely that some exchange carriers that have not pooled with NECA have made similar estimation errors. Therefore, we require that all exchange carriers correct demand estimation errors stemming from faulty methodology and revise their Special Access rates accordingly. In particular, exchange carriers should not estimate demand by methods that rely

[64] *Amendment of Part 31, Uniform System of Accounts*, CC Docket No. 82-679, FCC 83-456, released October 28, 1983.

[65] Outside wire, also called "drop and block" was termed "Station Connections—Other." (232 subaccount) before the reclassification. Outside wire connects the outside distribution network with the customer's premises.

[66] *See, e.g.*, NECA March 15, 1984, Cost Support, Volume II, Book 1 at 2-72. The accounts in the first tariff filing were distributed to Special Access before the Outside Wire Order was released. Apparently, those accounts were mistakenly carried over into the March filing.

[67] *Modification to the Uniform System of Accounts* CC Docket No. 82-681, released November 2, 1983.

[68] *See, e.g.*, Ad Hoc comments at 31; RCA comments at 19; SBS comments at 25-28; Western Union comments at 29-33.

[69] Western Union comments at 31-33.

[70] Ad Hoc comments at 31.

[71] SBS comments at 26-27.

[72] Southwestern Bell reply at 2-3; US West reply at 21-22; Pacific Bell reply at 5.

[73] Cincinnati Bell at 1-4; NYNEX at A-9.

[74] NECA Letter at 10-13, 20-28.

[75] NECA October 24, 1984 Letter.

[76] Also, NECA made cost and demand adjustments for FX closed-ends and DDS hubs directly to the rates.

solely on TIRKS. We also require that carriers which seek to revise their demand estimates submit revised cost support documenting these changes and explaining their cause and extent.

5. Demand-Related Costs

80. As mentioned in the *Revenue Requirement* section above, NECA included certain demand-related cost adjustments in its October 10 and 24 submissions. These adjustments include $36 million in costs associated with the inclusion of interstate interLATA demand and other modifications, $19 million in costs associated with the inclusion of DDS hubs and $10 million in costs associated with the inclusion of closed-end FX lines.[77] To the extent that these costs are directly related to the demand modifications discussed in the section immediately above, we will allow NECA to include these costs in its proposed rates, subject to further investigation and comment in this proceeding. Other carriers wishing to include costs related to corrections of specific demand omissions may do so subject to the same conditions. Any carrier including new demand-related costs in its revenue requirement must supply appropriate Section 61.38 documentation.

6. Conclusion Regarding Cost Support

81. Our investigation of the Special Access cost support filings has revealed significant defects in rate element costing, the allocation of the interstate revenue requirement to Special Access, and the estimation of demand. The problem of erratic rate element costing is widespread among the exchange carriers and manifests itself in the extreme high and low rates that are found in tariffs with the same rate structure. The removal of DALE costs and reclassified Uniform System of Account items affects all the BOCs and many other exchange carriers. The revised treatment of Category 5 message station equipment costs affects all exchange carriers, without exception. In addition, errors and omissions in the estimation of demand appear to involve many BOCs, whether or not they have participated in the NECA pool. Other exchange carriers may have also incorrectly computed demand.

82. To the extent that the pending Special Access provisions exhibit the defects we have discussed in the paragraph immediately above, we find them unlawful. We direct NECA and all exchange carriers that filed Special Access provisions to resubmit rates and cost support in accordance with the changes we have outlined in this order. Each carrier should simply and directly identify and explain the cost and demand changes made.

C. Other Issues

84. A section-by-section analysis of a number of additional issues appears in Appendix B.

III. Transition to Special Access Tariff Rates

85. The Commission has conducted an extensive investigation into lawful rates for Special Access services. We have carefully reviewed the cost data submitted with the Special Access tariffs and the voluminous filings regarding the tariffs and the Docket No. 20099 Settlement Agreement. The record before us amply supports the findings that maintaining the current rate levels of the Docket No. 20099 Settlement Agreement rates is unjust and unreasonable and unduly preferential in violation of Sections 201(b) and 202(a) of the Act, 47 U.S.C. 201(b) and 202(a).[78] The rates are so low that continuing them would place an excessive burden on other consumers, from whom the exchange carriers' shortfall would ultimately be recovered. Thus, adherence to the noncompensatory Docket No. 20099 rates would adversely affect the public interest.[79] For example, certain of the OCC facility tariff rates established by that agreement reflect a thirty percent discount from the rates effective August 2, 1974, for intraexchange voice grade and wire pair facilities and a twenty-one percent discount for certain other facilities. Cost-based Special Access tariff rates, therefore, will represent significant increases from the Docket No. 20099 rates. As a result, the Commission is faced with a difficult question: how to implement just and reasonable cost-based tariff rates for Special Access services without causing "rate shock" in the industry.

85. Those commenting on the first, as well as the second, Special Access tariff proposals have urged the Commission to phase-in the anticipated rate increases to reduce the drastic impact sudden increases could be expected to have on the market.[80] Additionally, on August 9, 1984, the Ameritech Operating Companies filed a petition with the Commission proposing an end to what they call the current "stalemate."[81] Ameritech proposes that the Commission abrogate the Docket No. 20099 Settlement Agreement and prescribe a multistep phase-in of Special Access rates for the OCCs. Upon implementation of the phase-in, Ameritech suggests a twenty percent increase over the existing Docket No. 20099 Settlement Agreement rates. Six months after the implementation of Ameritech's proposal, the rates for OCCs would be fifty percent of the then-effective Special Access tariff rates. One year after implementation of the phase-in, OCCs would begin paying seventy-five percent of the Special Access tariff rates. Finally, eighteen months after implementation of the phase-in, OCCs would pay the full Special Access tariff rates.

86. On September 5, 1984, six sets of comments were filed regarding Ameritech's phase-in proposal.[82] AT&T filed comments in which it opposed the notion of a transition on the grounds that it "would simply perpetuate the unlawful discrimination" between the rates AT&T pays for Special Access and the rates the OCCs pay under the Docket No. 20099 Settlement Agreement.[83] AT&T does, however, support Ameritech's request to abrogate the Docket No. 20099 Settlement Agreement insofar as the Commission may deem necessary. AT&T urges the Commission to adopt one of the alternatives described in its June 26, 1984 application for review of the May 25, 1984 *Interim Prescription Order*.[84] In that application, AT&T suggests four alternatives: (1) reduce AT&T's rates to the level currently paid by the OCCs; (2) raise the OCCs' rates to the level effectively prescribed for AT&T in the *Interim Prescription Order*; (3) simultaneously raise the OCCs' rates and reduce AT&T's rates to some

[77] The closed end of interstate FX lines are provided under Special Access. *See First Reconsideration Order* paras. 50, 52, and n. 35; *See also* Revised Separations Manual, Amendment of Part 67, CC Docket No. 80-286, FCC 83-564 released February 15, 1984 at paras. 1, 57.

[78] The rates for facilities provided to OCCs were established by a Settlement Agreement accepted by the Commission as a disposition of Docket No. 20099. *See* American Telephone and Telegraph Company, 47 FCC 2d 660 (1974), 52 FCC 2d 727 (1975), *aff'd sub nom.* Carpenter v. FCC, 539 F.2d 242 (D.C. Cir. 1976).

[79] *See* FPC V. Sierra Pacific Power Co., 350 U.S. 348, 355 (1956).

[80] *See, e.g.*, ARGO Communications Corp. comments at 6-7; ARINC comments at 22; Press parties comments at 35-36; Dow Jones comments at 15-16; RCA comments at 9; *see also ECA Tariff Order*, App. D at 7-6.

[81] Petition to Expedite Transition to Special Access Tariff Rates, filed August 9, 1984, by Illinois Bell Telephone Company; Indiana Bell Telephone Company; Ohio Bell Telephone Company; and Wisconsin Bell, Inc. (Ameritech).

[82] A list of commenters appears in Appendix H. Reply comments were filed September 12, 1984; see Appendix I.

[83] AT&T September 5 comments at 2.

[84] A list of the comments filed regarding AT&T's application appears in Appendix G.

uniform intermediate level designed to achieve a fair interim return for both exchange and interexchange carriers; or (4) permit the "appropriate elements" of the pending Special Access tariffs to become effective on an interim basis, subject to such accounting orders and adjustments as the Commission deems necessary.[85]

87. The US West Regional Companies filed comments opposing Ameritech's phase-in proposal.[86] Those companies suggest that contrary to Ameritech's argument, there is no "stalemate" regarding the Special Access tariffs and, moreover, no phase-in for OCCs is "necessary, appropriate or lawful." [87] NECA also filed comments on the Ameritech petition, in which it states that the pending Special Access tariffs should be permitted to go into effect. If, however, the Commission implements some transition, NECA urges the Commission to take into account the potential consequences to the traffic sensitive pool administered by NECA.

88. Satellite Data Broadcast Networks, Inc. (SATNET) filed an opposition to Ameritech's petition arguing that there is no compelling reason to override the provisions of the Docket No. 20099 Settlement Agreement at this time. SATNET, however, does support the adoption of a transition plan beginning six months after the filing of cost-supported tariffs. It would be premature for the Commission to adopt Ameritech's proposal now, SATNET argues, because a phase-in plan presupposes the existence of cost-based Special Access tariffs. Further, SATNET contends that, ideally, carriers would file their transition plans with their Special Access tariff materials.

89. In jointly filed comments on Ameritech's proposal, eight OCCs (Western Union, MCI, ITT, Allnet, SBS, American Satellite Company (ASC), the Association of Long Distance Telephone Companies and TRT Communications, a willingness to accept a twenty percent increase over existing Docket No. 20099 rates. The Joint Carriers, however, continue to argue that the March-filed rates are unsupported and are far greater than cost-based levels. They argue that the twenty percent increase over Docket No. 20099 must therefore be accompanied by an accounting order, and the marked-up rates should remain in effect until lawful Special Access rates are determined after investigation.

90. Several former BOCs argue in jointly filed comments that "the Commission's objective should be fully cost based rates by November 13, 1984 and concur with Ameritech's assessment that the current stalemate must be broken as soon as possible." [88] The BOCs assert that if, despite the revenue shortfall the BOCs will suffer, the Commission finds that the public interest requires a transition to full cost based rates, the initial rate increases should eliminate at least one half of the existing shortfall. The BOCs also argue that if the Ameritech proposal is adopted, it should be modified, not only to reflect higher initial rate increases, but also to implement a uniform rate structure. They assert that a single, uniform Special Access rate structure would offer a number of benefits, and would ensure that the same services are offered to all customers under the same terms and conditions, *albeit* for an interim period at transitional rates for some customers.

91. We believe that a transition to cost-based rates for the OCCs such as that proposed by Ameritech, is necessary to ensure the survival of essential telecommunications services. A transitional OCC discount will strike a fair balance between two countervailing considerations: (1) the need to avoid severe disruptions ("rate shock") in the market, versus (2) the need to avoid casting upon other consumers an excessive burden and thus to allow the exchange carriers to earn more for Special Access services provided to OCCs than the ten-year old Docket No. 20099 rates.

92. As an initial step toward just and reasonable, cost-supported Special Access tariff rates, we require the carriers to file tariffs, or amend their contractual arrangements, to establish rates for OCCs which reflect a twenty percent increase over the Docket No. 20099 rates. In addition, we propose, and seek further comment on, the second and third steps of the phase-in which would allow to pay fifty percent of effective Special Access tariff rates for a transitional period of six months, and would then allow OCCs to pay seventy-five percent of the tariffs, rates for the next months.[89] After the end of the second six-month period, the OCCs would pay the full tariff rates.

93. We believe the suggestion of Bell of Pennsylvania and others that the exchange carriers implement a uniform Special Access rate structure has considerable merit. As we noted above in our discussion of Special Access rate structure, at least initially, a uniform, simple structure would facilitate evaluation and speed the implementation of Special Access tariffs. A uniform structure would also ensure that the same or similar services would be offered by the exchange carriers under the same or similar terms and conditions.[90]

94. During the proposed phase-in of Special Access rates for OCCs, Special Access services would be offered to AT&T and the OCCs at different prices. We find that it would not be unreasonably discriminatory for the exchange carriers to file and have in effect differing Special Access rates for AT&T and the OCCs during a transition period. We are unpersuaded by AT&T's argument that the existence of different prices during the transition period would be unlawfully discriminatory. Even if it were assumed that the Special Access services the OCCs obtain are "like" the services AT&T obtains, the disparate rates paid by AT&T and the OCCs during the transition period would not be unlawfully disciminatory under the Communications Act. Section 202(a) of the Act, 47 U.S.C. § 202(a), forbids unjust or unreasonable discrimination in charges, practices, classifications and regulations for like services; Section 201(b), 47 U.S.C. § 201(b), requires that charges for communications services be just and reasonable. Neither provision, however, flatly prohibits all disparate charges. As the U.S. Court of Appeals

[85] AT&T application at 2–3 n.**, 18–21.

[86] Comments filed September 5, 1984, by Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company.

[87] *Id.* at 3.

[88] Comments filed jointly on September 5, 1984, by the Bell Telephone Company of Pennsylvania; The Chesapeake and Potomac Telephone Companies; The Diamond State Telephone Company; Nevada Bell; New England Telephone and Telegraph Company; New Jersey Bell Telephone Company; New York Telephone Company; Pacific Bell; South Central Bell Telephone Company; Southern Bell Telephone and Telegraph Company; and Southwestern Bell Telephone Company.

[89] The rate for circuits activated on or before November 8, 1984 would be the Docket No. 20099 rates until November 13, 1984; the rate between November 13, 1984 and the effective date of the Special Access tariffs would be the Docket NO. 20099 rates plus twenty percent; upon the effective date of the Special Access tariffs the rate for those circuits would be the tariff rate, less any transitional discount. The rate of circuits activated after November 8, 1984 would be the Docket No. 20099 rates until November 13, 1984; after November 13, 1984 the rate for those circuits would be the Docket No. 20099 rates plus twenty percent; the rate for those circuits would be the full tariff rate when the Special Access tariffs become effective.

[90] We therefore encourage exchange carriers to file uniform, simple structures incorporating rate elements like the channel termination and channel mileage elements of NECA's October 10 structure, so that the job of implementing initial Special Access tariffs can be more manageable. In the future, however, carriers are encouraged to develop more individualized tariff solutions to the provision of Special Access services.

for the District of Columbia Circuit held in its decision affirming the Commission's Access Charge Plan:

> The Communications Act * * * does not prevent all discrimination—disparities in prices for similar service—but only *unreasonable* discrimination. *Associated Press* v. *FCC*, 452 F.2d 1290, 1300, 1301, (D.C. Cir. 1971). The reasonableeness of the price disparity must be judged by the cirumstances in which it is assessed.[91]

95. The disparity in the price paid by AT&T and the OCCs must be judged in light of a number of factors including how the disparity came about, and the steps being taken to eliminate the disparity. It is ATT&T's failure to propose reasonable, cost-based adjustments to those rates in accordance with the Rules of the Commission prior to divestiture that accounts for their continued existence today. Further, the Commission is taking steps to eliminate the difference in rates paid by AT&T and the OCCs. In fact, one of the major goals of the Access Charge Proceeding has been the elimination of "the existing potpourri of mechanisms through which local carriers recover the cost of providing access services needed to complete interstate and foreign telecommunications."[92] Shifting from the existing arrangements to cost-based Special Access tariffs is a primary goal in this proceeding, but it must be done so as to avoid excessive disruption and dislocation in the telecommunications industry that would ultimately result in harm to the public. The OCCs now paying Docket No. 20099 rates and the customers of the OCCs must be given some reasonable opportunity to adjust to cost-based tariff rates. Denying the OCCs and their customers any transition period could threaten the survival of needed telecommunications services. AT&T and its customers do not stand in the same position, however. The rates AT&T currently pays are likely to be close to the tariff rates. AT&T, therefore, unlike the OCCs, does not need the protection against sudden increases in Special Access rates.[93]

96. There can be no question that the Commission has the authority to implement a reasonable transition plan for Special Access to avoid severe dislocations in the market. The Commission has frequently used such transitional mechanisms. As the court stressed in *NARUC* v. *FCC*:

> [R]ates may be structured to avoid disruptive service impacts. When necessary to avoid excessively burdening carriers, the gradual implementation of new rates and policies is a standard tool of the Commission. *E.g. Uniform System of Accounts*, 85 F.C.C. 2d 818, 828 (1981); *ENFIA*, 71 F.C.C. 2d 440, 455 (1979); *See also National Association of Independent Tel. Producers & Distributors* v. *FCC*, 502 F.2d 249, 253–55 (D.C. Cir. 1974).[94]

Further examples of transitions can be found in the Commission's Access Charge Rules.[95] Those Rule envision a transition to full end user charges for residential, single business and Centrex-CO customers.[96] The Commission has also provided for a phase-out of customer premises equipment from the separations process.[97]

97. We will thus require exchange carriers to file transition plans with, or as part of, their Special Access tariffs. Interested parties will have opportunity to comment on the second and third steps of the proposed phase-in when they comment on the filed Special Access tariffs. We intend to monitor the phase-in as part of our ongoing investigation of Special Access.

IV. The Docket No. 20099 Settlement Agreement

98. The Docket No. 20099 Settlement Agreement established "interim" tariff rates for the OCCs' use of what was then the Bell System's local exchange facilities. The Agreement imposed two conditions on changes to those tariff rates. First, the agreement requires that the rates can only be increased on six months notice, including any period of Commission suspension. Second, proposed tariff revisions are to be supported as required by Part 61 of the Commission's Rules, 47 CFR Part 61. The "interim" period ends when the revised rates become effective.

99. As discussed above, we have determined that the Docket No. 20099 rates are so low that, without modification, they would be unjust and unreasonable in violation of Section 201(b) of the Act, 47 U.S.C. § 201(b), and would grant the OCCs an undue preference in violation of Section 202(a) of the Act, 47 U.S.C. 202(a). The Docket No. 20099 rates are also so low that they would cast upon other consumers an excessive burden. Accordingly, the Settlement Agreement does not affect the Commission's authority under Section 205(a) of the Act, 47 U.S.C. 205(a), to prescribe a twenty percent increase over Docket No. 20099 rates for the OCCs to implement the first stage of the proposed three stage transition toward just and reasonable cost-based rates. Nor does the Agreement impair the Commission's authority to require a third set of Special Access tariffs, to become effective on forty-five days notice. Indeed, the Commission has express authority under the *Sierra-Mobile* doctrine[98] "to prescribe a change in contract rates whenever it determines such rates to be unlawful." 350 U.S. at 353. In MCI Telecommunications Corp. v. FCC, 665 F.2d 1300 (D.C. Cir. 1981), a case which addressed the Docket No. 20099 Settlement Agreement, the court duly recognized the Commission's authority to prescribe rate changes in abrogation of the Agreement.

100. Even if we were not acting pursuant to our Section 205(a) prescription authority, however, we believe that the OCCs have had much more than the six months notice of a rate increase required by the Agreement. The access tariffs filed by exchange carriers in September and October 1983 put the OCCs on notice that the Docket No. 20099 rates would be increased. Moreover, the Commission's Access Charge orders provided the interexchange carriers with notice that the Docket No. 20099 rates would terminate with the implementation of access tariffs.[99]

101. In addition to finding that the notice requirement has been satisfied, we also believe that an increase of twenty percent over Docket No. 20099

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[91] National Association of Regulatory Commissioners v. FCC, 737 F.2d 1095, 1136 (D.C. Cir. 1984) (*NARUC* v. *FCC*), *petition for cert. filed*, 53 U.S.L.W. 3070 (U.S. July 18, 1984) (No. 84–95) (emphasis in original).

[92] MTS and WATS Investigation, CC Docket 78–72, Phase I, FCC 83–356, released August 22, 1983 (*First Reconsideration*) at para. 2.

[93] The effect on ATT&T and the OCCs of implementing cost-based tariff rates would also differ significantly because the OCCs unlike AT&T, are likely to lease transmission facilities to interconnect their operating centers in the various local exchange company areas under tariffs which have been based on the Docket No. 20099 Settlement Agreement. In contrast, the arrangements by which AT&T obtains such facilities are not based on the Settlement Agreement.

[94] 737 F.2d at 1135.

[95] Part 69 of the commission's Rules, 47 CFR Part 69.

[96] Section 69.202 of the Commission's Rules, 47 CFR 69.202.

[97] Amendment of Part 67 of thye Commission's Rules and Establishment of a Joint Board, CC Docket No. 80–286, FCC 2d 1 (1982).

[98] FPC v. Sierra Pacific Power Co. (*Sierra*), 350 U.S. 348 (1956); United Gas Pipe Line Co. v. Mobile Gas Service Corp. (*Mobile*), 350 U.S. 332 entities to abrogate *unilaterally* their private contracts by filing tariffs altering the terms of those contracts.

[99] *See* MTS and WATS Market Structure, CC Docket No. 78–72, Phase I (*Access Charge Order*), 93 FCC 2d 241, 309–310 n.90 (1983). The argument that the OCCs have not had the six months notice required by the Agreement was considered and rejected in the *ECA Tariff Order* at paragraph 50. In the March 28 Order we confirmed our belief that the OCCs have been afforded the notice contemplated in the Docket No. 20099 Agreement. FCC 84–106 at 5–6 n.8.

rates is cost-justified. Thus, both conditions of the Agreement have been met. While we have criticized at length the cost data supplied with the Special Access tariffs and have found that data fails to support the tariff rates proposed thus far, it is without question that the cost data supports at least a twenty percent increase over the ten-year old Settlement Agreement rates.[100] Even eight OCCs have recognized some increase is justified and have acquiesced in a twenty percent increase over the Docket No. 20099 rates until Special Access tariff rates are implemented.[101]

102. Out of an abundance of caution, however, we asked for comments on whether the Agreement continues to be in the public interest, accepting *arguendo* that the notice requirement has not yet been satisfied. Comments and replies regarding the Docket No. 20099 Settlement Agreement were filed on the same schedule as the comments on the Special Access tariffs and many parties integrated their comments on the Agreement and the tariffs.[102]

103. We have carefully considered the comments discussing the Agreement filed in response to the March 28 Order, as well as those filed in response to AT&T's June 26 application for review and those filed in response to Ameritech's phase-in petition. As discussed above, we conclude that abrogation of the contract with respect to provision of Special Access services to OCCs by exchange carriers is in the public interest.

104. The Commission has specifically required the exchange carriers to file access tariffs to replace existing compensation arrangements, including the Docket No. 20099 Settlement Agreement.[103] The record assembled in our investigation into Special Access rates amply supports a twenty percent increase over the Docket No. 20099 Settlement Agreement rates. Continuation of the Agreement, with no increase in its rates, would perpetuate the rate disparity between the various carriers and customers longer than is necessary to shield the ICCs against rate shock and longer than is in the public interest. Thus, we have the authority to abrogate the Docket No. 20099 rates not simply because they are unprofitable to the exchange carriers, but rather because they are so low that, without modification, they would be unjust, unreasonable, would grant an undue preference, and would excessively burden other customers. *Cf. Sierra*, 350 U.S. at 355.

V. Interim Compensation Arrangements

105. In the interim period, that is from November 13, 1984 until Special Access tariffs take effect, we prescribe a twenty percent markup over the Docket No. 20099 rates. Exchange carriers providing Special Access service under contracts or tariffs other than the Docket No. 20099 tariffs, may charge the OCCs rates for Special Access services which reflect a twenty percent markup over the Docket No. 20099 rates. The existing contracts and arrangements between AT&T and the exchange carriers are to be extended until the Special Access tariffs become effective.[104]

106. Section 214(a) of the Communications Act[105] prohibits carriers from discontinuing service without authorization. Moreover, pursuant to Sections 4(i), 201(a) and 205(a) of the Communications Act,[106] the Commission is authorized to establish divisions of charges for service provided by through rates. The Commission also has clear authority to prescribe interim arrangements where necessary to ensure continuation of service. *See Lincoln Tel. & Tel. Co. v. FCC*, 659 F.2d 1092 (D.C. Cir. 1982); *Trans Alaska Pipeline Rate Cases*, 436 U.S. 631 (1978).

107. A waiver of the MFJ has been granted to permit the provision of Special Access services to AT&T pursuant to existing contractual arrangements until November 13, 1984.[107] The extension of the arrangements between AT&T and the former BOCs may require the parties to the antitrust settlement agreement to seek further waiver of the MFJ as they deem appropriate.

VI. Cancellation of Conflicting Tariffs.

A. Copycat Private Line Offerings

108. As initiatlly filed, Special Access was devised as a "for carriers only" offering. Jurisdictionally interstate private line service is currently provided to end-users through concurrence in AT&T's general-application private line offerings in Tariffs F.C.C. No. 260, 267, and 270.[108] By offering Special Access as a "for carriers only" tariff for local-area private line termination, supplanting their current OCC tariff offerings, the exchange carriers contemplated concurrently offering equivalent service to end-users either by continuing to concur in AT&T's general-application private line tariffs or by re-publishing the terms of those tariffs in their own "copycat" private line tariffs.

109. The Commission re-emphasized in the *ECA Tariff Order*, however, that it is a basic goal of its Access Charge Plan to see to it that any person, whether a carrier or an end-user, may be able to obtain access service under the filed tariffs and that its general objective is to eliminate, so far as possible, differences in services and rates that turn on the customer's status as carrier or end-user.[109] Accordingly, we directed the filing carriers to revise the Special Access provisions so that end-users would be able to obtain any of the services offered therein to interexchange carriers.

110. Most of the Special Access filings have since been revised to remove any

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[100] In *MCI v. FCC*, the court recognized that "inflation and higher interest rates could [be] taken into account * * * in cost supported rate revisions" to the Docket No. 20099 Settlement Agreement. 665 F.2d at 1303.

[101] The eight OCCs argued that the twenty percent increase must be accompanied by an accounting order. Although we will continue our investigation of lawful Special Access rates, we decline to impose an accounting order at this time. The interim mark-up over the Docket No. 20099 rates will be in place only until the second stage of the transition becomes effective and the potential benefits of an accounting order would be outweighed by the burdensome record-keeping it would require. The only OCC which filed comments opposing the twenty percent increase, SATNET, argued that the twenty percent increase would violate the terms of the Docket No. 20099 Settlement Agreement. SATNET, however, is neither a signatory to the Settlement Agreement nor a successor to any party.

[102] Since the carriers have had notice and opportunity to comment on the twenty percent rate increase prescribed herein, all procedural requirements of Section 205(a) of the Act, 47 U.S.C. 205(a), have been satisfied. Further, the parties will be afforded an additional opportunity to comment on the proposed second and third stages of the transition plan set forth herein.

[103] *Reconsideration Order* at para. 2.

[104] On October 19, 1984, Pacific Bell and Nevada Bell petitioned the Commission to require the former BOCs to maintain pooling arrangements amongst themselves. We do not address the issues presented in that petition at this time and our action in this order is taken without prejudice to any resolution of those questions.

[105] 47 U.S.C. 214(a).

[106] 47 U.S.C. § 154(i), 201(a), 205(a).

[107] United States v. Western Electric Company, Inc., No 82-0192 (D.D.C. October 19, 1984).

[108] The Commission has found that there is no difference between the private line services that the BOCs provide under AT&T Tariff F.C.C. No. 260 and those that they provide under their OCC tariffs, except for pricing and the manner in which certain features are bundled with transmission in the OCC tariffs. *American Telephone & Telegraph Company*, 92 FCC 2d 896, 907 at n. 31 (1982).

[109] *ECA Tariff Order* Appendix D, pp. 1, 2-1 and 2-65. See also paragraph 24 of the *Access Charge Order*, where the Commission determined that exchange carriers must implement a "single, uniform and nondiscriminatory structure for interstate access tariffs covering those services that make identical or similar use of access facilities" if they are to satisfy the obligations that the Communications Act imposes on them. For an exchange carrier to offer private line access services on different terms to its customers depending on their status as carriers or end-users would obviously violate this requirement.

doubt that the services are to be held open to all classes of customers. It appears, however, that some exchange carriers may still contemplate maintaining in effect the tariff offerings under which they currently provide private line service to end-users beyond the effective date of their Special Access tariffs. Any that were to do so would then have in effect two "overlapping" tariff offerings, each ostensibly open to end-user and carrier customers alike, specifying disparate rates and terms of service for jurisdictionally interstate, intraLATA private line service. The prior tariff orders in this proceeding did not explicitly instruct the exchange carriers to avoid this result by cancelling their currently-effective "end-user" offerings as of the effective date of the Special Access tariffs. We did note, however, at page 7–13 of Appendix D to the *ECA Tariff Order*, that "an additional question arises concerning the continued need and usefulness of copycat tariffs for private line services which customers will be able to obtain under the revised Special Access tariff provisions," and we stated that comment would be sought on this issue in the context of Phase II of Docket No. 83–1145.

111. Shortly thereafter, the Commission's staff pointed out in a public notice issued on February 23, 1984 in connection with Phase II, Part I that there is evidently a "substantial area of overlap" between Special Access and the so-called copycat tariffs.[110] The notice expressed concern that exchange carriers which maintained both sets of offerings concurrently would be furnishing equivalent service on disparate terms. After warning that, if such a result would be unlawful, any "overlap" would have to be eliminated before the offerings would be permitted to be concurrently effective, the notice invited interested persons to submit written comments.

112. The filing carriers, as well as the other interested parties that responded to the public notice, all agreed that the private line copycat tariffs and Special Access offerings do, in fact, overlap, *i.e.*, provide functionally equivalent service in whole or in part.[111] Most of the carriers only went so far as to concede that there is some overlap, without specifying which of the services covered by their private line copycat tariffs have no counterpart in their Special Access offerings, or *vice versa*. Without expressing any view as to whether it would be unlawful for them to maintain dual, "overlapping" general-application private line tariffs concurrently in effect, the carriers generally conceded that each carrier's interstate private line offerings ought to be consolidated into a single tariff. Northwestern Bell, Wisconsin Bell, Pacific Northwest Bell, Mountain Bell, and the GTE Operating Companies proposed to withdraw their private line copycat filings just before the Special Access tariffs take effect. The other filing carriers urged, on the other hand, that they be allowed to maintain their private line copycat tariffs concurrently in effect with their Special Access offerings for limited periods of time.[112] Their principal argument for allowing the private line copycat tariffs to be maintained concurrently with Special Access for an interim period is that the carriers would assertedly be unable for some time to bill at Special Access rates the customers that now take private line service under the tariff terms that the copycat tariffs would replicate due to the time needed to convert billing records. The carriers indicated that they were unprepared in this regard because the Commission's recent direction in its *ECA Tariff Order* that Special Access was to be offered to end-users as well as carriers had taken them by surprise.[113]

113. Several of the filing carriers sought to justify an overlapping period by claiming that customers which now take private line service under the existing tariff terms ought not to be charged Special Access rates as of April 3, the putative effective date for Special Access, because they would not have had sufficient advance notice by then that different rates were to apply. Similarily, other interested parties advocated that private line service continue to be offered to end-users on the terms that are currently in effect until the Commission and the public have had adequate time in which to assess the pending Special Access tariffs.

114. Since then, the GTE operating companies and United Inter-Mountain have withdrawn their private line copycat filings.[114] The BOCs continue to maintain theirs on file, however, although they have postponed their effective dates to November 13 to again coincide with the putative effective date for Special Access.[115]

115. Based on the record assembled on this issue, we will require exchange carriers to withdraw or cancel conflicting interstate tariff offerings of private line service prior to the effective date of the Special Access tariffs. By "conflicting interstate tariff offerings" we mean offerings filed with the Commission for service that is functionally-equivalent to the "access" service that is to be provided under the Special Access tariffs: *i.e.*, jurisdictionally-interstate private line service between points within a LATA or equivalent local serving area that is used to originate or terminate interLATA communications. As noted above, the fundamental stated objective of the Access Charge Plan is to replace with a single uniform mechanism the existing potpourri of mechanisms through which exchange carriers recover the cost of providing access services needed to complete interstate and foreign communications.[116] This objective would be thwarted if exchange carriers were to offer private line service that constitutes "access" service under disparate terms pursuant to concurrently-effective interstate tariffs. "Access service," for purposes of the Access Charge Plan, refers to jurisdictionally-interstate service of the sort which the MFJ defines as "exchange access" and requires the BOCs to offer under tariffed access charges. Any intraLATA service used to originate or terminate communications extending beyond LATA boundaries is "exchange access" as defined in the MFJ. The exchange carriers' current private line offerings by concurrence in AT&T's tariffs, which would essentially be replicated in the pending copycat tariffs,

[110] The copycat tariffs have been set for investigation in Phase II, Part I of this proceeding.

[111] The parties which commented on the overlap are listed in Appendix F.

[112] At the time when the responses to the public notice were being prepared, the Special Access tariffs were scheduled to become effective on April 3, 1984.

[113] Michigan Bell, NYNEX, Southern Bell, South Central Bell, and the Bell Atlantic companies declared that they would be unable to bill copycat customers at Special Access rates until the end of 1984; Illinois Bell and Indiana Bell declared that they would be unready until June 1984; Ohio Bell said that it would be unready until August 3; Pacific Telephone and Telegraph and Nevada Bell proposed to withdraw their private line copycats within "a reasonably short period of time" needed for records conversion; and Southern New England Telephone stated that it would be unready to bill copycat customers at Special Access rates until ninety days following the effective date of the Special Access offerings. United Inter-Mountain proposed to maintain its private line copycat tariffs in effect until the end of 1984, but did not allege that any practical consideration precluded it from applying Special Access rates prior to then. Cincinnati Bell did not disclose whether it intended to maintain its private line copycat tariffs in effect concurrently with Special Access.

[114] GTE Operating Companies Transmittal No. 18, filed on July 24, 1984, effective July 25, 1984. United Inter-Mountain Transmittal No. 40, filed on October 31, 1984, effective November 1, 1984.

[115] Cincinnati Bell postponed the effective date of its copycat tariff to November 30, 1984.

[116] *First Reconsideration* at para. 2.

largely apply for service of this description, as they pertain to the provision of intraLATA channels used to originate or terminate interstate, interLATA communications. The BOCs may not, therefore, maintain their existing offerings of private line "access" services, whether as published in copycat tariffs or in AT&Ts tariffs in which they concur, in effect after the effective date of the Special Access tariffs. If they were to do so, not only would their practice in this regard be at odds with the Access Charge plan and the Commission's Private Line Guidelines, but it would also seem to be at odds with the requirements of Sections 202(a) and 203(c) of the Act, 47 U.S.C. 202(a) and 203(c).

116. The considerations that some of the BOCs have advanced to justify temporarily maintaining the current offerings in effect after the effective date of Special Access are not compelling, particularly as it appears that such practice would forestall attainment of one of the Access Charge Plan's basic objectives: that of eliminating, as far as possible, discrimination between carrier and end-user customers. It has been contended in justification of this discriminatory scheme that existing end-user customers would not have had adequate advance notice by April 3 of the impending application of Special Access for the private line service afforded them. This consideration has been mooted by the subsequent suspension of the Special Access tariffs' effectiveness and by the action that is being taken here. Refiling of Special Access provisions required by this order will provide adequate time for carriers to modify their billing procedures. We expect that the BOCs will be prepared to bill all customers under the terms of their Special Access tariffs by the time those tariffs take effect, although they may not have been prepared to do so when they responded to our public notice of February 23 on the overlap issue. Should some carriers not be prepared by the effective date of Special Access to bill end-users in accordance with their Special Access tariffs, we would expect the carriers to implement the billing changes as soon as possible.

B. Non-Exchange Access Offerings

117. We have ruled that it would be unlawful for exchange carriers to maintain in effect the terms of their existing interstate tariff offerings for private line service after the effective date of their Special Access tariffs, to the extent that the former pertain to the provision of access service. The currently-effective private line offerings (and hence the pending copycat tariffs which replicate them), however, cover the provision of certain types of jurisdictionally interstate service that is not access service as defined by the Commission in its *Access Charge Order*, because it is not used to originate or terminate interLATA communications. One type of non-access service that is provided under the currently-effective tariffs is so-called "corridor" service: *i.e.*, the provision of interstate, interLATA channels in certain metropolitan areas, *e.g.*, New York City/Newark and Philadelphia/Camden, which the MFJ allowed the BOCs to provide by exception to the general restriction on their provision of interLATA service.[117] A second type of non-access service that the exchange carriers currently offer under interstate private line tariffs is the provision of physically-interstate channels between two points within the same LATA which are not used in connection with interLATA channels. A third type of currently-covered non-access service is the provision of physically intrastate, intraLATA channels that are used to carry intraLATA communications to another state within the same LATA. Given the Commission's policy that generic transmission channels ought to be be provided under integrated rate structures, there is no evident justification for separate interstate tariffs to be maintained solely for corridor traffic or the other types of jurisdictionally-interstate, non-access private line service that the exchange carriers currently offer under interstate tariff. So that the implementation of Special Access will not occasion discrimination between the provision of jurisdictionally interstate private line access service and other jurisdictionally interstate private line service, we require that the Special Access tariffs be amended as necessary to cover the provision of such corridor and intraLATA, non-access private line services under an integrated rate structure.[118] Hence, there will be no reason for exchange carriers to continue to concur in AT&T interstate private line offerings after the effective date of Special Access, and we will require them to cancel their concurrences as of then.[119]

118. Additionally, more than one exchange carrier is generally involved in providing corridor and interstate, intraLATA service, so that a means of dividing revenues would be required if through rates are to be established. It seems that the establishment of joint through rates, if desired, could be achieved using traditional methods, for example, each of the joint providers could file the through, end-to-end interexchange rate in its tariff and divide revenues in a manner related to costs or other equitable, agreed-upon methods.

119. In a public notice released October 23, 1984, public comments were requested on the treatment of physically interstate, intraLATA and intraLATA transmission channels and related services under the Switched and Special Access tariffs. Attachments to that notice included a letter dated August 30, 1984, from John Staurulakis, Inc., and a reply to that letter dated October 12, 1984, from NECA. The pleading cycle established in that notice ends on November 29, 1984 and we expect an order to be issued shortly thereafter. We do not reach those issues in this order.

VII. Conclusion and Ordering Clauses

120. As discussed above, the rate structures and the rates proposed by the exchange carriers in the pending Special Access tariffs are unreasonable and unsupported. The exchange carriers are therefore directed to issue tariff supplements which indicate that the proposed Special Access tariffs have been found unlawful and are not in effect.

121. We have also determined that the copycat private line tariffs pending before the Commission, and the concurrences of the exchange carriers in AT&T's private line tariffs are unlawful, as discussed above. The carriers are therefore required to withdraw or cancel those tariffs and concurrences before the effective date of Special Access tariffs.

122. Exchange carriers with tariffs subject to the Docket No. 20099 Settlement Agreement are directed to file revisions to those tariffs which reflect a twenty percent markup over the Docket No. 20099 rates. The existing

[117] United States v. American Telephone and Telegraph Company, No. 82-0192 (D.D.C. April 20, 1983).

[118] As noted in the *First Reconsideration*, many local area private lines provided under state tariffs may, in fact, be jurisdictionally interstate. The Commission intends to review this issue in the future to determine whether such services should be provided under access tariffs to ensure uniform, non-discriminatory rates for all interstate customers.

[119] Moreover, it would be an unreasonable practice for the carriers that have not already withdrawn their private line copycat tariffs to substitute these replicative tariffs for their concurrences in corresponding AT&T tariffs in the interim before the implementation of Special Access, as this would burden the Commission's resources to no useful purpose.

arrangements and contracts between AT&T and the exchange carriers are to be extended until the Special Access tariffs become effective.

123. We require the exchange carriers to file revised Special Access provisions which comply with the policy determinations and specific instructions of this order, including Appendix B of this order. Carriers are directed to file revised tariffs and support material conforming to this order no late than December 3, to be effective on January 17, 1985. Comments on the revised tariffs are to be filed by December 18, 1984, and are to use a section-by-section analysis like the one used in Appendix B of this order. Reply comments are due by December 28, 1984, and must also use the section-by-section format. We do not expect to modify or waive the requirements of this order, absent exceptional circumstances.

124. We expect that the information supplied with the new filings and the specific rates and provisions will comply with this order, so that we may allow the revised tariffs to become effective. In any event, we will continue this investigation to monitor the filings and consider any additional issues which we have not fully or permanently resolved here.

125. Accordingly, it is ordered, pursuant to Sections 4(i), 4(j), 201, 202, 203, 204(a) and 205 of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 201, 202, 203, 204(a) and 205, that the tariff material submitted pursuant to the transmittals referenced in Appendix A is unlawful.

126. It is further ordered that if the transmittals referenced in Appendix E and the concurrences of the exchange carriers in the private line tariffs of American Telephone and Telegraph Company are not withdrawn or cancelled prior to the effective date of the Special Access tariffs, they will be unlawful.

127. It is further ordered that the exchange carriers issue supplements indicating that the Special Access tariffs have been found unlawful and are not in effect.

128. It is further ordered that the exchange carriers issue supplements withdrawing or cancelling their copycat private line tariffs by the effective date of the Special Access tariffs.

129. It is further ordered that the exchange carriers shall issue revocation notices canceling their concurrences in American Telephone and Telegraph Company private line tariffs to be effective concurrently with the effective date of the Special Access tariffs.

130. It is further ordered that American Telephone and Telegraph Company shall file revisions to its private line tariffs deleting the exchange carriers as concurring carriers, upon receipt of the revocation notices of the exchange carriers as of the effective date of the Special Access tariffs.

131. It is further ordered that for the purposes of this order, Sections 61.58, 61.59, 61.116 and 61.134 of the Commission's Rules, 47 CFR §§ 61.58, 61.59, 61.116 and 61.134 are waived.

132. It is further ordered that the exchange carriers shall file revised tariff material in compliance with this order no later than December 3, 1984, with a scheduled effective date of January 17, 1985.

133. It is further ordered, pursuant to sections 4(i), 4(j), 201(a), 203(b), 204, 205 and 211 of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 201(a), 203(b), 204, 205 and 211, that the prescription described herein be implemented effective November 13, 1984, and the affected exchange carriers are to file tariff supplements which increase the Docket No. 20099 rates by twenty percent as of November 13, 1984, to remain in effect until Special Access tariffs become effective.

134. It is further ordered that the exchange carriers file supplements to withdraw as issuing carriers in the Docket No. 20099 tariffs to be effective as of the effective date of the Special Access tariffs.

135. It is further ordered that the Bell Operating Companies shall file supplements to withdraw as issuing carriers in B.S.O.C. Tariff F.C.C. Nos. 3 and 4 to be effective concurrently with the effective date of the Special Access tariffs.

136. It is further ordered that the existing arrangements and contracts between American Telephone and Telegraph Company and exchange carriers are to be extended until the Special Access tariffs become effective.

137. It is further ordered that the application for review filed by American Telephone and Telegraph Company is denied.

Note.—Due to the ongoing effort to minimize publishing costs, Appendices A through I, Summaries/Lists of Parties filing comments and/or Tariffs, will not be printed herein. They may be viewed, however, in the FCC Dockets Branch, Rm. 239, and the FCC Library, Rm. 639, both located at 1919 M St., N.W., Washington, D.C. 20554. In addition, copies of the complete text of this action may be obtained from the International Transcription Service, also located at 1919 M St., N.W. Tel. No.: (202) 296-7322.

FEDERAL COMMUNICATIONS COMMISSION.

William J. Tricarico,

Secretary.

[FR Doc. 84-33696 Filed 12-27-84; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

National Emergency Training Center, Board of Visitors for the National Fire Academy; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name: Board of Visitors (BOV) for the National Fire Academy (NFA)
Dates of meeting: February 3-4, 1985
Place: Hyatt Regency-Crystal City, Arlington, Virginia
Time: February 3—1:00 p.m. to 6:00 p.m.; February 4—8:00 a.m. to 1:00 p.m.
Proposed agenda: February 3-4: Approval of Minutes; Old Business, New Business; Annual Report; FY86 Preparations

The meeting will be open to the public with approximately 10 seats available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact Mr. Joseph Donovan, Superintendent, National Fire Academy, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD, 21727 (telephone number 301-447-6771) on or before January 2, 1985.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Associate Director's Office, Building N, National Emergency Training Center, Emmitsburg, MD, 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: December 11, 1984.

Joseph L. Donovan,

Superintendent, National Fire Academy.

[FR Doc. 84-33709 Filed 12-27-84; 8:45 am]

BILLING CODE 6718-04-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties

may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 15 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–008090–025
Title: Mediterranean North Pacific Coast Freight Conference
Parties: d'Amico Societa di Navigazione per Azioni, "Italia" di Navigazione S.p.A., United Yugoslav Line, Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would expand the scope of the conference to include the Eastbound trade from ports on the Pacific Coast of the United States and inland U.S. points via such ports to ports and points in the Mediterranean areas covered by the Westbound scope of the conference and points in Yugoslavia. It would also make certain changes in procedures for conference decision making.

Agreement No.: 206–010706
Title: Hong Kong/Macao/Taiwan Eastbound Bridging Agreement
Parties: New York Freight Bureau, Trans Pacific Freight Conference (Hong Kong)

Synopsis: The proposed agreement would provide bridging authority for the parties to cooperate in respect to shippers and consignees serving both conference trades under conference service contracts and volume incentive programs, whether in service contracts or by tariff application.

Agreement No.: 206–010707
Title: Japan/Korea—Eastbound Bridging Agreement
Parties: Japan/Korea—Atlantic & Gulf Freight Conference, Trans-Pacific Freight Conference of Japan/Korea

Synopsis: The proposed agreement would provide bridging authority for the parties to cooperate in respect to shippers and consignees serving both conference trades under conference volume incentive programs, whether in service contracts or by tariff application.

By Order of the Federal Maritime Commission.

Dated: December 21, 1984.

Francis C. Hurney,
Secretary.

[FR Doc. 84–33739 Filed 12–27–84; 8:45 am]
BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–000150–077
Title: Trans-Pacific Freight Conference of Japan/Korea
Parties: American President Lines, Ltd.; Barber Blue Sea Line; Hapag-Lloyd AG; Japan Line, Ltd.; Kawasaki Kisen Kaisha, Ltd.; Lykes Bros. Steamship Company, Inc.; Mitsui O.S.K. Lines, Ltd.; A.P. Moller-Maersk Line; Neptune Orient Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line, Inc.; Sea-Land Service, Inc.; Showa Line, Ltd.; United States Lines, Inc.; Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would permit the member lines in their capacity as conference members to enter into agreements with any other carrier or person "including a conference of carriers," provided such agreements are separately filed and become effective under the Shipping Act of 1984.

Agreement No.: 202–003103–076
Title: Japan/Korea-Atlantic & Gulf Freight Conference
Parties: Barber Blue Sea Line; Japan Line, Ltd.; Kawasaki Kisen Kaisha, Ltd.; Lykes Bros. Steamship Company, Inc.; Mitsui O.S.K. Lines, Ltd.; A.P. Moller-Maersk Line; Neptune Orient Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line, Inc.; United States Lines, Inc.; Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would permit the member lines in their capacity as conference members to enter into agreements with any other carrier or person "including a conference of carriers," provided such agreements are separately filed and become effective under the Shipping Act of 1984.

Agreement No.: 202–005600–052
Title: Philippines North America Conference
Parties: American President Lines, Ltd.; Hapag Lloyd AG; Lykes Bros. Steamship Co., Inc.; A.P. Moller (Maersk Line); Sea-Land Service, Inc.; United States Lines, Inc.

Synopsis: The proposed amendment would divide the Atlantic and Gulf Coast Group into two subgroups, an all-water group and a separate mini-landbridge group, vesting in each group voting autonomy, allowing, however, mini-landbridge members to participate in discussions held by the all-water group but without voting rights therein.

Agreement No.: 202–006190–042
Title: United States Atlantic & Gulf Venezuela Freight Association
Parties: Compania Anonima Venezolana de Navigacion, Delta Steamship Lines, Inc.

Synopsis: The proposed amendment would add Coordinated Caribbean Transport, Inc. as a party to the agreement. The parties have requested a shortened review period.

Agreement No.: 202–010012–006
Title: Australia/Pacific Coast Rate Agreement
Parties: Columbus Line, Pacific Australia Direct Line

Synopsis: The proposed amendment would replace the neutral-body self-policing features of the agreement with an internally-controlled self-policing program. The parties have requested a shortened review period.

Agreement No.: 202–010270–008
Title: Gulf-European Freight Association
Parties: Atlantic Cargo Services, AB; Compagnie Generale Maritime; Hapag Lloyd AG; Intercontinental Transport (ICT) BV; Lykes Bros. Steamship Co., Inc.; Sea-Land Service, Inc.; Trans Freight Lines, Inc.

Synopsis: The proposed amendment would allow space chartering among the parties to the agreement.

Agreement No.: 202–010390–005
Title: United States Atlantic and Gulf/Ecuador Conference
Parties: Coordinated Caribbean Transport, Inc.; Delta Steamship Lines, Inc.; Ecuadorian Line, Inc.; Lykes Bros. Steamship Co., Inc.; Transportes Navieros Equatorianos

Synopsis: The proposed amendment would expand the scope of the agreement to include all Atlantic and Gulf ports of the United States and Ecuador both Northbound and Southbound. It would also authorize intermodal service in the U.S. via Atlantic and Gulf ports and

intermodal service in Ecuador. Additionally, it would substitute final, permanent provisions for previously submitted interim mandatory provisions and would restate the agreement in accordance with the Commission's format, organization and content requirements.

Agreement No.: 202–010424–008
Title: United States Atlantic & Gulf/Jamaica and Hispaniola Steamship Conference
Parties: Puerto Rico Marine Management, Inc.; Sea-Land Service, Inc.; Trailer Marine Transport/CTMT
Synopsis: The proposed amendment would add as parties to the agreement Concorde Nopal Line, Coordinated Caribbean Transport, Inc. and Seaboard Caribe, Ltd. The parties have requested a shortened review period.

Agreement No.: 202–010636–004
Title: United States Atlantic-North Europe Conference
Parties: Atlantic Container Line (G.I.E.); Dart-ML Limited; Double Eagle Lines, Inc.; Hapag-Lloyd AG; Sea-Land Servide, Inc.; Trans Freight Lines, Inc.
Synopsis: The proposed amendment would add Compagnie Generale Maritime and Intercontinental Transport (ICT) BV to the list of parties to the agreement. The parties have requested a shortened review period.

Agreement No.: 202–010637–003
Title: North Europe-U.S. Atlantic Conference
Parties: Atlantic Container Line (G.I.E.); Compagnie Generale Maritime; Dart-ML Limited; Hapag-Lloyd AG; Intercontinental Transport (ICT) BV; Sea-Land Service, Inc.; Trans Freight Lines, Inc.; United States Lines, Inc.
Synopsis: The proposed amendment would extend the members' right of independent action with respect to rate and service items required to be filed in a tariff to also apply to commodities exempted from tariff filing requirements. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: December 21, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84–33741 Filed 12–27–84; 8:45 am]

BILLING CODE 6730–01–M

Filing and Effective Date of Agreement

The Federal Maritime Commission hereby gives notice, that on December 17, 1984, the following agreement was filed with the Commission pursuant to section 5, Shipping Act of 1984, and was deemed effective that date, to the extent it constitutes an assessment agreement as described in paragraph (d) of section 5, Shipping Act of 1984.

Agreement No.: 201–000082–006
Title: West Gulf Maritime Association Assessment Agreement
Parties: West Gulf Maritime Association, International Longshoremen's Association
Synopsis: The amendment provides for an extension of the cargo assessment provided for in the West Gulf Maritime Association Resolution of June 21, 1984 to June 30, 1985.

By Order of the Federal Maritime Commission.

Dated: December 21, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84–33740 Filed 12–27–84; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on December 21, 1984.

Social Security Administration

Office of Refugee Resettlement

Subject: Reporting Requirements for Targeted Assistance Grants for Services for Refugees and Entrants in Local Areas of High Need-Revision-(0960–0334)
Respondents: States
OMB Desk Officer: Robert J. Fishman.

Office of the Secretary

Subject: Office of Community Services Discretionary Grant Application-Reinstatement
Respondents: State or local governments, non-profit institutions
Subject: Analysis of Government Owned Contractor-Held Property Extension (0990–0004)
Respondents: Certain HHS Contractors
Subject: Report of Capitalized Nonexpendable Equipment-Extension (0990–0081)
Respondents: Certain HHS Contractors
Subject: Recordkeeping Requirements for Government Owned/Contractor Held Property-Extension (0990–0015)
Respondents: Certain HHS Contractors
Subject: DHHS Project-By-Project Research Awards Cost Sharing Agreement-Extension-(0990–0016)
Respondents: Certain HHS Grantees
OMB Desk Officer: Robert J. Fishman.

Social Security Administration

Subject: Overpayment Recovery Questionnaire-Extension SSA–632 (0960–0037)
Respondents: Individuals or households
Subject: State's Report of Adjustments-Extension-SSA-3964 (0960–0044)
Respondents: States
Subject: Quarterly Work Incentive Demonstration Program Report-SSA-4769-Revision (0960–0254)
Respondents: States
OMB Desk Officer: Robert J. Fishman.

Public Health Service

Office of the Assistant Secretary for Health

Subject: Application for Appointment as a Commissioned Officer in the U.S. Public Health Service-Extension (0937–0025)
Respondents: Individuals or households

Health Resources and Service Administration

Subject: Black Lung Clinics Program—Extension (0915–0081)
Respondents: State or local governments, businesses, non-profit institutions.
Subject: Sample Survey of the Practice Characteristics of Clinical Psychologists Providing Mental Health Services—New
Respondents: Individuals or households

National Institutes of Health

Subject: Survey of Biomedical Research Facilities—New
Respondents: Non-profit institutions
OMB Desk Officer: Fay S. Iudicello.

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202–245–6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503, Attn: (Name of OMB Desk Officer).

Dated: December 21, 1984.

Wallace O. Keene,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 84-33722 Filed 12-27-84; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control

Adult Population Vaccine Usage; Open Meeting

The Centers for Disease Control (CDC) announces a meeting to develop a coordinated approach to public and professional education concerning the need to increase the appropriate use of vaccine by the adult population.

Representatives from medical professional societies, voluntary agencies, the public health sector, and vaccine manufacturers have been invited to participate. The meeting is open to the public, limited only by space available.

The meeting is scheduled to be held on Thursday, January 17, 1985, at 8:30 a.m., in Room 207, Building 1, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

All inquiries should be sent to: Mr. Philip R. Horne, Program Management Officer, Division of Immunization, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia, Telephones: FTS: 236-1882; Commercial: 404/329-1882.

Dated: December 21, 1984.

James O. Mason, M.D., Dr. P.H.,

Director, Centers for Disease Control.

[FR Doc. 84-33699 Filed 12-27-84; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Kent Feeds' GM-T 40 (Tylosin Phosphate) Medicated Premix; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) sponsored by Kent Feeds, Inc., providing for use of GM-T 40 Medicated Premix (a 0.8-gram-per-pound tylosin phosphate) in making complete swine feeds. The sponsor requested the withdrawal of approval.

EFFECTIVE DATE: January 7, 1985.

FOR FURTHER INFORMATION CONTACT: David N. Scarr, Center for Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1846.

SUPPLEMENTARY INFORMATION: Kent Feeds, Inc., 1600 Oregon St., Muscatine, IA 52761, is sponsor of NADA 96-272, which provides for use of a 0.8-gram-per-pound tylosin premix to make complete swine feeds used for increased rate of weight gain and improved feed efficiency.

The application was originally approved May 9, 1975 (40 FR 20270). By letter of September 6, 1984, the sponsor requested withdrawal of approval of the NADA because the product is not being marketed and waived their opportunity for a hearing.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84) and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 96-272 and all supplements for Kent Feeds' GM-T 40 Medicated Premix is hereby withdrawn, effective January 7, 1985.

In a document published elsewhere in this issue of the **Federal Register**, the regulations are amended accordingly.

Dated: December 20, 1984.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 84-33689 Filed 12-27-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84G-0384]

Fuji Oil Co., Ltd.; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Fuji Oil Co., Ltd., has filed a petition proposing that the generally recognized as safe (GRAS) regulations be amended to include an alternate method of manufacture. The amendment would provide for the safe use of cocoa butter substitute from palm oil when it is prepared by directed esterification of partially saturated 1,2,3-triglycerides (derived from plam oil) and ethyl stearate in the presence of lipase enzyme from *Aspergillus Niger*.

DATE: Comments by February 26, 1985.

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

FOR FURTHER INFORMATION CONTACT: John W. Gordon, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-5487

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that a petition (GRASP 5G0296) has been filed by Fuji Oil Co., Ltd., 6-1, Hachmancho, Minami-ku, Osaka, proposing that § 184.1259 (21 CFR 184.1259) of the generally recognized as safe (GRAS) regulations be amended to provide for use of cocoa butter substitute, primarily from palm oil, prepared by an alternate method of manufacture. The amendment would provide for the safe use of the ingredient when it is prepared by directed esterification of partially saturated 1,2,3-triglycerides (derived from palm oil) and ethyl stearate in the presence of lipase enzyme from *Aspergillus Niger*.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the format requirements outlined in § 170.35 is filed by FDA. There is no prefiling review of the adequacy of data to support a GRAS conclusion. This, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for affirmation.

Interested persons may, on or before February 26, 1985, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS. A copy of the petition and received comments may be seen in the Dockets Management Branch, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 19, 1984.

Sanford A Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-33691 Filed 12-27-84; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

New Grants Program for Baccalaureate Degree-Granting Institutions; Academic Research Enhancement Award

In its report accompanying the Fiscal Year 1985 appropriations for the National Institutes of Health (NIH),

Congress included funds for an initiative to develop research in educational institutions which provide the baccalaureate training for a significant number of our nation's research scientists, but which historically have not been major participants in NIH programs. Therefore, the NIH is announcing a new program of Academic Research Enhancement Awards. These awards are for the support of new or expanded health-related research projects conducted by faculty in eligible institutions.

For purposes of application and award, eligible institutions are those offering baccalaureate degrees in the sciences related to health, that are not eligible to receive the NIH Biomedical Research Support Grant in Fiscal Year 1985. Applications, to be submitted on Form PHS 398 (Rev. 5/82), will be received and processed by the NIH Division of Research Grants. Each application will be reviewed for scientific and technical merit and program relevance under the system of peer review required by sections 301 and 475 of the Public Health Service Act. The deadline for receipt of applications is April 1, 1985.

Applicants may request up to $50,000 in direct costs which may be used for up to a 24-month period. Allowable direct costs include salaries for the principal investigator and other research personnel, supplies, equipment, travel, and other items specifically associated with the research project. Awards will also include applicable indirect costs.

The NIH will make up to $5,000,000 available for this initiative. It is anticipated that approximately 75 awards will be made. Funding decisions will be based on a project's scientific merit and relevance to NIH programs, and on an institution's contribution to the undergraduate preparation of doctoral-level health professionals. Among projects of essentially equivalent scientific merit and program relevance, preference will be given to those submitted by institutions that have granted baccalaureate degrees to 25 or more individuals who, during the period 1977–1984, obtained academic or professional doctoral degrees in the health-related sciences.

The Office of Grants Inquiries, Division of Research Grants, Westwood Building, Room 449, Bethesda, Maryland 20205, Telephone 301–496–7441, will answer questions about institutional eligibility and provide application materials. The Extramural Programs Management Office, Office of Extramural Research and Training, Shannon Building, Room 314, Bethesda, Maryland 20205, Telephone 301–496–8915, will answer other questions concerning this program.

Dated: December 19, 1984.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 84–33711 Filed 12–27–84; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Office of the Assistant Secretary for Health; Statement of Organization, Functions and Delegations of Authority

Part H, Public Health Service (PHS), Chapter HA (Office of the Assistant Secretary for Health) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) (42 FR 61318, December 2, 1977, as amended most recently at 49 FR 40449, October 16, 1984), is amended to retitle the National Center for Health Services Research to the National Center for Health Services Research and Health Care Technology Assessment. This title change complies with requirements of Pub. L. 98–551 signed by the President on October 30, 1984. This title change is intended to identify the focal point for health care technology assessment activities within the Department of Health and Human Services.

Office of the Assistant Secretary for Health

Under Part H, Chapter HA, Office of the Assistant Secretary for Health (OASH), Section HA–20 Functions, delete the title for the *National Center for Health Services Research (HAR)* and insert the following:

National Center for Health Services Research and Health Care Technology Assessment (HAR).

Effective Date: December 14, 1984.

Margaret M. Heckler,

Secretary.

[FR Doc. 84–33712 Filed 12–27–84; 8:45 am]

BILLING CODE 4160–17–M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Intent To Perform Interstate Transportation for Certain Nonmembers

Date: December 24, 1984.

The following Notices were filed in accordance with section 10526 (a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, D.C. 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

(1) Farmers Union Cooperative Transport, Inc.

(2) N983 Hwy. 13, Stetsonville, WI 54480

(3) N983 Hwy. 13, Stetsonville, WI 54480

(4) Roger Nicks, N983 Hwy. 13, Stetsonville, WI 54480

James H. Bayne,

Secretary.

[FR Doc. 84–33768 Filed 12–27–84; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice, as required by 49 U.S.C. 10524(b)(1), that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Atlantic Richfield Company, 515 Flower Street, Los Angeles, CA 90051.

2. Wholly-owned subsidiaries which will participate in the operations, and states of incorporation; or in the case of foreign corporations, countries under whose laws such companies are incorporated:

Air Management Mechanical and Solar, California
Airtron Inc., Delaware
Almeg Extrusion Company, Inc., Delaware
AMC Securities Inc., Delaware
AMCOR-Chem. Inc., Delaware
Anaconda Advanced Technology, Inc., Ohio

Anaconda Aluminum Company, Delaware
Anaconda Aluminum Service Company, Kentucky
Anaconda Arizona, Inc., Delaware
Anaconda Australia Inc., Delaware
Anaconda Bauxite S.A., Republic of Panama
Anaconda B.V. (100% by Anaconda/Holland B.V.), The Netherlands
Anaconda Canada Exploration Ltd., Canada Business Corporations Act
Anaconda Chile S.A., Republic of Chile
The Anaconda Company (North Dakota) North Dakota
The Anaconda Company (Delaware), Delaware
Anaconda Holland, B.V., The Netherlands
Anaconda Indonesia Inc., Delaware
Anaconda International Corporation, Delaware
Anaconda-Iran, Inc. (100% by Anaconda International Corporation), Delaware
Anaconda Ireland Company (100% by Anaconda International Corporation), Republic of Ireland
Anaconda Jamacia Inc. (100% by Anaconda International Corporation), Delaware
Anaconda Minerals Corporation (name holder), Delaware
Anaconda Mining Company, Delaware
Anaconda Moly Company, Nevada
Anaconda Overseas Services Inc., Delaware
Anaconda Peru, Inc., Delaware
Anaconda Properties Company, Delaware
Anaconda Sales Company, Delaware
Anaconda Shannon Company, Delaware
Anaconda South America, Inc., Delaware
Anaconda Valve Company, Delaware
Andes del Peru, Maine
ARCHEM Company, Delaware
ARCO Alaska, Inc., Delaware
ARCO Argentina Inc., Delaware
ARCO Asia Inc., Delaware
ARCO Bahamas Inc., Delaware
ARCO Bangladesh, Inc., Delaware
ARCO Belize Limited, Belize
ARCO Brazil Inc., Delaware
ARCO British Limited, Delaware
ARCO Centennial Corp., Delaware
ARCO Channelview, Inc., Delaware
ARCO Chemical Asia Pacific, Ltd., Delaware
ARCO Chemical Corporation (name holder), Delaware
ARCO Chemical Europe, Inc., Delaware
ARCO Chemical (Europe) Inc., Delaware
ARCO Chemical Export Sales Company, Delaware
ARCO Chemical International Company, Delaware
ARCO Chemical Products Europe, Inc., Delaware
ARCO Chemical Trading, Inc., Delaware
ARCO Chemie Nederland, Ltd., Delaware
ARCO Chile LNG Inc., Delaware
ARCO China Inc., Delaware
ARCO Coal Sales Company, Delaware
ARCO Colombia Oil Corporation, Delaware
ARCO Comfort Products Co. (100% by ARCO Energy), Texas
ARCO Communications, Inc., Delaware
ARCO Credit Corporation, Delaware
ARCO Crude Trading Inc., Delaware
ARCO Denmark Inc., Delaware
ARCO Dubai Inc., Delaware
ARCO Durethene Pipe Inc., Delaware
ARCO Durethene Plastics, Inc., Delaware
ARCO East Africa Inc., Delaware
ARCO Ecuador Corporation (inactive), Delaware
ARCO Egypt, Inc., Delaware
ARCO El Salvador, Inc., Delaware
ARCO Energy Conservation, Inc., Delaware
ARCO Energy Transportation, Inc., Delaware
ARCO Environmental Inc., Delaware
ARCO Exploration Corporation (name holder), Nevada
ARCO Exploration Inc., Delaware
ARCO Export Inc., Liberia
ARCO Far East Exploration Inc., Delaware
ARCO Ft. Madison, Inc., Delaware
ARCO Graph Inc., Delaware
ARCO Graphite Inc., Delaware
ARCO Greenland A/S, Denmark
ARCO Greenland Inc., Delaware
ARCO Guatemala Inc., Delaware
ARCO Ilocos Inc., Delaware
ARCO International Oil and Gas Corporation (name holder), Delaware
ARCO International Petroleum, Inc., Delaware
ARCO International Services, Inc., Delaware
ARCO International Transportation, Inc., Delaware
ARCO Iran Inc., Delaware
ARCO Ireland Inc., Delaware
ARCO Italy Inc., Delaware
ARCO Kenya Inc., Delaware
ARCO Kuparuk Shipping Company, Delaware
ARCO Latin America Inc., Delaware
ARCO Lyondell, Inc., Delaware
ARCO Malaysia Inc., Delaware
ARCO Marine, Inc., Delaware
ARCO Mauritania Inc., Delaware
ARCO Medical Products Company, Delaware
ARCO Metals Overseas Services, Inc., Delaware
ARCO Mindoro Inc., Delaware
ARCO Morocco Inc., Delaware
ARCO Netherlands Inc., Delaware
ARCO New Mexico, Inc., Delaware
ARCO Nicaragua Corporation, Delaware
ARCO Norge A/S, Norway
ARCO Norge Mineraler A/S, Norway
ARCO Norway, Inc., Delaware
ARCO Norway Systems Inc., Delaware
ARCO Nuclear Company, Delaware
ARCO Offshore Inc., Delaware
ARCO Oil and Gas Corporation (name holder), Delaware
ARCO Oil Company Nigeria, Nigeria
ARCO Oil Producing, Inc., Delaware
ARCO Oil Refining Company, Delaware
ARCO Oman, Inc., Delaware
ARCO Pakistan Inc., Delaware
ARCO Panama Transportation, Inc., Delaware
ARCO Performance Chemicals (PTE) Ltd. (100% by ChemLink, Inc.), Singapore
ARCO Peru Corporation, Delaware
ARCO Petroleum Company (name holder), Delaware
ARCO Philippines Inc., Delaware
ARCO Pipe Line Company, Delaware
ARCO Satcom, Inc., Delaware
ARCO Sebree, Inc., Delaware
ARCO Seed Company, California
ARCO Seed Company International, California
ARCO Solar, Inc., Delaware
ARCO Solar African Sales, Inc. (100% by ARCO Solar, Inc.), Delaware
ARCO Solar Electric Power Inc. (100% by ARCO Solar, Inc.), Delaware
ARCO Solar Europe, Inc. (100% by ARCO Solar, Inc.), Delaware
ARCO Europe S.P.A. (100% by ARCO Solar Europe Inc.), Italy
ARCO Solar Far East PTE. Ltd. (100% by ARCO Solar, Inc.), Singapore
ARCO Solar Group, Inc., Delaware
ARCO Solar Industries, (name holder), Delaware
ARCO Solar International, Inc. (100% by ARCO Solar, Inc.), Delaware
ARCO Solar Ltda., Brazil
ARCO Solar Middle East, Inc., Delaware
ARCO Solar Power Production, Inc. (100% by ARCO Solar, Inc.), California
ARCO Solar Technical Services, Inc. (100% by ARCO Solar, Inc.), Delaware
ARCO Somalia Incorporated, Delaware
ARCO Spain Inc., Delaware
ARCO Sudan Inc., Delaware
ARCO Tankers, Inc., Delaware
ARCO Technology, Inc., Delaware
ARCO Thailand Inc., Delaware
ARCO Transportation Corporation (name holder), Delaware
ARCO Turkey, Inc., Delaware
ARCO Venezuela Inc., Delaware
ARCO West Africa Inc., Delaware
ARCOal, Inc., Delaware
ARCOal Transportation, Inc., Delaware
ARCObrazil Participacoes e Investimentos Ltda, Brazil
ARCOtravel Club, Inc., Delaware
ARDEV Company, Inc., Delaware
Arlan Corporation, Delaware

Arphos, Inc., Delaware
Atlantic Refining Company (name holder), Delaware
Atlantic Refining Company of Cuba (inactive), Delaware
Atlantic Richfield Argentina Inc., Delaware
Atlantic Richfield Bali North Inc., Delaware
Atlantic Richfield Foundation of California, California
Atlantic Richfield France, Inc., Delaware
Atlantic Richfield Hanford Company (inactive), Delaware
Atlantic Richfield Indiana, Inc., Delaware
Atlantic Richfield Indonesia Coal, Inc., Delaware
Atlantic Richfield Indonesia Inc., Delaware
Atlantic Richfield International Finance Corporation, Delaware
Atlantic Richfield Investment Company, Delaware
Atlantic Richfield Kentucky Corporation, Delaware
Atlantic Richfield Medical Products (Ireland) Limited, Ireland
Atlantic Richfield Overseas Finance N.V., Netherlands Antilles
Atreco, Inc., Delaware
Atreco Investment Company, Delaware
Beaver Creek Coal Company, Delaware
Bogen, Inc. (100% by Airtron), Ohio
Bolivian Atlantic Corporation, Delaware
Bolivian Petroleum Corporation, Delaware
Border Pipe Line Company, Delaware
Brandywine Oil Company (100% by Major Petroleum), Delaware
George Y. Brubaker, Inc., Pennsylvania
Buckley & Scott Co., Delaware
Buckley & Scott, Whetton, Inc., Massachusetts
Butte, Anaconda & Pacific Railway Company, Montana
Canderlaria Exploration Corporation, Delaware
Casitas Pipeline Company, Delaware
Casolin, S.A., Republic of Panama
ChemLink, Inc., Delaware
ChemLink Petroleum Inc., Delaware
Cheviot Hills Pipeline Company, Delaware
Cimarron Properties, Inc., Delaware
Compania Mexicana de Petroleo "El Charro", S.A.—100%, Mexico
Compania Petrolera Carco, Cuba
Cranston Properties, Inc., Delaware
Curragh Queensland Mining Limited, Delaware
Cuyama Pipeline Company, Delaware
Delta Housing Inc., Delaware
Dessert Seed Company, Inc. (name holder), California
Dock's Creek River Terminal, Inc., Delaware
Eastern-Narragansett Oil Company, Rhode Island
Elector of Palatine, Inc. (100% by WCI), Minnesota
Empresa Carioca de Productos Quimicos S.A., Brazil
Fabnestock, Inc. (100% by Airtron), Kansas
Four Corners Pipe Line Company, Delaware
Gardner Oil Company, Inc. (100% by Buckley & Scott), Massachusetts
Gieske Sheet Metal Co. (100% by Airtron), Missouri
Gill Bros., Inc. (100% by Major Petroleum), Pennsylvania
Greene Cananea Copper Company, Minnesota
Hondo Coal Company, Delaware
Hondo Oil & Gas Company, New Mexico
Housing Services, Inc., Delaware
Integrated Solar International Sales, Inc., Delaware
J.R. Hobbs Company (100% by Airtron), Texas
Joaquin Ranch Company, Delaware
Junction Projects, Inc., Delaware
Kinney Air Conditioning Company, Delaware
Kuparuk Pipeline Company, Delaware
Lamborn Land Company, Delaware
Libyan American Oil Company, Delaware
Libyan Atlantic Company, Delaware
Los Palacios Exploration Corp. (Inactive), Delaware
Major Petroleum Company, Delaware
Mesa Pipeline Company, Delaware
N.T. Development, Inc., Delaware
Newtown Square Properties Inc., Delaware
Northrup Incorporated (100% by ARCO Comfort Products), Texas
Observer International Inc., Delaware
Oxirane Chemical Company, Delaware
Oxirane Technology (Japan) Company (Partnership), New York
Pacific Marine Oil Company, California
Palomar Land Company, Delaware
Pan American Petroleum Company of California, California
Prestige Stations, Inc., Delaware
William C. Pullen, Inc., New Jersey
Quiggin & Son, Inc. (100% by Airtron), Ohio
Reno Junction Development, Inc., Delaware
Resolution Seismic Services, Inc., Delaware
Richfield Athabasca Petroleum Company (Inactive), Nevada
Richfield Iranian Offshore Petroleum Co., Liberia
Richfield Oil Corporation (name holder), Delaware
Rio Grande Gasoline Company, California
Rodes Exploration Corporation, Delaware
Rossoe, Inc., Washington
Russell Coal & Oil Company (100% by Buckley & Scott), Massachusetts
S A Investment Company, Inc., Delaware
Santa Cruz Exploration Corporation, Delaware
Sartomer Company, Delaware
Schultz, Doyle & Stoddard, Inc., Massachusetts
Sherman Equipment Corporation, Delaware
Silva Exploration Corporation, Delaware
Sinclair Deutschland Erdol Gessellschaft, Delaware
Sinclair International Oil Company, Delaware
Sinclair Netherlands Oil Company, Delaware
Tabasco Gas Pipe Line Company, Delaware
Tanker Transport, Inc., Liberia
Tankers Leasing Corporation, New York
Thunder Basin Coal Company, Delaware
Tooele Valley Railway Company, Utah
Valley Dehydrating Co., Inc. (100% Dessert Seed), Colorado
Venezuelan Atlantic Refining Company, Delaware
Venezuelan Atlantic Transmission Corp., Delaware
West Elk Coal Company, Inc., Delaware
Wisconsin Centrifugal, Incorporated, Delaware
Wright Oil Co., Inc. (100% Buckley & Scott), Massachusetts.

(1) The parent corporation is: James River Corporation, Tredegar Street, P.O. Box 2218, Richmond, VA 23217.

(2) The wholly-owned subsidiaries which will participate in the operations are as follows:

Riverside Transportation, Inc. (formerly Riverside Trucking Co.), 802 Hooly Springs Road, Richmond, Virginia 23224
James River Paper Company, Papermaking Division, Tredegar Street, P.O. Box 2218, Richmond, VA 23217
James River Paper Company, Converting Division, Tredegar Street, P.O. Box 2218, Richmond, VA 23217
James River-Rochester, Inc., Adams Division, 115 Howland Avenue, Adams, Massachusetts 01220
James River-Rochester, Inc., Rochester Division, 340 Mill Street, Rochester, Michigan 48663
Riegel Products Corporation, Frenchtown Road, Milford, New Jersey 08848
James River-Curtis, Inc., Paper Mill Road, Newark, Delaware Mill, Newark, Delaware 19711

Peninsular Paper Company, Ypsilanti, Michigan Mill, 100 North Huron, Ypsilanti, Michigan 48197
James River-Fitchburg, Inc., Old Princeton Road, Fitchburg, Massachusetts 01220
*James River-Massachusetts, Inc., 701 Westminister Street, Fitchburg, Massachusetts 01420
*James River-Graphics, Inc., 28 Gaylord Street, S. Hadley, Massachusetts 01075
James River-Otis, Inc., P.O. Box 10, Jay, Maine 04239
James River-KVP, Inc., Island Avenue, Parchment, Michigan 49008
James River-Berlin/Gorham Inc., 650 Maine Street, Berlin, New Hampshire 03570
*James River-Groveton, Inc., Groveton, New Hampshire 03582
H.P. Smith Paper Company, 5001 West 66th Street, Chicago, Illinois 60638
H.P. Smith Paper Company, 2000 Industrial Park Road, Iowa City, Iowa 52240
Arkon Corporation, 315 Pendleton Road, Greenville, South Carolina 29611
Arkon Corporation, P.O. Box 990, Simpsonville, South Carolina 29681.

The following are divisions of James River–Norwalk, Inc. operating under the following division names:

*James River Corporation, Paperboard Packaging Group, 243 East Paterson Street, Kalamazoo, Michigan 49007
*James River Corporation, Dixie Products Group, P.O. Box 6000, River Park, 800 Connecticut Avenue, Norwalk, Connecticut 06856–6000
*James River Corporation, Towel and Tissue Group, P.O. Box 6000, River Park, 800 Connecticut Avenue, Norwalk, Connecticut 06856–6000
James River Corporation, Paperboard Packaging Group, Gilco Division, 28740 Glenwood, Perrysburg, Ohio 43551
James River Corporation, Paperboard Packaging Group, Superior Match Division, 7530 S. Greenwood Avenue, Chicago, Illinois 60619.

The above subsidiaries indicated by an asterisk (*) each have truck fleets of their own. James River-Norwalk, Inc. has truck fleets operating in Neenah, Wisconsin; Darlington, South Carolina; and Old Town, Maine. Compensated intercorporate hauling operations will be performed by and between the subsidiaries of James River Corporation.

1. Parent corporation and address of principal office: The Toro Company, 8111 Lyndale Avenue South, Minneapolis, MN 55420.

2. Wholly-owned subsidiaries which will participate in the operations, and states of incorporation:

(1) Lunalite, Inc., a Minnesota Corporation.

(2) Toro Merchandising Co., a Minnesota Corporation.

James H. Bayne,

Secretary.

[FR Doc. 84–33771 Filed 12–27–84; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–117 (Sub-No. 1)]

Railway Services; Elgin, Joliet and Eastern Railway Co.; Abandonment; in Lake and Porter Counties, IN; Findings

The Commission has issued a certificate authorizing Elgin, Joliet and Eastern Railway Company to abandon its 20.41-mile rail line between Griffith (milepost J36.30) and Porter (milepost J56.71) in Lake and Porter Counties, IN. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 84–33769 Filed 12–27–84; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 124)]

Railroad Services; Seaboard System Railroad, Inc.; Abandonment; in Franklin, Grundy, and Marion Counties, TN; Findings

The Commission has issued a certificate authorizing Seaboard System Railroad, Inc. to abandon its 20.25-mile rail line between Cowan (milepost 0.0) and Tracy City (milepost 20.25) in Franklin, Grundy and Marion Counties, TN. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.

James H. Bayne,

Secretary.

[FR Doc. 84–33770 Filed 12–27–84; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Government Procurement Labor Functional Subcommittee; Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Government Procurement Labor Functional Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: January 15, 1985, 10:00 a.m., Rm. S5313 Frances Perkins, Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

FOR FURTHER INFORMATION, CONTACT: Fernand Lavallee, Executive Secretary, Labor Advisory Committee, Phone: (202) 523–6565, December 21, 1984.

Signed at Washington, D.C. this 21st day of December 1984.

Robert W. Searby,

Deputy Under Secretary International Affairs.

[FR Doc. 84–33735 Filed 12–27–84 8:45 am]

BILLING CODE 4510–28–M

LIBRARY OF CONGRESS

Copyright Office

[Docket RM 84-6]

Implementation of the Semiconductor Chip Protection Act of 1984; Public Availability of Mask Work Form and Information Circular

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of public availability of mask work form and circular.

SUMMARY: This notice is issued to inform the public of the availability on or about December 28, 1984 of application forms (Form MW) to register claims to protection in mask works, pursuant to the Semiconductor Chip Protection Act of 1984, Pub. L. 98-620. A general information circular (R 100) will also be available on or about January 4, 1985 which, among other matters, generally informs the public how to apply for registration and what should be deposited along with the application and filing fee. The forms and circular will be available free of charge upon request from the Public Information Office of the Copyright Office, Library of Congress, Washington, D.C. 20559. To obtain Form MW alone, call the Forms Hotline, (202) 287-9100. To obtain the circular, call (202) 287-8700 or 287-8380. The text of the circular appears as an Appendix to this Notice.

Regulations implementing certain provisions of the Semiconductor Chip Protection Act will be published in a few days in a separate notice.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Department D.S., Library of Congress, Washington, D.C. 20540; (202) 287-8380.

(17 U.S.C. 702; 908)

Dated: December 20, 1984.

Dorothy Schrader,

Associate Register of Copyrights for Legal Affairs.

Approved by:

William J. Welsh,

The Acting Librarian of Congress.

APPENDIX—CIRCULAR R 100—FEDERAL STATUTORY PROTECTION FOR MASK WORKS

Introduction

Under the Semiconductor Chip Protection Act of 1984, Pub. L. 98-620, chapter 9 of title 17, United States Code (U.S.C.) federal statutory protection is now available for mask works fixed in semiconductor chip products. The provisions of the Semiconductor Chip Protection Act, enacted by the 98th Congress and made effective as of November 8, 1984,* differ in many respects from the provisions of the Copyright Act, chapters 1-8 of title 17, U.C.C., in the type of protection provided. Although both laws are administered by the Copyright Office and involve protection of intellectual property, they differ from each other in many respects, including eligibility, ownership, term, scope and limitation of rights, remedies, and registration procedures. This circular provides information about registration of claims under the semiconductor Chip Protection Act.

"Mask Works" and "Semiconductor Chips" Defined

Mask Works are defined in the Act as: A series of related images, however fixed or encoded: (1) Having or representing the predetermined three-dimensional pattern of metallic, insulating, or semiconductor material present or removed from the layers of a semiconductor chip product; and (2) in which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.

The integrated circuits, better known as semiconductor chips, used to operate many consumer, medical, commercial, and industrial products and machinery, are defined in the Act as: the final or intermediate form of any product (1) having two or more layers of metallic, insulating, or semiconductor material in accordance with a predetermined pattern; and (2) intended to perform electronic circuitry functions.

Protection of Mask Works

Protection under the Act extends to the three-dimensional images or patterns formed on or in the layers of metallic, insulating, or semiconductor material and fixed in a semiconductor chip product, i.e., the "topography" of the "chip." Although these images or patterns are purely functional features, in contrast with copyright law they are nevertheless protected, provided that the particular mask work is neither dictated by a particular electronic function nor is one of only a few available design choices that will accomplish that function.

Protection under the Act does not extend to any idea or concept associated with a mask work. Just as ideas are not protected by copyright, no protection is available for any procedure, process, system, method of operation, concept, principle or discovery associated with a mask work, regardless of the form in which it is described, explained, illustrated, or embodied in a mask work. (17 U.S.C. 902 (c))

Originality

To be protected under the Act, a mask work must be original. The Report of the Committee of the Judiciary of the House of Representatives [1] provides that a mask work is "original" if it is the independent creation of an author who did not copy it.

The mask work may not consist solely of designs that are staple, commonplace or familiar in the semiconductor industry, or variations of such designs, combined in a way that, considered as a whole, are not original. (17 U.S.C. 902 (b))

National Origin

Any original mask work fixed in a semiconductor chip product by or under the authority of the mask work owner is eligible for protection if:

1. On the date the mask work is registered with the Copyright Office or the date the mask work is first commercially exploited anywhere in the world, whichever occurs first, the owner of the mask work is:

- A national or domiciliary of the United States; or
- A national, domiciliary or sovereign authority of a foreign nation that is a party with the United States to a treaty affording protection to mask works; or
- A stateless person; or

2. The mask work is first commercially exploited in the United States; or

3. The mask work comes within the scope of a Presidential proclamation extending protection to mask works of nationals and domicilaries of a foreign country and to works first commercially exploited in that country, on the basis of a finding that mask works protected by the Semiconductor Chip Protection Act are also protected in the particular foreign country, either under the principle of reciprocity or under the principle of national treatment.

Note.—Under a special transitional section, the Secretary of Commerce may issue an order extending protection to mask works of foreign nationals, domiciliaries, and sovereign authorities and to mask works first commercially exploited in a particular country, provided that 1) the foreign country is making good faith efforts and reasonable

*NOTE: While protection is effective from November 8, 1984, the copyright Office will not begin registration of claims to protection until January 7, 1985, pursuant to 17 U.S.C. 913(a).

[1] House Report No. 98-781, 98th Cong. 2d Sess. 4 (1984), p. 17.

progress toward a treaty with the United States or toward enactment of legislation protecting United States mask works; 2) the country is not engaging in piracy of mask works; and 3) issuance of the order would promote the purposes of the Act and interests of international comity. The Secretary's authority terminates 3 years after the date of enactment, but mask work claims registered pursuant to an order of the Secretary remain valid for the normal 10-year period of protection, if otherwise valid. For guidelines governing the submission of requests for issuance of an order by the Secretary, contact the U.S. Patent and Trademark Office, Washington, D.C. 20231.

Registration of Mask Works

Registration Mandatory to Secure Protection

In order to secure protection, owners of mask works must apply for registration of their claims with the Copyright Office. Moreover, owners of mask works must register their works within 2 years after the date on which the mask work is first commercially exploited, or the opportunity to secure protection under the Act will be lost.

The effective date of registration of a claim to protection in a mask work will be the date on which an acceptable application, deposit of identifying material, and appropriate fee are received in the Copyright Office.

Note.—Retroactivity to July 1, 1983.

Protection is available to a mask work first commercially exploited on or after July 1, 1983, and before the effective date of the Act if a claim in the mask work is registered with the Copyright Office before July 1, 1985. However, infringing chip product units manufactured before the date of enactment may be imported and distributed for 2 years after registration of such a mask work, if the importer or distributor pays or offers to pay a reasonable royalty.

Importance of Certificate of Registration

The Act further provides that a certificate of registration for a mask work issued by the Copyright Office constitutes prima facie evidence of the facts stated in the certificate and that the applicant issued the certificate has met the requirements for protection.

After a certificate has been issued by the Copyright Office, the owner of the mask work or the exclusive licensee of all rights in the mask work may institute a civil action for infringement occurring after the commencement of protection accorded by the Act.

Term of Protection

Protection for a mask work begins on the date mask work is registered with the Copyright Office, or the date the mask work is first commercially exploited anywhere in the world, whichever occurs first. Protection lasts for 10 years (terminating at the end of the tenth calendar year after it began).

Note.—To "commercially exploit" a mask work is defined in the Act as the distribution to the public for commercial purposes of a semiconductor chip product embodying the mask work, with the provision that the term includes an offer to sell or transfer a semiconductor chip product only when the offer is in writing and occurs after the mask work is fixed in the semiconductor chip product.

Exclusive Rights of an Owner: Limitations and Transfers

During the term of protection, the owner of a mask work has the following exclusive rights:

1. To reproduce the mask work by optical, electronic, or any other means;
2. To import or distribute a semiconductor chip product in which the mask work is embodied;
3. To induce or knowingly to cause another person to do any of the acts described in number 1 and number 2.

Limitations on Rights

The Act permits reverse engineering of a mask work solely for the purposes of teaching, analyzing, or evaluating the concepts or techniques embodied in the mask work or in the circuitry, logic flow, or organization of components used in the mask work. The person who performs legitimate reverse engineering may incorporate the results in an original mask work which is made to be distributed.

Note.—House Report 98-781 [2] refers to the "paper trail" evidencing the extensive effort involved in legitimate reverse engineering and states that reverse engineering is an affirmative defense to an infringement claim.

Purchasers also obtain a right arising from the first sale of semiconductor chips. The Act specifies that purchasers of semiconductor chip products have the right ot use and resell them freely but not to reproduce them without the permission of the owner of the mask work embodied in the semiconductor chip product.

Transfer of Rights

The Act allows the owner of the exclusive rights to transfer all of them or to license all or fewer than all the rights. A transfer or license must be in writing and signed by the owner of the rights or by a duly authorized agent of the owner. The Act also provides that the exclusive rights in a mask work may be transferred by operation of law or by terms of a will; or, the rights may pass as personal property under the applicable state law of interstate succession.

For information on the recordation of documents of transfer in the Copyright Office, see p. 5 of this circular.

Mask Work Created by Employees of the U.S. Government

Federal protection under the Semiconductor Chip Protection Act is not available for any mask work of the United States government, that is, any mask works created by United States government employees as part of their official duties.

How to Apply for Registration of Mask Works

To apply for registration of a mask work, send the following to the Copyright Office:

1. A completed Form MW;
2. A nonrefundable $20.00 filing fee; and,
3. The appropriate identifying materal (deposit).

Send the application, fee, and deposit in the same package to: Register of Copyrights, Department MW, Library of Congress, Washington, D.C. 20540.

You can obtain Form MW free of charge by sending a specific request, identifying the number of forms you need, to: Information Section, LM-401, Copyright Office, Library of Congress, Washington, D.C. 20559, or by calling the Forms Hotline (202) 287-9100 and leaving a recorded request for forms.

Deposit of Identifying Material

The Act gives the Register of Copyrights broad, general authority to specify the identifying material to be deposited in connection with the claim for registration. In recognition of the public representations of a need to preserve trade secret protection or avoid public disclosure of sensitive information embodied in various identifying materials, the regulations of the Copyright Office provide different deposit options, depending upon whether the mask work has been commercially exploited. The Copyright Office encourages the fullest disclsoure of the mask work within the deposit options established by the regulation.

For commercially exploited mask works, the identifying material shall consist of the following:

1. Four chips (dies) as first commercially exploited; and
2. One full set of visually perceptible reproductions of each layer of the mask work. The applicant may elect to deposit

[2] House Report No. 98-781, 98th Cong., 2d Sess. 3 (1984), p. 21.

either plastic color overlays, composite plots, or photographs of the layers of the mask work, to be reproduced at 20 to 30 times magnification of the actual size.

For mask works that have not been commercially exploited, the identifying material shall ordinarily consist of: one full set of either plastic color overlays or composite plots of each layer of the semiconductor chip product.

To the extent possible, the set of visually perceptible material should be submitted in a 8½ by 11-inch format.

Trade Secret Protection

Where an applicant makes a claim of trade secret protection or a need to protect sensitive information in no more than two layers of a commercially exploited mask work consisting of at least five layers, the applicant should submit:

1. Four chips as first commercially exploited; and

2. In lieu of color overlays, plots, or photographs, special "identifying portions" (defined below) for the one or two affected layers.

Where the claim of trade secret protection or need to protect sensitive information is made in connection with any layer of a mask work that has not been commercially exploited, the applicant may similarly elect to deposit:

1. Special "identifying portions" in lieu of color overlays or plots of the affected layer, and

2. A single photograph of the top layer of the mask work and any other layer visible from a single exposure.

The special "identifying portions" shall consist of a printout of mask work design data pertaining to each withheld layer reproduced in microform and the sensitive material may be blocked out or stripped from the deposited material.

Claims of trade secret protection not accommodated by the above requirements will be addressed on a case by case basis, if the applicant petitions for special relief by writing to the Chief, Examining Division, Copyright Office, Washington, D.C. 20559. Petitions for special relief should set forth the specific reasons for the request and should generally propose an alternative form of deposit.

Fee

The nonrefundable filing fee for an application for registration of a claim to protection in a mask work is $20.00 (check, money order, or bankdraft, not cash) payable to: Register of Copyrights.

Notice

The owner of a mask work protected under the Semiconductor Chip Protection Act may affix a notice of ownership to mask works, to masks, and to semiconductor chip products embodying the mask work in a manner and location which givers reasonable notice of the claim to protection.

The Act requires the form of the notice to be:

1. The words mask work, the symbol *M* or the symbol Ⓜ; and

2. The name of the owner(s) of the rights in the mask work or an abbreviation by which the name is recognized or is generally known.

Affixation of such a notice is optional and is not a condition of protection but the notice does constitute prima facie evidence of notice of protection. The Register of Copyrights shall prescribe by regulation, as examples, specific methods of affixation and positions of the notice.

Recordation

Any document which transfers ownership or any other document pertaining to a mask work may be recorded in the Copyright Office, providing the requirements of the Act are met.

What to Submit for Recordation

1. The document submitted must bear the actual signature of the person who executed it, or, if a photocopy of the original signed document is submitted, it must be accompanied by a sworn or official certification that it is a true copy of the signed original.

2. A fee which shall be computed as follows: For a document of six pages or less, covering no more than one title, $10; for each page over six and each title over one, 50 cents additional.

The Copyright Office, upon receipt of the acceptable document and fee, shall record the document and return it with a certificate of recordation.

Please send documents to be recorded to: Documents Section, LM-462, Examining Division, Copyright Office, Library of Congress, Washington, D.C. 20559.

[FR Doc. 84-33715 Filed 12-27-84 8:45 am]
BILLING CODE 1410-03-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 84-96]

NASA Advisory Council; 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 (NAC) Informal Earth System Sciences Committee (ESSC).

DATE AND TIME: January 28-29, 1985, 8:30 a.m. to 5 p.m. each day; and January 30, 1985, 8:30 a.m. to 3 p.m.

ADDRESS: Jet Propulsion Laboratory, Building 167 Conference Room, 4800 Oak Grove Drive, Pasadena, California 91109.

FOR FURTHER INFORMATION CONTACT: Mr. Ray J. Arnold, Code EE, National Aeronautics and Space Administration, Washington, DC 20546 (202) 453-1707.

SUPPLEMENTARY INFORMATION: The NASA Advisory Council, Informal Earth System Sciences Committee has been formed to provide advice and counsel to NASA on the future role, responsibilities, and implementation strategies for the Earth Science and Applications program. This committee is chaired by Dr. Francis L. Bretherton and has a total of 17 members.

Type of Meeting

Open.

Agenda

January 28, 1984

8:30 am.—Brief Reports by Working Group Chairpersons.

1 p.m.—Discussion on the implementation strategy.

5 p.m.—Adjourn.

January 29, 1984

8:30 a.m.—Continuation of the discussion on the implementation strategy.

5 p.m.—Adjourn.

January 30, 1984

8:30 a.m.—Continuation of the discussion on the implementation strategy.

1 p.m.—Summation of discussion, Working Group assignments, date and place of next meeting.

3 p.m.—Adjourn.

December 19, 1984.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

[FR Doc. 84-33688 Filed 12-27-84; 8:45 am]
BILLING CODE 7510-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Columbia River Basin Fish and Wildlife Program

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council.

ACTION: Notice of Proposed Amendment.

SUMMARY: The proposal would amend sections 201 and 1504 (Action Item 36) of the Columbia River Basin Fish and Wildlife Program, to change the funding source and make other procedural modifications related to an assessment of salmon and steelhead losses attributable to hydropower development and operation, statement of program goals, development of program objectives, and measurement of progress toward goals and objectives. It would make no substantive statement on the extent of losses, scope of goals, precise nature of objectives, or method for measuring progress.

DATES AND ADDRESSES: Comments on the proposed amendment must be received on or before 5 p.m., Friday, February 1, 1985. They must be mailed to Janie Pearcy, Northwest Power Planning Council, Suite 1100, 850 SW Broadway, Portland, Oregon 97205. Hearings are scheduled as follows:

Thursday, January 10, 1985 at 9 a.m., central office of the Council, Suite 1100, 850 SW Broadway, in Portland, Oregon.

Friday, January 18, 1985 at 10 a.m., Sheraton-Missoula Hotel, 200 South Pattee, in Missoula, Montana.

Thursday, January 24, 1985 at 9 a.m. at the Clearwater Room, Cavanaugh's River Inn, North 700 Division, in Spokane, Washington.

Monday, January 28, 1985 at 9 a.m. at the Teton Room, Red Lion Downtowner, 1800 Fairview, in Boise, Idaho.

FOR FURTHER INFORMATION CONTACT: Dulcy Mahar, Director of Public Information and Involvement, Northwest Power Planning Council, Suite 1100, 850 SW Broadway, Portland, Oregon 97205. Telephone: 503–222–5161 (toll free 1–800–452–2324, within Oregon; 1–800–222–3355, from Idaho, Montana, and Washington).

SUPPLEMENTARY INFORMATION: The Pacific Northwest Electric Power and Conservation Planning Council (the "Northwest Power Planning Council" or "the Council") was created pursuant to the Pacific Northwest Electric Power Planning and Conservation Act of 1980, 16 U.S.C. 839 ("the Northwest Power Act"). Congress charged the Council with two primary tasks: Development of a regional energy plan, and adoption of a fish and wildlife program to protect, mitigate and enhance fish and wildlife affected by development and operation of hydropower projects in the Columbia River Basin. The Council adopted its Columbia River Basin Fish and Wildlife Program ("the fish and wildlife program" or "the program") on November 15, 1982, and amended it on October 10, 1984.

The amendment proposed in this notice would change Program Section 201 and Action Item 36 in Program Section 1504, which deal with the process for assessing salmon and steelhead losses attributable to development and operations of hydropower projects in the Columbia River Basin and developing program goals to address these losses. For the reasons stated below, the Council proposes to delete Program Sections 201(1)–201(7) and to substitute language indicating the Council's intent to assess losses, set goals, develop related objectives, and study methods for measuring progress toward goals and objectives, rather than to call for funding of such efforts by the Bonneville Power Administration in the U.S. Department of Energy ("Bonneville"). Associated changes are proposed in Action Item 36 (Program Section 1504).

The amendment proposed by the Council would change only the funding and procedural mechanisms for assessing losses, setting goals, developing objectives, and studying methods for measuring progress. It would not state substantive conclusions on the nature or extent of losses, set goals, establish objectives, identify the means for measuring progress toward goals or objectives, or determine the technical methods to be employed in those activities.

Background

In adopting and amending its program to restore fish and wildlife affected by the development and operation of hydroelectric projects in the Columbia River Basin, the Council approved several hundred action items in response to Congressional direction to emphasize immediate restorative action over prolonged study. Most of the action items call for prompt implementation of projects intended to remedy the harm suffered by fish and wildlife due to the effects of the federal and nonfederal hydropower projects throughout the Basin. In view of the urgent need to initiate remedial action quickly, the Council temporarily put aside certain questions fundamental to the nature, scope, foundation and future of the program. Instead, it proposed a longer-term process, in Program Section 201, for answering such questions as: What is the extent of salmon and steelhead losses attributable to hydroelectric development and operations? What are appropriate goals and objectives for the program? What is the best way to achieve these goals?

The Council continues to support the basic assumption underlying Program Section 201: Program goals will help describe the scope of the program and what the program ultimately seeks to achieve. A statement of goals, together with a method for measuring progress toward goals and objectives, would give the program additional direction, provide a yardstick for measuring its success, indicate its scope, and help ensure that hydropower ratepayers are not expected to compensate for fish losses caused by other factors. Goals also could make it easier to determine what measures are needed to protect, mitigate and enhance fish by making it clearer what the Council is trying to accomplish. In other words, goals can help provide a framework for existing and future measures and action items.

To set goals, it appears advisable to assess the extent and nature of "losses" of salmon and steelhead production and production capability attributable to development and operation of hydroelectric facilities in the Columbia River Basin. It also appears that development of a framework for the program should entail establishment of program "objectives," that is, the short-term and geographically-specific targets which together should lead to achievement of long-term, basinwide goals. Objectives can be developed through a planning process designed to assess the current potential for redressing salmon and steelhead losses.

Problem

Program Section 201 currently calls on Bonneville to fund a study by the fish and wildlife agencies and tribes in the Columbia River Basin which would identify losses and lead to development of proposals for program goals. The measure has resulted in no statements of losses or proposals for goals to date. That situation may be attributable in part to Bonneville's reluctance to fund the goals effort, the difficulties inherent in the conduct of a major study by a large group of entities representing divergent interests, and the ambitious scope of Program Section 201, as now worded. Study proposals and comments related to section 201 also have highlighted a number of other problems with the measure as now written. First, it appears inappropriate for Bonneville, an agency charged with program implementation, to be funding a major

planning effort which will help define the scope of the Council's program. The Council may be able to control the objectivity, quality, cost, and timing of the study effort only if it takes the lead.

There also are problems in the program language. For example, section 201(3)(A) states that the goals study will assess "present and potential production." Yet the Council's Hydro Assessment Study (conducted under Program Section 1204(c), Action Item 35 in section 1504 of the Program, and Action Items 14.2 and 14.3 of the Council's Power Plan) is designed to collect the same information. A second productivity effort would be unnecessary and undesirable. Similarly, section 201(3)(B) indicates the need to gather information on the potential for wild, natural, and hatchery propagation in the Basin, subjects also covered by the Hydro Assessment Study, as well as Bonneville studies under section 704(f). Section 201(3)(C) encompasses disease and genetics, complex topics already under review by Bonneville and the Fish Health Protection Committee, pursuant to Program Sections 704(h)(2)(C)–(E), as amended. "Areas of emphasis" and "stocks of emphasis" are addressed in section 201 as well, with no indication of whether such stocks and areas could include resident fish in areas where salmon and steelhead have disappeared because of hydropower development. Section 201(3)(G) anticipates determination of "[c]apital costs and operation and maintenance costs," suggesting that the study should go beyond goal-setting to detailed identification of new projects. Section 201(3) also speaks in terms of a goals study which would "determine" production, areas and stocks of emphasis, limiting factors and other matters not wholly susceptible to definitive determination in a study. In addition, section 201(3) suggests that the "study," not the Council, would determine program goals. Yet Congress charged the Council with adopting and amending the program.

The existing measure also fails to indicate how or whether the goals-setting process would mesh with other program measures, including related study efforts, and to other planning efforts initiated by the fish and wildlife agencies, tribes, land management agencies and other entities regulating harvest, planning enhancement, protecting habitat, and otherwise responsible for fishery management.

Proposal

The Council's proposed amendment would delete existing Program Sections 201(1)–201(7) and associated Action Item 36 in Program Section 1504. The amended section 201 would state the Council's intent to assess salmon and steelhead losses attributable to hydropower development and operations, state goals, adopt objectives, study methods for measuring progress toward goals and objectives, and otherwise develop a framework for existing and future program measures and action items. The revised Action Item 36.1 would indicate the Council's intent immediately to request a supplemental budget from the Bonneville Power Administration to begin section 201 activities in fiscal year 1985. Action Item 36.2 would state the Council's intent to promptly develop a detailed work plan for section 201 activities. To avoid delay, the budget request and work plan would be developed on approximately the same schedule.

Action Item 36.2 also describes five important guiding principles the Council would follow in developing the work plan:(1) The Council, not Bonneville, should lead the effort. (2) The collection of information on losses and on production potential are cornerstones to the 201 activities; information-gathering in both areas should begin promptly and at approximately the same time. (3) Special attention should be paid to those areas where salmon and steelhead no longer can be produced due to hydropower development. (4) A close working relationship with the managers of the fisheries and of fish habitat is essential. (5) Amendment proceedings will be needed before any statements of losses, goals, and objectives are added to the program.

The Council envisions a statement of losses which at least would describe the historic runs of salmon and steelhead, the habitat historically used by those species, and the historic uses of those species; a description of hydroelectric development and major nonhydroelectric impacts; and a description of current run sizes, habitat, uses, and deterimental impacts. For these purposes, the Council would consider "historic" to refer to conditions prior to major human impact in the Columbia River Basin. Descriptions of historic runs would be based on records of catch, fishing efforts, cannery production, and fish counts, to the extent available. To the extent feasible, the specific locations of fish habitat (e.g., migratory routes, spawning areas, and rearing areas) and stocks produced would be described. Similarly, historical fish uses (including commercial, cultural, subsistence, ceremonial, and religious uses) would be described by stocks and location, also to the extent feasible within the limits of available data. Sources would be listed for reference by all interested parties. The non-hydroelectric effects to be described would include irrigation, mining, logging, fishing, and other major sources of impact.

The Council believes these changes would help eliminate the problems caused by the existing language in Program Section 201 and Action Item 36 of Program Section 1504 and would state important principles to be followed in the 201 process, while allowing flexibility in developing specific schedules, work assignments and methods.

Proposed Language

Section 201

Delete sections 201(1)–201(7) and substitute the following:

201. The Council will assess salmon and steelhead losses attributable to hydropower development and operations, state goals, adopt objectives, study methods for measuring progress toward goals and objectives, and otherwise develop a systemwide framework for program measures and action items, following the guidelines listed in Action Item 36.

Section 1504. Action Item 36

Delete existing Action Items 36.1–36.4 and substitute the following:

Council Actions

36.1. Request a supplemental budget to provide for initiation of section 201 activities in fiscal year 1985. [Section 201.]

36.2 Develop a detailed work plan for assessing losses, stating goals, adopting objectives, studying methods for measuring progress toward goals and objectives, and otherwise developing a framework for program measures and action time, following these general principles:

- The Council will lead the effort to collect information in salmon and steelhead losses attributable to development and operation of hydroelectric projects in the Columbia River Basin.
- At approximately the same time that it begins to collect information on losses, the Council also will begin to collect information on existing and potential production of salmon and steelhead throughout the Columbia River Basin.
- The Council also will identify areas in the Basin where salmon and steelhead once were produced and no longer can be produced, due to

hydropower development and operations. Then it will collect information on potential resident fish production in those areas.

• At all stages of assessing losses, stating goals, developing objectives, and studying methods for measuring progress toward goals and objectives, including all information-gathering efforts, the Council will seek the advice of and exchange information with the fish and wildlife agencies, tribes, land management agencies, and other entities regulating harvest, planning enhancement, protecting habitat and otherwise responsible for fishery management. It also will consult with project operators and regulators, Bonneville, and Bonneville customers.

• The Council will initiate amendment proceedings before incorporating any statements of losses, goals, and objectives into the program.

[Section 201.]

Edward Sheets,

Executive Director.

[FR Doc. 84-33700 Filed 12-27-84; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 23540; 70-7042]

Middle South Utilities, Inc. and Electec, Inc.; Notice of Proposal To Finance Consulting Subsidiary

December 20, 1984.

Middle South Utilities, Inc. ("MSU"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and its wholly owned consulting subsidiary, Electec, Inc. ("Electec"), have proposed a transaction subject to sections 6, 7, 9, 10, 12(b) and 13(b) of the Public Utility Holding Company Act of 1935 and Rules 43, 45, 50(a)(3) and 87 thereunder.

Electec was organized and undertook the analysis and development of various investment opportunities, and to market system capabilities and expertise. Electec and MSU hereby seek authorization for the finance $1.9 million to be used for Electec's consulting program in 1985. The $1.9 million will be used for salaries, benefits, legal services, travel, rent, cost of Middle South Services corporate support services (purchasing, accounting, etc.), bid proposal preparation, business studies, and miscellaneous expenses. These costs are expected to be incurred at the rate of $125,000 per month. A one-time expense of $400,000 is included to reimburse certain system companies for services rendered to Electec in connection with a terminated lignite gasification project.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by January 14, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 84-33730 Filed 12-27-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14282; 812-5960]

Pilgrim Fund Inc., et al.; Application for Order Pursuant to Section 11(a) of the Act Approving Certain Offers of Exchange and Pursuant to Section 6(c) of the Act Exempting Applicants From Section 22(d) of the Act

December 18, 1984.

Notice is hereby given that Pilgrim Fund Inc. ("Pilgrim"), 222 Bridge Plaza South, Fort Lee, New Jersey 07204, MagnaCap Fund, Inc. ("MagnaCap"), Magna Income Trust ("Income"), and Pilgrim GNMA Fund ("GNMA") (the "Funds"), all open-end, diversified management investment companies registered under the Investment Company Act of 1940 (the "Act"), and Pilgrim Distributors Corp. ("Distributors") ("Applicants"), a broker-dealer registered under the Securities Exchange Act of 1934, filed an application on October 11, 1984, requesting a Commission order (1) pursuant to section 11(a) of the Act, to permit certain exchange offers on a basis other than at relative net asset value, and (2) pursuant to section 6(c) of the Act, exempting Applicants from the provisions of section 22(d) of the Act to permit such exchange offers. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the relevant statutory provisions.

Applicants state that Pilgrim invests principally in common stocks with the investment objective of seeking long-term capital appreciation. It is stated that MagnaCap has capital growth as its principal objective with dividend income as a secondary consideration. The primary investment objective of Income is to seek production of current income, and, secondarily to consider securities for potential capital appreciation. Applicants state that GNMA's investment objective is to obtain high current income through investment in U.S. Government guaranteed securities.

Applicants state that Distributors is underwriter for each of the Funds and maintains a continuous public offering of the shares of the Funds at their respective net asset values plus a sales charge based upon a percentage of the public offering price which varies according to the amount purchased. The current schedule of sales charges (as a percentage of the offering price) for Pilgrim, MagnaCap and Income are as follows:

Size of transaction at offering price	Sales charge (percent)
Less than $25,000	7.25
$25,000 but less than $50,000	6.25
$50,000 but less than $100,000	5.00
$100,000 but less than $250,000	4.00
$250,000 but less than $500,000	3.00
$500,000 but less than $1,000,000	2.50
$1,000,000 or more	1.00

The shares of GNMA are offered to the public through Distributors on a continuous basis at GNMA's per share net asset value plus a sales charge computed as a percentage of GNMA's public offering price, as follows:

Size of transaction at offering price	Sales charge (percent)
Less than $25,000	4.00
$25,000 but less than $100,000	3.50
$100,000 but less than $250,000	3.00
$250,000 but less than $500,000	2.00
$500,000 but less than $1,000,000	1.00
$1,000,000 or more	0.75

Section 11(a) of the Act provides that it shall be unlawful for any registered open-end investment company to make an offer to the holder of a security of such company or of any other open-end company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged

unless approve the Commission. Section 22(d) of the Act prohibits any registered investment company from selling any redeemable security issued by such company except at a current public offering price described in the prospectus.

According to the application, the shareholders of Pilgrim, MagnaCap and Income may exchange their shares for shares of any of the other of those Funds at relative net asset value. Pilgrim, MagnaCap and Income propose to offer to shareholders of GNMA the right to exchange their share for shares of Pilgrim, MagnaCap and Income on the basis of relative net aset value plus, in the case of GNMA shares acquired other than pursuant to a previous exchange from shares of Pilgrim, MagnaCap and Income, the difference in the applicable sales charge as described in the current prospectuses of the exchanging Funds. Applicants state that, once the difference in the applicable sales charge is paid, all future exchanges between the Funds would be at relative net asset value without any sales charge. Applicants state further that a service charge of up to $10.00 may be charged per exchange to cover its cost.

Applicants assert that, since each Fund has different investment objectives, the proposed exchange offer will allow any of the Funds' shareholders who changes his investment objective to change his investment to a different Fund. Applicants state that shareholders will be informed of their rights to exchange shares of one Fund for shares of any of the other Funds. Applicants assert that the exchange offer to the shareholders of GNMA (except for shares acquired by exchange from the other Funds) cannot be made at relative net asset value because GNMA shareholders may have paid a lower sales charge while a similarly situated shareholder in the Fund to be acquired would likely have incurred a higher sales charge. Applicants submit that if shares of Pilgrim, MagnaCap, or Income could be acquired by a shareholder of GNMA at net asset value in an exchange, it is possible that the exchange would be in violation of section 22(d) of the Act since an investor would be able to purchase shares of one of the Funds at a sales charge other than that described in its prospectus merely by purchasing shares of GNMA and subsequently exchanging those shares at net asset value for shares of one of the other Funds. Applicants contend that granting the requested exemption would avoid this problem.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than January 14, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 84-33727 Filed 12-27-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21543; File No. SR-AMEX-84-36]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc., Relating to the Post Execution Reporting (PER) System

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 November 28, 1984, the American 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 American Stock Exhange, Inc. has determined to expand its Post Execution Reporting (PER) system to increase the limits of PER orders from 300 shares to 1,000 shares for market orders and from 500 shares to 1,000 shares for marketable limit orders, and to permit away-from-the-market limit orders up to 10,000 shares.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) *Purpose.*—The Post Execution Reporting (PER) system provides a means for Exchange member firms to send equity market and marketable limit orders directly to the specialist's post and receive back execution reports through their wire systems. The system was implemented to increase the capacity of the floor to handle order flow by facilitating the transmission, execution and reporting of small routine orders.

At its inception in 1977, PER processed odd-lot and 100 share market orders. In response to the operational needs of member firms and the capacities of competitive automated systems at the other exchanges, PER was expanded in 1980 and again in 1983, to the current level of 300 share market and 500 share marketable limit orders.

Since the last increase in parameters, the percentage of orders eligible for inclusion in the PER system has decreased as a result of a significant increase in the average size of equity transactions. At the same time, enhancements to the PER system, including AUTOPER, have greatly improved the ability of specialists to handle larger order flow and permit the reporting of executions on a more timely basis. The Exchange therefore proposes to raise the present order limits to 1,000 shares for market and marketable limit orders, and to permit away-from-the-market limit orders up to 10,000 shares. The proposed changes would not only increase the percentage of orders which are eligible for the PER system but would permit the Exchange to respond to member firm requests for greater efficiency in the processing of small, routine orders, including away-from-the-market limit orders. Furthermore, an

increase in limits would place the PER system on a more competitive footing with the automated systems of the other exchanges. A recent survey of the systems at the New York, the Philadelphia, the Pacific, and the Midwest Stock exhanges, as well as the proposed NASDAQ SOES system, indicates that market orders from 500 to 1,099 shares and limit orders of 300 to 99,000 shares are eligible for execution through the various systems.

The Exchange intends to implement the proposed rule change upon approval by the Commission; however, with regard to market orders, the Exchange will initially increase the eligible order size to up to 500 shares and, at some time within the following six months upon the determination of the Chairman of the Exchange, to up to 1,000 shares.

(2) *Basis.*—The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objective of section 6(b)(5) in particular in that it will foster cooperation and coordination with persons engaged in facilitating transactions in securities, and will also result in more efficient and effective market operations, consistent with section 11A(a)(1)(B).

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will create no burden on competition given that use of the PER system is optional, and those firms which use PER can achieve more efficient handling of their respective orders. The proposed rule change will also enhance the Exchange's competitive status in providing an efficient, fast and accurate order-delivery system.

C. Self-Regulatory Organization's Statement on comments on the Proposed Rule Change Received from Members, Participants or Others

No written Comments were solicited or received with respect to the proposed rule change.

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 rules 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, DC 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, DC. 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 by January 20, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

December 21, 1984.

[FR Doc. 84-33729 Filed 12-27-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21579; File Nos. SR-Amex-84-29, SR-CBOE-84-27, SR-NYSE-84-38, SR-PSE-84-20 and SR-Phlx-84-32]

Self-Regulatory Organizations; Proposed Rule Changes by the American Stock Exchange, Inc. et al. Relating to Establishment of a Premium-Based Margin System

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 the above-mentioned options exchanges have filed with the Securities and Exchange Commission the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organizations.[1] The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("Amex"), Chicago Board Options Exchange, Incorporated ("CBOE"), New York Stock Exchange, Inc. ("NYSE"), Pacific Stock Exchange, Inc. ("PSE") and Philadelphia Stock Exchange, Inc. ("Phlx") have proposed to amend their rules to establish a uniform, premium-based customer margin system for "short" options positions.[2] The National Association of Securities Dealers, Inc. intends to file a substantially similar proposal to the Commission.

The proposed formula results in initial and maintenance margin levels equal to: 100% of the current option premium value plus a fixed percentage of the underlying value, with an adjustment for out-of-the-money options, and a minimum of not less than 100% of the current options premium value plus a fixed lesser percentage of the underlying value. The percentage requirement varies with the options product as described in the chart below:

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[1] American Stock Exchange, Inc. filed October 3, 1984; Chicago Board Options Exchange, Incorporated filed October 4, 1984; New York Stock Exchange, Inc. filed October 29, 1984; Pacific Stock Exchange, Inc. filed November 7, 1984; and Philadelphia Stock Exchange, Inc. filed December 3, 1984.

[2] Margin requirements for individual stock options are set by the Board of Governors of the Federal Reserve System ("Board") under Sections 220.5 and 220.18 of Regulation T (12 CFR 220.5 and 220.18). Accordingly, before the margin levels for individual stock options can be changed, the Board must amend Regulation T. We note that under Section 220.18 of Regulation T, the exchanges can specify by rule the margin levels for options on exempted debt securities, indices or groups of securities, certificates of deposit, and foreign currencies, provided these rules have been approved or amended by the Securities and Exchange Commission.

MARGIN REQUIREMENTS

Option issues	Proposed—		Current—						
	Premium—Percent of underlying	Adjusted for out-of-money	Minimum (percent)	Percent of underlying	Adjusted for profit and loss	Premium plus percent of underlying	Premium plus percent of principal amount	Adjusted for out-of-money only	Minimum
Equity	15	Yes	5	30	Yes				$250.
Narrow based index	15	Yes	5	30	Yes				$250.
Broad based index	5	Yes	2			10		Yes	2 percent.
Foreign currencies	2	Yes	½	(*)	(*)	(*)	(*)	(*)	(*).
Treasury bonds	3½	Yes	½				3½	Yes	[1] $500.
Treasury notes	3	Yes	½				3	Yes	[1] $500.
Treasury bills (95 Days)	35	Yes	½₀				.35	Yes	[1] $500.
GNMA	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*).
Contracts not registered on a national security exchange [3].	45	Yes	10	50	Yes				$250.

[1] Options with smaller principal amount—minimum requirements prorated with $100 minimum.
[2] This product is not currently being traded by any of the options exchanges. No charge from current margin requirements.
[3] Not issued by a registered clearing corporation.
[4] A 130 percent of premium plus $750 with $2,500 maximum plus 100 percent of premium, adjusted for out-of-money with $250 minimum plus 130 percent of premium
[5] A 130-percent of premium plus $1,500 with maximum of premium plus $5,000.

In addition, CBOE is proposing to delete any references to the "mini-series" of Treasury bond options because these products are not currently traded and there are not current plans to resume trading. CBOE has also proposed to delete Rule 21(c)(1) because the rule is both incorrect and unnecessary; the rule deals with a product that is not traded on the CBOE.

Amex is also proposing to delete the margin requirements for certain option products that Amex currently does not trade and has no current plans to trade. Phlx is also proposing to merge their rules so that all option margin requirements are contained in one rule.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In their filings with the Commission, the self-regulatory organizations included statements concerning the purpose of and basis for their proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. Set forth in sections (A), (B), and (C) below are summaries of the most significant aspects of these statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under current margin rules, there are different systems for calculating margin requirements for the different types of options products (equity, broad and narrow-based indices, foreign currencies and treasuries). For example, the margin requirements for writing options on an equity security or an industry stock index are based, respectively, on a percentage of the value of the underlying stock or the aggregate index value, and not directly on the option premium. In comparison, the requirement for writing options on a broad-based index is computed as the option premium plus a fixed percentage of the aggregate index value.

The options exchanges and the NASD have developed a uniform margin system based on the option premium plus an additional amount, which more closely reflects the risks involved in such trading. The proposed system continues to protect broker-dealers in the event that customers fail to meet their financial obligations, and simplifies the margin requirements by establishing a single, standardized approach, which can be applied to all option products. The proposed margin requirements represent minimum standards; brokerage firms, however, would still be permitted to require higher minimum margin than those prescribed in the self-regulatory organization's rules.

Under the proposed system, the minimum margin requirement for all short options positions would be: 100 percent of the option premium plus a fixed percentage of the current market value of the underlying security (the percentage to vary for each option product), with an adjustment for out-of-the-money options not to be less than 100 percent of the option premium plus a stipulated lesser percentage of the current market value of the underlying security. The above chart in Section I shows the current and proposed margin requirements agreed upon by all self-regulatory options exchanges.

The percentages recommended as the proposed margin requirements were developed by relating option margin to the annualized price volatility of the underlying security. The resulting percentages were then adjusted to provide for initial margin that would cover the underlying product's historical volatility over a seven-day period, given a 9.5 percent confidence level. This formula can be applied to any option product and can be recomputed periodically to insure that the requirements remain appropriate. Margin levels would be established for new options products utilizing the formula prior to the introduction of the new products. When compared to current margin rules, the margin requirements for short positions in stock options, index options and foreign currency options will generally be lower under the proposed system. There will be no substantive margin changes for options on government securities that are currently traded on CBOE and Amex. The proposed formula will decrease the incidence of excessive or inappropriate margining in customer accounts by correlating the margin to risk exposure. In addition, because member organizations must maintain different computer programs to calculate margin for each options product under the existing margin rules, the proposed margin system is designed to reduce the computer programming required of member organizations for new options products and allow for the use of one basic program for all options. Accordingly, the broker/dealer community will benefit from reduced operational and computerization costs while maintaining adequate coverage against loss. Self-regulatory organizations will have a more rational basis for establishing margin levels for new option products as well as for monitoring the appropriate level of existing requirements on an on-going basis.

Amex, CBOE and Phlx, in addition to their proposals on a uniform margin system, have proposed some other changes to their rules. Amex's proposed rule change deletes the margin

requirements for option products not currently trading and for which the Exchange has no current plan to commence trading. Therefore, the requirements for options on Government National Mortgage Association (GNMA) securities, certain U.S. Government obligations and certificates of deposit have been deleted. CBOE is proposing, among other things, to delete all references in its rules to the mini-series of treasury bond options because these products are not currently trading and CBOE has no plans to resume trading. Phlx is also proposing to merge all of its option margin rules into one rule, for the convenience of its members.

The proposed change is consistent with the requirements of the Securities Exchange Act of 1934 ("Act") and rules and regulations thereunder applicable to the self-regulatory organizations by revising the margin requirements to more closely reflect the risks involved in options trading and thus potentially increasing market liquidity. Therefore, the proposed rule change is consistent with section 6(b)(5) of the Act, which provides in pertinent part, that the rules of the Exchanges be designed to promote just and equitable principles of trade and to protect the investing public. In addition, the proposed rule changes are consistent with the requirements of the Act and the rules and regulations prescribed by the Board of Governors of the Federal Reserve System pursuant to section 7(a) of the Act in that they adjust margins to a level which provides a reasonable amount of financial protection to the securities industry and does not permit the excessive use of credit for the purchase or carrying of securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchanges do not believe that the proposed rule changes will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

None of the Exchanges solicited or received written comments.

Amex's Options Committee, a committee of the Amex Board of Governors comprised of members and representatives of member firms, and the Securities Industry Association's Credit Division have endorsed the proposed rule change.

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 changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organizations. All submissions should refer to the file numbers in the caption above and should be submitted by January 20, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 18, 1984.

John Wheeler,

Secretary.

[FR Doc. 84-33731 Filed 12-27-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21592; File No. SR-OCC-84-18]

Filing of a Proposed Rule Change of the Options Clearing Corporation

December 20, 1984.

The Options Clearing Corporation ("OCC") on December 5, 1984, filed a proposed rule change under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). The proposal would change the qualifications for OCC's Board of Directors.

OCC's Board of Directors is composed of Member Directors (representing OCC members), Exchange Directors (representing the registered options exchanges that own OCC), and one Management Director (representing OCC management). OCC Member Directors currently must be either: (1) An individual OCC Clearing Member, or (2) the general partner or prinicpal officer of a Clearing Member Organization. The proposal would broaden the qualifications for OCC's Member Directors by also allowing a director of a Clearing Member Organization to serve on OCC's Board of Directors. Additionally, the proposal provides that no person will be eligible to be a Member Director if appointment or election of that person would result in simultaneous service as Member Directors of two or more persons associated with affiliated Clearing Members.

OCC believes that the proposal will facilitate the selection of individuals most qualified for membership on OCC's Board of Directors. OCC notes a recent trend among its Clearing Members to establish separate service entities to perform functions associated with OCC membership, and then for the parent entities to withdraw from OCC membership. The service entity then would become an OCC Clearing Member. In those instances, knowledgeable, experienced persons associated with the parent might be a director, but not a general partner or principal officer, of the service entity. OCC further believes that the proposal, by limiting Clearing Member Directors from affiliated Clearing Member Organizations, should ensure continued fair representation on OCC's Board of Directors.

To assist the Commission in determining whether to approve the proposal or institute proceedings to determine whether the proposal should be disapproved, interested persons are invited to submit written data, views and arguments concerning the proposal within 21 days from the date this notice is published in the **Federal Register**. Please file six copies of written comments 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-OCC-84-18.

Copies of the proposal, all subsequent amendments, all written statements with respect to the proposal which are

filed with the Commission, and all written communications relating to the proposal between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, are available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of the proposal and any subsequent amendments also are available at the principal office of OCC.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 84-33728 Filed 12-27-84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 84-097]

Aquatic Resources Trust Fund; Availability of Financial Assistance

AGENCY: Coast Guard, DOT.

ACTION: The Boat Safety Account of the Aquatic Resources Trust Fund; Notice of Availability of Fiscal Year 1985 funds for financial assistance to national nonprofit public service organizations.

SUMMARY: Pursuant to Title 46 United States Code section 13103(c), the Coast Guard is seeking to enter into financial assistance agreements with national nonprofit public service organizations for national boating safety activities.

Applicability

The Coast Guard has funds available to provide financial assistance to national nonprofit public service organizations to help them conduct selected national boating safety activities. This announcement seeks proposals for all types of projects that will promote boating safety on a national level. Innovative approaches are welcome. Three areas of special interest this year are:

a. Problem of alcohol abuse in boating;

b. Education of persons participating in canoeing, kayaking, hunting, fishing and other recreational activities involving use of small boats; and

c. Investigation and analysis of causes of boat fires and explosions to determine effects of Federal fuel and electrical systems regulations.

Statement of Funds Availability

Title 26, United States Code, section 9504 establishes the Boat Safety Account of the Aquatic Resources Trust Fund. The Coast Guard may award annually up to 5 percent of the available funds to national nonprofit public service organizations for national boating safety activities. Up to $650,000 is available for the fiscal year ending September 30, 1985. Thirteen grant awards totaling $625,000 were made in fiscal year 1984; awards ranged from $8,600 to $188,917. Nothing in this announcement should be construed as committing the Coast Guard to dividing available funds among all qualified applicants or awarding any specified amount. Applicants must be responsible, non-governmental, nonprofit public service organizations and must establish that their activities are, in fact, national in scope. It is anticipated that several awards will be made by the Chief, Office of Boating, Public, and Consumer Affairs, U.S. Coast Guard.

DATE: All proposals must be submitted within 90 days of the date of this notice.

Applications, Instructions and Forms

Specific information on organization eligibility, proposal requirements, award procedures, financial administration procedures and application forms (SF424) may be obtained from Commandant (G-BP/42), U.S. Coast Guard, 2100 Second Street, SW, Washington, D.C. 20593 or by telephoning Mr. Ladd Hakes at (202) 426-1052.

Federal Domestic Assistance Catalog

The Boating Safety Financial Assistance Program is listed in section 20.005 of the Federal Domestic Assistance Catalog.

Dated: December 20, 1984.

A. D. Breed,

Commodore, U.S. Coast Guard, Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 84-33777 Filed 12-27-84; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

National Airspace Review; Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1) notice is hereby given of a meeting of Task Group 4-4 of the Federal Aviation Administration National Airspace Review Advisory Committee. The agenda for this meeting is as follows: In light of the numerous automation enhancements under the NAS plan and their associated increases in flight information services capability, a review of traditional FSS functions and service motivations should be conducted.

DATE: Beginning Tuesday, February 5, 1985, at 9 a.m. through Thursday of the first week and resuming at 9 a.m. Monday through Thursday of the following week.

ADDRESS: The meeting will be held at the Federal Aviaton Administration, conference room 9A/B, 800 Independence Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: National Airspace Review Program Management Staff, room 1005, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, 426-3560. Attendance is open to the interested public, but limited to space available. To insure consideration, persons desiring to make statements at the meeting should submit them in writing to the Executive Director, National Airspace Review Advisory Committee, Associate Administrator for Air Traffic, AAT-1, 800 Independence Avenue, SW., Washington, D.C. 20591, by January 29, 1985. Time permitting and subject to the approval of the chairman, these individuals may make oral presentations of their previously submitted statements.

Issued in Washington, D.C., on December 20, 1984.

Karl D. Trautmann,

Manager, Special Projects Staff; Office of the Associate Administrator for Air Traffic.

[FR Doc. 84-33776 Filed 12-27-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 551]

Commerce in Explosives; List of Explosive Materials

Pursuant to the provisions of Section 841(d) of Title 18, United States Code, and 27 CFR 55.23, the Director, Bureau of Alcohol, Tobacco, and Firearms, must publish and revise at least annually in the **Federal Register** a list of explosive determined to be within the coverage of 18 U.S.C. Chapter 40, Importation, Manufacture, Distribution and Storage

of Explosive Materials. This Chapter covers not only explosives, but also blasting agents and detonators, all of which are defined as explosive materials in section 841(c) of Title 18, United States Code.

Accordingly, the following is the 1985 List of explosive Materials subject to regulation under 18 U.S.C. Chapter 40, which includes both the list of explosives (including detonators) required to be published in the **Federal Register** and blasting agents. The list is intended to also include any and all mixtures containing any of the materials in the list. Materials constituting blasting agents are marked by an asterisk. While the list is comprehensive, it is *not* all inclusive. The fact that an explosive material may not be on the list does not mean that it is not within the coverage of the law if it otherwise meets the statutory definitions in Section 841 of Title 18, United States Code. Explosive materials are listed alphabetically by their common names followed by chemical names and synonyms in brackets. This revised list supersedes the List of Explosive Materials dated December 8, 1983 (48 FR 55061) and will be effective as of January 1, 1985).

List of Explosive Materials

A

Acetylides of heavy metals.
Aluminum containing polymeric propellant.
Aluminum ophorite explosive.
Amatex.
Amatol.
Ammonal.
Ammonium nitrate explosive mixtures (cap sensitive).
* Ammonium nitrate explosive mixtures (non cap sensitive).
Aromatic nitro-compound explosive mixtures.
Ammonium perchlorate having particle size less than 15 microns.
Ammonium perchlorate composite propellant.
Ammonium picrate [picrate of ammonia, Explosive D].
Ammonium salt lattice with isomorphously substituted inorganic salts.
* ANFO [ammonium nitrate-fuel oil].

B

Baratol.
Baronol.
BEAF [1, 2-bis (2, 2-difluoro-2-nitroacetoxyethane)].
Black powder.
Black powder based explosive mixtures.
* Blasting agents, nitro-carbo-nitrates, including non cap sensitive slurry and water-gel explosives.
Blasting caps.
Blasting gelatin.
Blasting powder.
BTNEC [bis (trinitroethyl) carbonate].
BTNEN [bis (trinitroethyl) nitramine].
BTTN [1,2,4, butanetriol trinitrate].
Butyl tetryl.

C

Calcium nitrate explosive mixture.
Cellulose hexanitrate explosive mixture.
Chlorate explosive mixtures.
Composition A and variations.
Composition B and variations.
Composition C and variations.
Copper acetylideI21 Cyanuric triazide.
Cyclotrimethylenetrinitramine [RDX].
Cyclotetramethylenetetranitramine [HMX].
Cyclotol.

D

DATB [diaminotrinitrobenzene].
DDNP [diazodinitrophenol].
DEGDN [diethyleneglycol dinitrate].
Detonating cord.
Detonators.
Dimethylol dimethyl methane dinitrate composition.
Dinitroethyleneurea.
Dinitroglycerine [glycerol dinitrate].
Dinitrophenol.
Dinitrophenolates.
Dinitrophenyl hydrazine.
Dinitroresorcinol.
Dinitrotoluene-sodium nitrate explosive mixtures.
DIPAM.
Dipicryl sulfone.
Dipicrylamine.
DNDP [dinitropentano nitrile].
DNPA [2,2–dinitropropyl acrylate].
Dynamite.

E

EDNA
Ednatol.
EDNP [ethyl 4,4–dinitropentanoate].
Erythritol tetranitrate explosives.
Esters of nitro-substituted alcohols.
EGDN [ethylene glycol dinitrate].
Ethyl-tetryl.
Explosive conitrates.
Explosive gelatins.
Explosive mixtures containing oxygen releasing inorganic salts and hydrocarbons.
Explosive mixtures containing oxygen releasing inorganic salts and nitro bodies.
Explosive mixtures containing oxygen releasing inorganic salts and water insoluble fuels.
Explosive mixtures containing oxygen releasing inorganic salts and water soluble fuels.
Explosive mixtures containing sensitized nitromethane.
Explosive mixtures containing tetranitromethane (nitro form).
Explosive nitro compounds of aromatic hydrocarbons.
Explosive organic nitrate mixtures.
Explosive liquids.
Explosive powders.

F

Filminate of mercury.
Fulminate of silver.
Fulminating gold.
Fulminating mercury.
Fulminating platinum.
Fulminating silver.

G

Gelatinized nitrocellulose.
Gem-dinitro aliphatic explosive mixtures.
Guanyl nitrosamino guanyl tetrazene.
Guanyl nitrosamino guanylidene hydrazine.
Guncotton.

H

Heavy metal azides.
Hexanite.
Hexanitrodiphenylamine.
Hexanitrostilbene.
Hexogene or octogene and a nitrated N-methylaniline.
Hexolites.
HMX [cyclo-1,3,5,7-tetramethylene-2,4,6,8-tetranitramine: Octogen].
Hydrazinium nitrate/hydrazine/aluminum explosive system.
Hydrazoic acid.

I

Igniter cord.
Igniters.
Initiating tube systems.

K

KDNBF [potassium dinitrobenzo-furoxane].

L

Lead azide.
Lead mannite.
Lead mononitroresorcinate.
Lead picrate.
Lead salts, explosive.
Lead styphnate [styphnate of lead, lead trinitroresorcinate].
Liquid nitrated polyol and trimethylolethane.
Liquid oxygen explosives.

M

Magnesium ophorite explosives.
Mannitol hexanitrate.
MDNP [methyl 4,4-dinitropentanoate].
Mercuric fulminate.
Mercury oxalate.
Mercury tartrate.
Minol-2 [40% TNT, 40% ammonium nitrate, 20% aluminum].
Mononitrotoluene-nitroglycerin mixture.
Monopropellants.

N

NIBTN [nitroisobutametriol trinitrate].
Nitrate sensitized with gelled nitroparaffin.
Nitrated carbohydrate explosive.
Nitrated glucoside explosive.
Nitrated polyhydric alcohol explosives.
Nitrates of soda explosive mixtures.
Nitric acid and a nitro aromatic compound explosive.
Nitric acid and carboxylic fuel explosive.
Nitric acid explosive mixtures.
Nitro aromatic explosive mixtures.
Nitro compounds of furane explosive mixtures.
Nitrocellulose explosive.
Nitroderivative of urea explosive mixture.
Nitrogelatin explosive.
Nitrogen trichloride.
Nitrogen tri-iodide.
Nitroglycerine [NG, RNG, nitro, glyceryl trinitrate, trinitroglycerine].
Nitroglycide.

Nitroglycol (ethylene glycol dinitrate, EGDN)
Nitroguanidine explosives.
Nitroparaffins Explosive Grade and ammonium nitrate mixtures.
Nitronium perchlorate propellant mixtures.
Nitrostarch.
Nitro-substituted carboxylic acids.
Nitrourea.

O

Octogen [HMX].
Octol [75 percent HMX, 25 percent TNT].
Organic amine nitrates.
Organic nitramines.

P

PBX [RDX and plasticizer].
Pellet powder.
Penthrinite composition.
Pentolite.
Perchlorate explosive mixtures.
Peroxide based explosive mixtures.
PETN [nitropentaerythrite, pentaerythrite tetranitrate, pentaerythritol tetranitrate].
Picramic acid and its salts.
Picramide.
Picrate of potassium explosive mixtures.
Picratol.
Picric acid (explosive grade).
Picryl chloride.
Picryl fluoride.
PLX [95% nitromethane, 5% ethylenediamine].
Polynitro aliphatic compounds.
Polyolpolynitrate-nitrocellulose explosive gels.
Potassium chlorate and lead sulfocyanate explosive.
Potassium nitrate explosive mixtures.
Potassium nitroaminotetrazole.

R

RDX [cyclonite, hexogen, T4, cyclo-1,3,5,-trimethylene-2,4,6,-trinitramine; hexahydro-1,3,5,-trinitro-S-triazine].

S

Safety fuse.
Salts of organic amino sulfonic acid explosive mixture.
Silver acetylide.
Silver azide.
Silver fulminate.
Silver oxalate explosive mixtures.
Silver styphnate.
Silver tartrate explosive mixtures.
Silver tetrazene.
Slurried explosive mixtures of water, inorganic oxidizing salt, gelling agent, fuel and sensitizer (cap sensitive).
Smokeless powder.
Sodatol.
Sodium amatol.
Sodium dinitro-ortho-cresolate.
Sodium nitrate-potassium nitrate explosive mixture.
Sodium picramate.
Squibs.
Styphnic acid.

T

Tacot [tetranitro-2,3,5,6-dibenzo-1,3a,4,6a-tetrazapentalene].
TATB [triaminotrinitrobenzene].
TEGDN [triethylene glycol dinitrate].
Tetrazene [tetracene, tetrazine, 1(5-tetrazolyl)-4-guanyl tetrazene hydrate].
Tetranitrocarbazole.
Tetryl [2,4,6 tetranitro-N-methylaniline].
Tetrytol.
Thickened inorganic oxidizer salt slurried explosive mixture.
TMETN (trimethylolethane trinitrate).
TNEF [trinitroethyl formal].
TNEOC [trinitroethylorthocarbonate].
TNEOF [trinitroethyl orthoformate].
TNT [trinitrotoluene, trotyl, trilite, triton].
Torpex.
Tridite.
Trimethylol ethyl methane trinitrate composition.
Trimethylolthane trinitrate-nitrocellulose.
Trimonite.
Trinitroanisole.
Trinitrobenzene.
Trinitrobenzoic acid.
Trinitrocresol.
Trinitro-meta-cresol.
Trinitronaphthalene.
Trinitrophenetol.
Trinitrophloroglucinol.
Trinitroresorcinol.
Tritonal.

U

Urea nitrate.

W

Water bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates (cap sensitive).

X

Xanthamonas hydrophilic colloid explosive mixture.

FOR FURTHER INFORMATION CONTACT: Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202–566–7591).

Signed: December 19, 1984.

Stephen E. Higgins,

Director.

[FR Doc. 84–33706 Filed 12–27–84; 8:45 am]
BILLING CODE 4810–31–M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 251
Friday, December 28, 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

[M-415, 12/20/84]

CIVIL AERONAUTICS BOARD

TIME AND DATE: 10:00 a.m., December 31, 1984.

PLACE: Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of Items Adopted by Notation.
2. Closing Ceremonies.

Phyllis **T. Kaylor,**

Secretary.

[FR Doc. 84-33843 Filed 12-26-84; 3:35 pm]

BILLING CODE 6320-01-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 9:30 a.m. (Eastern Time), Tuesday, January 8, 1985.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street NW., Washington, D.C. 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. Proposed Compliance Manual Section 22, Extended Investigations Procedures
4. Proposed Compliance Manual Section 5, Relationship and Interaction with State and Local Fair Employment Practices Agencies
5. Request for Opinion Letter—Texas Youth Commission
6. Amendment of the Commission's Interpretation of section 12(c) of the ADEA as a Result of Legislative Changes
7. Final Regulation Implementing section 4(g) of the ADEA 29 U.S.C. 623(g)

Closed

1. Litigation Authorization; General Counsel Recommendations.
2. Proposed Decisions, Settlements, and Subpoenas.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634-6748.

Dated: December 21, 1984.

Cynthia C. Matthews,

Executive Officer.

[FR Doc. 84-33603 Filed 12-26-84; 12:15 pm]

BILLING CODE 6750-01-M

3

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 10 a.m., Monday, December 31, 1984.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW.

STATUS: Part of this meeting will be closed to the public. The rest of the meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Portion closed to the public: Selection of Regional Director for Region 12, Tampa, Florida.

Portion open to the public: Case handling procedures.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, D.C. 20570, Telephone: (202) 254-9430.

Dated, Washington, D.C., December 24, 1984.

By direction of the Board:

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 84-33767 Filed 12-24-84; 1:52 pm]

BILLING CODE 7545-01-M

federal register

Friday
December 28, 1984

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 611
Foreign Fishing; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 41049-4149]

Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes to revise the general regulations governing foreign fishing within the fishery conservation zone (FCZ). This action is necessary because the regulations no longer reflect current and projected operations of the fisheries; enforcement efforts are detecting an increasing number of sophisticated and severe violations of the regulations; and amendments have made the regulations disjointed, contradictory, and increasingly difficult to use. The proposed revision is intended to bring the regulations in line with current practices in the fisheries, reduce illegal fishing and associated losses of resources and revenue, and simply and improve the utility of the regulations.

DATE: Comments on this proposed rule must be received by February 26, 1985.

ADDRESS: Send comments to Fees, Permits and Regulations Division, F/M12, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C. 20235. A copy of the regulatory review for this rule is also available.

FOR FURTHER INFORMATION CONTACT: William D. Chappell, 202-634-7432.

SUPPLEMENTARY INFORMATION: NMFS proposes to completely revise Subparts A and B of the foreign fishing regulations issued under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) (Magnuson Act). The proposed revision would update the regulations to reflect changes in the Magnuson Act, including the requirements for 100 percent observer coverage aboard foreign fishing vessels (FFV's); meet enforcement needs for preventing or curtailing sophisticated violations of the regulations; reflect the shift in foreign activity from directed fishing towards joint ventures with U.S. fishing vessels; conform more closely to foreign fishing operations; clarify existing regulations and practices; and eliminate redundancies.

The proposed revision reorganizes almost every section of the two affected subparts. Some sections are moved and others consolidated or deleted. One section is added. Along with substantive changes, the reorganization is meant to make the regulations more useable by putting related provisions together and making headings more descriptive. The revised Subparts A and B would serve as the foundation upon which to build management measures contained in the subsequent subparts. Redundant requirements contained in those subparts could be deleted. A distribution table is included to enable referencing from the current regulations.

Background

The foreign fishing regulations were last revised in their entirety at 43 FR 59293 on December 19, 1978. Since that time there have been many amendments to update these regulations, to address specific changes in the fisheries, and close loopholes. A proposal revising the logkeeping for fisheries off Alaska, which has not been implemented, was contained at 46 FR 55733 on November 12, 1981. The contents of that proposd rule have been revised and are contained in this action. Because of the current revisions and the length of time which has elapsed since comments on the 1981 action were received, NMFS will consider only comments received on the present action.

Public Law 96-561 and Public Law 97-453 amended the Magnuson Act to require U.S. observers to be stationed aboard all FFV's while in the FCZ, with certain exceptions, and to provide for a supplementary observer program to meet observer needs in excess of appropriations. Proposed rules to implement the supplementary observer program were published at 48 FR 41789 on September 19, 1983. That action proposed to require foreign nations to submit a fishing effort plan detailing foreign fishing activity and proposed to provide for supplementary observers, to be employed as the need arises, and whose qualifications and functions would be equivalent to other observers in all respects. This action incorporates draft final regulations for the program reordered to be consistent with the rest of the regulations. Because comments on the supplementary observer program have already been received and this action will not change the substance of final rules issued as a result of those comments, further comments on the program will not be considered.

Public Law 97-453 also amended the Magnuson Act to allow recreational fishing by foreign vessels within the FCZ. This action proposes a definition for recreational fishing and a section which exempts foreign recreational fishing from Federal permit procedures and other foreign fishing regulations. Foreign recreational fishing vessels would be required to conform with other Federal regulations and with State regulations governing recreational fishing.

NMFS has observed an increase in the number of serious, systematic violations of these regulations over the last several years. The presumed motives for these violations are to catch quantities of fish in excess of the allocations without having the fishery closed, and to avoid paying poundage fees, which have increased more than 250 percent since 1980, on the excess catch.

In calendar year 1983 enforcement personnel documented 54 infractions of the reporting requirements, including one serious enough to warrant seizure of an FFV, and 104 infractions of recordkeeping requirements, seven of which involved seizures. From January through July of 1984 enforcement personnel documented 47 infractions of the reporting requirements, and 32 infractions of the recordkeeping requirements. These categories of infractions are most often associated with the most serious "underlogging" violations. The violations consist of falsely representing the amount of catch by failing to log the catch, logging more valuable species as less valuable ones, or using an incorrect product recovery rate to compare the product in the vessel's holds to the amount of whole fish reported caught, thus making the catch seem smaller than it actually was; transferring fish to another vessel and recording nothing or only part of it; or some combination of the above. These violations may involve conspiracy among several vessels and companies and falsification or failure to make required reports. In one case involving numerous vessels over a two-year period, it is charged that more than 4,000 metric tons of catch went unrecorded, resulting in a loss of amost $100,000 in poundage fees.

This proposed revision is designed to prevent or reduce the potential damage of these systematic "underlogging" violations. In doing so the regulations specify responsible parties, tighten and specify new reporting requirements, and make logkeeping requirements more explicit. The proposed revision will have the additional benefit of making the job easier for enforcement personnel by consolidating and standardizing information requirements which will reduce boarding time per vessel and allow more boardings for any given length of time.

Since the last complete revision of these regulations, the foreign fishing activity in the FCZ has shifted

significantly from directed fishing for allocations to joint ventures assisting U.S. fishing vessels by processing and transporting their catch. In 1983 joint ventures in the FCZ accounted for a catch of 434,948 metric tons, an almost 700% increase from 1980 and equivalent to 39% of the foreign catch. Because joint ventures are becoming the predominant foreign fishing activity within the FCZ, and have already become so in the Northwest Atlantic fishery and the Pacific Coast groundfish fishery, this proposed revision is drafted to address joint ventures specifically. Specific conditions and restrictions previously added to joint venture permits would not be codified in the regulations. Other procedures which have become industry practice by mutual agreement between fishing vessel operators and NMFS would also be codified to provide clear and firm guidance to foreign joint venture fishermen and to provide for the enforcement of these practices.

The proposed revision was drafted to conform with present FFV operations as much as possible. Information requested is similar if not identical to records currently kept by FFV's. NMFS encourages specific suggestions which would minimize recordkeeping on the part of foreign fishing vessel owners and operators without compromising the information requirements needed to insure complete and accurate reporting of catch.

This proposed revision was also drafted to be more readable and formatted to be more useful to foreign fishermen and enforcement personnel. It is generally formatted in the active voice, specifying the person or level at which the requirement is expected to be completed. Appendices are proposed to be consolidated and expanded at the end of Subpart A for the convenience of the user. Unnecessary provisions within the regulations and provisions of specific fisheries which would become redundant due to their incorporation as general regulations and references to these subparts would be deleted by technical amendment once these regulations become final. NMFS encourages specific recommendations which would ease transition and further clarify requirements of the regulations.

Proposed changes of consequence are discused below. There are also numerous editorial changes and added headings which improve the readability and utility of the regulations without changing their meaning.

Section-by-Section Analysis

Subpart A. The subpart is proposed to be reorganized to reflect the changed requirements of foreign fishing. Section 611.4 now contains all reporting requirements, including those weekly reports previously contained in § 611.9. The requirements of § 611.12 (Directed fisheries), are proposed to be deleted as obsolete except where specified in the other subchapters. The requirements of § 611.10 (Fishery support operations), and portions of § 611.14 (Incidental catch—other species), are proposed to be combined in a new § 611.10 (Fishing operations). Section § 611.13 (Incidental catch—prohibited species), and parts of § 611.14 are proposed to be combined in a new § 611.11 (Prohibited species). Section 611.11 (Gear conflicts), and § 611.16 (Disposal of fishing gear and other articles), are proposed to be combined in § 611.12 (Gear avoidance and disposal). A new § 611.15 (Recreational fishing), is proposed to be added.

Section 611.1. The statement of purpose is updated and expanded to include cross references to pertinent international conventions, laws and regulations.

Section 611.2. Definitions are proposed to be added to clarify regulations, deleted to remove obsolete material, or revised to reflect changes to the regulations and the law.

"Agent" is clarified to require the agent to respond to actions involving nonpermitted as well as permitted vessels. Persons with diplomatic status who become agents cannot claim diplomatic immunity to avoid litigation.

"Allocated species" is proposed to be added to simplify explanations of which species may be caught by FFV's.

The term "certified enforcement agent" is proposed to be deleted from "Authorized officer" as no longer used.

"Authorized species" is proposed to be added to simplify explanations of which species may be received in joint ventures.

"Billfish" is deleted because it is not used in Subpart A.

"Center Director" is proposed to be added, as the Center Director may have several functions under these regulations.

"Coast Guard Commander" is proposed to be added to simplify reporting requirements.

"Continental shelf" is proposed to be deleted because it is not used in Subpart A.

"Continental shelf fishery resources" has been retained and is proposed to be expanded to include future determinations by the Secretary.

"Council" is proposed to be added because regional fishery management councils play an important part in the permitting and allocations processes.

"Designated representative" is proposed to be rewritten to clarify the duties of the designated representatives. Designated representatives are responsible for most of the operational requirements and liaison between FFV's and NMFS and the Coast Guard. A designated representative is not authorized to accept legal process unless the same person is also the agent.

"Directed fishery" is proposed to be deleted because it is not used in Subpart A, and the term "directed fishing" is proposed to be substituted to clarify operations by FFV's which actually catch fish.

"Exclusive economic zone" is proposed to be added for referencing from Governing International Fishery Agreements.

"Existing International Fishery Agreement" is proposed to be deleted as unused, because the International Convention for the High Seas Fisheries of the North Pacific Ocean, the only remaining agreement with active foreign fishing, is specifically used in § 611.3.

"Fish (when used as a verb)" is proposed to be added to simplify subsequent regulations.

"Fishery" is proposed to be expanded by adding method of harvest.

"Fish over which the United States exercises exclusive fishery management authority" is proposed to be deleted because it is not used in Subpart A.

"Fishery resource" is proposed to be deleted as unused in Subpart A.

"Fishing " is proposed to be simplified and used to define "fish." Definitions for "scouting", "processing" and "support" are found elsewhere in the section.

"Foreign fishing" is proposed to be simplified.

"Foreign fishing vessel" is proposed to be used throughout the regulations by its abbreviation "FFV."

"Governing International Fishing Agreement" is proposed to be expanded to include multilateral GIFA's.

"GMT" is proposed to be added as an abbreviation for Greenwich mean time and is the time used throughout the regulations.

"Incidental catch" is proposed to be deleted as unused in Subpart A.

"International radio call sign (IRCS)" is added to enable the use of the abbreviation IRCS throughout the regulations.

"Joint venture" is proposed to be defined.

"Act" is proposed to be changed to "Magnuson Act" to reflect a change in the name of the law.

"NMFS" is proposed to be added, as it is used throughout the regulations.

"NOAA" is proposed to be added, as it is used throughout the regulations.

"Optimum yield (OY)" is proposed to be added, because the term is used in Subpart B.

"Owner" is proposed to be revised to insure all persons responsible for the actions of a FFV and its crew may be included in a legal action.

"Prohibited species" is proposed to be revised to indicate all species other than allocated or authorized species are prohibited.

"Processing" is proposed to be moved from the definition of fishing and expanded.

"Product recovery rate" is proposed to be added.

"Recreational fishing" is proposed to be defined as in the Magnuson Act. The sale, barter, or trade of fish is excluded from recreational fishing.

"Regional Director" is proposed to be added, as the Regional Director has several functions throughout the regulations.

"Scouting" is proposed to be moved from the definition for fishing and more specifically explained.

"State" is proposed to be shortened by removing an obsolete reference to the Trust Territories of the Pacific Islands.

"Support" is proposed to be moved from the definition of fishing.

"U.S. harvested fish" is proposed to be added from the Magnuson Act, since it is used in describing permit requirements, joint ventures and allocations.

"U.S. observer" is proposed to be added to insure supplementary observers are covered by these regulations.

"Vessel of the United States" is proposed to be revised to reflect the revised definition in the Magnuson Act.

"Vessel day" is proposed to be deleted as unused in Subpart A.

Section 611.3. Section 611.3 (Vessel permits), is proposed to be rewritten for clarity and to simplify procedures.

Section 611.3(a) is proposed to be rewritten to describe which vessels must have permits, and to exempt foreign vessels only recreationally fishing from permits requirements. The current § 611.3(b) would be moved to § 611.3(a)(2) and the term Existing International Fishery Agreement is replaced by a specific reference to the International Convention for the High Seas Fisheries of the North Pacific Ocean. A new § 611.3(a)(3) would be rewritten from the current § 611.3(h) to indicate when a certificate of inclusion to take marine mammals is needed.

A new § 611.3(b) is proposed to be added, specifying that the owners and operators are responsible for their employees and each other's actions.

The current § 611.3(d) proposed to be redesignated as § 611.3(c) and activity codes redefined.

The current § 611.3(e) is proposed to be redesignated as § 611.3(d) and expanded to clarify application requirements. Vessel substitutions would now be considered new applications, since the applications must be processed in the same manner as initial applications. Appropriate fees would be required.

Section 611.3(e) would describe the procedures involved in issuing permits. The current § 611.3(c) is proposed to be redesignated § 611.3(e)(1) and expanded to reflect current practices. The current § 611.3(f)(1) describing permit forms and (5) describing completion of the forms are proposed to be combined and redesignated as § 611.3(e)(2). Requirements for completed permit forms and their amendments from the current § 611.3(f) (3) and (4) are proposed to be combined and redesignated as § 611.3(e)(3) for clarity. The permit exemption for small boats launched from larger vessels is extracted from the current § 611.3(f)(2) and redesignated as § 611.3(e)(4).

Permit validity is proposed to be abstracted from the current § 611.3(f)(2), redesignated as § 611.3(f) revised to reflect current practice.

Transfer of permits would be extracted from the current § 611.3(f)(2) and redesignated as § 611.3(g).

Display of permits is proposed to be moved from § 611.3(f)(3)(ii) to § 611.3(h) and the posting requirement relaxed.

The current § 611.3(g) is proposed to be redesignated as § 611.3(i) and the requirements for suspension and revocation of permits are proposed to be revised to reflect current practice. Civil procedures are now consolidated in 15 CFR Part 904.

A new § 611.3(j) proposes to cross reference application fees to § 611.22. The permit issuing procedures of § 611.3(i) are proposed to be moved to § 611.3 (k) and (l). The notification provisions of § 611.3(i)(1) are proposed to be simplified and included in § 611.3(1). The current §§ 611.3(i) (3), (4), and (5) are redesignated as § 611.3(k) and revised to reflect current practice in changes to applications. A 15-day limit on submission of changes is imposed because of confusion from unreported changes. An unreported change in ownership voids the permit and would make a vessel subject to seizure as an unpermitted vessel.

Permit modifications by the Assistant Administrator, now called additional restrictions, are proposed to be redesignated from the current §§ 611.3(i) (l) and (2) to § 611.3(1). The provisions of §611.3(i)(2) are proposed to be revised to simplify permit modification procedures. A 15-day comment period plus a seven day implementation period would be required prior to additional restrictions. These changes will preserve the rights of the permit holders while streamlining the permit modification procedures.

Section 611.4. The section on vessel reports is proposed to be clarified and retitled. Reports previously contained in § 611.9 would be consolidated in this section to separate them from logbooks. The appendices would be moved to the end of the subchapter for convenience, since some appendices apply throughout the regulations. Tables I and II would appear in Appendix A to the subpart.

In § 611.4(a), NMFS is proposed to be added as an addressee to reports because of the addition to the section of weekly reports. The present paragraphs §§ 611.4(a) (1)–(5) would be moved to § 611.4(c).

The current § 611.4(b) is proposed to be revised to combine the general requirements of the current §§ 611.4 (b) and (c) regarding transmittal of reports.

A new § 611.4(c) (Activity reports), would contain the specific requirements for vessel reports (VESREP's) currently contained in §§ 611.4(a) (1) through (5) and § 611.4(d). Examples would be moved to an appendix. BEGIN messages would require reporting product aboard for all vessels now fishing in the FCZ. The advance notice would be increased from 24 to 48 hours. The time of delivery for DEPART and RETURN messages would be shortened from 72 to 24 hours. FFV's returning to the FCZ after conducting a joint venture in internal waters would be required to report the product on board as required in a BEGIN message. SHIFT messages changing fishing area would now be reported before leaving the original area. Provision would be made for fishing on both sides of a boundary by incorporating the requirements of § 611.70(j)(2). An FFV fishing on a boundary would submit one message sent before the last SHIFT of the day and detailing all SHIFT's during the day. The exemption from reporting SHIFT's from Atlantic areas 2 and 3 would be redundant due to a change in the reporting areas. FFV's would be required to report their joint venture activities as now required by § 611.70(j)(1) but within 24 hours of transmittal.

A new TRANSFER report would be required of FFV's planning to receive transfers of fish or fish products at sea, prior to each transfer. A new

OFFLOADED report would be required for FFV's transferring fish or fisheries products to another FFV. Each FFV would be required to report the amount of each transfer by species and product and the vessel which received it. The message would be required to be delivered before the FFV ceases fishing and leaves the FCZ. FFV's receiving fish or fisheries products would be required to submit a RECEIVED report specifying the product received and the FFV's from which they received it. The message would be required to be delivered before the FFV leaves the FCZ.

The CEASE message would be required to be delivered 48 hours in advance of the FFV's commencing its transit from the FCZ after stopping fishing. A new CHANGE message would be required similar to that of § 611.81(d)(4). Vessels would be required to report any change to previous messages when the new activities do not occur within either five nautical miles or four hours of a previous report. A new CANCEL message would be required similar to that of § 611.81(d)(4). FFV's would be required to report whenever a previously reported action would not take place at all.

The proposed requirements will facilitate the placement of observers on FFV's and alleviate the considerable difficulties enforcement unit have had in finding and making timely boardings of FFV's transferring fisheries products and/or leaving the FCZ. These requirements will improve compliance of FFV's by removing opportunities to falsify their records and reports.

A new § 611.4(d) would specify reporting parameters outside of which a vessel would be considered in violation. It would give an FFV an eight-hour time span (four hours before and four hours after a report) to come within a five nautical mile radius of the reported position.

The current § 611.4(e) would be clarified to specify that individual operators are responsible for making required reports. The example would be moved to Appendix B.

Weekly reports are proposed to be moved from §§ 611.9 (e), (f), and (g) to § 611.4 (f) to consolidate reporting requirements. The FFV instead of the nation would now be responsible for initiating the report. Report instructions and forms would be moved to appendices at the end of the subpart. Weekly catch reports would be redesignated as § 611.4(f)(2) from § 611.9(e) and revised.

The section would exempt foreign harvesting vessels if factory vessels submit consolidated reports. The weekly report of receipts of U.S. harvested fish by foreign processing vessels would be redesignated § 611.4(f)(3) from § 611.9(f) and revised. In addition to present requirements, foreign processors would be required to report amounts discarded, codends received, and names of vessels actively participating in the joint venture. The weekly report of marine mammal incidental catch would be redesignated §611.4(f)(4) from § 611.9(g) and revised, and would exempt foreign catching vessels if processing vessels submitted consolidated reports. Joint venture processors would submit consolidated reports for U.S. vessels.

A new § 611.4(g) would consolidate general instructions on weekly reports from §§ 611.9 (e), (f) and (g). Submission instructions from the appendix would be placed within the paragraph and addresses referenced to Appendix A.

Section 611.5. The current vessel identification requirements are proposed to be combined with the current § 611.5(b). Contents would be clarified.

The current § 611.5(d) (Navigational lights and shapes) is proposed to be titled for consistency with other sections and redesignated as § 611.5(b). The regulations would be cross referenced to treaties in force and other federal regulations.

The current § 611.5(e) (Gear identification) is proposed to be redesignated § 611.5(c). Requirements would apply only to *deployed* gear. Specific markings and identification would be required to reduce navigational hazards due to entanglement, to reduce gear conflicts and to aid enforcement. Improperly marked gear would be retrieved and disposed of.

The current § 611.5(c) (Maintenance) would be redesignated § 611.5(d). The operator would also be responsible for maintaining navigational lights and shapes and gear markings.

Section 611.6. (Facilitation of enforcement) is proposed to be revised because of many problems encountered in boardings.

The general provisions of § 611.6(a) are proposed to be moved to § 611.6(a)(1) and rewritten to state more specifically what an authorized officer may require to facilitate enforcement. Paragraph § 611.6(f) requiring any additional information is proposed to be redesignated as § 611.6(a)(2) as a general provision. Reference to fleet commanders is deleted because it remains the vessel operator's responsibility to report his actions.

Paragraph § 611.6(e) is proposed to be redesignated as § 611.6(b) and revised. The paragraph now specifies three different radios and associated frequencies required by fishing vessels. Catching vessels operating with a processing vessel are exempted from the requirements for long-range communications. Since most FFV's already have these radios, the requirement is really for FFV's to monitor the specified frequencies, which some FFV's have not done in the past.

The current § 611.6(b) is proposed to be redesignated as § 611.6(c) and the text revised. Methods of signaling are specified. Failure to respond to signals to stop via VHF–FM radiotelephone, message block, flashing light, flaghoist, or loudhailer would be considered a refusal to permit a boarding.

The current § 611.6(c) is proposed to be redesignated as §611.6(d) and revised. Operators would be required to monitor certain radio frequencies and provide a SOLAS pilot ladder. The 1974 SOLAS Convention pilot ladder requirements are summarized and the Convention referenced. The proposed regulation should clarify to FFV operators and enforcement personnel what a "safe boarding ladder" is.

The current §661.6(d) is proposed to be deleted as redundant, because the Coast Guard has general authority to board any vessel subject to these regulations.

A new § 611.6(e) is proposed to be added to clarify authorized officers' access to and records pertaining to fishing activities. The authority to enter spaces where work is conducted and fishing records are kept reflects current practice as it has evolved under the authority of the Magnuson Act. The proposed requirement to provide a plan of vessel holds reflects documents already on FFV's but not necessarily up to date.

A new § 611.6(f) is proposed to be added which specifies that extraneous items not be stored beneath fish or fish products, so that calculating the contents of a hold can be facilitated.

Section 611.7. The current prohibitions are proposed to be revised and expanded to reflect fully the requirements of the regulations. Section 611.7 (a) and (b) detail the prohibitions which are punishable under the Magnuson Act. Proposed new prohibitions restrict actions which are outside of or contrary to the requirements of the regulations, such as § 611.7(a)(6) which prohibits interfering with, obstructing or delaying, or preventing a boarding. The proposed prohibition reflects the requirement of § 611.9 to maintain accurate logs. Any alteration, destruction, or disposal of logbooks or other evidence will be

considered interference with a boarding or investigation.

Section 611.7(b) is proposed to be revised to prohibit unauthorized joint ventures conducted in the internal waters of a State.

Section § 611.7(c) has been deleted because all foreign violations of these regulations are potentially subject to criminal sanctions.

Section 611.8. The section on observers is proposed to be rewritten to specify new requirements and clarify current ones.

The current § 611.8(a) is proposed to be revised to clarify that more than one observer may be assigned to an FFV. A proposed requirement that an FFV must have an observer aboard is added to conform with a change to the Magnuson Act.

The fishing effort plan is proposed to be redesignated from § 611.21(b) to § 611.8(b) and revised for facilitating assignment of observers. The current § 611.8(b) would be moved to § 611.22(c), the other section addressing fees.

The current § 611.8(d) is proposed to be moved to § 611.8(c). The previous requirements are proposed to be rewritten to make them more enforceable and new ones added to specify the FFV operator and crew's responsibilities regarding the observer and to clarify what is required for compliance. The revisions are necessary to protect observers from the increasingly uncooperative attitude of some foreign fishermen towards observers caused by the increased compliance role of observers. The current § 611.8(c) would be moved to § 611.7(a)(14) as a prohibition.

To provide for safer observer transfers, the current § 611.8(e) is proposed to be redesignated as § 611.8(d), and revised to require FFV operators to conduct observer transfers during daylight only, to use boarding ladders and procedures used for boarding operations and to escort the observer during a transfer using and experienced crew member.

Section 611.9. The section on recordkeeping is proposed to be extensively revised with a new logbook based on a proposed rule published on November 12, 1981 at 46 FR 55733. NMFS expects FFV operators' records will be sufficient to complete the cumulative catch and production sections of the logs whenever this regulation becomes effective. NMFS is considering requiring the use of NMFS-supplied logbooks at a future date if the proposed requirements prove adequate. All reporting requirements are proposed to be moved to § 611.4 and appendices to be consolidated at the end of the subpart.

In § 611.9(a) general maintenance requirements for records are specified. Records would be required to be maintained for three years from the close of the referent permit period.

The current provisions of § 611.9(i) requiring accurate and timely maintenance and availability of records to enforcement personnel are proposed to be moved to §§ 611.9(a) (1) and (2). A new § 611.9(a)(3) is proposed which would require all designated records to be produced upon demand, wherever their location, for three years after the end of the permit period. The present § 611.9(h) requiring owners or operators to provide any additional information would be redesignated as § 611.9(a)(4).

The current § 611.9(c) is proposed to be redesignated § 611.9(b) to put the order of presentation of communications and transfer logs in the order of most probable use. Communications logs would now record the contents of all reports complied at the time the report was made.

The current § 611.9(b) is proposed to be redesignated § 611.9(c) and transfer log requirements are clarified. Joint venture or catching vessel transfers of codends would not be considered transfers.

In the current § 611.9(d), the daily cumulative log is proposed to be replaced by a series of three logs. Foreign catching vessels, foreign processing vessels and joint venture vessels have different logging requirements. Each log consists of a trawl or daily fishing section, a daily cumulative section and a production section specifying the effort, catch, and production of each FFV. The logs would be kept by fishery (i.e., Gulf of Alaska groundfish fishery) instead of by fishing area as is now required, which would substantially reduce the number of individual logbooks required. The actual area of catch would still be required to be recorded in the log, and catch must be reported in the weekly catch report (see the proposed § 611.4(f)). Foreign harvesting vessels without processing facilities would be exempted from completing all but the first section of the log. Specific requirements for logging prohibited species catch in different fisheries would be moved to the various individual fishery subparts.

A new § 611.9(e) is proposed which would combine contents of the daily fishing log, which all FFB's keep in some form; the daily cumulative catch log, as is currently required, and the production log, which is kept by all FFV's which process fish. The log would provide a standard format and contents which law enforcement personnel and observers could use to verify an FFV's catch.

A new § 611.9(f) would provide foreign processors the option to keep a daily consolidated fishing log of catch and production for those foreign catching vessels fishing for them, similar to the current § 611.90(e)(2). Daily entries by each catching vessel would be required. The log would record only the catch of the catching vessels. The processor's catch (if any) would have to be kept separately.

A new § 611.9(g) proposes to specify the requirements of a consolidated fishing log.

A new § 611.9(h) proposes that foreign processors operating in joint ventures be required to keep a daily log by codend received by each U.S. harvesting vessel. Catch disposition by codend received would also be required. The processor would record its own catch (if any) or receipt from other foreign vessels in a separate daily fishing log.

A new § 611.9(i) proposes to specify the requirements of a joint venture log.

A new § 611.9(j) proposes to redesignate and expand the maintenance requirements from the daily cumulative catch log section of the current Appendix III to § 611.9, paragraph B. Time limits on completing the log sections, how weights are to be determined, and water weight allowances are proposed. The same information is proposed to be repeated in the appendices.

Section 611.10. The present § 611.10 and § 611.14 are proposed to be combined and retitled to reflect the particular types of fishing operations affected. The criteria which allow particular operations to take place are proposed to be defined. Because the term incidental species is no longer used in Subpart A, § 611.14 is combined with catching operations.

Section 611.11. A new § 611.11 is proposed which combines the current § 611.13 and § 611.14(b) to address the method of treating prohibited species, however caught or received.

The present § 611.12 is proposed to be deleted as no longer used within Subpart A.

Section 611.12. The present § 611.11 and § 611.16 are proposed to be combined and redesignated as §611.12 to discuss both conflicts and lost gear. The section on claims by U.S. fishermen is proposed to be dropped as not appropriate to foreign regulations. The same information is contained in 50 CFR Part 258. Information requirements to be sent to the Coast Guard in the event of a conflict would be clarified. There would be a prohibition on discarding or

abandoning anything that may "ghost fish" or harm marine mammals. FFV operators would be required to contact the Coast Guard for disposition of any gear or other items retrieved, and to report the same information required in a gear conflict.

Section 611.13. The current § 611.15 (Fishery closure procedures) is redesignated § 611.13. Because directed and incidential species would be treated identically, the paragraphs addressing them separately would be combined. Closure procedures for specific fisheries contained in Subparts C through G would take precedence over this proposed regulations.

A new § 611.13(b) is added to reflect current policy regarding closure of joint venture fisheries.

A new § 611.13(c) proposes to revise the current § 611.5(c) to delete requirements for the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), to notify foreign countries of closures. Since closures are routine administrative actions and the designated representative has routine communications with the FFV's, it is appropriate for the designated representative to notify the FFV's directly.

The current § 611.15(d) is proposed to be redesignated as § 611.13(e), shortened, and joint venture processing amounts included.

Section 611.14. The current § 611.17 (Scientific research) is proposed to be redesignated. The wording is reserved because NMFS is developing revised language for the section in cooperation with the Coast Guard and the Department of State. The section will be the subject of a separate rulemaking.

Section 611.15. A new § 611.15 is proposed to clarify that only foreign vessels not operated for profit may be considered as recreational fishing vessels and that foreign recreational fishermen are subject to state and federal laws applicable to recreational fishermen.

Section 611.16. The current § 611.18 (Relation to other laws) is proposed to be redesignated as § 611.16.

Appendices: New appendices plus appendices previously existing within different sections of Subpart A are now proposed to be consolidated at the end of Subpart A. This will provide an easier reference for fishermen to fill out the reports required by the subparts and remove the confusion of referencing the appendices of one section to complete the reports of another section and appendix. Additional information needed to complete required reports and documents is also included.

Appendix A—This appendix would contain the information in Table I and Table II of the present § 611.4. The addresses of paragraph D to Appendix IV of the present § 611.9 and additional addresses are included.

Appendix B—This appendix would replace the vessel report examples cited in § 611.4 (d) and (e) and give an example of each type of report.

Appendix C—This appendix would replace the current Appendix II to § 611.9. Fishing areas would be described verbally as well as in the figures, by fishery. The Northwest Atlantic Ocean fishery would use Northwest Atlantic Fisheries Organization (NAFO) areas and subareas for reporting vessel activities (Areas 21–26) and NMFS 3-digit statistical areas for weekly reports and recordkeeping. This should increase the use of data without unduly increasing message traffic. Fishing windows would no longer be reporting areas and the appropriate figure would be moved to Subpart C. Bering Sea areas are renamed for consistency with fishing codes and a temporary area is given a code to provide for easier enforcement.

Appendix D—This appendix replaces the current Appendix I to § 611.9. The number of species are limited to allocated and prohibited species and the most common incidential catches. Observer coverage will enable detailed sampling of species caught in commercially insignificant quantities.

Appendix E—This proposed new appendix would be added to simplify the new requirements for describing the product on board and product transferred by FFV's.

Appendix F—This appendix would include the contents of the current Appendix IV to § 611.9—Weekly Catch Report, less the submission table. The addresses of that table would be in Appendix A and the submission instructions would be moved to § 611.4(g). Report contents are unchanged.

Appendix G—This appendix include the contents of the current Appendix V to § 611.9—Weekly Report of Receipt of U.S. Harvested Fish. It is renamed for clarity and new requirements would be added. The number of vessels supplying codends and the number of codends received in each area would now be required to be reported. The names of U.S. vessels actually participating in the joint venture would be required. Other contents are unchanged.

Appendix H—This appendix would include the contents of the current Appendix XI to § 611.9 (Weekly Report of Marine Mammal Catch). Foreign processing vessels would be able to submit consolidated reports for vessels delivering unsorted catch to them. Reports of the capture of more than one animal could be consolidated whenever the other data does not change.

Appendices I, J and K—These appendices would supplant the contents of Appendix III to § 611.9 (Daily Cumulative Catch Log) and would be expanded and broken into three separate logs. They are based on similar formats which combine the old cumulative catch log with a section on fishing effort (trawl or fishing log) and production (production log) not previously required by all fisheries. A daily fishing log (Appendix I) is required by all vessels which may actually catch fish (activity code 1). A daily consolidated log (Appendix J) would be required for processing vessels accepting unprocessed fish from catching vessels (activity code 2). A daily joint venture log (Appendix K) would be required by vessels receiving U.S. harvested fish from U.S. fishing vessels. Logs would be maintained by fishery rather than by fishing area. The required formats for the logs are illustrated.

Subpart B. Minor revisions are proposed for Subpart B to bring it into conformance with present practice and consolidate the fee provisions of the foreign regulations.

Section 611.20. Paragraph (a) is unchanged.

Section 611.21. The current § 611.21(b) is proposed to be redesignated as § 611.8(b) for use in coordinating observer placement.

Section 611.22. In the current § 611.22(a), the general paragraph is proposed to be deleted as unnecessary.

Section 611.22(a)(1)(ii) is proposed to be deleted, since the letter-of-credit system removes and need to refund fees.

Section 611.8(b) is proposed to be redesignated as § 611.22(d) and revised to base withdrawals from the letter of credit on anticipated fishing effort.

The current § 611.22(c) is proposed to be redesignated as § 611.22(e).

Technical Amendments. A number of technical amendments will be required within the other subparts when these regulations are made final to correct references to Subparts A and B, delete redundant requirements, and move fishery specific requirements to those specific subparts. Those technical amendments will be published as a separate companion document when these proposed regulations are made final. The technical amendments which would affect current fishing operations are summarized below.

Subpart C. In the Northwest Atlantic Ocean fishery and hake fishery, § 611.50(b)(2)(ii) the current fishing areas would be redesignated as areas seasonally open to directed fishing. In § 611.50(b)(4)(ii) the term "all billfish" listed as a prohibited species would be revised to read, "billfish including all species of marlin, spearfish, sailfish and swordfish." In § 611.50(e)(1), the separate requirement for a fishing log would be deleted and replaced with a requirement to log to the nearest tenth of a metric ton any discarded prohibited species or their return to a U.S. fishing vessel.

Subpart D. In the Atlantic, Caribbean and Gulf of Mexico fisheries the term "billfish" would be defined as it currently is in § 611.2(f).

Subpart E. In the Pacific Coast groundfish fishery the reports and recordkeeping section would be revised extensively. The joint venture reporting requirements of § 611.70(j)(1) could be deleted as redundant, since their requirements would appear at § 611.4(c)(5). The multiple shift reporting requirement could also be deleted since those requirements would appear at § 611.4(c)(4). The report of fish on board when entering the fishery could similarly be deleted, since those requirements would appear at § 611.4(c)(1) and (3). The requirements of § 611.70(j)(6) for FFV's to keep a daily cumulative catch log would be revised to specify those requirements rather than refer back to §611.9, since that log would no longer be required by Subpart A. The additional requirements for FFV's in a joint venture to report weekly discards, codends received and vessels participating could be deleted, since these provisions now appear in § 611.4(f)(3). The current § 611.70(k) could be deleted as redundant since the requirements for discarding and recording catches of prohibited species would be addressed in § 611.11 and the revision to § 611.70(j)(6).

Subpart F. In the Western Pacific Ocean fisheries, the fishing log required by seamount groundfish fishery in § 611.80(f) could be deleted, since its provisions would be substantially required by § 611.9(d).

Subpart G. In North Pacific Ocean and Bering Sea fisheries, the statistical reporting and recordkeeping relaxation for catching vessels delivering fish to a processor in § 611.90(e)(2) would be extended to all fisheries in § 611.9(e). The paragraph would be replaced with one describing the logging requirements on unallocated (prohibited) species (salmon, halibut and herring) removed from the current § 611.4 and § 611.9. The additional report of fish on board of §611.90(f)(1) could be deleted as being replaced by those of §611.4 (c)(1) and (c)(3). The requirement that an FFV with fish on board be subject to inspection prior to fishing would remain. In § 611.92(b)(1) the requirement that any catch or receipt of salmon or halibut be recorded and reported by number would be so stated and referred to § 611.90(e)(2). In § 611.93(d)(2)(1) the requirements for logging the prohibited species (herring) would be revised to clarify that it be logged to the nearest tenth of a metric ton.

A proposed disposition of the current Subparts A and B is described in the Distribution Table located at the end of this preamble. Compare the specific paragraphs affected for the exact changes proposed.

Classification

The Assistant Administrator for Fisheries determined that this proposed rule is necessary for the conservation and management of the foreign fisheries and that it is consistant with the Magnuson Act and other applicable law.

Because this action makes changes only to the methods of regulating foreign fishing and not their actual operation, it is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02–10.

The NOAA Administrator determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The proposed increased reporting and advance notice requirements can be carried out by the foreign fishing industry at little additional cost. The proposed marking requirements should require little additional gear or cost. Approximately 95 percent of the foreign fishing vessels which would be affected by the proposed radio and boarding ladder requirements already meet them. The logkeeping and other proposed requirements of this action would codify existing foreign fishing industry practices and clarify and reformat existing requirements.

NMFS prepared a regulatory impact review which concludes that this rule will have the following economic effects. Foreign fishing vessel operators will have to give more detailed reports of their activities in a more timely manner, increasing time spent in radio transmission and communications charges to some small extent. Additional gear marking requirements should be negligible, since most of the requirements are already met. Approximately 20 foreign fishing vessels would have to buy VHF–FM radios at a total cost of $14,000 but with a net savings in enforcement costs more than $49,000 per year. A small number of vessels would have to bring their boarding ladders into conformance with the new regulations or buy conforming ones at approximately $300 each. Safety of enforcement personnel and observers boarding foreign fishing vessels will be correspondingly improved. Foreign fishing vessel operators will be required to update some records sooner, consolidate some records, and maintain other records on a daily rather than a weekly basis. Some records are consolidated. Expected benefits of the action are increased compliance by foreign fishermen and increased efficiency by observers and enforcement personnel due to more explicit regulatory requirements. Other benefits include more revenues from fees on foreign catch which would otherwise have gone unreported, and reduced costs-per-enforcement contact because of reduced time required to board foreign fishing vessels and inspect their records.

You may obtain a copy of this review from NMFS at the address listed above.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed rule revises already existing regulations affecting only foreign fishing vessels. The proposed rule has no provisions which would directly affect U.S. fishing vessels independently fishing or fishing in joint ventures. As a result, a regulatory flexibility analysis was not prepared.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act. The collection of portions of this information has been approved by the Office of Management and Budget, OMB Control Number 0648–0089 for foreign fishing vessel permit applications and OMB Control Number 0648–0075 for foreign fishing vessel reports. A request to collect additional information has been submitted to the Office of Management and Budget for approval. Comments on the information collection requirements contained within this proposed rule may

be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for NOAA, Sheri Fox, 202–395–3785.

List of **Subjects in 50 CFR Part 611**

Fish, Fisheries, Foreign relations, Recordkeeping and reporting requirements.

Dated: December 21, 1984.

Carmen J. Blondin,

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

BILLING CODE 3510-22-M

Distribution Table

Old Section	New Section
Subpart A - General	
§611.1	§611.1
§611.2 Definitions included unless otherwise noted	§611.2 Definitions undesignated and alphabetized
§611.2(a) "Act"	Magnuson Act
§§11.2(f) "Billfish"	Unnecessary
§611.2(g) "Continental Shelf"	Unnecessary
§611.2(j) "Directed fishery"	§611.2 Directed fishing
§611.2(l) "Existing International Fishery Agreement"	Unnecessary
§611.2(n) "Fish over which the United States exercises exclusive management authority"	Unnecessary
§611.2(q) "Fishery resource"	Unnecessary
§611.2(r)(1)	§611.2 Fishing or to fish includes, scouting, processing and support
§611.2(r)(2)	§611.2 Scouting
§611.2(r)(3)(i)	§611.2 Processing
§611.2(r)(3)(ii)	§611.2 Support
§611.2(r)(3)(iii)	§611.2 Support
§611.2(y) "Incidental catch"	Unnecessary
§611.2(ff) "Vessel day"	Unnecessary
§611.3(a)	§611.3(a)(1)
§611.3(b)	§611.3(a)(2)
§611.3(c)	§611.3(e)
§611.3(d)	§611.3(e)(1)
§611.3(e)	§611.3(d)
§611.3(f) introductory language	Unnecessary
§611.3(f)(1)	§611.3(e)(2)
§611.3(f)(2) first sentence	§611.3(e)(1)
§611.3(f)(2) second sentence	§611.3(f)
§611.3(f)(2) third sentence	§611.3(g)
§611.3(f)(2) fourth and fifth sentences	§611.3(e)(4)
§611.3(f)(2) sixth sentence	Unnecessary
§611.3(f)(3) introductory language	§611.3(h)
§611.3(f)(3)(i)	§611.3(e)(3)
§611.3(f)(3)(ii)	§611.3(h)
§611.3(f)(4) modifications included as part of completed form	§611.3(e)(3)(iv)
§611.3(f)(5) except "or modification"	§611.3(e)(2)
§611.3(f)(5) "(or modification)" only	§611.3(k)(5)
§611.3(g)	§611.3(i)
§611.3(h)	§611.3(a)(3)
§611.3(i) Introductory language	§611.3(1)(1)
§611.3(i)(1)	Unnecessary

Distribution Table - Cont'd

Old Section	New Section
Subpart A - General	
§611.3(i)(2) first sentence	§611.3(1)(1)
§611.3(i)(2) second sentence	§611.3(1)(2)
§611.3(i)(2)(i)	§611.3(1)(2)
§611.3(i)(2)(ii)(A)	§611.3(1)(2)
§611.3(i)(2)(ii)(B)	Unnecessary
§611.3(i)(2)(iii)	Unnecessary
§611.3(i)(2)(iv)	Unnecessary
§611.3(i)(2)(v)	Unnecessary
§611.3(i)(2)(vi)	§611.3(1)(3)
§611.3(i)(2)(vii)	§611.3(1)(2)
§611.3(i)(3) first sentence	§611.3(k)(1)
§611.3(i)(3) last two sentences	§611.3(k)(2)
§611.3(i)(4)	§611.3(k)(3)
§611.3(i)(5)	§611.3(k)(4)
§611.4(a) introductory language	§611.4(a)
§611.4(a)(1)	§611.4(c)(1)
§611.4(a)(2)	§611.4(c)(2)
§611.4(a)(3)	§611.4(c)(3)
§611.4(a)(4)	§611.4(c)(4)
§611.4(a)(5)	§61.4(c)(9)
§611.4(b)	§611.4(b)
§611.4(c) "transmitted" and "delivered" explained	§611.4(b)
§611.4(c) first sentence	§611.4(c)(1) and §611.4(c)(9)
§611.4(c) second sentence except phrase beginning, "except..."	§611.4(c)(2) through (c)(8)
§611.4(c) phrase beginning "except..."	§611.4(c)(4)
§611.4(d) first sentence	§611.4(c) introductory paragraph
§611.4(d) second and third sentences	§611.4(c)(1) through (c)(ii) specify requirements
§611.4(d) example	Appendix B.1.
§611.4(e) first paragraph	§611.4(e)
§611.4(e) example	Appendix B.12.
§611.5(a)(1)	§611.5(a)(1)
§611.5(a)(2)	§611.5(a)(2)
§611.5(b)	§611.5(a)(3)
§611.5(c)	§611.5(d)
§611.5(d)	§611.5(b)
§611.5(e)	§611.5(c)(1)
§611.6(a)	§611.6(a)(1)
§611.6(b) introductory paragraph	§611.6(c)(1)
§611.6(b)(1)	§611.6(c)(1)(iv)
§611.6(b)(2)	§611.6(c)(1)(iii)
§611.6(b)(3)	§611.6(c)(1)(ii)
§611.6(4)	§611.6(c)(1)(i)
§611.6(c)	§611.6(d)
§611.6(d)	Unnecessary

Distribution Table - Cont'd.

Old Section	New Section
Subpart A - General	
§611.6(e)	§611.6(b)(2)
§611.6(f)	§611.6(a)(2)
§611.7(a) introductory language	§611.7(a)
§611.7(a)(1)	§611.7(a)(26)
§611.7(a)(2)	§611.7(a)(10)
§611.7(a)(3)	§611.7(a)(11)
§611.7(a)(4)	§611.7(a)(2)
§611.7(a)(5)	§611.7(a)(3)
§611.7(a)(6)	§611.7(a)(4)
§611.7(a)(7)	§611.7(a)(1)
§611.7(a)(8)	§611.7(a)(5)
§611.7(b)	§611.7(b)
§611.7(c)	§611.7(c)
§611.8(a) first sentence	§611.8(a)
§611.8(a) second sentence	§611.8(c) introductory wording
§611.8(a)(1)	§611.8(c)(1)
§611.8(a)(2)	§611.8(c)(2)
§611.8(a)(3)	§611.8(c)(3)
§611.8(a)(4)	§611.8(c)(4)
§611.8(a)(5)	§611.8(c)(9)
§611.8(b)	§611.22(d)
§611.8(c)	§611.7(a)(14)
§611.8(d)	§611.8(e)(2)
§611.9(a)	§611.9(a) introductory paragraph
§611.9(b)	§611.9(e)
§611.9(c)	§611.9(b)
§611.9(d)	§611.9(d) See also §611.9(f) through (h)
§611.9(d)(1) first sentence except "in English."	§611.9(d)(1)
§611.9(d)(1) "in English"	§611.9(a)(1)
§611.9(d)(1) second sentence	§611.9(e)(4)(iii)
§611.9(d)(1) third sentence	§611.9(a)(2)
§611.9(d)(1) fourth sentence	§611.9(d)(1)
§611.9(d)(2) introductory language	§611.9(e)
§611.9(d)(2)(i)	§611.9(e)(1)(iii) and (iv)
§611.9(d)(2)(ii)	§611.9(e)(1)(v)
§611.9(d)(2)(iii)	§611.9(e)(1)(ii)
§611.9(d)(2)(iv)	§611.9(e)(4)(i)
§611.9(d)(2)(v)	§611.9(e)(2)(ii)
§611.9(d)(2)(vi)	§611.9(e)(4)(ii)
§611.9(d)(2)(vii)	§611.9(e)(4)(ii)

Distribution Table - Cont'd.

Old Section	New Section
Subpart A - General	
§611.9(d)(2)(viii)	§611.9(e)(4)(ii)
§611.9(d)(3) first sentence	§611.9(e) introductory paragraph
§611.9(d)(3) second sentence	§611.9(j)
§611.9(d)(3) third sentence	§611.9(e)(3)(ii)
§611.9(d)(4)	Unnecessary
§611.9(g)(1) "Each foreign nation shall submit through designated representative"	§611.4(f)(1)
§611.9(g)(1) rest of paragraph	§611.4(f)(4)(i)
§611.9(g)(2)	§611.4(f)(4)(i) and Appendix H
§611.9(g)(3)	§611.4(f)(4)(ii)
§611.9(g)(4)	§611.4(g) and Appendix H
§611.9(g)(5)	Unnecessary
§611.9(h)	§611.9(a)(4)
§611.9(i) introductory	Unnecessary
§611.9(i)(1)	§611.9(a) introductory paragraph
§611.9(i)(2)	§611.9(a)(1)
§611.9 Appendix I	Appendix D
§611.9 Appendix II	Appendix C
§611.9 Appendix III	Appendices I, J, and K
§611.9 Appendix IV	Appendix F
§611.9 Appendix V	Appendix G
§611.9 Appendix VI	Appendix H
§611.10(a)	§611.2 Processing and Support
§611.10(b)	§611.10(c) and (d)
§611.10(c)	§611.10(c) and (d)
§611.11(a)	§611.12(a)(1)
§611.11(b)	§611.12(a)(2)
§611.11(c)	§611.12(b) introductory paragra
§611.11(d)	Unnecessary
§611.12	Unused in the subpart
§611.13(a)	§611.11(a)
§611.13(b)	§611.11(b)
§611.13(c)	§611.11(d)
§611.14(a)	§611.10(a)
§611.14(b)	§611.11(c)
§611.15(a) introductory paragraph	§611.13(a) introductory paragra
§611.15(a)(1)	§611.13(a)(1)
§611.15(a)(2)	§611.13(a)(1)
§611.15(a)(3)	§611.13(a)(2)
§611.15(a)(4)	§611.13(a)(2)
§611.15(a)(5)	Unused
§611.15(a)(6)	§611.13(a)(3)
§611.15(a)(7)	§611.13(a)(3)
§611.15(a)(8)	§611.13(a)(4)

Distribution Table - Cont'd.

Old Section	New Section
Subpart A - General	
§611.15(b)	§611.13(d)
§611.15(c) introductory language	§611.13(c) heading
§611.15(c)(1)	Obsolete
§611.15(c)(2) first sentence	§611.13(c)(1)
§611.15(c)(2) rest of paragraph	§611.13(c)(2)
§611.15(d)	§611.13(e)
§611.16(a) except "including abandoned fishing gear"	§611.13(c)(1)
§611.16(a) "including abandoned fishing gear	§611.12(c)(2)
§611.16(b) introductory paragraph	§611.12(c)(3)
§611.16(b)(1)	§611.12(b)(1)
§611.16(b)(2)	§611.12(b)(2)
§611.16(b)(3)	§611.12(b)(3)
§611.16(b)(4)	§611.12(b)(4)
§611.16(c)	§611.12(c)(2)
§611.17(a)	§611.14(a)
§611.17(b)	§611.14(d)
§611.18	§611.16
Subpart B - Surpluses	
§611.20	§611.20
§611.21(a)	§611.21(a)
§611.21(b)(1)	§611.8(b)
§611.21(b)(2)	§611.8(b)(1)
§611.21(b)(3)	Obsolete
§611.22(a) introductory language	Unnecessary
§611.22(a)(1)(i)	§611.22(a)
§611.22(a)(1)(ii)	Obsolete
§611.22(a)(1)(iii)	Obsolete
§611.22(a)(2)(i)	§611.22(b)(1)
§611.22(a)(2)(ii)	§611.22(b)(2)
§611.22(a)(2)(iii)	§611.22(b)(3)
§611.22(b)	§611.22(c)
§611.22(c)	§611.22(d)
§611.22 Table I	§611.22 Table I

BILLING CODE 3510-22-C

For the reasons set out in the preamble, Part 611 of Title 50, Code of Federal Regulations, is proposed to be amended by revising Subparts A and B to read as follows:

PART 611—FOREIGN FISHING

Subpart A—General

Sec.
611.1 Purpose and scope.
611.2 Definitions.
611.3 Vessel permits.
611.4 Vessel reports.
611.5 Vessel and gear identification.
611.6 Facilitation of enforcement.
611.7 Prohibitions.
611.8 Observers.
611.9 Recordkeeping.
611.10 Fishing operations.
611.11 Prohibited species.
611.12 Gear avoidance and disposal.
611.13 Fishery closure procedures.
611.14 Scientific research. [Reserved]
611.15 Recreational fishing.
611.16 Relation to other laws.
Appendix A to Subpart A—Addresses, areas of responsibility and communications.
Appendix B to Subpart A—Vessel activity reports.
Appendix C to Subpart A—Fishing areas.
Appendix D to Subpart A—Species codes.
Appendix E to Subpart A—Fishery product codes.
Appendix F to Subpart A—Weekly catch report.
Appendix G to Subpart A—Weekly joint venture receipts report.
Appendix H to Subpart A—Weekly marine mammal report.
Appendix I to Subpart A—Daily fishing log.
Appendix J to Subpart A—Daily consolidated log.
Appendix K to Subpart A—Daily joint venture log.

Subpart B—Surpluses

611.20 Total allowable level of foreign fishing (TALFF).
611.22 Allocations.
611.22 Fee schedule.

* * * * *

Authority: 16 U.S.C. 1801 *et seq.*, unless otherwise noted.

Subpart A—General

§ 611.1 Purpose and scope.

(a) This part governs all foreign fishing over which the United States exercises exclusive fishery management authority under the Magnuson Fishery Conservation and Management Act.

(b) For additional provisions governing the Japanese harvest of salmonids, see the International Convention for the High Seas Fisheries of the North Pacific Ocean (TIAS 2786, as amended in 1962, TIAS 5385 and 1978, TIAS 9242).

(c) Other U.S. laws and regulations apply to foreign vessels fishing in the U.S. FCZ, such as the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361, and 50 CFR Part 216).

§ 611.2 Definitions.

In addition to the definitions contained in the Magnuson Act, and unless the context requires otherwise, in this Part 611, the terms used have the following meanings (some definitions in the Magnuson Act have been repeated here to aid fishermen in understanding the regulations):

Agent means a person appointed and maintained within the United States who is authorized to receive and respond to any legal process issued in the United States to an owner and/or operator of vessel operating under a permit and of any other vessel of that nation fishing subject to the jurisdiction of the United States. Any diplomatic official accepting such an appointment as designated agent waives diplomatic or other immunity in connection with such process.

Allocated species means any species or species group allocated to a foreign nation under § 611.21 for catching by vessels of that nation.

Anadromous species means species of fish which spawn in fresh or estuarine waters of the United States and which migrate to ocean waters, including but not limited to—

King salmon *(Oncorhynchus tshawytscha)*
Pink salmon *(Oncorhynchus gorbuscha)*
Chum salmon *(Oncorhynchus keta)*
Sockey salmon *(Oncorhynchus nerka)*
Silver salmon *(Oncorhynchus kisutch)*
Rainbow (Steelhead) trout *(Salmo gairdneri)*
Atlantic salmon *(Salmo salar)*
Striped bass *(Morone saxatilis)*

Assistant Administrator means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration (NOAA) or a designee.

Authorized officer means—

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating to enforce the Magnuson Act; or

(d) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Authorized species means any species or species group which a foreign vessel is authorized to retain in a joint venture by a permit issued under activity code 4 as described by § 611.3(c).

Coast Guard Commander means one of the commanding officers of the Coast Guard units specified in Table 1 of Appendix A of this subpart or a designee.

Center Director means the Director of one of the four NMFS Fisheries Centers described in Table 1 of Appendix A to this subpart or a designee.

Continental shelf fishery resources (CSFR) means the following plus any species added by the Secretary under section 3(4) of the Magnuson Act:

Coelenterata

Bamboo coral (*Acanella* spp.)
Black coral (*Antipathes* spp.)
Gold coral (*Callagorgia* spp.)
Precious red coral (*Corallium* spp.)
Bamboo coral (*Keratoisis* spp.)
Gold coral (*Parazoanthus* spp.)

Crustacea

Tanner crab (*Chionoecetes tanneri*)
Tanner crab (*Chionoecetes opilio*)
Tanner crab (*Chionoecetes angulatus*)
Tanner crab (*Chionoecetes bairdi*)
King crab (*Paralithodes camtschatica*)
King crab (*Paralithodes platypus*)
King crab (*Paralithodes brevipes*)
Lobster (*Homarus americanus*)
Dungeness crab (*Cancer magister*)
California king crab (*Paralithodes californiensis*)
California king crab (*Paralithodes rathbuni*)
Golden king crab (*Lithodes aequispinus*)
Northern stone crab (*Lithodes maja*)
Stone crab (*Menippe mercenaria*)
Deep-sea red crab (*Geryon quinquedens*)

Mollusks

Red abalone (*Haliotis rufescens*)
Pink abalone (*Haliotis corrugata*)
Japanese abalone (*Haliotis kamtschatkana*)
Queen conch (*Strombus gigas*)
Surf clam (*Spisula solidissima*)
Ocean quahog (*Arctica islandica*)

Sponges

Glove sponge (*Spongia cheiris*)
Sheepwool sponge (*Hippiospongia lachne*)
Grass sponge (*Spongia graminea*)
Yellow sponge (*Spongia barbera*)

Council means any of the Regional Fishery Management Councils established under the Magnuson Act.

Designated representative means the person appointed by a foreign nation and maintained within the United States who is responsible for transmitting information to and submitting reports from vessels of that nation and establishing observer transfer arrangements for vessels in both directed and joint venture activities.

Directed fishing means any fishing by the vessels of a foreign nation for allocations of fish granted that nation under § 611.21.

Discard or *discarded* means to release or return to the sea fish, whether or not such fish are brought fully aboard a fishing vessel.

Exclusive economic zone (EEZ), with respect to U.S. fisheries, is deemed to have the same meaning as the fishery conservation zone (FCZ).

Fish (when used as a noun) includes finfish, elasmobranches, mollusks, crustaceans, and all other forms of marine animal or plant life, except marine mammals, birds, and highly migratory species.

Fish (when used as a verb) means to engage in "fishing," as defined below.

Fishery means—

(a) One or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographic, scientific, technical, recreational, or economic characteristics, or method of catch; or

(b) Any fishing for such stocks.

Fishery conservation zone (FCZ) means the area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal states to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing or *to fish* means any activity, other than scientific research, which does, is intended to, or can reasonably be expected to result in the catching or removal from the water of fish. Fishing also includes the acts of scouting, processing and support.

Fishing vessel means any boat, ship, or other craft which is used for, equipped to be used for, or of a type normally used for, fishing.

Foreign fishing means fishing by a foreign fishing vessel.

Foreign fishing vessel (FFV) means any fishing vessels other than a vessel of the United States.

Gear conflict means any incident at sea involving one or more fishing vessels (a) in which one fishing vessels or its gear comes into contact with another vessel or the gear of another vessel, and (b) which results in the loss of, or damage to, a fishing vessel, fishing gear, or catch.

Governing International Fishery Agreement (GIFA) means an agreement between the United States and a foreign nation or nations under Section 201(c) of the Magnuson Act.

Greenwich mean time (GMT) means the local mean time at Greenwich, England. All times in this part are GMT unless otherwise specified.

Highly migratory species means the species of tuna which in the course of their life cycle spawn and migrate over great distances of the ocean, including, but not limited to—

Albacore (*Thunnus alalunga*)
Bigeye tuna (*Thunnus obsesus*)
Bluefin tuna (*Thunnus thynnus*)
Skipjack tuna (*Euthynnus pelamis*)
Southern bluefin tuna (*Thunnus maccoyii*)
Yellowfin tuna (*Thunnus albacares*)

International radio call sign (IRCS) means the unique radio identifier assigned a vessel by the appropriate authority of the flag state.

Joint venture means any operation by a foreign vessel assisting fishing by U.S. fishing vessels, including catching, scouting, processing and/or support. A joint venture generally entails a foreign vessel processing fish received from U.S. fishing vessels and conducting associated support activities.

Magnuson Act means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

NMFS means National Marine Fisheries Service.

NOAA means the National Oceanic and Atmospheric Administration, Department of Commerce.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Optimum yield (OY) means the amount of fish—

(a) Which will provide the greatest overall benefit to the United States, with particular reference to food production and recreational opportunities; and

(b) Which is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor.

Owner, with respect to any vessel, means any person who owns that vessel or any charterer, whether bareboat, time, or voyage; and any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel.

Prohibited species, with respect to any vessel, means any species of fish which that vessel is not specifically allocated or authorized to retain.

Processing means any operation by a vessel assisting fishing by foreign or U.S. fishing vessels by preparation of fish, including but not limited to cleaning, cooking, canning, smoking, salting, drying, or freezing.

Product recovery rate (PRR) means a ratio expressed as a percentage of the weight of processed product divided by the round weight of fish used to produce that amount of product.

Recreational fishing means any fishing from an FFV not operated for profit. It may not involve the sale, barter, or trade of part or all of the catch.

Regional Director means the Director of one of the five NMFS regions described in Table I of Appendix A to this subpart or a designee.

Round weight means the weight of the whole fish.

Secretary means the Secretary of Commerce or a designee.

Scouting means any operation by a vessel exploring on the behalf of an FFV or U.S. fishing vessel for the presence of fish by visual, acoustic, or other means which do not involve the catching of fish.

State means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and any other Commonwealth, territory, or possession of the United States.

Support means any operation by a vessel assisting fishing by foreign or U.S. fishing or support vessels including—

(a) Transferring or transporting fish or fish products; or

(b) Supplying a fishing vessel with water, fuel, provisions, fishing equipment, fish processing equipment, or other supplies.

U.S. harvested fish means fish caught, taken, or harvested by vessels of the United States within any fishery for which a fishery management plan prepared under Title III of the Magnuson Act of a preliminary fishery management plan prepared under section 201(h) of the Magnuson Act has been implemented.

U.S. observer or *observer* means any person serving in the capacity of an observer employed by NMFS, either directly or under contract, or certified as a supplementary observer by NMFS.

Vessel of the United States or *U.S. vessel* means—

(a) Any vessel documented under the laws of the United States;

(b) Any vessel numbered in accordance with the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*), and measuring less than 5 net tons; or

(c) Any vessel numbered under the Federal Boat Safety Act of 1971 and used exclusively for pleasure.

§ 611.3 Vessel permits.

(a) *General.*

(1) Each FFV fishing under the Magnuson Act must have on board a completed permit form for a permit issued under this section, unless it is engaged only in recreational fishing.

(2) The Secretary of State may issue annual registration permits for FFV's fishing under the International Convention for the High Seas Fisheries of the North Pacific Ocean (TIAS 2786; amended in 1962, TIAS 5385; and in 1978, TIAS 9242) upon application from the foreign nations.

(3) Permits issued under this section do not authorize FFV's or persons to harass, capture, or kill marine mammals. No marine mammal may be taken in the course of fishing unless that vessel has on board a marine mammal certificate of inclusion issued under a general permit under the Marine Mammal Protection Act. Application procedures for permits to take marine mammals incidental to commercial fishing operations are contained in 50 CFR 216.24.

(b) *Responsibility of owners and operators.* The owners and operators of each FFV are jointly and severally responsible for compliance with the Magnuson Act, the applicable GIFA, this part, and any permit issued under the Magnuson Act and this part. The owners and operators of each FFV are responsible for the acts of their employees and agents constituting violations, regardless of whether the specific acts were authorized or even forbidden by the employer or principal, and regardless of knowledge concerning the occurrence.

(c) *Activity codes.* Permits to fish under a GIFA may be issued by the Assistant Administrator for the activities described below, as modified by regulations of this part, and by the conditions and restrictions attached to the permit. The Assistant Administrator may issue a permit for one of the activity codes 1, 2, or 3. The Assistant Administrator will issue a permit with the additional activity code 4 for FFV's authorized to assist U.S. fishing vessels in a joint venture. The activity codes are described as follows:

Activity code 1—Catching, scouting, processing and support.

Activity code 2—Processing, scouting and support.

Activity code 3—Support.

Activity code 4—Assisting U.S. fishing vessels as allowed by the other assigned code (joint venture).

(d) *Application.* (1) Applications for FFV permits must be submitted by each foreign nation to the Department of State. Application forms are available from OES/OFA, Department of State, Washington, D.C. 20520. The applicant should allow 90 days for processing before the anticipated date to begin fishing. The permit application fee must be paid at the time of application according to § 611.22.

(2) Applicants must provide complete and accurate information requested on the permit application form.

(3) Applicants for FFV's that will support U.S. vessels in joint ventures (activity code 4) must provide the additional information specified by the permit application form.

(4) Substitutions of one FFV for another must be made to the Department of State. They are considered new applications and a new application fee must be paid. Applications for vessels replacing permitted FFV's that are disabled or decommissioned will be processed after the appropriate Council(s) has been notified of the new application.

(e) *Issuance.* (1) Permits may be issued to an FFV by the Assistant Administrator through the Department of State after—

(i) The Assistant Administrator determines that the fishing described in the application will meet the requirements of the Magnuson Act and approves the permit application;

(ii) The foreign nation has paid the fees specified in § 611.22 of this part, including any surcharge fees; and provided any assurances required by the Secretary;

(iv) The foreign nation has appointed an agent;

(v) The foreign nation has identified a designated representative; and

(vi) The "general conditions and restrictions" of receiving permits have been accepted by the nation issuing the FFV's documents, and any "additional restrictions" attached to the permit also have been accepted.

(2) The Assistant Administrator will distribute blank permit forms to the designated representative while the application is being processed. The designated representative must insure that each FFV receives a permit form and must accurately transmit the permit form and the contents of the permit to the FFV when it is issued. The FFV owner or operator must accurately complete the permit form prior to fishing in the FCZ.

(3) A completed permit form must contain—

(i) The name and IRCS of the FFV and its permit number;

(ii) The authorized fisheries and activity codes;

(iii) The date of issuance and expiration date, if other than December 31; and

(iv) All conditions and restrictions, and any additional restrictions and technical modifications appended to the permit.

(4) Permits are not issued for boats which are launched from larger vessels. Any enforcement action which results from the activities of a launched boat will be taken against the permitted vessel.

(f) *Duration.* A permit is valid from its date of issuance to its date of expiration unless it is revoked or suspended. The permit will be valid for no longer than the calendar year in which it was issued.

(g) *Transfer.* Permits are not transferable or assignable. A permit is valid only for the FFV to which it is issued.

(h) *Display.* Each FFV operator must have a properly completed permit form available on board the FFV when engaged in fishing activities and must produce it at the request of an authorized officer or observer.

(i) *Suspension and revocation.* Title 15 CFR Part 904 governs permit sanctions under this part. A permit may be revoked, suspended, or additional permit restrictions imposed if the vessle is involved in the commission of any violation of the Magnuson Act, the GIFA, or this part; if an agent and a designated representative are not maintained in the United States; if a civil penalty or criminal fine imposed under the Magnuson Act has become overdue; or as otherwise specified in the Magnuson Act.

(j) *Fees.* Permit application fees are described at § 611.22.

(k) *Change in application information.* (1) The foreign nation must report in writing any change in the information supplied under paragraph (d) of this section to the Assistant Administrator within 15 calendar days of the change. Failure to report a change in ownership within the specified time frame voids the permit, and all penalties involved will accrue to the previous owner.

(2) The Assistant Administrator may make technical modifications or changes in the permit application requested or reported by a nation, such as a change in radio call sign, processing equipment, or tonnage, which will be effective immediately.

(3) If, in the opinion of the Assistant Administrator, a permit change requested by a nation could significantly affect the status of any fishery resource, such request will be processed as an application for a new permit under this section.

(4) The Assistant Administrator will notify the designated representative of any revision which must be made on the permit form as the result of a permit change.

(5) The vessel owner or operator must record the modification on the permit form.

(l) *Additional restrictions.* (1) The Assistant Administrator may add additional restrictions to a permit for the conservation and management of fishery resources covered by the permit. Compliance with the additional restrictions in a condition of the permit. Violations of the additional restrictions will be treated as violations of this part.

(2) Notice of proposed additional restrictions will be sent to each nation whose vessels are affected. The notice will include a summary of the reasons underlying the proposal. The notice will include a summary of the reasons underlying the proposal. The owners of affected vessels or their representatives will be allowed 15 days to comment to the Assistant Administrator. The Assistant Administrator may make the proposed additional restriction effective immediately, if necessary, to prevent substantial harm to a fishery resource of the United States.

(3) The final additional restrictions will be appended to the permit after the end of the 15-day comment period. Notice of the final additional restrictions will be sent to each nation whose vessels are affected. The notice will include a response to comments submitted.

(4) The effective date of additional restrictions which increase the regulatory burden is seven days after the Assistant Administrator's approval of the final version, or when the permit is issued, whichever is appropriate. The effective date of additional restrictions which relieve the regulatory burden is the day of approval.

(5) Additional restrictions may be modified by following the procedures of paragraphs (1)(2) through (1)(4) of this section.

§ 611.4 Vessel reports.

(a) The operator of each FFV must report the FFV's activities within the FCZ to the Cost Guard and NMFS as specified in this section. (Approved by the Office of Management and Budget under OMB control number 0648–0075.)

(b) All reports required by this section must be in English and in the formats specified in the appendices. Reports should be delivered by private or commercial communications facilities to the appropriate Coast Guard commander, who will relay them to NMFS. Reports may also be delivered directly to the appropriate NMFS Region or Center (Tables 1 and 2 of Appendix A to this subpart). (The required notice may be delivered to the closest Coast Guard communication station as indicated in Table 3 of Appendix A *only if* adequate private or commercial communications facilities have not been successfully contacted.) Radio reports must be made via radiotelegraphy or TELEX where available. In this section, a message is considered *transmitted* when its receipt is acknowleged by a communications facility and considered *delivered* upon its receipt in the offices of the appropriate Coast Guard commander, NMFS Regional Office or NMFS Center identified in Appendix A. Reports required by this section may be submitted by the vessel's designated representative; however, the operator of the FFV is responsible for the correct and timely filing of all required reports.

(c) *Activity reports.* The operator of each FFV must report the FFV's movements and activities before or upon the event as specified in this paragraph and as illustrated in Appendix B to this subpart (EXCEPTION: § 611.81(d)). Each FFV report must contain the following information: The message identifier "VESREP" to indicate it is a vessel activity report, FFV name, international radio call sign (IRCS), date (month and day based on GMT), time (hour and minute GMT), position (latitude and longitude to the nearest degree and minute) where required, area (use fishing area code from Appendix C to this subpart) where required, the appropriate action code, and the other information specified in paragraphs (c)(1) through (c)(11) of this section.

(1) *BEGIN.* Each operator must specify the date, time, position and area the FFV will actually BEGIN fishing in the FCZ and the species (by species code from Appendix D to this subpart), product (by product code from Appendix E to this subpart), and quantity of all fish and fish products (by product weight to the nearest hundredth of a metric ton) on board when entering the FCZ (action code BEGIN). The message must be *delivered* at least 48 hours before the vessel begins to fish.

(2) *DEPART.* Each operator must specify the date, time, position and area the FFV will DEPART the FCZ to embark or debark an observer, to visit a U.S. port, or to otherwise temporarily leave an authorized fishing area but not depart the seaward limit of the FCZ (action code DEPART). The message must be *transmitted* before the FFV's departure from the grounds and *delivered* at least 24 hours of its transmittal.

(3) *RETURN.* Each operator must specify the date, time, position and area the FFV will RETURN to the FCZ following a temporary departure, and the species (by species code from Appendix D to this subpart), product (by product code from Appendix E to this subpart), and quantity of all fish and fish products (by product weight to the nearest hundredth of a metric ton) on board which were received in a joint venture in internal waters (action code RETURN). The message must be *transmitted* before returning to the FCZ and *delivered* within 24 hours of its transmittal.

(4) *SHIFT.* Each operator must report each SHIFT in fishing area (as shown in Appendix C to this subpart) by specifying the date, time, and position the FFV will start fishing, and the new area (action code SHIFT). The message must be *transmitted* before leaving the original area and *delivered* within 24 hours of its tranmittal. If a foreign vessel operates within 20 nautical miles of a fishing area boundary, its operator may submit in one message the shift reports for all fishing area shifts occurring during one fishing day (0001–2400 GMT). This message must be transmitted prior to the last shift made in the day and *delivered* within 24 hours of its transmittal.

(5) *JV OPS.* Each operator must specify the date, time, position, and area at which the FFV will START joint venture operations (action code START JV OPS) or END joint venture operations (action code END JV OPS). These reports must be made in addition to other activity reports made under this section. Each message must be *transmitted* before the event and *delivered* within 24 hours of its transmittal.

(6) *TRANSFER.* The operator of each FFV which anticipates a support operation in which the FFV will receive fish or fisheries products must specify the date, time, position, and area the FFV will conduct the TRANSFER and the name and IRCS of the other FFV involved (action code TRANSFER). The message must be *transmitted* prior to the transfer and *delivered* within 24 hours of its transmittal. The movement of raw fish from a catching vessel or U.S. fishing vessel to a processing vessel and the return of nets or codends is not considered a transfer.

(7) *OFFLOADED.* Each operator must specify the date, time, position and area the FFV OFFLOADED fish or fisheries products TO another FFV in a transfer, the other FFV's name, IRCS, species (by species code from Appendix D to this subpart) and quantity of fish and fisheries products (by product code from Appendix E to this subpart and by product weight to the nearest hundredth of a metric ton) offloaded (action code OFFLOADED TO). The message must be *transmitted* within 12 hours after the transfer is completed and *delivered* before the FFV ceases fishing in the FCZ and within 24 hours of its transmittal.

(8) *RECEIVED.* Each operator must specify the date, time, position, and area the vessel RECEIVED fish or fisheries products FROM another FFV in a transfer, the other FFV's name, IRCS, species (by species code from Appendix D to this subpart) and quanitity of fish and fisheries products (by product code from Appendix E to this subpart and by product weight to the nearest hundredth of a metric ton) received (action code RECEIVED FROM). The message must be *transmitted* within 12 hours after the transfer is completed and *delivered* before the vessel CEASES fishing in the FCZ and within 24 hours of its transmittal.

(9) *CEASE.* Each operator must specify the date, time, position, and area the FFV will CEASE fishing in order to leave the FCZ (action code CEASE.) The message must be *delivered* at least 48 hours before the FFV's departure.

(10) *CHANGE.* Each operator must report any CHANGE TO the FFV's operations if the position or time of an event will vary more than 5 nautical miles or 4 hours from that previously reported, by sending a revised message inserting the word "CHANGE" in front of the previous report, repeating the name, IRCS, action code changed, date, and time of the previous report, adding the word "TO" and the complete revised text of the new report (action code CHANGE–TO). Changes to reports specifying an early beginning of fishing by an FFV or other changes to reports of paragraphs (c)(1) through (c)(9) must be transmitted and delivered prior to the date and time of the event in the original message and under the same time constraints as the original message.

(11) *CANCEL.* Each operator wishing to CANCEL a previous report may do so by sending a revised message, and inserting the word "CANCEL" in front of the previous report's vessel name, IRCS, action code canceled, date and time, (action code CANCEL.) The message must be transmitted and delivered prior to the date and time of the event in the original message.

(d) The operator of an FFV will be in violation of paragraphs (c)(1) through (c)(9) of this section if the FFV does not pass within five nautical miles of the position given in the report within four hours of the time given in the report.

(e) The notices required by this section may be provided for individual or groups of FFV's (on a vessel-by-vessel basis) by fleet commanders or other authorized persons. This does not relieve the individual vessel operator of the responsibility of filing required reports. In these cases, the message format in Appendix B of this subpart should be modified so that each line of text under "VESREP" is a separate vessel report.

(f) *Weekly reports.* (1) The operator of each FFV in the FCZ must submit appropriate weekly reports through the nation's designated representative. The report must arrive at the address and time specified in paragraph (g) of this section. The reports may be sent by Telex, but a completed copy of the report form (see Appendices F, G, and H to this subpart) must be mailed or hand delivered to confirm the Telex. Designated representatives may include more than one vessel report in a Telex message, if the information is submitted on a vessel-by-vessel basis.

(2) *Weekly catch report (CATREP).* (i) The operator of each FFV must submit a weekly catch report stating any catch (activity code 1) in round weight of each species or species group allocated to that nation by area and days fished in each area for the weekly period Sunday through Saturday, GMT, as modified by the fishery in which the FFV is engaged (See Subparts C through G). Foreign vessels delivering unsorted, unprocessed fish to a processing vessel are not required to submit CATREP's, if a processing vessel (activity code 2) submits consolidated CATREP's for all fish received during each weekly period. No report is required for FFV's which do not catch or receive foreign-caught fish during the reporting period.

(ii) Appendix F to this subpart contains the instructions and form to submit a CATREP.

(3) *Weekly receipts report (RECREP).* (i) The operator of each FFV must submit a weekly report stating any receipts of U.S. harvested fish in a joint venture (activity code 4) in each fishing area by authorized or prohibited species or species group, days fish received; round weight retained, discarded, or returned to the U.S. fishing vessel; number of codends received; number of vessels transferring codends; and the names of U.S. fishing vessels transferring codends for the weekly period Sunday through Saturday, GMT, as modified by the fishery in which the FFV is engaged (See Subparts C through G). No report is required for FFV's which do not receive any U.S. harvested fish during the reporting period.

(ii) Appendix G to this subpart contains the instructions and form to submit a RECREP.

(4) *Marine mammal report (MAMREP).* (i) The operator of each FFV must submit a weekly report stating any incidental catch or receipt of marine mammals (activity codes 1 or 2 and/or 4), the geographical position caught, the condition of the animal, number caught, and nationality of the catching vessel for the period Sunday through Saturday, GMT, as modified by the fishery in which the vessel is engaged (See Subparts C through G). Foreign catching vessels delivering unsorted, unprocessed fish to a processing vessel are not required to submit MAMREP's provided that the processing or factory vessel (activity code 2) submits consolidated MAMREP's for all fish received during each weekly period. FFV's receiving U.S. harvested fish in a joint venture (activity code 4) must submit consolidated reports for U.S. vessels operating in the joint venture. No report is required for FFV's which do not catch or receive marine mammals during the reporting period.

(ii) Appendix H to this subpart contains the instructions and form to submit MAMREP's.

(g) *Submission instructions for weekly reports.* The designated representative for each FFV must submit weekly reports in the prescribed format to the appropriate Regional or Center Director of NMFS 1900 GMT on the Wednesday following the end of the reporting period. For fisheries off Alaska, weekly reports must be received by 1900 GMT on the Friday following the end of the reporting period. However, by agreement with the appropriate Director, the designated representative may submit weekly reports to some other facility of NMFS (See Table 2 to Appendix A to this subpart).

§ 611.5 Vessel and gear identification.

(a) *Vessel identification.* (1) The operator of each FFV assigned an international radio call sign (IRCS) must display that call sign amidships on both the port and starboard sides of the deck house or hull, so that it is visible from an enforcement vessel, and on an appropriate weather deck so it is visible from the air.

(2) The operator of each FFV not assigned an IRCS, such as a small trawler associated with a mothership or one of a pair of trawlers, must display the IRCS of the associated vessel, followed by a numerical suffix. (For example, JCZM–1, JCZM–2, etc. would be displayed on small trawlers not assigned an IRCS operating with a mothership whose IRCS is JCZM; JANP–1 would be displayed by a pair trawler not assigned an IRCS operating with a trawler whose IRCS is JANP).

(3) The vessel identification must be in a color in contrast to the background and must be permanently affixed to the FFV in block roman alphabet letters and arabic numerals at least one meter in height for FFV's over 20 meters in

length, and at least one-half meter in height for all other FFV's.

(b) *Navigational lights and shapes.* Each FFV engaged in fishing must display the lights and shapes prescribed by the International Regulations for Preventing Collisions at Sea, 1972 (TIAS 8587, and 1981 amendment TIAS 10672), for the activity in which the FFV is engaged (as described at 33 CFR Part 81).

(c) *Gear identification.* (1) The operator of each FFV must ensure that all deployed fishing gear which is not physically and continuously attached to an FFV is clearly marked at the surface with a buoy displaying the FFV identification of the vessel to which the gear belongs, a pole and flag, a light, and a radar reflector. Net codends passed from one vessel to another are considered deployed fishing gear and are not required to be marked.

(2) The operator of each FFV must ensure that deployed longlines, strings of traps or pots, and gillnets are marked at the surface at each terminal end with a buoy displaying the vessel identification of the FFV to which the gear belongs, a pole and flag, a light visible for two miles at night in good visibility, and a radar reflector. Additional requirements may be specified in Subparts C through G for the fishery in which the vessel is engaged.

(3) Unmarked or incorrectly identified fishing gear may be considered abandoned and may be disposed of in any appropriate manner by any authorized officer.

(d) *Maintenance.* The operator of each FFV must—

(1) Keep the vessel and gear identification clearly legible and in good repair;

(2) Ensure that nothing on the FFV obstructs the view of the markings from an enforcement vessel or aircraft; and

(3) Ensure that the proper navigational lights and shapes are displayed for the FFV's activity and are properly functioning.

§ 611.6 Facilitation of enforcement.

(a) *General.* (1) The owner, operator, or any person aboard any FFV subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the FFV; to move the FFV to a specified location; and to facilitate safe boarding and inspection of the vessel, its gear, equipment, records, and fish and fish products on board for purposes of enforcing the Magnuson Act and this part.

(2) The operator of each FFV must provide vessel position or other information when requested by NMFS or the Coast Guard within the time specified in the request.

(b) *Communications equipment* (1) Each FFV assigned and IRCS must be equipped with a VHF–FM radiotelephone station location so that it may be operated from the wheelhouse. Each operator must maintain a continous listening watch on Channel 16 (156.8 mHz).

(2) Each FFV must be equipped with a radiotelegraph station capable of communicating via 500 kHz radiotelegraphy and at least one working frequency between 405 kHz and 535 kHz, and a radiotelephone station capable of communicating via 2182 kHz radiotelephone and at least one set of working frequencies identified in Table 3 to Appendix A of this subpart appropriate to the fishery in which the FFV is operating. Each operator must monitor and be ready to communicate via 500 kHz radiotelegraph and 2182 kHz radiotelephone each day from 0800 GMT to 0830 GMT and 2000 to 2030 GMT, and in preparation for boarding.

(3) FFV's that are not equipped with processing facilities and that deliver all catches to a factory ship are exempt from the requirements of paragraph (b)(2) of this section.

(c) *Communications procedures.* (1) Upon being approached by a Coast Guard vessel or aircraft or other vessel or aircraft with an authorized officer aboard, the operator of any FFV subject to this part must be alert for communications conveying enforcement instructions. The enforcement unit may communicate by channel 16 VHF–FM radiotelephone, 2182 kHz radiotelephone, 500 kHz radiotelegraph, message block from an aircraft, flashing light or flag signals from the International Code of Signals, hand signal, placard, loudhailer, or other appropriate means. The following signals extracted from the International Code of Signals are among those which may be used.

(i) "AA, AA, AA, etc." which is the call for an unknown station. The signaled vessel should respond by identifying itself or by illuminating the vessel identification required by § 611.5 of this part;

(ii) "RY–CY" meaning "You should proceed at slow speed, a boat is coming to you";

(iii) "SQ3" meaning "You should stop or heave to; I am going to board you"; and

(iv) "L" meaning "You should stop your vessel instantly."

(2) Failure of an FFV's operator to stop the vessel when directed to do so by an authorized officer using VHF-FM radiotelephone (channel 16), message block from an aircraft, flashing light signal, flaghoist, or loudhailer constitutes a violation of § 611.7(a)(2) of this part.

(3) The operator of or any person aboard an FFV who does not understand a signal from an enforcement unit and who is unable to obtain clarification by rediotelephone or other means must consider the signal to be a command to stop the FFV instantly.

(d) *Boarding.* The operator of an FFV signaled for boarding must—

(1) Monitor 2182 kHz radiotelephone and 500 kHz radiotelegraph (if equipped) and channel 16 (156.8 mHz) VHF–FM radiotelephone;

(2) Stop immediately and lay to or maneuver in such a way as to facilitate boarding by the authorized officer and the boarding party or an observer;

(3) Provide the authorized officer, boarding party, or observer a safe pilot ladder. The operator must insure the pilot ladder is securely attached to the FFV and meets the construction requirements of Regulation 17, Chapter V of the International Convention for the Safety of Life at Sea (SOLAS), 1974 (TIAS 9700 and 1978 Protocol, TIAS 10009), which are summarized below:

(i) The ladder must be of a single length of not more than 9 meters (30 feet), capable of reaching the water from the point of access to the FFV, accounting for all conditions of loading and trim of the FFV and for an adverse list of 15 degrees. Whenever the distance from sea level to the point of access to the ship is more than 9 meters (30 feet), access must be by means of an accommodation ladder or other safe and convenient means.

(ii) The steps of the pilot ladder must be—

(A) Of hardwood, or other material of equivalent properties, made in one piece free of knots, having an efficient non-slip surface; the four lowest steps may be made or rubber of sufficient strength and stiffness or of other suitable material of equivalent characteristics;

(B) Not less than 480 millimeters (19 inches) long, 115 millimeters (4½ inches) wide, and 25 millimeters (1 inch) in depth, excluding any non-slip device; and

(C) Equally spaced not less than 300 millimeters (12 inches) nor more than 380 millimeters (15 inches) apart and secured in such a manner that they will remain horizontal.

(iii) No pilot ladder may have more than two replacement steps which are secured in position by a method different from that used in the original construction of the ladder.

(iv) The side ropes of the ladder must consist of two uncovered manila ropes not less than 60 millimeters (2¼ inches) in circumference on each side. Each rope must be continuous with no joints below the top step.

(v) Battens made of hardwood, or other material of equivalent properties, in one piece and not less than 1.80 meters (5 feet 10 inches) long must be provided at such intervals as will prevent the pilot ladder from twisting. The lowest batten must be on the fifth step from the bottom of the ladder and the interval between and batten and the next must not exceed 9 steps.

(vi) Where passage onto or off the ship is by means of a bulwark ladder, two handhold stanchions must be fitted at the point of boarding or leaving the FFV not less than 0.70 meter (2 feet 3 inches) nor more than 0.80 meter (2 feet 7 inches) apart, not less than 40 millimeters (2½ inches) in diameter, and must extend not less than 1.20 meters (3 feet 11 inches) above the top of the bulwark.

(4) When necessary to facilitate the boarding or when requested by an authorized officer or observer, provide a manrope, safety line and illumination for the ladder; and

(5) Take such other actions as necessary to ensure the safety of the authorized officer and the boarding party and to facilitate the boarding and inspection.

(e) *Access and records.* (1) The owner and operator of each FFV must provide authorized officers access to all spaces where work is conducted or business papers and records are kept.

(2) The owner and operator of each FFV must provide to authorized officers all records and documents pertaining to the fishing activities of the vessel, including but not limited to, production records, fishing logs, and an accurate hold plan reflecting the current structure of the vessel's storage and factory spaces.

(f) *Product storage.* The operator of each permitted FFV storing fish or fish products in a storage space must ensure that all non-fish product items are neither stowed beneath nor covered by fish products. These items include, but are not limited to, portable conveyors, exhaust fans, ladders, nets, fuel bladders, extra bin boards, or other movable non-product items. These items may be in the space when necessary for safety of crew or storage of product: Lumber, bin boards, or other dunnage may be used for shoring or bracing of product to ensure safety of crew and to prevent shifting of cargo within the space.

§ 611.7 Prohibitions.

(a) It is unlawful for any person to—

(1) Ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of any fish taken or retained in violation of the Magnuson Act, this part, or any other regulations under the Magnuson Act;

(2) Refuse to allow an authorized officer to board an FFV for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation or permit issued under the Magnuson Act;

(3) Forcibly assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any inspection or search described in paragraph (a)(2) of this section;

(4) Resist a lawful arrest for any act prohibited by the Magnuson Act, this part, or any permit issued under this part;

(5) Interfere with, delay, or prevent by any means the apprehension or arrest of another person with the knowledge that such other person has committed any act prohibited by the Magnuson Act, this part, or any permit issued under this part;

(6) Interfere with, obstruct, delay, opposed, impede, intimidate, or prevent by any means any boarding, investigation or search conducted in the process of enforcing this part;

(7) Engage in any fishing activity for which the FFV does not have a permit as required under § 611.3;

(8) Engage in any fishing activity within the FCZ without a U.S. observer abord the FFV, unless the requirement has been waived by the appropriate Regional Director;

(9) Receive or attempt to receive, within the FCZ, directly or indirectly, any U.S. harvested fish, unless the FFV has a permit for activity code 4 which authorizes the receipt of U.S. harvested fish of the species being received;

(10) Use any fishing vessel to engage in fishing after the revocation, or during the period of suspension, of an applicable permit issued under the Magnuson Act;

(11) Violate any provision of the applicable GIFA;

(12) Falsely or incorrectly complete (including by omission) a permit application or permit form as specified in § 611.3 (d) and (j);

(13) Fail to report to the assistant Administrator within 15 days any change in the information contained in the permit application for a FFV, as specified in § 611.3(j);

(14) Forcibly assault, resist, oppose, impede, intimidate, or interfere with an observer placed aboard an FFV under this part;

(15) Interfere with or bias the sampling procedure employed by an observer, including sorting or discarding any catch prior to sampling contrary to the observer's instrucitons; or tampering with, destroying, or discarding an observer's collected samples, equipment, records, photographic film, papers, or effects without the express consent of the observer;

(16) Prohibit or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer from collecting samples, conducting product recovery rate determinations, making observations, or otherwise performing the observer's duties;

(17) Harass an authorized officer or observer (including sexual harassment) by conduct which has the purpose or effect of unreasonably interfering with the observer's work performance, or which creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis;

(18) Fail to provide the required assistance to an observer as described at § 611.8(d);

(19) Fail to identify, falsely identify, fail to properly maintain, or obscure the identification of the FFV or its gear as required by this part.

(20) Falsify or fail to make, keep, maintain, or submit any record or report required by this part;

(21) Fail to return to the sea or fail to otherwise treat prohibited species as required by this part;

(22) Fail to report or falsely report any gear conflict;

(23) Fail to report or falsely report any loss, jettisoning, or abandonment of fishing gear or other article into the FCZ which might interfere with fishing, obstruct fishing gear or vessels, or cause damage to any fishery resource or marine mammals;

(24) Continue activity codes 1 through 4 after those activity codes have been canceled under § 611.13;

(25) Violate any provisions of Subparts C through G of this part;

(26) Violate any provision of this part, the Magnuson Act, any notice issued under this part or any other regulation or permit promulgated under the Magnuson Act; or

(27) Attempt to do any of the foregoing.

(b) It is unlawful for any FFV, and for the owner or operator of any FFV except an FFV engaged only in recreational fishing, to fish—

(1) Within the boundaries of any State, unless the fishing is authorized by the Governor of that State as permitted by Section 306(c) of the Magnuson Act to engage in a joint venture for processing and support with U.S. fishing vessels in the internal waters of that State; or

(2) Within the FCZ, or for any anadromous species or continental shelf fishery resources, beyond the FCZ, unless the fishing is authorized by, and conducted in accordance with, a valid permit issued under § 611.3 or by the Secretary of State under the International Convention for the High Seas Fisheries of the North Pacific Ocean.

§ 611.8 Observers.

(a) *General.* To carry out such scientific, compliance monitoring, and other functions as may be deemed necessary or appropriate to carry out the purposes of the Magnuson Act, the appropriate Regional or Center Director (See Table 2 to Appendix A to this subpart) may assign one or more U.S. observers to any foreign fishing vessel. Except as provided for in section 201(i)(2) of the Magnuson Act, no FFV may conduct fishing operations within the FCZ unless a U.S. observer is aboard.

(b) *Effort plan.* To ensure the availability of an observer as required by this section, the owners and operators of FFV's wishing to fish within the FCZ will submit to the appropriate Regional Director or Center Director (see Table 2 to Appendix A to this subpart) a schedule of fishing 30 days prior to the beginning of each quarter. A quarter is a time period of three consecutive months beginning January 1, April 1, July 1, and October 1 of each year. The schedule will contain the name and IRCS of each FFV intending to fish within the FCZ during the upcoming quarter, and each FFV's expected date of arrival and expected date of departure.

(1) The appropriate Regional or Center Director must be notified immediately of any substitution of vessels or any cancellation of plans to fish in the FCZ for FFV's listed in the quarterly schedule.

(2) If an arrival date of an FFV will vary more than five days from the date listed in the quarterly schedule, the appropriate Regional or Center Director must be notified at least 10 days in advance of the rescheduled date of arrival. If the notice required by this paragraph is not given, the FFV may not engage in fishing until an observer is available and has been placed aboard the vessel.

(c) *Assistance to observers.* The owner and operator of an FFV to which an observer is assigned must—

(1) Provide, at no cost to the observer or the United States, accommodations for the observer aboard the FFV which are equivalent to those provided to the officers of that vessel;

(2) Cause the FFV to proceed to such places and at such times as may be designated by the appropriate Regional Director for the purpose of embarking and debarking the observer;

(3) Allow the observer to use the FFV's communications equipment and personnel upon demand for the transmission and receipt of messages;

(4) Allow the observer access to and use of the FFV's navigation equipment and personnel upon demand to determine the vessel's position;

(5) Allow the observer free and unobstructed access to the FFV's bridge, trawl, or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds and any other space which may be used to hold, process, weigh, or store fish or fish products at any time;

(6) Allow the observer to inspect and copy the FFV's daily log, communications log, transfer log, and any other log, document, notice, or record required by these regulations;

(7) Provide the observer copies of any records required by these regulations upon demand;

(8) Notify the observer at least 15 minutes before fish are brought aboard or fish or fish products are transferred from the FFV unless the observer specifically requests not to be notified; and

(9) Provide all other reasonable assistance to enable the observer to carry out his or her duties.

(d) *Observer transfers.* (1) The operator of the FFV must ensure that transfers of observers at sea are carried out during daylight hours as weather and sea conditions allow, and with the agreement of the observer involved. The FFV operator must provide the observer three hours advance notice of at-sea transfers, so that the observer may collect personal belongings, equipment, and scientific samples.

(2) The FFV's involved must provide a safe pilot ladder and conduct the transfer according to the procedures of § 611.6(d) to ensure the safety of the observer during the transfer.

(3) An experienced crew member must accompany the observer in the small boat or raft in which the transfer is made.

§ 611.9 Recordkeeping

(a) *General.* The owner and operator of each FFV must maintain timely and accurate records required by this section as modified by the regulations for the fishery in which the FFV is engaged (See Subparts C through G).

(1) The owner and operator of each FFV must maintain all required records in English, based on Greenwich mean time (GMT) unless otherwise specified in the regulation, and make them immediately available for inspection upon the request of an authorized officer or observer.

(2) The owner and operator of each FFV must retain all required records on board the FFV whenever it is in the FCZ for three years after the end of the permit period.

(3) The owner and operator of each FFV must retain the required records and make them available for inspection upon the request of an authorized officer at any time during the three years after the end of the permit period, whether or not such records are on board the vessel.

(4) The owner and operator of each FFV must provide to the Assistant Administrator, in the form and at the times prescribed, any other information requested that the Assistant Administrator determines is necessary to fulfill the purposes of the Magnuson Act.

(b) *Communications log.* The owner and operator of each FFV must record, in a separate communications log at the time of transmittal, the time and content of each notification made under § 611.4 of this part.

(c) *Transfer log.* Except for the transfer of unsorted, unprocessed fish via codend from a catching vessel to a processing vessel (activity code 2 or 4), the owner and operator of each FFV must record, in a separate transfer log, each transfer or receipt of any fish or fishery product. The operator must record in the log within twelve hours of the completion of the transfer—

(1) The time and date (GMT) and location (in geographic coordinates) the transfer began and was completed;

(2) The product weight, by species and product (use species and product codes from Appendices D and E of this subpart), of all fish transferred to the nearest hundredth of a metric ton (0.01 mt); and

(3) The name, IRCS, and permit number of the FFV offloading the fish and the FFV receiving the fish.

(d) *Daily fishing log.* (1) The owner or operator of each FFV authorized to catch fish (activity code 1) must maintain a daily fishing log of the effort, catch and production of the FFV, as modified by paragraph (d)(2) of this section and the regulations for the fishery in which the FFV is engaged (See Subparts C through G). The operator must maintain on a daily and cumulative basis for the permit period a separate log for each fishery (see Table 2 to Appendix A to this subpart) in which the FFV is engaged according to this section and in the format specified in Appendix I to this subpart. Daily effort entries are required for each day the vessel is in the FCZ. Daily entries are not required whenever the FFV is in port or engaged in a joint venture in the internal waters of a State. Information for separate days must be maintained or separate pages of the log.

(2) The owner or operator of each FFV authorized to catch fish (activity code 1) but which is not equipped with processing facilities, and which delivers all catches to a processing vessel, must maintain only SECTION ONE—EFFORT, of the daily fishing log, provided the processing vessel maintains a daily consolidated fishing log as described in paragraph (a) of this section.

(e) *Daily fishing log—contents.* The daily fishing log must contain the following information, as modified by paragraph (d)(2) of this section and the fishery in which the FFV is engaged (See Subparts C through G of this part), and be completed according to the format and instructions of Appendix I to this subpart.

(1) SECTION ONE—EFFORT must contain on a daily basis—

(i) A consecutive page number beginning with the first day the vessel entered the FCZ and continuing throughout the logs;

(ii) The date (based on GMT);

(iii) The FFV's name;

(iv) The FFV's IRCS;

(v) The FFV's U.S. permit number;

(vi) The FFV's noon (1200 GMT) position in geographic coordinates; and

(vii) The master's signature.

(2) SECTION ONE—EFFORT must contain for each trawl or set, as appropriate to the gear type employed—

(i) The consecutive trawl or set number, beginning with the first set of the day;

(ii) The fishing area in which the trawl or set was completed;

(iii) The gear type;

(iv) The time the gear was set;

(v) The position of the set;

(vi) The course of the set;

(vii) The sea depth;

(viii) the depth of the set;

(ix) The duration of the set;

(x) The hauling time;

(ix) The position of the haul;

(xii) The number of pots or longline units (where applicable);

(xiii) The number of hooks per longline unit (where applicable);

(xiv) The trawl speed (where applicable); and

(xv) The mesh size of the trawl's codend (where applicable).

(3) SECTION TWO—CATCH must contain for each trawl or set—

(i) The consecutive set or trawl number from SECTION ONE;

(ii) The estimated catch of each allocated species or species group to the nearest tenth of a metric ton (0.1 mt) round weight;

(iii) The prohibited species catch to the nearest tenth of a metric ton (0.1 mt) round weight or by number, as required by the regulations for the fishery in which the FFV is engaged; and

(iv) The species code of each marine mammal caught and its condition code when caught.

(4) SECTION TWO—CATCH must contain on a daily basis—

(i) The species codes for all allocated or prohibited species or species groups caught;

(ii) For each allocated species—the amount to the nearest tenth of a metric ton (0.1 mt) and the daily disposition, either processed for human consumption, used for fishmeal, or discarded; the daily catch; and the cumulative total catch;

(iii) For the total catch of allocated species—the amount to the nearest tenth of a metric ton (0.1 mt) and the daily disposition, daily total catch and cumulative total catch; and

(iv) The daily and cumulative catch of each prohibited species.

(5) SECTION THREE—PRODUCTION must contain on a daily basis for each allocated species caught and product produced—

(i) The product by species code and product type;

(ii) The daily product recovery rate of each species and product;

(iii) The daily total product produced by species to the nearest hundredth of a metric ton (0.01 mt);

(iv) The cumulative total of each product to the nearest hundredth of a metric ton (0.01 mt);

(v) The cumulative amount of product transferred;

(vi) The balance of product remaining aboard the FFV;

(vii) The total daily amount, cumulative amount, transferred product and balance of frozen product aboard the FFV to the nearest hundredth of a metric ton (0.01 mt); and

(viii) Transferred amount and balance of fishmeal and fish oil aboard to the nearest hundredth of a metric ton (0.01 mt).

(f) *Daily consolidated fishing log.* The owner or operator of each FFV which receives unsorted, unprocessed fish from foreign catching vessels (activity code 2) for processing must maintain a daily consolidated fishing log of the effort, catch and production of its associated foreign catching vessels and the processing vessel, as modified by the regulations for the fishery in which the FFV is engaged (see Subparts C through G). This log is separate and in addition to any log required by paragraphs (d) and (e) of this section. The owner or operator must maintain a separate log for each fishery in which the FFV is engaged (see Table 2 of Appendix A to this subpart) on a daily and cumulative basis for the permit period according to this section and in the format specified in Appendix J to this subpart. Information for separate days must be maintained on separate pages of the log.

(g) *Daily consolidated fishing log—contents.* Daily consolidated fishing logs must contain the following information, as modified by the fishery in which the vessel is engaged (see Subparts C through G of this part), and be completed according to the format and instructions of Appendix J to this subpart.

(1) SECTION ONE—EFFORT must contain on a daily basis that information required in paragraph (e)(1) of this section.

(2) SECTION TWO—CATCH must contain for each foreign catching vessel on a daily basis and by area—

(i) The name and IRCS of the foreign catching vessel;

(ii) The fishing area number from which the fish were caught (where the foreign catching vessel caught fish in more than one area, a daily entry for each area must be made);

(iii) The receipts of each allocated species or species group to the nearest tenth of a metric ton (0.1 mt) round weight;

(iv) The receipts of each prohibited species and species group to the nearest tenth of a metric ton (0.1 mt) round weight, or by number, as required by the fishery in which the FFV is engaged; and

(v) The species code of each marine mammal received and its condition code when received.

(3) SECTION TWO—CATCH must contain on a daily basis—

(i) The species codes for all allocated or prohibited species or species groups received;

(ii) The daily disposition, daily total, and cumulative total catch of each allocated species;

(iii) The daily disposition, daily total, and cumulative total catch of each prohibited species;

(iv) The daily disposition, either processed for human consumption, used for fishmeal, or discarded, daily total and cumulative total receipts of all allocated species or species groups; and

(v) The daily and cumulative total receipts of prohibited species or species groups.

(4) SECTION THREE—PRODUCTION must contain on a daily basis for each allocated species received and product produced that information required in paragraph (e)(5) of this section.

(h) *Daily joint venture log.* The operator of each FFV which receives U.S. harvested fish from U.S. fishing vessels in a joint venture (activity code 4) must maintain a daily joint venture log of the effort, catch and production of its associated U.S. fishing vessels and the processing vessel as modified by the regulations for the fishery in which the FFV is engaged (See Subparts C through G). This log is separate and in addition to any log required by paragraphs (d) and (f) of this section. The operator must maintain a separate log for each fishery in which the FFV is engaged on a daily and cumulative basis according to this section and in the format specified in Appendix K to this subpart. Receipts of fish caught outside the FCZ must be included. Information for each day must be maintained on a separate page of the log.

(i) *Daily joint venture log—contents.* Daily joint venture logs must contain the following information, as modified by the fishery in which the vessel is engaged (see Subparts C through G of this part), and be completed according to the format and instructions of Appendix K of this subpart.

(1) SECTION ONE—EFFORT must contain on a daily basis that information required in paragraph (e)(1) of this section.

(2) SECTION ONE—EFFORT must contain for each receipt of a codend—

(i) The consecutive codend number, beginning with the first codend received for the day;

(ii) The name of the U.S. fishing vessel the codend was received from;

(iii) The fishing area in which the fish were caught;

(iv) The time the codend was received; and

(v) The position the codend was received.

(3) SECTION TWO—CATCH must contain for each codend received—

(i) The consecutive codend number from SECTION ONE;

(ii) The estimated receipts of each authorized species or species group and its disposition, either processed for human consumption, used for fishmeal, discarded, or returned to the U.S. fishing vessel, to the nearest tenth of a metric ton (0.1 mt) round weight;

(iii) The estimated receipts of each prohibited species or species group and its disposition, either discarded or returned to the U.S. fishing vessel if authorized in the fishery in which the U.S. vessel is engaged, to the nearest tenth of a metric ton (0.1 mt) round weight; and

(iv) The species code of each marine mammal received and its condition code when received.

(4) SECTION TWO—CATCH must contain on a daily basis—

(i) The species codes of all authorized or prohibited species or species groups received;

(ii) The daily disposition, as described in paragraph (i)(2)(iv) of this section, daily total, and cumulative total receipts of each authorized species or species groups;

(iii) The daily disposition, daily total and cumulative total receipts of all authorized species or species groups; and

(iv) The daily and cumulative total receipts of prohibited species groups and their disposition as described in paragraph (i)(2)(v).

(5) SECTION THREE—PRODUCTION must contain on a daily basis for each authorized species or species group received and product produced that information required in paragraph (e)(5) of this section.

(j) *Daily log maintenance.* The logs required by paragraphs (e) through (i) of this section must be maintained separately for each fishery in Subparts C through G (see Table 2 to Appendix A to this subpart).

(1) The effort section (all of SECTION ONE) of the daily logs must be updated within two hours of the hauling or receipt time. The species code and estimated catch (mt) for each trawl or set (SECTION TWO) must be entered within four hours of the hauling time. The species code and catch (mt) on a total daily and cumulative basis (SECTION TWO) and the production portion (SECTION THREE) of the log must be updated within 12 hours of the end of the day on which the catch was taken. The date of catch is the day and time (GMT) the gear is hauled.

(2) Entries for total daily and cumulative catch or receipt weights (disposition "C" or "M") must be based on the most accurate method available to the vessel, either scale round weights or factory weights converted to round weights. Entries for daily and cumulative weights to discarded or returned fish (disposition "D" or "R") must be based on the most accurate method available to the vessel, either actual count, scale round weight, or estimated deck weights. Entries for product weights must be based on the number of production units (pans, boxes, blocks, trays, cans, or bags) and the average weight of the production unit, with reasonable allowances for water added. Allowances for water added cannot exceed five percent of the unit weight. Product weights cannot be based on the commercial or arbitrary wholesale weight of the product, but must be based on the total actual weight of the product as determined by representative samples.

(3) The owner or operator must make all entries in indelible ink with corrections to be accomplished by lining out and rewriting rather than erasure.

§ 611.10 Fishing operations.

(a) *Catching.* Each FFV authorized for activity code 1 may catch fish. An FFV may retain its catch of any species or species group for which there is an unfilled national allocation. All fish caught will be counted against the national allocation, even if the fish are discarded, unless exempted by the regulations of the fishery in which the FFV is engaged (See Subparts C through G of this part). Catching operations may be conducted as specified by the regulations of the fishery in which the FFV is engaged and as modified by the FFV's permit.

(b) *Scouting.* Each FFV authorized for activity code 1 or 2 may scout for fish. Scouting may only be conducted whenever and wherever catching operations for FFV's of that nation are permitted, and under such other circumstances as may be designated in these regulations or the permit.

(c) *Processing.* Each FFV with activity code 1 or 2 may process fish. Processing may only be conducted whenever and wherever catching operations for FFV's of that nation are permitted, and under such other circumstances as may be designated in these regulations or the permit.

(d) *Support.* Each FFV with activity code 1, 2, or 3 may support other permitted FFV's. Support operations may be conducted whenever and wherever catching and processing for FFV's of that nation are permitted, and under such other circumstances as may

be designated in these regulations or the permit.

(e) *Joint ventures.* Each FFV with activity code 4 may also conduct operations with U.S. fishing vessels. These joint venture operations with U.S. fishing vessels may be conducted throughout the FCZ, and under such other circumstances as may be designated in these regulations or the permit. FFV's with activity code 4 may continue operations assisting U.S. fishing vessels despite closures under § 611.13(a).

(f) Each FFV authorized by the Governor of a State under section 306(c) of the Magnuson Act may engage in processing and support of U.S. fishing vessels within the internal waters of that State, in compliance with terms and conditions set by the authorizing Governor.

§ 611.11 Prohibited species.

(a) The owner or operator of each FFV must minimize its catch or receipt of prohibited species.

(b) After allowing for sampling by an observer (if any), the owner or operator of each FFV must sort its catch or fish received as soon as possible and return all prohibited species and species parts to the sea immediately with a minimum of injury, regardless of condition, unless a different procedure is specified by the regulations for the fishery in which the FFV is engaged (see Subparts C through G of this part). All prohibited species must be recorded in the daily fishing log and other fishing logs as applicable.

(c) All species of fish which an FFV has not been specifically allocated or authorized under this part to retain, including fish caught or received in excess of any allocation or authorization, are prohibited species.

(d) It is a rebuttable presumption that any prohibited species or species part found on board an FFV was caught and retained in violation of this section.

§ 611.12 Gear avoidance and disposal.

(a) *Vessel and gear avoidance.* (1) FFV's arriving on fishing grounds where fishing vessels are already fishing or have set their gear for that purpose must ascertain the position and extent of gear already placed in the sea and must not place themselves or their fishing gear so as to interfere with or obstruct fishing operations already in progress. Vessels using mobile gear must avoid fixed fishing gear.

(2) The operator of each FFV must maintain on its bridge a current plot of broadcast fixed-gear locations for the area in which it is fishing.

(b) *Gear conflicts.* The operator of each FFV which is involved in a conflict or which retrieves the gear of another vessel must immediately notify the appropriate Coast Guard commander identified in Appendix A to this subpart and request disposal instructions. Each report must include:

(1) The name of the reporting vessel;

(2) A description of the incident and articles retrieved including the amount, type of gear, condition, and identification markings;

(3) The location of the incident; and

(4) The date and time of the incident.

(c) *Disposal of fishing gear and other articles.* (1) The operator of an FFV in the FCZ may not dump overboard, jettison or otherwise discard any article or substance which may interfere with other fishing vessels or gear, or which may catch fish or cause damage to any marine resource, including marine mammals and birds, except in cases of emergency involving the safety of the ship or crew, or as specifically authorized by communication from the appropriate Coast Guard commander or other authorized officer. These articles and substances include but are not limited to fishing gear, net scraps, bale straps, plastic bags, oil drums, petroleum containers, oil, toxic chemicals or any manmade items retrieved in an FFV's gear.

(2) The operator of an FFV may not abandon fishing gear into the FCZ.

(3) If these articles or substances are encountered, or in the event of accidental or emergency placement into the FCZ, the vessel operator must immediately report the incident to the appropriate Coast Guard Commander indicated in Appendix A to this subpart, and give the information required in paragraph (b) of this section.

§ 611.13 Fishery closure procedures.

(a) Activity codes 1 and 2 for a fishery are automatically canceled in the following cases unless otherwise specified by Subparts C through G to this part when—

(1) The optimum yield for any allocated species or species group has been reached in that fishery;

(2) The total allowable level of foreign fishing or catch allowance for any allocated species or species group has been reached in that fishery;

(3) The foreign nation's allocation for any allocated species or species group has been reached; or

(4) The letter of credit required in § 611.22(b)(2) is not established and maintained.

(b) Activity code 4 is automatically cancelled when—

(1) The optimum yield for a species with a joint venture processing (JVP) amount is reached;

(2) The JVP amount for a species or species group is reached; or,

(3) The letter of credit required in § 611.22(b)(2) is not established and maintained.

(c) *Notification.* (1) The Regional Director is authorized to close a fishery on behalf of the Assistant Administrator. The Regional Director will notify each FFV's designated representative of closures.

(2) If possible, notice will be given 48 hours before the closure. However, each nation and the owners and operators of all FFV's of that nation are responsible for ending fishing operations when an allocation is reached.

(d) *Catch reconciliation.* Vessel check-in/check-out information, U.S. surveillance observations, observer reports, and foreign catch and effort reports will be used to make the determinations listed in paragraphs (a) and (b) of this section. If NMFS estimates of catch or other values made during the season differ from those reported by the foreign fleets, efforts will be initiated by NMFS through the designated representative to resolve such differences. If, however, differences still persist after such efforts have been made, NMFS estimates will be the basis for decisions and will prevail.

(e) *Duration.* Any closure under this section will remain in effect until an applicable new or increased allocation or JVP becomes available or the letter of credit required by § 611.22(b)(2) is reestablished.

§ 611.14 Scientific research. [Reserved]

§ 611.15 Recreational fishing.

(a) Permits are not required for foreign vessels not operated for profit to conduct recreational fishing in the FCZ and such vessels may conduct recreational fishing within the boundaries of a State. Any fish caught may not be sold, bartered, or traded.

(b) The owner or operator of any FFV conducting recreational fishing must comply with any federal laws or regulations applicable to the fishery while the FCZ and any State laws or regulations applicable to State waters.

§ 611.16 Relation to other laws.

(a) Persons affected by these rules should be aware that other Federal and State statutes may apply to their activities.

(b) Fishing vessel operators must exercise due care in the conduct of fishing activities near submarine cables. Damage to submarine cables resulting from intentional acts or from the failure to exercise due care in the conduct of

fishing operations subjects the fishing vessel operator to enforcement action under the International Convention for the Protection of Submarine Cables, and to the criminal penalties prescribed by the Submarine Cable Act (47 U.S.C. 21) and other laws which implement that Convention. Fishing vessel operators also should be aware that the Submarine Cable Act prohibits fishing operations at a distance of less than one nautical mile from a vessel engaged in laying or repairing a submarine cable; or at a distance of less than one quarter nautical mile from a buoy or buoys intended to mark the position of a cable when being laid, or when out of order, or broken.

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APPENDIX A TO SUBPART A - ADDRESSES, AREAS OF RESPONSIBILITY AND COMMUNICATIONS

Table 1. Addresses

NMFS Regional Directors	NMFS Center Directors	U.S. Coast Guard Commanders
Director, Northeast Region National Marine Fisheries Service, NOAA 14 Elm Street, Federal Building Gloucester, Massachusetts 01930 Telex No.: 940007 Telephone: (617) 281-3600	Director, Northeast Fisheries Center National Marine Fisheries Service, NOAA Woods Hole, Massachusetts 02543 Telephone: (617) 548-5123	Commander, Atlantic Area U.S. Coast Guard Governor's Island, New York N.Y. 10004 Telex No.: 126831 Telephone: (212) 668-7877
Director, Southeast Region National Marine Fisheries Service, NOAA 9450 Koger Boulevard St. Petersburg, Florida 33702 Telephone: (813) 893-3141	Director, Southeast Fisheries Center National Marine Fisheries Service, NOAA 75 Virginia Beach Drive Miami, Florida 33149 Telephone: (305) 361-4284	As Above
Director, Northwest Region National Marine Fisheries Service, NOAA 7600 Sand Point Way, Northeast BIN C15700 Seattle, Washington 98115 Telex No.: 9104442786 Telephone: (206) 526-6150	Director, Northwest & Alaska Fisheries Ctr National Marine Fisheries Service, NOAA 2725 Montlake Boulevard, East Seattle, Washington 98112 Telex No.: 329422 Telephone: (206) 442-4760	Commander, Pacific Area U.S. Coast Guard Government Island Alameda, California 94501 Telex No.: 172343 Telephone: (415) 437-3700
Director, Southwest Region National Marine Fisheries Service, NOAA 300 South Ferry Street Terminal Island, California 90731 Telephone: (213) 548-2575	Director, Southwest Fisheries Center National Marine Fisheries Service, NOAA P.O. Box 271 Lajolla, California 92038 Telephone: (619) 453-2820	Commander Fourteenth Coast Guard District 300 Ala Moana Boulevard Honolulu, Hawaii 96813 Telex No.: 392401 Telephone: (808) 546-7597
Director, Alaska Region National Marine Fisheries Service P.O. Box 1668 Juneau, Alaska 99801 Telex No.: 09945-377 Telephone: (907) 586-7221	Director, Northwest & Alaska Fisheries Ctr	Commander Seventeenth Coast Guard District P.O. Box 3-5000 Juneau, Alaska 99801 Telex No.: 45305 Telephone: (907) 586-7200 After hours: (907) 586-7340

Table 2. Areas of Responsibility of NMFS and U.S. Coast Guard Offices

Area of Responsibility	Fishery	National Marine Fisheries Service	U.S. Coast Guard
Atlantic Ocean north of Cape Hatteras	Northwest Atlantic Ocean Fishery including the Hake Fishery	Director, Northeast Region for effort plans: Attention observer program	Commander, Atlantic Area
Atlantic Ocean south of Cape Hatteras Gulf of Mexico Caribbean Sea	Atlantic Billfish and Sharks Fishery Royal Red Shrimp Fishery	Director, Southeast Region for weekly reports Director, Southeast Center	Commander, Atlantic Area
Pacific Ocean off the States of California Oregon, and Washington	Pacific Coast Groundfish Fishery	Director, Northwest Region	Commander, Pacific Area
Pacific Ocean off Hawaii and other U.S. insular possessions in the Central and Western Pacific	Seamount Groundfish Fishery Pacific Billfish, Oceanic Sharks Wahoo and Mahi Mahi Fishery Precious Coral Fishery	Director, Southwest Region	Commander, Fourteenth Coast Guard District
North Pacific Ocean and Bering Sea off Alaska	Gulf of Alaska Groundfish Fishery Bering Sea and Aleutian Islands Groundfish Fishery Snail Fishery	Director, Alaska Region Director, Northwest and Alaska Fisheries Center for effort plans	Commander, Seventeenth Coast Guard District

Table 3 - U.S. Coast Guard Communications Stations and Frequencies

U.S. Coast Guard Communications Station	IRCS	Radiotelegraphy			Radiotelephone	
		kHz	mHz	time[1/]	Channel[2/]	GMT time
Boston	NMF	500	-	all	B	all
Portsmouth	NMN	500	8, 12 16	all HJ	A B,C D	0200-1200 all 1200-0200 (On reques
Miami	NMA	500	-	all	B	all
San Juan	NMR	500	8,12 16	all HJ	none	
New Orleans	NMG	500	-	all	A B,C D E	0200-1200 all 1200-0200 (On reques
San Francisco	NMC	500	8 6 16	all HN HJ	A,B,C D E	all 0200-2400 (On reques
Honolulu	NMO	500	8,12 22	all HJ	A,B,C D,E	all (On reques
Guam	NRV	500	- 8,12	all HN	none	
Kodiak	NOJ	500	-	all	B A,C,D and E	all (On reques

1/ HJ means 2 hours after sunrise until 2 hours before sunset, local time.
HN means 2 hours before sunset until 2 hours before sunrise, local time.

2/ Carrier frequencies of duplex, high-frequency single-sideband channels are:

Letter	Shore transmit	Ship transmit
A	4428.7	4134.3
B	6506.4	6200.0
C	8765.4	8241.5
D	13113.2	12342.4
E	17307.3	16534.4

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Appendix B to Subpart A—Vessel Activity Reports

1. *BEGIN report.* Begin reports must be delivered to the appropriate Coast Guard commander no later than 48 hours before fishing.

EXAMPLE: The stern trawler NAVIS, LTUX, will begin fishing on March 11 at 1320 GMT, at position 59°30' N. latitude, 142°30' W. longitude, in the Yakutat fishing area (code 64) of the Gulf of Alaska. There are 105.5 metric tons of headed and gutted (use product code HG from Appendix E to this subpart) Alaska pollock (use species code 701 from Appendix D to this subpart), 53.0 metric tons headed and gutted (code HG) Pacific cod (code 702) and 35.0 metric tons of fish meal (code M) on board. The required message would be transmitted as follows:

FROM: NAVIS, LTUX
TO: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA, ALASKA REGION, NMFS, JUNEAU, ALASKA
VESREP
NAVIS/LTUX/0311/1320/5930N/14230W/64/BEGIN//
PRODUCT ABOARD/701/HG/105.5//702/HG/53.0/M/35//

If no product was aboard the PRODUCT ABOARD line could be ommitted.

2. *DEPART report.* Depart reports must be transmitted before departure and delivered within 24 hours of transmittal.

EXAMPLE: The stern trawler NAVIS, LTUX will depart the FCZ at position 45°15' N. latitude, 124°20' W. longitude on July 11 at 1800 GMT in the Columbia fishing area (code 71) in the Northeast Pacific Ocean, to make a port call. The required message would be transmitted as follows:

FROM: F/V NAVIS, LTUX
TO: COAST GUARD PACIFIC AREA, ALAMEDA, CALIFORNIA, NORTHWEST REGION, NMFS, SEATTLE, WASHINGTON
VESREP
NAVIS/LTUX/0711/1800/4515N/12420W/71/DEPART//

3. *RETURN report.* Return reports must be transmitted before the returning to the grounds and delivered within 24 hours of transmittal.

EXAMPLE: The stern trawler NAVIS, LTUX will return from a port call to the FCZ on July 14 at 2230 GMT at position 44°45' N. Latitude, 124°33' W. longitude in the Columbia area (code 71). The required message would be transmitted as follows:

FROM: F/V NAVIS, LTUX
TO: COAST GUARD PACIFIC AREA, ALAMEDA, CALIFORNIA, NORTHWEST REGION, NMFS, SEATTLE, WASHINGTON
VESREP
NAVIS/LTUX/0714/2230/4445N/12433W/71/RETURN//

4. *SHIFT report.* Shift reports must be transmitted before leaving the original fishing area and delivered within 24 hours of transmittal. If an FFV is fishing within 20 nautical miles either side of a boundary the message must be transmitted before the last shift in fishing areas for the day, include all the day's shifts, and be delivered within 24 hours of its transmittal.

A. Example of standard SHIFT report. The longline vessel CABLE, EXRC fishing in the Atlantic billfish and sharks fishery is shifting areas to Atlantic area 16. The vessel will begin fishing in area 16 on December 3 at 1000 GMT at position 36°35' N. latitude, 73°25' W. longitude. The required message would be transmitted as follows:

FROM: F/V CABLE, EXRC
TO: COAST GUARD ATLANTIC AREA, NEW YORK, NEW YORK, NORTHEAST REGION, NMFS, GLOUCESTER, MASSACHUSETTS
VESREP
CABLE/EXRC/1203/1000/3635N/7325W/16/SHIFT//

B. Example of SHIFT report when the FFV fishes on a boundary. The stern trawler NAVIS, LTUX is fishing in area 22 in the Northwest Atlantic Ocean fishery. The vessel will begin fishing in area 22 on October 15 at 1115 GMT at position 39°01' N. latitude, 73°10' W. longitude. At 1720 GMT the vessel again SHIFTS to area 22 at position 38°59' N latitude, 73°07' W. longitude. The vessel will remain within 20 nautical miles of the boundary. The required report would be transmitted as follows before the last SHIFT of the day:

FROM: NAVIS, LTUX
TO: COAST GUARD ATLANTIC AREA, NEW YORK, NEW YORK, NORTHEAST REGION, NMFS, GLOUCESTER, MASSACHUSETTS
VESREP
NAVIS/LTUX/1015/1115/3900N/7310W/22/SHIFT//
NAVIS/LTUX/1015/1720/3859N/7307W/23/SHIFT//

5. *JV OPS reports.* Reports of starting or ending joint venture receipts and operations must be transmitted before the event and delivered within 24 hours of its transmittal. They are in addition to the requirements of other activity reports.

EXAMPLE: The stern trawler, NAVIS, LTUX, will begin joint venture receipts or processing on July 9, 1983, at 1320 GMT at position 43°40' N. latitude, 124°30' W. longitude in the Columbia area (code 71): The required message would be delivered as follows:

FROM: F/V NAVIS LTUX
TO: COAST GUARD PACIFIC AREA, ALAMEDA, CALIFORNIA, NORTHWEST REGION, NMFS, SEATTLE, WASHINGTON
VESREP
NAVIS/LTUX/0709/1320/4340N/12430W/71/START JV OPS//

6. *TRANSFER reports.* Transfer reports must be transmitted prior to the transfer and delivered within 24 hours of transmittal.

EXAMPLE: The refrigerated transport vessel SOPOV, LJUJ will conduct a transfer with the stern trawler NAVIS, LTUX on July 22 at 1900 GMT in position 58°30' N. latitude, 175°10' W. longitude in Bering Sea area 52 (code 52). The required message would be transmitted as follows:

FROM: SOPOV, LJUJ
TO: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA, ALASKA REGION, NMFS, JUNEAU, ALASKA
VESREP
SOPOV/LJUJ/0722/1900/5830N/17510W/52//
TRANSFER/NAVIS/LTUX//

7. *OFFLOADED report.* Offloaded-to reports must be transmitted within 12 hours of the completion of the transfer and delivered before the FFV CEASES fishing in the FCZ and within 24 hours of transmittal.

EXAMPLE: The stern trawler NAVIS, LTUX completed transfer operations with: the refrigerated transport vessel SOPOV, LJUJ at 0900 GMT on July 24 at position 58°30' N. latitude, 175°10' W. longitude, in Bering Sea Area 52 (code 52). NAVIS transferred 130.10 metric tons of headed and gutted (code HG) Alaska pollock (code 701), 15.75 metric tons of headed and gutted (code HG) Pacific cod (code 702), 5.63 metric tons of pollock roe (codes 701 and R respectively) and 5.10 metric tons of fish meal (code M). The required message would be transmitted as follows:

FROM: M/V NAVIS, LTUX
TO: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA, ALASKA REGION, NMFS, JUNEAU, ALASKA
VESREP
NAVIS/LTUX/0724/0900/5830N/1751/OW/52//
OFFLOADED TO/SOPOV/LJUJ//
701/HG/130.10//702/HG/15.75//701/R/5.63//M/5.10//

8. *RECEIVED report.* Received-from reports must be transmitted within 12 hours of the completion of the transfer and delivered before the FFV CEASES fishing in the FCZ within 24 hours and of transmittal. More than one operation may be reported in one report, provided the above time constraints are met for all operations.

EXAMPLE: The refrigerated transport vessel SOPOV, LJUJ completed transfer operations with the stern trawler NAVIS, LTUX at 0900 GMT on July 24 at position 58°30' N. latitude, 175°10' W. longitude, in Bering Sea Area 52 (code 52). NAVIS transferred 130.0 metric tons of headed and gutted (code HG) Alaska pollock (code 701), 15.7 metric tons of headed and gutted (code HG) Pacific cod (code 702), 5.6 metric tons of pollock roe (codes 701 and R respectively) and 5.1 metric tons of fish meal (code M). The required message would be transmitted as follows:

FROM: M/V SOPOV, LJUJ
TO: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA, ALASKA REGION, NMFS, JUNEAU, ALASKA
VESREP
SOPOV/LJUJ/0724/0900/5830N/17510W/52//
RECEIVED FROM/NAVIS/LTUX//
701/HG/130.0//702/HG/15.7/701/R/5.6//M/5.1//

9. *CEASE report.* Cease reports must be delivered 48 hours before ceasing fishing and departing the FCZ.

EXAMPLE: The stern trawler NAVIS, LTUX, will cease fishing on July 8 at 1215 GMT at position 57°30' N. latitude, 168°30' W. longitude in Bering Sea Area 51 (code 51). The required message would be transmitted as follows:

FROM: F/V NAVIS, LTUX

TO: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA, ALASKA REGION, NMFS, JUNEAU, ALASKA
VESREP
NAVIS/LTUX/0708/1215/5730N/16830W/51/CEASE//

10. *CHANGE-TO report.* Change-to reports must be transmitted and delivered as though they were the original message.

EXAMPLE: The stern trawler NAVIS, LTUX was to have begun fishing on March 11 at 1320 GMT at position 59°30' N. latitude, 142°30' W. longitude in the Yakutat fishing area of the Gulf of Alaska. Bad weather delayed arrival on the fishing grounds until 0800 GMT on March 12. Since the delay is longer than four hours, a CHANGE-TO report must be sent. Because the message is considered as though it were an original BEGIN report the message must be delivered 48 hours in advance, or before 1800 GMT on March 10. The required message would be transmitted as follows:

FROM: NAVIS, LTUX
TO: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA, ALASKA REGION, NMFS, JUNEAU, ALASKA
VESREP
CHANGE/NAVIS/LTUX/0311/1320/TO/NAVIS/LTUX/0312/1800/5930N/14230W/64/BEGIN//

11. *CANCEL report.* Cancel reports must be transmitted and delivered prior to the time and date of the event in the original message.

EXAMPLE: The stern trawler NAVIS, LTUX was to have begun fishing on March 11 at 1320 GMT at position 59°30' N. latitude, 142°30' W. longitude in the Yakutat fishing area of the Gulf of Alasks. The vessel has had mechanical problems and must return home. The required CANCEL message would be transmitted as follows:

FROM: NAVIS, LTUX
TO: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA, ALASKA REGION, NMFS, JUNEAU, ALASKA
VESREP
CANCEL/NAVIS/LTUX/0311/1320//

12. *Group reports.* A fleet commander or other authorized person may send in reports for several vessels.

EXAMPLE: The refrigerated transport vessel SOPOV, LJUJ with a fleet commander on board, wishes to report for three stern trawlers in the fleet. The stern trawler NAVIS, LTUX, will begin fishing at 59°39' N. latitude, 142°30' W. longitude, in Yakutat fishing area (code 64) on March 11 at 1320 GMT. The stern trawler FISKVOL, LBEV, will temporarily depart the fishing grounds at 58°05' N. latitude, 149°50' W. longitude in the Kodiak fishing area (code 63) on March 12 at 1200 GMT to embark an observer. The stern trawler ALEXANDROV, LXDV, will cease fishing at 54°40' N. latitude, 157°15' W. longitude in the Chirikof fishing area (code 62) on March 13 at 0800 GMT to return to its home port. The required message would be transmitted as follows:

FROM: M/V SOPOV, LJUJ
TO: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA, ALASKA REGION, NMFS, JUNEAU, ALASKA
VESREP
NAVIS/LTUX/0311/1320/5930N/14230W/64/BEGIN//
FISKVOL/LBEV/0312/1200/5805N/14950W/63/DEPART//
ALEXANDROV/LXDV/0313/0800/5440N/15715W/62/CEASE//

Appendix C to Subpart A—Fishing Areas

A. Northwest Atlantic Ocean and Hake Fisheries (Figures 1a, and 1b)

1. For the purposes of § 611.4(c) of this part fishing areas in the Northwest Atlantic are the areas shown in Figure 2a. and described below.

Area code	Name	Description
21	Atlantic Area 21	Atlantic FCZ between 35°00' N. latitude and 37°00' N. latitude.
22	Atlantic Area 22	Atlantic FCZ between 37°00' N. latitude and 39°00' N. latitude.
23	Atlantic Area 23	Atlantic FCZ north of 39°00' N. latitude and west of 91°40' W. longitude.
24	Atlantic Area 24	Atlantic FCZ enclosed by a line connecting the following points in the order listed —

Point No.	Latitude	Longitude
1	Shore	71°40' W.
2	39°00' N.	71°40' W.
3	39°00' N.	70°00' W.
4	Cape Cod	70°00' W.

25	Atlantic Area 25	Atlantic FCZ enclosed by a line connecting the following points in the order listed—

Point No.	Latitude	Longitude
1	Cape Cod	70°00' W.
2	39°00' N.	70°00' W.
3	39°00' N.	65°40' W.
4	42°00' N.	65°40' N.
5	42°00' N.	65°50' W.
6	42°10' N.	65°50' W.
7	42°10' N.	66°00' W.
8	42°20' N.	60°00' W.
9	42°20' N.	70°00' W.
10	Cape Cod	70°00' W.

26	Atlantic Area 26	Atlantic FCZ enclosed by a line connecting the following points in the order listed—

Point No.	Latitude	Longitude
1	Cape Cod	70°00' W.
2	42°20' N.	70°00' W.
3	42°20' N.	67°40' W.
4	43°50' N.	67°40' W.

	Point No.	Latitude	Longitude
	5	43°50′ N.	66°50′ W.
	6	44°20′ N.	66°50′ W.
	7	44°20′ N.	67°00′ W.
	8	Shore	67°00′ W.

27	Atlantic Area 27	Atlantic FCZ east of connecting the following points in the order listed—

	Point No.	Latitude	Longitude
	1	42°20′ N.	67°40′ W.
	2	43°50′ N.	67°40′ W.
	3	43°50′ N.	66°50′ W.
	4	44°20′ N.	66°50 W.
	5	44°20′ N.	67°00′ W.
	6	Shore	67°00′ W.

2. For the purposes of § 611.4(f) and § 611.9, fishing areas in the Northwest Atlantic are the NMFS "Three digit statistical areas" described in Figure 2b.

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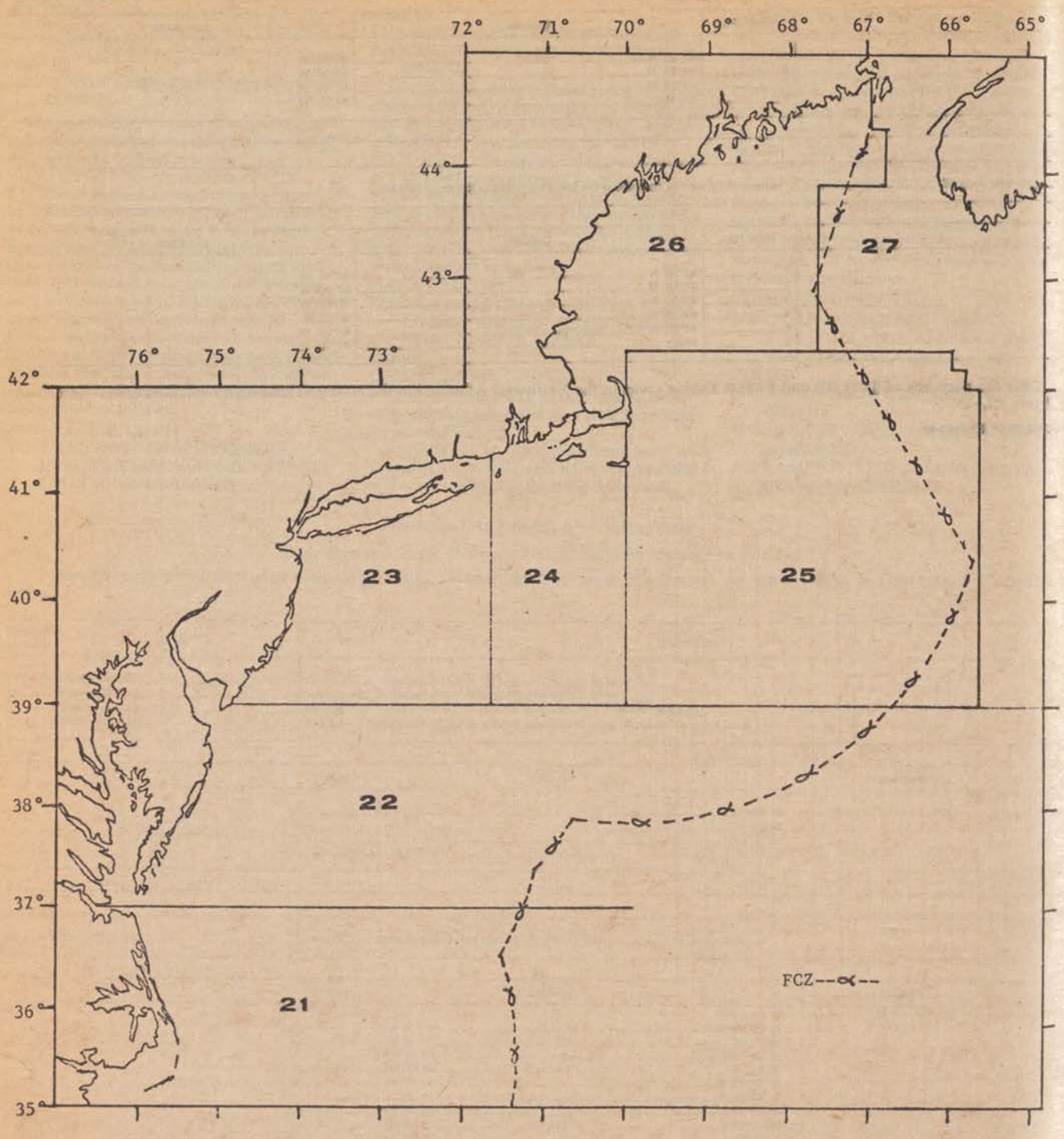

Figure 1a. to Appendix C: Fishing Areas for the Northwest Atlantic Ocean and Hake Fisheries for the purposes of 50 CFR 611.4(c).

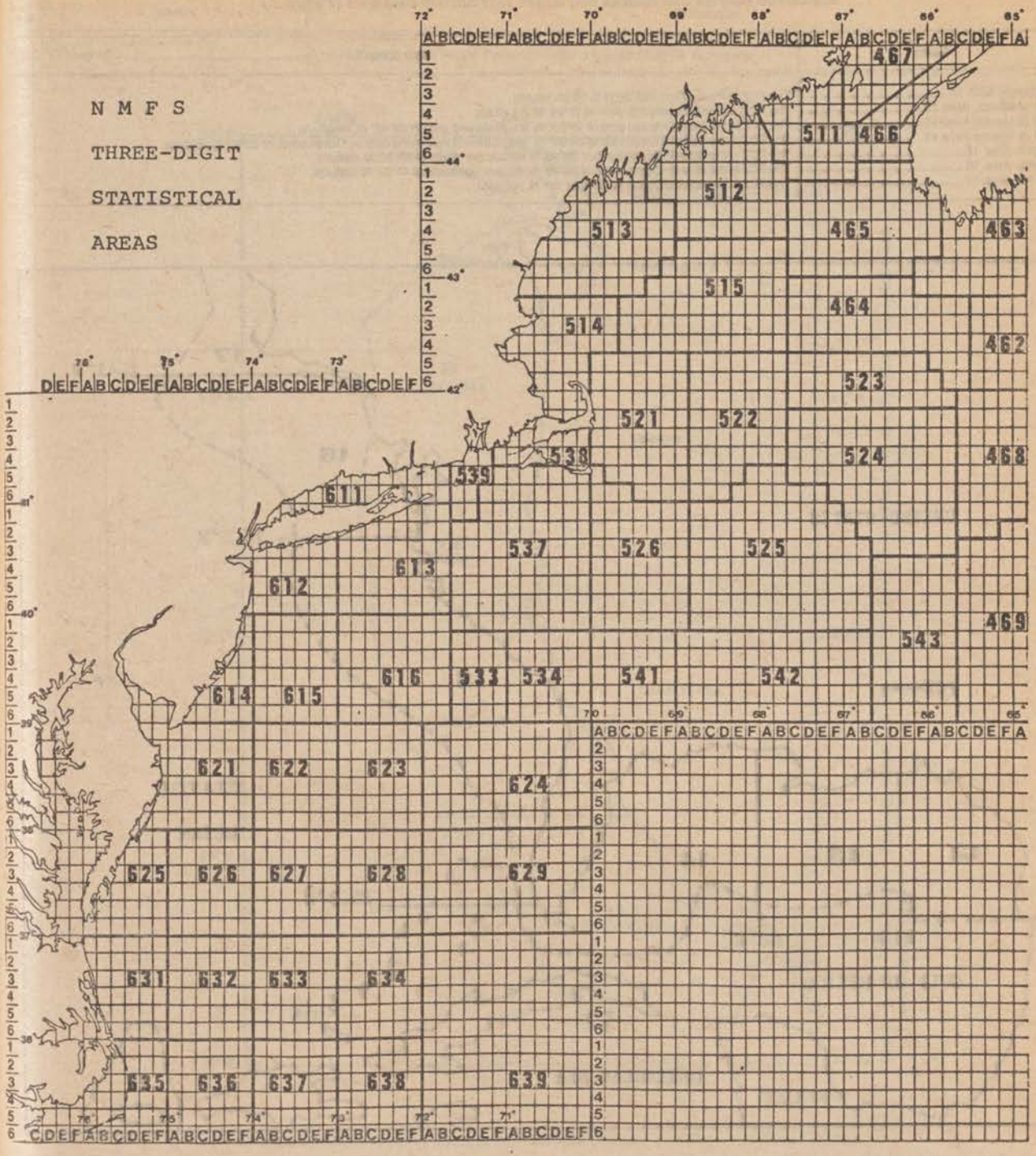

Figure 1b. to Appendix C: Fishing Areas for the Northwest Atlantic Ocean and Hake Fisheries for the purposes of 50 CFR 611.4(f) and 50 CFR 611.9.

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B. Atlantic Billfish and Sharks and Royal Red Shrimp Fisheries (Figure 2.)

Area Code	Name	Description
11	Caribbean Area 11	The FCZ of Puerto Rico and the U.S. Virgin Islands.
12	Gulf of Mexico Area 12	The FCZ in the Gulf of Mexico west of 93°00' W. longitude.
13	Gulf of Mexico Area 13	The FCZ in the Gulf of Mexico east of 93°00' W. longitude and west of 88°00' W. longitude.
14	Gulf of Mexico Area 14	The FCZ in the Gulf of Mexico east of 88°00' W. longitude and FCZ in the Atlantic Ocean south of 23°18' N. latitude.
15	Atlantic Area 15	The FCZ in the Atlantic Ocean north of 23°18' N latitude and south of 36°30' N. latitude.
16	Atlantic Area 16	The FCZ in the Atlantic Ocean north of 36°30' N. latitude and south of 41°00' N. latitude.
17	Atlantic Area 17	The FCZ in the Atlantic Ocean north of 41°00' N. latitude.

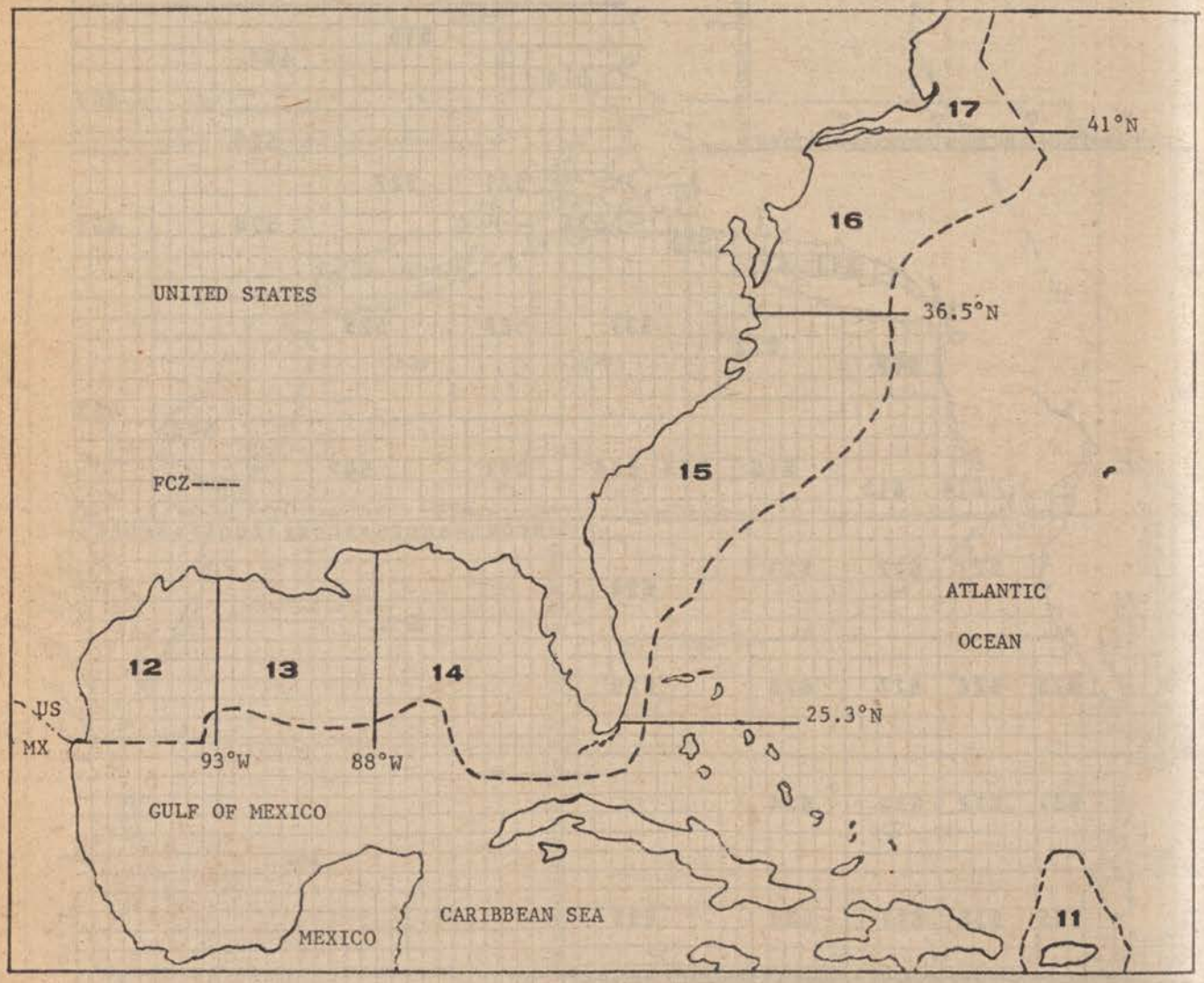

Figure 2. to Appendix C: Fishing Areas for the Atlantic Billfish and Sharks and Royal Red Shrimp Fisheries.

C. Pacific Coast Groundfish and Pacific Billfish and Sharks Fisheries

Area Code	Name	Description
67	Vancouver	The FCZ of the North Pacific Ocean off Washington south of 50°30' N. latitude and north of 47°30' N. latitude.
71	Columbia	The FCZ of the North Pacific Ocean off Washington and Oregon south of 47°30' N. latitude and north of 43°00' N. latitude.
72	Eureka	The FCZ of the North Pacific Ocean off Oregon and California south of 43°00' N. latitude and north of 40°30' N. latitude.
73	Monterey	The FCZ of the North Pacific Ocean off California south of 40°30' N. latitude and north of 36°00' N. latitude.

Area Code	Name	Description
74	Conception	The FCZ of the North Pacific Ocean off California south of 36°00′ N. latitude.

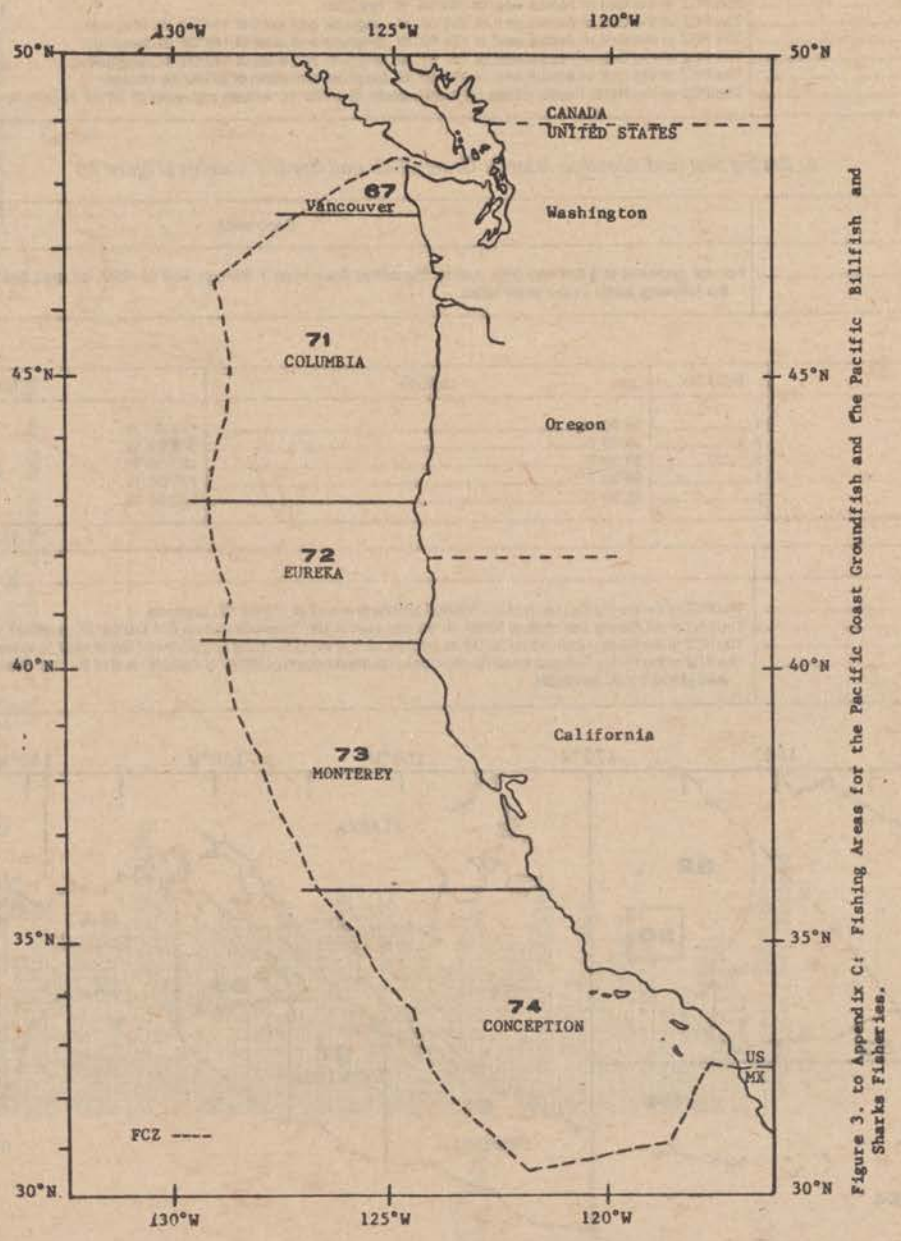

Figure 3. to Appendix C: Fishing Areas for the Pacific Coast Groundfish and the Pacific Billfish and Sharks Fisheries.

D. Seamount Groundfish, Pacific Billfish and Sharks, and Precious Coral Fisheries

Area Code	Name	Description
81	Hawaii and Midway Islands	The FCZ at the Pacific Ocean off the Hawaiian and Midway Islands.
82	Guam and Northern Mariana Islands	The FCZ of the Western Pacific Ocean off Guam and the Northern Mariana Islands.
83	American Samoa	The FCZ of the South Pacific Ocean off American Samoa.
84	Johnston Atoll	The FCZ off Johnston Atoll.
85	Howland and Baker Islands	The FCZ of the Pacific Ocean off Howland and Baker Islands.
86	Kingman Reef and Palmyra Atoll	The FCZ of the North Pacific Ocean off Kingman Reef and Palmyra Atoll.
87	Jarvis Island	The FCZ of the Pacific Ocean off Jarvis Island.
88	Wake Island	The FCZ of the North Pacific Ocean off Wake Island.

E. Gulf of Alaska Groundfish Fishery (Figure 4)

Area Code	Name	Description
61	Shumagin	The FCZ of the Gulf of Alaska west of 159°00' W. longitude.
62	Chirikof	The FCZ of the Gulf of Alaska east of 159°00' W. longitude and west of 154°00' W. longitude.
63	Kodiak	The FCZ of the Gulf of Alaska east of 154°00' W. longitude and west of 147°00' W. longitude.
64	Yakutat	The FCZ of the Gulf of Alaska east of 147°00' W. longitude and west of 137°00' W. longitude.
65	Southeastern	The FCZ of the Gulf of Alaska east of 137°00' W. longitude and north of 54°30' N. latitude.
66	Charlotte	The FCZ of the North Pacific Ocean off Alaska south of 54°30' N. latitude and north of 50°30' N. latitude.

F. Bering Sea and Aleutian Islands Groundfish and Snail Fisheries (Figure 4.)

Area Code	Name	Description
50	Bearing Sea Area 50	For the purposes of § 611.4(c) only, and for the period September 1 through April 30 GMT, an area described by rhumb lines connecting the following points in the order listed.

Point No.	Latitude	Longitude
1	58°00' N	175°00' W.
2	58°00' N	172°00' W.
3	59°00' N	172°00' W.
4	59°00' N	175°00' W.
5	58°00' N	175°00' W.

51	Bering Sea Area 51	The FCZ of the Bering Sea north of the Aleutian Islands and east of 170°00' W. longitude.
52	Bering Sea Area 52	The FCZ of the Bering Sea north of 55°00' N. latitude, east of 180° longitude and west of 170°00' W. longitude.
53	Bering Sea Area 53	The FCZ of the Bering Sea north of 55°00' N. latitude, east of the U.S.-Russian convention line of 1867, and west of 170°00' W. longitude.
54	Bering Sea Area 54	The FCZ of the Bering Sea and North Pacific Ocean off Alaska south of 55°00' N. latitude, east of the U.S.-Russian Convention Line of 1867 and west of 170°00' W. longitude.

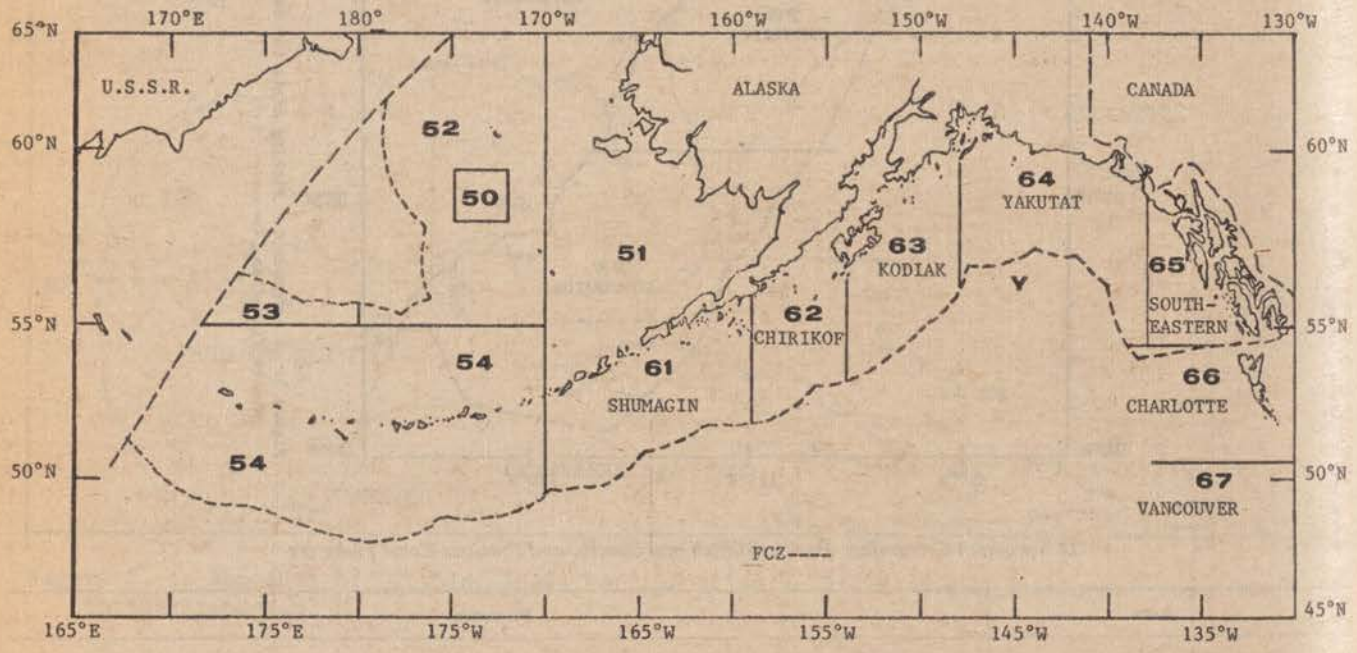

Figure 4. to Appendix C: Fishing Areas for the Gulf of Alaska Groundfish, Bering Sea and Aleutian Islands Groundfish, and Snail Fisheries.

BILLING CODE 3510-22-M

A. Atlantic Ocean and Gulf of Mexico Fishes.

Code	Common name[1]	Scientific name
	Finfish	
101	Cod, Atlantic	Gadus morhua
102	Haddock	Melanogrammus aeglefinus
103	Redfish	Sebastes marinus
104	Hake, silver	Merluccius bilinearis
105	Hake, red	Urophycis chuss
106	Pollock	Pollachius virens
116	Flounder, yellowtail	Limanda ferruginea
176	Scup	Stenotomus chrysops
182	Tilefish	Lopholatilus chamaeleonticeps
202	Herring, Atlantic	Clupea harengus harengus
204	Mackerel, Atlantic	Scomber scombrus
206	Great barracuda	Sphyraena barracuda
212	Butterfish	Peprilus triacanthus
216	Menhaden, Atlantic	Brevoortia tyrannus
228	Bluefish	Pomatomus saltatrix
237	Pompano dolphin	Coryphaena equisetis
238	Dolphin (mahimahi)	Coryphaena hippurus
240	Mackerel, king	Scomberomorus cavalla
252	Sailfish	Istiophorus platypterus
254	Longbill spearfish	Tetrapturus pfluegeri
255	Wahoo	Acanthocybium solanderi
256	Marlin, white	Tetrapturus albidus
260	Marlin, blue	Makaira nigricans
264	Swordfish	Xiphias gladius
309	Herring, river (includes alewife, blueback herring, and hickory shad)	Alosa pseudoharengus Alosa aestivalis, and Alosa mediocris
310	Shad, American	Alosa sapidissima
314	Croaker, Atlantic	Micropogonias undulatus
318	Salmon, Atlantic	Salmo salar
332	Bass, black sea	Centropristis striata
401	Striped bass	Morone saxatilis
414	Spot	Leiostomus xanthurus
418	Weakfish	Cynoscion regalis
462	Porbeagle shark	Lamna nasus
463	Longfin mako shark	Isurus paucus
464	Shortfin mako shark	Isurus oxyrinchus
465	Blue shark	Prionace glauca
469	Sharks (NS)	Squaliformes
499	Finfishes (NS) (includes dogfish and non-allocated squid)	Osteichthyes, squalidae, and sepioid and teuthoid squids

Code	Common name	Scientific name
	Invertebrates	
502	Squid, long-finned	Loligo pealei
504	Squid, short-finned	Illex illecebrosus
509	Squid (NS)	Sepioid and teuthoid squids (See code 499 -- other finfish)
619	Crabs, marine (NS)	
622	Lobster, northern	Homarus americanus
630	Royal red shrimp	Hymenopenaeus robustus
697	Shrimp (NS)	
699	Invertebrates, marine (NS)	

B. Pacific Ocean Fishes

Code	Common name	Scientific name
	Finfish	
129	Flatfishes (NS)	Pleuronectiformes
200	Pelagic Armorhead	Pentaceros richardsoni
201	Alfonsin	Beryx splendens
207	Atka mackerel	Pleurogrammus monopterygius
208	Jack mackerel	Trachurus symmetricus
209	Pacific herring	Clupea harengus pallasi
210	Salmonids (NS)	Salmonidae
237	Pompano dolphin (mahimahi)	Coryphaena equisetis
238	Dolphin (mahimahi)	Coryphaena hippurus
252	Sailfish	Istiophorus platypterus
253	Black marlin	Makaira indica
255	Wahoo	Acanthocybium solanderi
260	Marlin, blue	Makaira nigricans
261	Striped marlin	Tetrapturus audax
262	Shortbill spearfish	Tetrapturus angustirostris
263	Requiem sharks (NS)	Carcharhinidae
264	Broadbill swordfish	Xiphias gladius
265	Thresher sharks (NS)	Alopiidae
266	Mackerel sharks (NS)	Lamnidae
267	Hammerhead sharks (NS)	Sphyrnidae
469	Sharks (NS)	Squaliformes
499	Other species (NS)	See Subparts E, F, and G.
500	Non-specified species (NS)	See Subpart G
701	Pollock (walleye, Alaska)	Theragra chalcogramma
702	Pacific cod	Gadus macrocephalus
703	Sablefish (black cod)	Anoplopoma fimbria
704	Pacific whiting (hake)	Merluccius productus
720	Yellowfin sole	Limanda aspera
722	Pacific halibut	Hippoglossus stenolepis
737	Turbot (includes arrowtooth flounder, Greenland halibut and Kamchatka flounder)	(Atheresthes stomias, Reinhardtius hippoglossoides, and Atheresthes evermanni)
780	Pacific ocean perch[2]	Sebastes alutus
800	Shortbelly rockfish	Sebastes jordani
804	Idiot rockfish	Sebastolobus spp.
849	Rockfish (NS)	Scorpaenidae

Code	Common name	Scientific name
	Invertebrates	
505	Korean horsehair crab	Erimacrus isenbeckii
507	Lyre crab	Hyas lyratus
508	King crab	Paralithodes brevipes
509	Squid (NS)	Sepioid and teuthoid squids
527	Black coral (NS)	Antipathes spp.
529	Clams (NS)	
539	Scallops (NS)	Pectinidae
673	Snail (NS)	Gastropoda
676	Tanner crab (NS) (Snow)	Chionoecetes spp.
682	Corals (NS)	
690	Dungeness crab	Cancer magister
697	Shrimp (NS)	

C. Marine Mammals

Code	Common name	Scientific name
915	Whale, beluga	Delphinapterus leucas
930	Whale, false killer	Pseudorca crassidens
934	Dolphin, rough-toothed	Steno bredanensis
936	Dolphin, Atlantic white-sided	Lagenorhynchus acutus
938	Dolphin, Pacific white-sided	Lagenorhynchus obliquidens
940	Dolphin, common	Delphinus delphis
941	Dolphin, bottlenosed	Tursiops truncatus
942	Dolphin, Risso's (grampus)	Grampus griseus
943	Dolphin, spotted	Stenella attenuata
944	Dolphin, spinner	Stenella longirostis
946	Dolphin, northern right-whale	Lissodelphis borealis
947	Porpoise, harbor	Phocoena phocoena
949	Porpoise, Dall's	Phocoenoides dalli
955	Sea lion, northern	Eumetopias jubatus
956	Sea lion, California	Zalophus californianus
958	Seal, northern fur	Callorhinus ursinus
966	Walrus	Odobenus rosmarus
967	Seal, harbor	Phoca vitulina
973	Seal, ribbon	Phoca fasciata
976	Seal, gray	Halichoerus grypus
981	Seal, northern elephant	Mirounga angustirostris
986	Sea otter	Enhydra lutris
992	Whale, pilot (NS)	Globicephala spp.
993	Whale, baleen (NS)	Mysticeti
994	Whale, toothed (NS)	Odontoceti
995	Seal, (NS)	Other Phocidae
996	Sea lion, (NS)	Otaridae
998	Porpoise, (NS)	Other Phocoenidae
998	Dolphin, (NS)	Delphinidae

D. Other Species.

Code	Common name	Scientific name
69	Sea turtle (NS)	

[1] (NS) means non-specific as to species. This code must be used for all species of this species group unless a more specific code exists.

[2] Pacific ocean perch in the Alaska fisheries (Subpart G) includes the additional species of red rockfish --

Northern rockfish (Sebastes polyspinas),
Rougheye rockfish (Sebastes aleutianus),
Shortraker rockfish (Sebastes borealis), and
Sharpchin rockfish (Sebastes zacentrus).

BILLING CODE 3510-22-C

APPENDIX E TO SUBPART A
FISHERY PRODUCT CODES

Fishery Product	Code
Canned meat	CN
Fillets, with skin/two per fish	F
Fillets, without skin/two per fish	FN
Fillet, one-piece (butterfly) with skin	FB
Fillet, one-piece (butterfly), without skin	FBN
Fish meal	M
Fish oil	FO
Flounder steaks--diagonal cut from midsection of fish	S
Flounder pieces--punched or stamped from midsection of fish	ST
Gutted only	G
Gutted and gilled	GG
Headed only	H
Headed and gutted	HG
Headed, gutted, and tails removed	HGT
Heads, separate from remainder of fish	HDS
Intestinal organs separate from remainder of fish	IO
Other product (specify)	O
Otoshimi: Frozen minced fish product (Japan)	OS
Pectoral collars separate from remainder of fish	P
Roe separate from remainder of fish	R
Skate wings	SW
Squid or octopus, beak removed	BSO
Squid or octopus mantles	MSO
Squid or octopus tentacles	TSO
Surimi: Frozen minced fish product (Japan)	SU
Tara Shiniku: Frozen minced fish product (Japan)	TS
Tucza: heads, guts, fins, tail, and portions of belly flap removed (Poland)	TU
Whole fish	W

Appendix F to Subpart A—Weekly Catch Report

A. Report Form Entries

1. Page numbering: Number each page in sequence and the total number of pages in each submission. For example, the pages of a report for the catches of three vessels would be numbered "Page 1 of 3", "Page 2 or 3", and "Page 3 of 3."

2. Vessel name: Enter the vessel name as shown on the permit, flush left, up to 20 characters.

3. IRCS: Enter the vessel's international radio call sign, up to eight characters.

4. Permit number: Enter the current permit number (without hyphens).

5. Month/Day: Enter the month and day on which the weekly reporting period ended. A reporting period begins on Sunday at 0001 hours GMT (except during the first week of each year when it begins on January 1) and ends on Saturday at 2400 hours, GMT (except during the last week of each year when it ends on December 31).

For example, for the report period ending on Saturday, April 9, 1983 enter: 0409.

6. Area code: Enter the code from Appendix C to this subpart, for each area in which the vessel fished during the reporting period.

7. Days fished: Enter the number of days during which fishing gear was placed in the water in each fishing area during the reporting period.

8. Species: Enter the code from Appendix D to this subpart for each allocated species caught during the reporting period and the code for each prohibited species caught as required by the fishery in which the FFV is engaged (see Subparts C through G of this part).

9. Catch: Enter the round weight, to the nearest tenth of a metric ton (0.1 mt) by species and area of allocated species caught or received from catching vessels during the reporting period, regardless of whether retained or discarded, and the catch of prohibited species as required by the fishery in which the FFV is engaged (see Subparts C through G of this part). Entries for catch weights (disposition "C" or "M") must be based on the most accurate method available to the vessel, either scale round weights or factory weights converted to round weights. Entries for catch weights of discarded fish (disposition "D") must be based on the most accurate method available, either scale round weight estimated deck weights or number, as required by the fishery.

10. Designated representative: Enter the name of the designated representative who is responsible for submitting reports for the foreign nation.

11. Date: Enter the date the report is submitted to the NMFS by the designated representative.

B. Telex Reports

1. To ensure receipt of the Weekly Catch Report on time, Telex reports may be used. If a Telex report is submitted, a completed copy of the report form must be mailed as confirmation. Designated representatives may include several vessel reports in one Telex message, provided it is submitted on a vessel-by-vessel basis.

2. Reports submitted by Telex must contain the message identifier "CATREP" as the first group of the text to indicate that the information which follows constitutes a Weekly Catch Report. Data should be submitted as follows:

Vessel name/IRCS/Permit number/Date//
Area/Days fished//
Species/Catch//Species/Catch/etc.//
Area/Days fished//
Species/Catch//Species/Catch/etc.//

C. Example

1. The stern trawler NAVIS, permit number LT–83–0001–A, entered the fishery conservation zone on Sunday, March 13, 1983, began fishing in the Yakutat area (code 64) of the Gulf of Alaska on March 15, and continued fishing in that area the morning of March 16. The afternoon of March 16 the vessel shifted to the Kodiak area (code 63), began fishing that evening, and continued fishing through Saturday, March 19, 1983. (Note that March 16 counts as a day fished in both area 64 and area 63). In the Yakutat area the vessel caught 121.6 tons of pollock (code 701), 17.8 tons of Pacific ocean perch (code 780), and 8.0 tons of Atka mackerel (code 207). In the Kodiak area the vessel caught 23.4 tons of pollock, 23.7 tons of Pacific ocean perch, 86.4 tons of Atka mackerel, and 0.4 tons of sablefish (code 703).

2. The text of the Telex report would appear as follows:

CATREP
NAVIS/LTUX/LT830001A/0319//
64/2//
701/121.6//780/17.8//207/8.0//
63/4//
701/23.4//780/23.7//207/86.4//703/0.4//

3. The completed form would appear as follows:

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 3/31/86

WEEKLY CATCH REPORT

Page _____ of _____

VESSEL NAME

//////////////////////

PERMIT NUMBER | IRCS | MONTH/DAY

//////////// | /////// | /////

AREA CODES	DAYS FISHED	SPECIES CODES												

DESIGNATED REPRESENTATIVE _____ DATE _____

Figure 1. to Appendix F

Appendix G to Subpart A—Weekly Joint Venture Receipts Report

A. Report Form Entries

1. Page numbering, vessel name, IRCS, permit number, month/day, area code, designated representative, and date must be entered in accordance with the instructions for the Weekly Catch Report contained in Appendix G paragraphs A, 1–6, 10 and 11.

2. Vessels delivering (V): Enter the number of U.S. vessels which transferred codends in each area during the reporting period.

3. Codends received (T): Enter the number of codends received from U.S. vessels which were caught in that area.

4. Species: Enter the code from Appendix D to this subpart for each authorized or prohibited species or species group received during the reporting period.

5. Amounts received: Enter the round weight, to the nearest tenth of a metric ton (0.1 mt), by species and area, of species received from vessels of the U.S. during the reporting period and as required by the regulations of the fishery in which the FFV is engaged (see Subparts C through G). After the amount, enter the code to indicate the final disposition of the catch: C–processed, frozen, eaten by the crew or otherwise used for human consumption, whether or not, part of the catch went to fishmeal or oil; M–fishmeal; D–discarded; or R–returned to the U.S. vessel, when allowed by the fishery in which the FFV is engaged. Entries for receipt weights (disposition "C" or "M") must be based on the most accurate method available to the vessel, either scale round weights or factory weights converted to round weights. Entries for discards or returns (disposition "D" or "R") must be based on the most accurate method available to the vessel, either scale round weight, estimated deck weight, or number required by the fishery.

6. Participating vessels: Enter the names of U.S. vessels transferring codends to the FFV during the reporting period.

B. Telex Reports

1. To ensure receipt of the Weekly Joint Venture Receipts Report on time, Telex reports may be used. If a Telex report is submitted, a completed copy of the form must be mailed as confirmation. Designated representatives may include several vessel reports in one Telex message, provided it is submitted on a vessel-by-vessel basis.

2. Reports submitted by Telex must contain the message identifier "RECREP" as the first group of the text to indicate that the information which follows constitutes a Weekly Joint Venture Receipt Report. Data should be submitted as follows:

Vessel name/IRCS/Permit number/Date//
Area//
Species/Amount received—Disposition/
Species/Amount received—
Disposition//etc.//
Number of vessels transferring codends//
Codends transferred//
Area//
Species/Amount received—Disposition//
Species//Amount received—
Disposition//etc.//
Number of vessels transferring codends//
Codends transferred//
Name of participating vessel//Name of
participating vessel//etc.//

C. Example

1. The stern trawler NAVIS, LTUX, operating under permit number LT–83–0001–A which authorizes the receipt of U.S. harvested Pacific whiting and other associated species in the Pacific coast groundfish fishery, received 26 codends from the U.S. vessels LUCKY, MARY J, EMILY J, and LINDA C in the Columbia area (Code 71) during the week of June 5–11, 1983, the following species and amounts: Pacific hake (code 704), 156.3 mt; rockfishes (code 849), 0.2 mt; jack mackerel (code 208), 27.0 mt; and other species (code 499), 5.0 mt (of which 0.1 mt was retained and 4.9 mt were discarded). The codends also contained 25 salmon, a prohibited species required to be logged by number in the Pacific groundfish fishery (see § 611.70(j)).

2. The text of the Telex report would appear as follows:

RECREP
NAVIS/LTUX/LT830001A/0611//71//
704/156.3C//849/0.2C//208/27.0C//499/
0.1C//499/4.9D//210/25D//V4//T26//
LUCKY
MARY J//EMILY J//LINDA C//

The completed form would appear as follows:

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 3/31/86

WEEKLY JOINT VENTURE RECEIPTS REPORT

Page____of____

VESSEL NAME

//////////////////////

PERMIT NUMBER //////////

IRCS /////////

MONTH/DAY /////

AREA CODE	VSLS DEL(V)	CODENDS REC(T)	SPECIES CODES										

PARTICIPATING VESSELS

_____ _____ _____
_____ _____ _____
_____ _____ _____
_____ _____ _____

DESIGNATED REPRESENTATIVE _____ DATE _____

Figure 1. to Appendix G

Appendix H to Subpart A—Weekly Marine Mammal Report

A. Report Form Entries

1. Page numbering, vessel name, IRCS, permit number, designated representative, and date must be entered in accordance with the instructions for the Weekly Catch Report contained in Appendix G, paragraphs A 1–4, 10, and 11.

2. For each mammal caught enter—

a. Date caught. Enter the month and day e.g., for May 6, 1980, enter: 0506;

b. Latitude and longitude to the nearest degree;

c. Species code from Appendix D to this subpart;

d. Status code as follows: 1—Killed during capture; 2—Injured during capture; 3—Dead before capture (decomposed); and 4—Uninjured; and

e. Number of mammals caught where two or more of the same species and status were caught together.

f. Flag or nation of registry of vessel that caught the marine mammal.

B. Telex Reports

1. To ensure receipt of the Weekly Marine Mammal Report on time, Telex reports may be used. If a Telex report is submitted, a completed copy of the report form must be mailed as confirmation. Designated representatives may include several vessel reports in one Telex message provided it is submitted on a vessel-by-vessel basis.

2. Reports submitted by Telex must contain the message identified "MAMREP" as the first group of the text to indicate that the information which follows constitutes a Weekly Marine Mammal Report. Data should be submitted as follows:

Vessel name/IRCS/Permit number//
Date/Latitude/Longitude/Species/Condition/
Flag of vessel catching mammal//
Date/Latitude/Longitude/Species/Condition/
Flag of vessel catching mammal//.

C. Example

1. The stern trawler NAVIS, LTUX, permit number LT–83–0001–A, began fishing in the Bering Sea Area 52 on April 27, 1983. No

marine mammals were taken incidental to fishing activities until May 15 when two harbor seals (code 967) were taken at 56°10' N., 171°25' W. longitude. One was killed during retrieval of the trawl and the other was uninjured. On May 17, at 56°35' N. latitude, 171°40' W. longitude, a northern sea lion (code 955) was injured during capture by a U.S. vessel delivering its catch to the NAVIS.

2. The text of the Telex report would appear as follows:

MAMREP
NAVIS/LTUX/LT30001A//
0515/56N/171W/967/1/1/LT//
0515/56N/171W/967/4/1/LT//
0517/57N/172W/955/2/1/US//

3. The completed form would appear as follows:

OMB CONTROL NO. 0648-0075
EXPIRATION DATE 3/31/86

WEEKLY MARINE MAMMAL REPORT

Page____ of____

VESSEL NAME

/ /

PERMIT NUMBER / / / / / / / / / /

IRCS / / / / / / /

MONTH/DAY / / / / /

CONDITION CODES
1. KILLED DURING CAPTURE
2. INJURED DURING CAPTURE
3. DEAD BEFORE CAPTURE (DECOMPOSED)
4. UNINJURED

RECORD THE CATCH OF INDIVIDUAL ANIMALS UNLESS TWO OR MORE WERE TAKEN TOGETHER AND WERE IN THE SAME CONDITION

DATE (MM/DD)	LATITUDE (DEGREES)	LONGITUDE (DEGREE)	SPECIES CODE	STATUS CODE	NUMBER	FLAG

DESIGNATED REPRESENTATIVE _____ DATE _____

Figure 1. to Appendix H

Appendix I to Subpart A—Daily Fishing Log

A. Format

1. The log must contain entries for each day of fishing. Only one day's entries may be made on each page of the log.

2. Each page must be divided into three sections. The sections must include:

(a) Section One: Vessel particulars and fishing effort.

(b) Section Two: Catch statistics.

(c) Section Three: Production statistics.

3. Each log must contain a cover page with the vessel name, IRCS, and permit number.

B. Format Entries

1. Section One—Effort:

(a) Date: Enter the date based on GMT on which the catch was taken.

(b) Vessel name: Enter name.

(c) IRCS: Enter international radio call sign or other vessel identification as required by 50 CFR 611.5(a)(2).

(d) U.S. permit number: Enter vessel's permit number.

(e) Noon position: Enter the vessel's geographic coordinates (latitude/longitude to the nearest 0.1 of a minute) at noon (1200 hours) GMT.

(f) Noon weather: Enter the observed weather (optional).

(g) Master: Enter master's signature.

(h) Trawl or set number: Enter consecutive numbers for each trawl or set made that day.

(i) Fishing area number: Enter the code number (from Appendix C to this subpart) of the fishing area where each trawl or set was made.

(j) Gear type: Enter the abbreviation for type of gear used as described below.

Gear type	Standard abbreviation
Bottom otter trawl (side)	OTB-1
Bottom otter trawl (stern)	OTB-2
Off-bottom otter trawl (see § 611.50(c)(5) for definition of this gear)	OTB-3
Midwater otter trawl (side)	OTM-1
Midwater otter trawl (stern)	OTM-2
Bottom pair trawl	PTB
Midwater pair trawl	PTM
Purse seine	PS
Gillnets (set)	GNS
Gillnets (drift)	GND
Gillnets (fixed)	GNF
Longlines (set)	LLS
Longlines (drift)	LLD
Traps or Pots	FIX
Danish seine	DS
Miscellaneous gears (other than above)	MLS

(k) Set time: Enter the time based on GMT at which each set or trawl began. For trawls this should be the time of the net first reaches the fishing level and the winches stop paying out cable. For vessels using fixed gear this should be the time the set is started.

(l) Set position: Enter the geographic coordinates (latitude/longitude) where each trawl or set began. For longline and gillnet vessels, this would be the position where the first section of gear is set.

(m) Course of set: Enter the vessel's course (degrees true) when each trawl or set began.

(n) Sea depth: Enter the average sea depth in meters.

(o) Depth of set: Enter the average depth in meters at which the gear was set or towed.

(p) Duration of set: Enter the elapsed time in minutes of each set or trawl.

(q) Hauling time: Enter the ending time based on GMT when each trawl or set was hauled. For trawlers this should be the time the net begins to be hauled up. For vessels using fixed gear, this should be the time that retrieval of fixed gear is complete.

(r) Hauling position: Enter the geographic coordinates (latitude/longitude) at which the set or trawl was hauled. For longline and gillnet vessels this would be the position of the last section or end of the gear.

(s) No. of pots or longline units: For longline or gillnet, enter the number of longline or gillnet units (specify the length in fathoms per unit). For pot vessels, enter the number of pots set.

(t) No. of hooks per longline unit: Enter the number of hooks per unit of groundline.

(u) Trawl speed: For trawlers, enter the average speed to the nearest tenth of a knot at which the gear was towed.

(v) Net mesh size: Enter the millimeter mesh size of the cod end (trawlers) or gillnet (measured when wet after stretching, from the inside of one knot to the inside of the opposing knot).

2. Section Two—Catch:

(a) Species: Enter the species code for each species caught for which there is an applicable national allocation, even if the fish are discarded. Use the appropriate species code from Appendix D to this subpart.

(b) Set/trawl number: Enter the number corresponding with sets or trawls listed in Section One.

(c) Catch: Enter the estimated catch by species and by trawl or set, to the nearest tenth of a metric ton (0.1 mt) round weight. Enter zero (0) if there was no catch of a listed species.

(d) Daily disposition: For each species, specify the daily disposition as follows: Enter under "C" the round weight of fish consumed on board and for fish which are frozen in whole or in part or otherwise processed other than for fishmeal; enter under "M" the weight of whole fish which are processed for fishmeal or oil; and enter under "D" the round weight of whole fish which are discarded. The entries under "C" must be for round weight even though some part of the fish is used for fishmeal or oil.

(e) Daily total: Enter the total daily catch by species, to the nearest 0.1 mt round weight.

(f) Cumulative total: Enter the cumulative total catch by species, to the nearest 0.1 mt round weight.

(g) Total catch:

(1) Daily total: Enter the daily total for all species to the nearest 0.1 mt round weight for each category of disposition (C, M, and D).

(2) Cumulative total: Enter the cumulative total for all species to the nearest 0.1 mt round weight for each category of disposition (C, M, and D).

(h) Prohibited species: Enter the species code, the number of individual animals or parts, or the round weight to the nearest 0.1 mt of all prohibited species discarded from each set or trawl as required by the fishery in which the FFV is engaged (See Subparts C through G of this subpart). Enter the daily and cumulative total for each prohibited species.

(i) Marine mammals: Enter the species code from Appendix D to this subpart, number of animals involved, and condition code (1-Killed during capture; 2-Injured during capture; 3-Dead before capture (decomposed); and 4-Uninjured) for each incident.

3. Section Three—Production:

(a) Species: Enter the species code from Appendix D to this subpart for each species caught for which there is a national allocation.

(b) Products: Enter the product code from Appendix E to this subpart for each frozen or canned product produced.

(c) PRR %: Enter the product recovery rate (PRR) to the nearest percentage (example: 27%) for each type of product per species. This is a ratio expressed as a percentage of the weight of processed product divided by the round weight of fish used to produce that amount of product.

(d) Daily total: Enter the daily total of catch product produced per species to the nearest hundredth of a metric ton (0.01 mt).

(e) Cumulative total: Enter the cumulative total of each product produced per species to the nearest hundredth of a metric ton (0.01 mt).

(f) Amount transferred: Enter the cumulative total of each product per species transferred off the vessel either inside or outside of the FCZ (including products delivered to a port by the fishing vessel) to the nearest 0.01 mt.

(g) Balance: Enter the cumulative total of each product per species aboard the vessel to the nearest 0.01 mt.

(h) Total frozen product: Enter the total for all entiresspecies to the nearest 0.01 mt of the daily total, cumulative total, amount transferred, and quantity remaining onboard.

(i) Meal and Oil:

(1) Daily total: Enter the daily total produced to the nearest 0.01 mt.

(2) Cumulative total: Enter the cumulative total produced to the nearest 0.01 mt.

(3) Amount transferred: Enter the cumulative total transferred to the nearest 0.01 mt.

(4) Balance: Enter the cumulative total aboard the vessel to the nearest 0.01 mt.

BILLING CODE 3510-22-M

OMB CONTROL NO. 0648-
EXPIRATION DATE

DAILY FISHING LOG

SECTION ONE - EFFORT

PAGE NO	DATE Year Month Day	VESSEL NAME	IRCS	U.S. PERMIT NUMBER	NOON POSITION Latitude Longitude	NOON WEATHER	WIND DIRECTION FORCE	WEATHER	BARO-METER	SEA CONDITION	AIR WATER TEMPERATURE	MASTER

TRAWL OR SET NO	FISHING AREA NO	GEAR TYPE	SET TIME (G.M.T.)	SET POSITION	COURSE OF SET	SEA DEPTH (METERS)	DEPTH OF SET (METERS)	DURATION OF SET (MINUTES)	HAULING TIME (G.M.T.)	HAULING POSITION	NO. OF POTS OR LONGLINE UNITS	NO. OF HOOKS PER LONGLINE UNIT	TRAWL SPEED	TRAWL MESH SIZE COD END

REMARKS

U.S. INSPECTION

OFFICER: DATE:

REMARKS:

SECTION TWO - CATCH

SPECIES / SET - TRAWL NO															TOTAL CATCH DAILY TOTAL	TOTAL CATCH CUM. TOTAL
DAILY DISPOSITION	C															
	M															
	D															
DAILY TOTAL																
CUMULATIVE TOTAL																

PROHIBITED SPECIES

DAILY TOTAL

CUMULATIVE TOTAL

MARINE MAMMALS

SPECIES CODE	NUMBER	STATUS CODE

SECTION THREE - PRODUCTION

SPECIES / PRODUCT	FROZEN PRODUCT																			TOTAL FROZEN PRODUCT
PRN'S																				
DAILY TOTAL																				
CUMULATIVE TOTAL																				
AMOUNT TRANSFERRED																				
BALANCE																				

MEAL AND OIL	MEAL	OIL
DAILY TOTAL		
CUM TOTAL		
AMOUNT TRANSFERRED		
BALANCE		

Figure 1. to Appendix I: Daily Fishing Log.

BILLING CODE 3510-22-C

Appendix J to Subpart A—Daily Consolidated Log

A. Format

1. The log must contain entries for each day of fishing. Only one day's entries may be made on each page of the log.

2. Each page must be divided into three sections. The sections must include:

(a) Section One: Vessel particulars and fishing effort.

(b) Section Two: Catch statistics.

(c) Section Three: Production statistics.

3. Each log must contain a cover page with the vessel name, IRCS, and permit number.

B. Form Entries

1. Section One—Effort:

(a) Date: Enter the date based on GMT on which the catch was taken.

(b) Vessel name: Enter name.

(c) IRCS: Enter international radio call sign.

(d) U.S. permit number: Enter vessel's permit number.

(e) Noon position: Enter the vessel's geographic coordinates (latitude/longitide) at noon (1200 hours) GMT.

(f) Noon weather: Enter the observed weather (optional).

(g) Master: Enter master's signature.

2. Section Two—Catch:

(a) Vessel/IRCS: Enter the name of the foreign catching vessel transferring codends to the foreign processing vessel and its IRCS or other required vessel identification.

(b) Species: Enter the species code for each species caught for which there is an applicable national allocation, even if the fish are discarded. Use the appropriate species code from Appendix D to this subpart.

(c) Fishing area: Enter the fishing area, using the code from Appendix C to this subpart, where the fish were caught. If a catching vessel catches fish in more than one area, a separate line entry must be made for each area.

(d) Catch: Enter the catch by species of each catching vessel in that area during the day, to the nearest tenth of a metric ton (0.1 mt) round weight. Enter zero (0) if there was no catch of a listed species).

(e) Daily disposition: For each species, specify the daily disposition as follows: Enter under "C" the round weight of fish consumed on board and for fish which are frozen in whole or in part or otherwise processed other than for fishmeal or oil; enter under "M" the round weight of whole fish which are processed for fishmeal or oil; enter under "D" the round weight of whole fish which are discarded. The entries under "C" must be for round weight even though some part of the fish is used for fishmeal or oil.

(f) Daily total: Enter the total daily catch by species, to the nearest 0.1 mt round weight.

(g) Cumulative total: Enter the cumulative total catch by species, to the nearest 0.1 mt round weight.

(h) Total catch:

(1) Daily total: Enter the daily total for all species to the nearest 0.1 mt round weight for each category of disposition (C, M, and D).

(2) Cumulative total: Enter the cumulative total of all species to the nearest 0.1 mt round weight for each category of disposition (C, M, and D).

(i) Prohibited species: Enter the species code, the number of individual animals or parts, or the round weight to the nearest 0.1 mt of prohibited species received from each harvesting vessel as required by the fishery in which the FFV is engaged. Enter the daily and cumulative total for each prohibited species.

(j) Marine mammals: Enter the species code from Appendix D to this subpart, number of animals involved, and condition code (1-killed during capture; 2-Injured during capture; 3-Dead before capture (decomposed); and; 4-Uninjured) for each incident.

3. Section Three—Production:

(a) Species: Enter the species code from Appendix D to this subpart for each species caught for which there is a national allocation.

(b) Products: Enter the product code from Appendix E to this subpart for each frozen or canned product produced.

(c) PRR %: Enter the product recovery rate (PRR) to the nearest percentage (example: 27%) for each type of product per species. This is a ratio expressed as a percentage of the weight of processed product divided by the round weight of fish used to produce that amount of product.

(d) Daily total: Enter the daily total of catch product produced per species to the nearest hundredth of a metric ton (0.01 mt).

(e) Cumulative total: Enter the cumulative total of each product produced per species to the nearest hundredth of a metric ton (0.01 mt).

(f) Amount transferred: Enter the cumulative total of each product per species transferred off the vessel either inside or outside of the FCZ (including products delivered to a port by the fishing vessel) to the nearest 0.01 mt.

(g) Balance: Enter the cumulative total of each product per species aboard the vessel to the nearest 0.01 mt.

(h) Total frozen product: Enter the total for all species to the nearest 0.01 mt of the daily total, cumulative total, amount transferred, and quantity remaining onboard.

(i) Meal and Oil:

(1) Daily total: Enter the daily total produced to the nearest 0.01 mt.

(2) Cumulative total: Enter the cumulative total produced to the nearest 0.01 mt.

(3) Amount transferred: Enter the cumulative total transferred to the nearest 0.01 mt.

(4) Balance: Enter the cumulative total aboard the vessel to the nearest 0.01 mt.

BILLING CODE 3510-22-M

OMB CONTROL NO. 0648-
EXPIRATION DATE

DAILY CONSOLIDATED LOG

SECTION ONE - EFFORT

PAGE NO.	DATE Year-Month-Day	VESSEL NAME	IRCS	U.S. PERMIT NUMBER	NOON POSITION Latitude	Longitude	NOON WEATHER	WIND DIRECTION / FORCE	WEATHER	BAROMETER	SEA CONDITION	AIR / WATER TEMPERATURE	MASTER

SECTION TWO - CATCH

VESSEL / IRCS	SPECIES / AREA															PROHIBITED SPECIES				MARINE MAMMALS		
																				SPECIES CODE	NUMBER	STATUS CODE

Appendix K to Subpart A—Daily Joint Venture Log

A. Format

1. The log must contain entries for each day of fishing. Only one day's entries may be made on each page of the log.

2. Each page must be divided into three sections. The sections must include:

(a) Section One: Vessel particulars and fishing effort.

(b) Section Two: Catch statistics.

(c) Section Three: Production statistics.

3. Each log must contain a cover page with the vessel name, IRCS, and permit number.

B. Form Entries

1. Section One—Effort:

(a) Date: Enter the date based on GMT on which the catch was taken.

(b) Vessel name: Enter name.

(c) IRCS: Enter international radio call sign.

(d) U.S. permit number: Enter vessel's permit number.

(e) Noon position: Enter the vessel's geographic coordinates (latitude/longitude) at noon (1200 hours) GMT.

(f) Noon weather: Enter the observed weather (optional).

(g) Master: Enter master's signature.

(h) Codend No.: Enter consective numbers for each codend received that day.

(i) Vessel: Enter the name of the U.S. fishing vessel the codend was received from.

(j) Fishing area number: Enter the code number (from Appendix C to this subpart) of the fishing area in which the fish were caught.

(k) Receipt time: Enter the time based on GMT when the codend was received.

(l) Receipt position: Enter the geographic coordinates (Latitude/longitude) where the codend was received.

2. Section Two—Catch:

(a) Species: Enter the species code for each species received which the FFV is authorized to retain, even if the fish are discarded. Use the appropriate species code from Appendix D to this subpart. Use another column for the same species if there is more than one disposition of the receipt. (See paragraph (d) below).

(b) Codend No.: Enter the number corresponding with the receipts listed in Section One.

(c) Catch: Enter the estimated receipts in each codend by species, disposition, and receipt, to the nearest tenth of a metric ton (0.1 mt) round weight. Disposition is indicated by adding a letter code as described in paragraph (f) below. Enter zero (0) if there was no catch of a listed species.

(d) Daily Disposition: For each species, specify the disposition as follows: Enter under "C" the round weight the fish consumed on board and for fish which are frozen in whole or in part or otherwise processed other than for fishmeal or oil; enter under "M" the round weight of whole fish which are processed for fishmeal or oil; enter under "D" the round weight of fish which are discarded; and enter "R" for the round weight of fish returned to the U.S. vessel, if allowed in the fishery. The entries under "C" must be for round weight even though some part of the fish is used for fishmeal or oil.

(e) Daily total: Enter the total daily catch by species, to the nearest 0.1 mt round weight.

(f) Cumulative total: Enter the cumulative total catch by species, to the nearest 0.1 mt round weight.

(g) Total catch:

(1) Daily total: Enter the daily total for all species to the nearest 0.1 mt round weight for each category of disposition (C, M, D, and R).

(2) Cumulative total: Enter the cumulative total for all speices to the nearest 0.1 mt round weight for each category of disposition (C, M, D, and R).

(h) Prohibited species: Enter the species code, the number of individual animals or parts, or the round weight to the nearest 0.1 mt of all prohibited species received from each harvesting vessel, as required by the fishery in which the FFV is engaged. Enter the daily and cumulative total for each prohibited species.

(i) Marine mammals: Enter the species code from Appendix D to this subpart, number of animals involved, and condition code (1-killed during capture; 2-Injured during capture; 3-Dead before capture (decomposed); and 4-Uninjured) for each incident and harvesting vessel.

3. Section Three—Production:

(a) Species: Enter the species code from Appendix D to this subpart which the FFV is authorized to retain.

(b) Products: Enter the product code from Appendix E to this subpart for each frozen or canned product produced.

(c) PRR %: Enter the product recovery rate (PRR) to the nearest percentage (example: 27%) for each type of product per species. This is a ratio expressed as a percentage of the weight of processed product divided by the round weight of fish used to produce that amount of product.

(d) Daily total: Enter the daily total of product produced per species to the nearest hundredth of a metric ton (0.01 mt).

(e) Cumulative total: Enter the cumulative total of each product produced per species to the nearest hundredth of a metric ton (0.01 mt).

(f) Amount transferred: Enter the cumulative total of each product per species transferred off the vessel either inside or outside of the FCZ (including product delivered to a port by the fishing vessel) to the nearest 0.01 mt.

(g) Balance: Enter the cumulative total of each product per species aboard the vessel to the nearest 0.01 mt.

(h) Total frozen product: Enter the total for all species to the nearest 0.01 mt of the daily total, cumulative total, amount transferred, and quantity remaining onboard.

(i) Meal and Oil:

(1) Daily total: Enter the daily total produced to the nearest 0.01 mt.

(2) Cumulative total: Enter the cumulative total produced to the nearest 0.01 mt.

(3) Amount transferred: Enter the cumulative total transferred to the nearest 0.01 mt.

(4) Balance: enter the cumulative total aboard the vessel to the nearest 0.01 mt.

BILLING CODE 3510-22-M

OMB CONTROL NO. 0648-
EXPIRATION DATE

DAILY JOINT VENTURE LOG

SECTION ONE - EFFORT

PAGE NO	DATE Year Month-Day	VESSEL NAME	IRCS	U.S. PERMIT NUMBER	NOON POSITION Latitude Longitude	NOON WEATHER	WIND DIRECTION/FORCE	WEATHER	BAROMETER	SEA CONDITION	AIR-WATER TEMPERATURE	MASTER

COD END NO	VESSEL NAME	FISHING AREA NO	RECEIPT TIME (G.M.T.)	RECEIPT POSITION

REMARKS

U.S. INSPECTION

OFFICER: DATE:

REMARKS:

SECTION TWO - CATCH

SPECIES / COD END NO																PROHIBITED SPECIES				MARINE MAMMALS		
																				SPECIES CODE	NUMBER	STATUS CODE
																TOTAL CATCH						
																DAILY TOTAL	CUM TOTAL					
DAILY DISPOSITION	C																					
	M																					
	D																					
DAILY TOTAL																						
CUMULATIVE TOTAL																						

DAILY TOTAL

CUMULATIVE TOTAL

SECTION THREE - PRODUCTION

SPECIES / PRODUCT	FROZEN PRODUCT																				TOTAL FROZEN PRODUCT	MEAL AND OIL		
																							MEAL	OIL
PRR %																						DAILY TOTAL		
DAILY TOTAL																						CUM TOTAL		
CUMULATIVE TOTAL																						AMOUNT TRANSFERRED		
AMOUNT TRANSFERRED																						BALANCE		
BALANCE																								

Figure 1. to Appendix K: Daily Joint Venture Log.

BILLING CODE 3510-22-C

Subpart B—Surpluses

§ 611.20 Total allowable level of foreign fishing (TALFF).

(a) The TALFF, if any, with respect to any fishery subject to the exclusive fishery management authority of the United States, is that portion of the optimum yield (OY) of such fishery which will not be caught by vessels of the United States.

(b) Each specification of OY and each assessment of the anticipated U.S. harvest will be reviewed during each fishing season. Adjustments to TALFF's will be made based on updated information relating to status of stocks, estimated and actual performance of domestic and foreign fleets, and other relevant factors.

(c) Specifications of OY and the initial estimates of U.S. harvests and TALFF's at the beginning of the relevant fishing year will be published in the **Federal Register**. Adjustments to those numbers will be published as notices in the **Federal Register** upon occasion or as directed by regulations implementing fishery management plans. For current apportionments, contract the appropriate Regional Director of the Office of Fisheries Management, F/MI, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C. 20235.

§ 611.21 Allocations.

The Secretary of State, in cooperation with the Secretary, determines the allocation among foreign nations of fish species and species groups. The Secretary of State officially notifies each foreign nation of its allocation. The burden of ascertaining and accurately transmitting current allocations and status of harvest of an applicable allocation to fishing vessels is upon the foreign nation and the owner or operator of the FFV.

§ 611.22 Fee schedule.

(a) *Permit application fees.* Each vessel permit application submitted under § 611.3 must be accompanied by a fee of $73 per vessel, plus the surcharge required under paragraph (b) of this section, rounded to the nearest dollar. At the time the application is submitted to the Department of State, a check for the fees, drawn on a U.S. bank, made out to "Department of Commerce, NOAA", must be sent to Division Chief, Permits and Regulations Division, F/M12, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC 20235. The permit fee payment must be accompanied by a list of the vessel applications for which payment is made.

(b) *Poundage fees.*—(1) *Rates.* If a nation chooses to accept an allocation, poundage fees must be paid at the rate specified in Table 1, plus the surcharge required by paragraph (b) of this section.

TABLE 1. TO §611.22
SPECIES AND POUNDAGE FEE

(Dollars Per Metric Ton, Unless Otherwise Noted)

	Species	Poundage
1.	Butterfish	156
2.	Hake, red	29
3.	Hake, silver	31
4.	Herring, river	28
5.	Mackerel, river	25
6.	Other finfish (Atlantic)	146
7.	Sharks (Atlantic)	66
8.	Squid, Illex	60
9.	Squid, Loligo	134
10.	Shrimp, royal red	(reserved)
11.	Atka mackerel	42
12.	Cod, Pacific	66
13.a.	Flatfish (Bering Sea and Aleutian Is.)	30
13.b.	Flatfish (Gulf of Alaska)	59
14.	Flounders (Pacific)	59
15.	Jack mackerel	15
16.	Pacific ocean perch	89
17.	Other groundfish (Alaska)	62
18.	Other fish (Pacific)	49
19.	Pollock, Alaska	28
20.	Sablefish (Alaska)	148
21.	Sablefish (Pacific)	157
22.	Rockfish	68
23.	Snails	40
24.	Squid (Pacific)	23
25.	Whiting, Pacific	14
26.	Western Pacific corals (per kilogram)	79
27.	Seamount groundfish	31
28.	Dolphinfish (mahi mahi)	312
29.	Wahoo	312
30.	Sharks (Pacific)	156
31.	Swordfish (Pacific)	366
32.	Striped marlin (Pacific)	585
33.	Other Pacific billfish	234

(2) *Method of payment of poundage fees, surcharges and observer fees.* If a nation chooses to accept an allocation, a letter of credit (L/C) must be established and maintained to cover the poundage fees for at least 25 percent of the previous year's total allocations at the rate in paragraph (b)(1) of this section, or as determined by the Assistant Administrator, plus the surcharges

required by paragraph (c) of this section. The L/C must—

(i) Revolve five times;

(ii) Be irrevocable;

(iii) Be with a bank subscribing to ICC Pub. 290;

(iv) Designate "Department of Commerce, NOAA" as beneficiary;

(vi) Allow partial withdrawals; and

(vii) Be confirmed by a U.S. bank.

The customer must pay all commissions, TELEX, and service charges. No fishing will be allowed until the letter of credit is established, and authorized written notice of its issuance is provided to the Assistant Administrator at the address in paragraph (a) of this section.

(3) *Assessment of poundage fees.* Poundage fees will be assessed quarterly for the actual catch during January through March, April through June, July through September, and October through December. The appropriate Regional Director will reconcile catch figures with each country following the procedures of § 611.13(d). When the catch figures are agreed upon, NOAA will present a bill for collection as the documentary demand for payment to the confirming bank. If, after 45 days from the end of the quarter, catches have not been reconciled, the estimate of the Regional Director will stand and a bill will be issued for that amount. If necessary, the catch figures may be refined by the Regional Director during the next 60 days, and any modifications will be reflected in the next quarter's bill.

(c) *Surcharges.* The owner or operator of each foreign vessel who accepts and pays permit application or poundage fees under paragraphs (a) or (b) of this section must also pay a surcharge equal to four percent of those fees. The Assistant Administrator may reduce or waive the surcharge if it is determined that the Fishing Vessel and Gear Damage Compensation Fund is capitalized sufficiently. The Assistant Administrator also may increase the surcharge during the year to a maximum level of 20 percent, if needed to maintain capitalization of the fund.

(d) *Observer fees.* The Assistant Administrator will notify the owners or operators of FFV's of the estimated annual costs of placing observers aboard their vessels. The owners or operators of any such vessel must provide for repayment of those costs by including one-fourth of the estimated annual observer fee as determined by the Assistant Administrator in a letter of credit as prescribed in § 611.22(b)(2). During the fiscal year, payment will be withdrawn from the letter of credit as required to cover anticipated observer coverage for the upcoming fishery. The Assistant Administrator will reconcile any differences between the estimated cost and actual costs of observer coverage within 90 days after the end of the fiscal year.

(e) *Financial assurances.* A foreign nation, or the owners and operators of certain vessels of that foreign nation, may be required by the Secretary to provide financial assurances. Such assurances may be required if—

(1) Civil and criminal penalties assessed against fishing vessels of the nation have not effectively deterred violations;

(2) Vessels of that nation have engaged in fishing in the FCZ without proper authorization to conduct such activities;

(3) The nation's vessel owners have refused to answer administrative charges or summons to appear in court; or

(4) Enforcement of Magnuson Act civil or criminal judgments in the courts of a foreign nation is unattainable.

The level of financial assurances will be guided by the level of penalties assessed and costs to the U.S. government.

[FR Doc. 84-33596 Filed 12-27-84; 8:45 am]

BILLING CODE 3510-22-M

federal register

Friday
December 28, 1984

Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions, Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's order 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Government Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Alabama:	
AL84–1033	Nov. 16, 1984.
AL84–1032	Nov. 16, 1984.
Colorado:	
CO82–5127	Nov. 5, 1982.
CO83–5115	July 29, 1983.
Florida: FL83–1058	Aug. 19, 1983.
Missouri:	
MO84–4097	Oct. 5, 1984.
MO84–4062	Oct. 12, 1984.
Montana: MT84–5041	Dec. 14, 1984.
Ohio:	
OH83–5122	Nov. 25, 1983.
OH83–5127	Dec. 23, 1983.
Pennsylvania:	
PA82–3011	Mar. 12, 1982.
PA84–3035	Sept. 21, 1984.
PA82–3012	Mar. 5, 1982.
Utah: UT83–5120	Sept. 30, 1983.
Virginia: VA82–3034	Dec. 3, 1982.
West Virginia: WV83–3022	Nov. 18, 1983.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Arkansas: AR84–4092 (AR84–4111)	Jan. 13, 1984.
Michigan: MI81–2030 (MI84–5043)	June 26, 1981.
Texas: TX84–4005 (TX84–4112)	Feb. 24, 1984.

Signed at Washington, D.C., this 21st day of December 1984.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

DECISION NO. AL84-1033 Mod # 1 (49 FR 45530 - November 16, 1984) Calhoun, Etowah, Green, Jefferson, Pickens, St. Clair, Shelby, Sumter, Talledega, Tuscaloosa, & Walker Cos., Alabama	Basic Hourly Rates	Fringe Benefits
CHANGE:		
IRONWORKERS	$13.67	2.93

DECISION NO. AL84-1032 Mod # 2 (49 FR 45531 - November 16, 1984) Jefferson, Shelby & St. Clair Cos., Alabama	Basic Hourly Rates	Fringe Benefits
CHANGE:		
IRONWORKERS	$13 67	2.93

DECISION NO. MO84-4097 - MOD. #2 (49 FR 39434 - October 5, 1984) Pettis and Saline Counties, Missouri.	Basic Hourly Rates	Fringe Benefits
Change:		
Carpenters (Saline County)		
Carpenters & Lathers	$14.15	2.67
Millwrights & piledrivermen	16.05	2.67
Pipefitters	17.56	3.32

DECISION NO. FL83-1058- MOD. #2 (48 FR 37799-AUGUST 19, 1983) DUVAL COUNTY, FLORIDA	Basic Hourly Rates	Fringe Benefits
ADD:		
SOUND & COMMUNICATIONS INSTALLER		
STARTING	5.38	b
AFTER 3 MONTHS	5.62	b
AFTER 1 YEAR	6.35	b
AFTER 2 YEARS	7.39	b
AFTER 3 YEARS	8.32	b
SOUND & COMMUNICATIONS TECHNICIAN	9.72	b
CHIEF TECHNICIAN	10.72	b
FOOTNOTES:		
b-Paid vacations.		
After 12 months service up to 2 years-1 week		
2 years or more of service up to 8 years-2 weeks		
8 years of service up to 9 years-2 weeks plus 1 day		
9 years of service up to 10 years-2 weeks plus 2 days		
10 years of service up to 11 years-2 weeks plus 3 days		
11 years of service up to 12 years-2 weeks plus 4 days		
12 years or more of service 3 weeks.		

DECISION NO. MO84-4062 - MOD. #2 (49 FR 40149 - October 12, 1984) Boone, Cooper, and Howard Counties, Missouri.	Basic Hourly Rates	Fringe Benefits
Change:		
Carpenters:		
Carpenters & Lathers	13.45	1.58
Millwrights	14.10	1.58
Piledrivers	13.85	1.56

DECISION NO. C082-5127-MOD# 8 (47 FR 50418 - November 5, 1982) Las Animas, Otero and Pueblo Counties, Colorado	Basic Hourly Rates	Fringe Benefits
Change:		
Carpenters	$10.63	3.12

DECISION NO. C082-5127	Basic Hourly Rates	Basic Hourly Rates
Truck Drivers Zone Description:		
Counties Within Zone 1:		
Otero		
Counties Within Zone 2:		
Las Animas and Pueblo		
	ZONE 1	ZONE 2
TRUCK DRIVERS:		
Group 1	12.91	11.65
Group 2	13.01	11.78
Group 3	13.11	11.91
Group 4	13.21	12.03
Group 5	14.81	11.98
Group 6	14.86	12.03
Group 7	14.91	12.10
Group 8	14.96	12.22
Group 9	15.01	12.15
Group 10	15.06	12.22
Group 11	15.16	12.35
Group 12	15.21	12.41
Group 13	15.31	12.53
Group 14	15.46	12.73
Group 15	15.51	12.78
Group 16	15.61	12.90
Group 17	15.71	13.28
Group 18	15.81	13.16
Group 19	15.91	13.23
Group 20	16.11	13.54
FRINGE BENEFITS: $2.94		

Decision NO. C082-5127

TRUCK DRIVERS

Group 1: Pick Up, Truck Driver Tenders, Dumpmen, Washers, Greasemen

Group 2: Dump truck driver to including 6 cubic yard, sweeper truck, Flat rack single axle, and manhaul, shuttle truck or bus Liquid and bulk tankers - single axle

Group 3: Flat rack tandem axle
Battery men, mechanics tenders

Group 4: Fork lift driver

Group 5: Dump truck driver over 6 cubic yards, to and including 14 cubic yards

Group 6: Straddle truck driver, lumber carrier, Liquid and bulk tankers-tandem axle

Group 7: Truck drivers-fuel truck, grease truck, combination fuel and grease

Group 8: Cement mixer - agitator truck to and including 10 cubic yards, Distributor truck driver
Liquid and bulk tankers - semi or combination

Group 9: Multi purpose truck-specialty and hoisting

Group 10: Dump truck driver over 14 cubic yards, to and including 29 cubic yards
Highboy, lowboy, floats, semi
Cab operated distributor truck driver - semi
Liquid and bulk tankers - Euclid - Electric or similar
Truck Driver dumptor type, Youngbuggy, Jumbo and similar type equipment

Group 11: Truck driver, snow plow

Group 12: Cement mixer - agitator truck over 10 cubic yards, to and including 15 cubic yards

Group 13: Dump truck driver over 29 cubic yards, to and including 39 cubic yards

Group 14: Cement mixer - agitator truck over 15 cubic yards

Group 15: Tire man
Dump truck driver over 39 cubic yards, to and including 54 cubic yards

Group 16: Mechanic

Group 17: Dump truck driver over 54 cubic yards, to and including 79 cubic yards

Decision NO. C082-5127

Group 18: Heavy duty diesel mechanic, body men, welders or combination men

Group 19: Dump truck driver over 79 cubic yards, to and including 104 cubic yards

Group 20: Dump truck driver over 104 cubic yards

DECISION NO. CO83-5115-MOD #2
(48 FR 34598 - July 29, 1983)
Delta, Garfield, Gunnison, Mesa, Montrose, and Pitkin Counties, Colorado

OMIT:
Truck Drivers Zone Description, Rates, and Classifications as originally issued.

ADD:
Truck Drivers Zone Descriptions, Wage Rates and Classifications attached.

Change:

	Basic Hourly Rates	Fringe Benefits
Carpenters	10.63	3.12
Ironworkers	15.50	3.53
Operating Engineers		

DECISION NO. CO83-5115-MOD #2

	Basic Hourly Rates	Basic Hourly Rates
	ZONE 1	ZONE 2
POWER EQUIPMENT OPERATORS (Other than for work in Tunnels, Shafts, and Raises:		
Group 1	$11.26	$11.93
Group 2	11.61	12.28
Group 3	11.96	12.63
Group 4	12.11	12.78
Group 5	12.26	12.93
Group 6	12.41	13.08
(For work in Tunnels, Shafts, and Raises):		
Group 1	13.41	14.08
Group 2	13.76	14.43
Group 3	13.86	14.53
Group 4	14.11	14.78
Group 5	14.26	15.33
Group 6	14.66	15.33
Group 7	14.41	15.08

FRINGE BENEFITS:
$3.70

DECISION NO. CO83-5115

TRUCK DRIVERS ZONE DEFINITIONS

COUNTIES WITHIN ZONE 1:

Delta, Garfield, Mesa, Montrose

Legal description of the portion of Montrose County which is included within Zone 1, as follows:
All of Montrose County lying north of the North Line of Ouray County and said North Line extended West to the Township Line between R11W and R12W, said part lying East of said Township Line of the New Mexico Principal Meridian

COUNTIES WITHIN ZONE 2:
Gunnison, Pitkin, Montrose

Legal description of the portion of Montrose County which is included within Zone 2, as follows:
All of Montrose County except that part lying north of the North Line of Ouray County and said North Line extended West of said Township Line between R11W and R12W, said point being East of said Township Line of the New Mexico Principal Meridian

Decision NO. C083-5115

TRUCK DRIVERS

Group 1: Pick Up, Truck Driver Tenders, Dumpmen, Washers, Greasemen

Group 2: Dump truck driver to including 6 cubic yard, sweeper truck, Flat rack single axle, and manhaul, shuttle truck or bus Liquid and bulk tankers - single axle

Group 3: Flat rack tandem axle
Battery men, mechanics tenders

Group 4: Fork lift driver

Group 5: Dump truck driver over 6 cubic yards, to and including 14 cubic yards

Group 6: Straddle truck driver, lumber carrier, Liquid and bulk tankers-tandem axle

Group 7: Truck drivers-fuel truck, grease truck, combination fuel and grease

Group 8: Cement mixer - agitator truck to and including 10 cubic yards, Distributor truck driver
Liquid and bulk tankers - semi or combination

Group 9: Multi purpose truck-specialty and hoisting

Group 10: Dump truck driver over 14 cubic yards, to and including 29 cubic yards
Highboy, lowboy, floats, semi
Cab operated distributor truck driver - semi
Liquid and bulk tankers - Euclid - Electric or similar
Truck Driver dumptor type, Youngbuggy, Jumbo and similar type equipment

Group 11: Truck driver, snow plow

Group 12: Cement mixer - agitator truck over 10 cubic yards, to and including 15 cubic yards

Group 13: Dump truck driver over 29 cubic yards, to and including 39 cubic yards

Group 14: Cement mixer - agitator truck over 15 cubic yards

Group 15: Tire man
Dump truck driver over 39 cubic yards, to and including 54 cubic yards

Group 16: Mechanic

Group 17: Dump truck driver over 54 cubic yards, to and including 79 cubic yards

Decision NO. C083-5115

Group 18: Heavy duty diesel mechanic, body men, welders or combination men

Group 19: Dump truck driver over 79 cubic yards, to and including 104 cubic yards

Group 20: Dump truck driver over 104 cubic yards

DECISION NO. MT84-5041- Mod. #1 (49 FR 48883 - December 14, 1984) Statewide, Montana	Basic Hourly Rates	Fringe Benefits	Basic Hourly Rates	Fringe Benefit
Change:				
IRONWORKERS:				
Area 2	$17.18	4.71		
Add:				
Electricians, Ironworkers, Painters, Plumbers and Sheet Metal Workers: Area Descriptions				

ELECTRICIANS:
Area 1: Beaverhead, Deer Lodge, Granite, Jefferson, Madison, Silver Bow and Powell Counties
Area 2: Big Horn, Carbon, Carter, Dawson, Golden Valley, Musselshell, Powder River, Prairie, Rosebud, Stillwater, Treasure, Wibaux, and Yellowstone Counties
Area 3: Blaine, Chouteau, Daniels, Fergus, Glacier, Hill, Judith-Basin, Liberty, McCone, Petroleum, Pondera, Phillips, Richland, Roosevelt, Sheridan, Teton, Toole, Valley, and Wheatland Counties
Area 4: Broadwater, Lewis and Clark, and Meagher Counties
Area 5: Cascade County
Area 6: Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli, and Sanders Counties
Area 7: Gallatin County
Area 8: Park and Sweet Grass Counties

IRONWORKERS:
Area 1: Beaverhead County, Broadwater County, Deer Lodge County, Gallatin County, Granite County, Jefferson County, Lewis & Clark County (southern half including Wolf Creek), Madison County, Park County, Powell County, Ravalli County, and Silver Bow County
Area 2: Flathead, Glacier, Lake, Lincoln, Mineral, Missoula, and Sanders Counties
Area 3: Remaining Counties (including northern half of Lewis & Clark County)

DECISION NO. MT84-5041 (Cont'd)

AREA DESCRIPTIONS (Cont'd)

PAINTERS:
Area 1: The entire Counties of Beaverhead, Gallatin, Park and Silver Bow. The Northern portion of Jefferson County from a line running East and West (5) miles south of the southern City limits of Boulder, Montana; the south part of Jefferson County from a line running due west from the south limits of Tosten, Montana; the Southern portion of Lewis & Clark County from a line running east and west through the southern limits of Craig, Montana; the Southern portion of Powell County from a line running east and west through the Southern limits of Helmsville, Montana; the west part of Madison County from a line running north and south through the west limits of Harrison, Montana.
Area 2: Big Horn, Carbon, Carter, Custer, Dawson, Fallon, Golden Valley, Musselshell, Powder River, Prairie, Rosebud, Stillwater, Sweetgrass and Treasure Counties; Wheatland County (south of the City of Harlowton); Wilbaux and Yellowstone Counties.
Area 3: Deer Lodge County and the southern part of Granite County from a line east-west through the southern limits of Phillipsburg
Area 4: Cascade County; Chouteau County (south of a line running east and west through the southern limits of Big Sandy); Daniels and Fergus Counties; Glacier County (including Glacier National Park); Garfield and Judith-Basin Counties; Lewis & Clark County (northern portion from a line running east and west through the northern limits of Craig), McCone, Phillips, Pondera, Petroleum, Richland, Roosevelt, Sheridan, Teton, Toole, and Valley Counties; Wheatland County (northern area from a line running east and west through the southern limits of Harlowtown)
Area 5: Blaine, Hill, and Liberty Counties; Chouteau County (north of the southern limits of the City of Big Sandy)
Area 6: Flathead County; Granite County (northern area north of City limits of Phillipsburg); Lake County (southern area including the City of Ronan); Lincoln, Mineral, and Missoula Counties; Powell County (northern area through south limits of Helmsville); Ravalli and Sanders Counties
Area 7: Statewide

PLUMBERS:
Area 1: Flathead, Lake, Lincoln, Mineral, Missoula, and Sanders Counties
Area 2: Blaine, Cascade, Chouteau, Fergus, Glacier, Hill Judith-Basin, Liberty, McCone, Meagher, Phillips, Pondera, Roosevelt, Teton, Toole, and Valley Counties
Area 3: Beaverhead, Broadwater, Deer Lodge, Gallatin, Granite, Jefferson, Lewis & Clark, Madison, Park, Powell, Silver Bow, and Sweet Grass Counties
Area 4: Big Horn, Carbon, Carter, Custer, Daniels, Dawson, Fallon, Garfield, Golden Valley, Musselshell, Petroleum, Powder River, Prairie Richland, Rosebud, Sheridan, Stillwater, Treasure, Wheatland, Wibaux, and Yellowstone Counties

SHEET METAL WORKERS:
Statewide

DECISION NUMBER OH83-5122 - MOD. #9
(48 FR 53254 - November 25, 1983)
Statewide, Ohio

	Basic Hourly Rates	Fringe Benefits
Change:		
Electricians:		
Area 8:		
Up to & Inclu. 18 mi. radius of Hamilton Co. Court House, Cincinnati	$16.00	3½%+ 3.30
Over 18 mi. radius up to & Inclu. 21 mi. radius of Hamilton Co. Court House, Cincinnati	16.30	3½%+ 3.30
Over 21 mi. radius up to & Inclu. 25 mi. radius of Hamilton Co. Court House, Cincinnati	16.40	3½%+ 3.30
Over 25 mi. radius of Hamilton Co. Court House, Cincinnati	16.55	3½%+ 3.30
Plumbers; Steamfitters; & Pipefitters:		
Area 5	16.81	4.23
Area 7	18.80	3.80
Area 13	17.57	7.42
Area Descriptions:		
Area 6: Brown, Clermont, Hamilton & Warren (S 1/3) Cos.		
Area 7: Butler & Warren (N 2/3, N. of Rte. #63, exclu. Lebanon & S. Lebanon) Cos.		

DECISION NUMBER OH83-5127 - MOD. #8
(48 FR 56903 - December 23, 1983)
Adams, Allen,...Wood and Wyandot Counties, Ohio

	Basic Hourly Rates	Fringe Benefits
Change:		
Electricians:		
Area 5:		
Up to & Inclu. 18 mi. radius of Hamilton Co. Court House, Cincinnati	$16.00	3½%+ 3.30
Over 18 mi. radius up to & Inclu. 21 mi. radius of Hamilton Co. Court House, Cincinnati	16.30	3½%+ 3.30
Over 21 mi. radius up to & Inclu. 25 mi. radius of Hamilton Co. Court House, Cincinnati	16.40	3½%+ 3.30
Over 25 mi. radius of Hamilton Co. Court House, Cincinnati	16.55	3½%+ 3.30
Pipefitters; Plumbers; & Steamfitters:		
Area 4	16.81	4.23
Area 6	18.80	3.80
Area 12	17.57	7.42
Area Descriptions:		
Area 6: Butler & Warren (N 2/3, N. of Rte. #63, exclu. Lebanon & S. Lebanon) Cos.		

DECISION NO. PA82-3011 - MOD. #10
(47 FR 10963 - March 12, 1982)
Bradford, Tioga & Union Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ASBESTOS WORKERS	16.33	2.66
CARPENTERS	13.22	2.55
ELECTRICIANS:		
Bradford County, Town of Towanda, that portion of the Susquehanna River South of Towanda and West of U.S. Highway 309, North of Towanda	15.25	3.30+ 3%
LABORERS:		
Unskilled laborers, Scaffold Builders, Wrecking, Window Cleaners & Demolition	9.10	1.50
Operators of Jackhammers, Paving Breakers, Vibrator & other pneumatic & mechanical tools coming under the jurisdiction of laborers, Wagon Drill operators, Excavating for Caisson, under pinning & Pier Holes (below 12') non-metallic pipe layers, plasterers Tenders, Mortar Men (mixed by hand) handling & using cutting burning torches in the wrecking of buildings, Mason Tenders	9.25	1.50
GLAZIERS		
Bradford & Tioga Cos.	13.04	2.90
LINE CONSTRUCTION:		
Linemen, Dynamite Man, equipment operator	16.29	1.00+3 3/8%
Winch truck operator	11.59	1.00+3 3/8%
Groundman	10.30	1.00+3 3/8%
LATHERS	13.22	2.55
MILLWRIGHTS	16.57	2.55
PAINTERS:		
Brush	12.30	2.70
Tapers	12.96	2.70
Structural Steel	13.96	2.70
PILEDRIVERMEN	15.97	6.81+d
SOFT FLOOR LAYERS	12.29	2.55

DECISION NO. PA84-3035 - MOD. #2
(49 FR 27243 - September 21, 1984)
Lackawanna, Susquehanna, Wayne & Wyoming Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ASBESTOS WORKERS	16.33	2.66
IRONWORKERS:		
Lackawanna, Wayne and Wyoming Counties		
Structural & Ornamental	17.75	4.30
Reinforcing	17.50	4.30
PILEDRIVERMEN	15.97	6.81+d

DECISION NO. PA82-3012 - MOD. #12 (47 FR 9681 - March 5, 1982) Columbia, Montour & Snyder Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ASBESTOS WORKERS	16.33	2.66
BRICKLAYERS & STONEMASONS		
Columbia County	14.65	2.06
CARPENTERS	13.22	2.55
CEMENT MASONS		
Columbia County	14.35	2.06
ELECTRICIANS:		
Berwick Borough in Columbia County	15.93	2.50+ 3%
South of U.S. Highway #522 in Snyder County	15.41	1.83+3 1/4%
GLAZIERS:		
Remainder of Columbia County	13.04	2.90
IRONWORKERS:		
Structural & Ornamental	17.75	4.30
Reinforcing	17.50	4.30
LABORERS:		
Columbia County:		
Unskilled laborers and window washer	10.19	2.80
Mason Tenders and Scaffold Builders	10.59	2.80
Pneumatic Electrical tool op. under the jurisdiction of laborers 2' pump-non-metallic pipe laying and making joints clay terra cotta, ironstone vitrified concrete, handling of burning torches, asphalt or other hot material; cement finishers and blasters helpers, power buggies, and walk along hoist	10.29	2.80
Plasterers tenders, and wagon drill operator	10.44	2.80
Montour County:		
Unskilled laborers, Scaffold builders, wrecking, window cleaners & demolition	9.10	1.50
Operators of Jackhammer Paving breakers, vibrators & other pneumatic & mechanical tools coming under the jurisdiction of laborers, wagon drill operators, excavating for caisson, under pinning & pier holes (below 12' non-metallic pipe layers, plasterers tenders, mortar men (mixed by hand), handling & using cutting or burning torches in the wrecking of buildings, mason tenders	9.25	1.50
LATHERS	13.22	2.55
LINE CONSTRUCTION:		
Lineman, dynamite man, heavy equipment operator	16.29	1.00+3 3/8%
Winch Truck operator	11.59	1.00+3 3/8%
Groundman	10.30	1.00+3 3/8%
LATHERS	13.22	2.55
MILLWRIGHTS	16.57	2.55
PAINTERS:		
Brush	12.30	2.70
Tapers	12.96	2.70
Structural Steel	13.96	2.70
PILEDRIVERMEN	15.97	6.81+d
PLUMBERS & STEAMFITTERS	17.45	2.97

DECISION NO. UT83-5120-Mod. #9 (48 FR 44992 - September 30, 1983) Statewide, Utah	Basic Hourly Rates	Basic Hourly Rates
Change:		
LABORERS:		
Building Construction:		
Group 1	$9.27	
Group 2	10.27	
FRINGE BENEFITS: $2.09		
Heavy and Highway Construction:	Area 1	Area 2
Group 1	$11.47	$14.47
Group 2	11.60	14.60
Group 3	11.72	14.72
Group 4	11.97	14.97
Group 5	12.47	15.47
Tunnel and Shaft Work:		
Group 1	11.62	14.62
Group 2	11.72	14.72
Group 3	11.92	14.92
Group 4	12.37	15.37
FRINGE BENEFITS: $2.34		

DECISION NO. VA82-3034-MOD. #6 (47 FR 54746-December 3, 1982) The Cities of CHESAPEAKE, PORTSMOUTH, & VIRGINIA BEACH	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CARPENTERS & SOFT FLOOR LAYERS	$12.45	1.80
PILEDRIVERMEN & DOCKBUILDERS	12.45	1.80

DECISION #WV83-3022-MOD#14 (48 FR 52547-November 18, 1983) Statewide West Virginia excluding the Counties of Berkley, Jefferson and Morgan	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Boilermakers:		
Area 1	$18.45	$3.52
Bricklayers:		
Area 8		
Stone Masons & Marble Masons	18.50	1.47
Tile Setters & Terrazzo Workers	16.45	1.47
Carpenters & Piledrivermen:		
Area 3		
Carpenters	15.76	3.53+ 3%
Piledrivermen	16.14	28%
Cement Masons &		
Plasterers:		
Area 5		
Cement Masons	17.83	1.28
Plasterers	15.68	1.55
Electricians:		
Inside Electrician		
Brooke (Buffalo twp. only), Marshall, Ohio and Wetsel Counties		
Wiremen	16.43	3%+ 4.08
Cable Splicers	15.68	3%+ 4.08
Brooke (Remainder of Co.) and Hancock (except Grant twp) Cos.		
Wiremen	18.00	43%
Ironworkers:		
Area 2	14.79	8%+ 5.63
Plumbers & Pipefitters:		
Area 5	17.57	7.42
Brooke (South of Buffalo Creek), Marshall, Ohio and Wetzel Counties		
Area 6	16.81	4.23
Brooke (Remainder of County) & Hancock Cos.		
Roofers:		
Area 3	14.03	2.70
Sheetmetal Workers		
Area 3	16.20	3.45

SUPERSEDEAS DECISION

STATE: ARKANSAS

COUNTIES: SEBASTIAN, CRAWFORD & WASHINGTON COUNTIES

DECISION NO.: AR84-4111

DATE: DATE OF PUBLICATION

Supersedes Decision No. AR84-4092 dated January 13, 1984 in 49 FR 1846.

Description of Work: Building projects (excluding single family homes and apartments up to and including four (4) stories).

SEBASTIAN & CRAWFORD COS.	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$17.76	$2.33
BOILERMAKERS	16.125	2.95
BRICKLAYERS, STONEMASONS	13.50	.85
CARPENTERS	11.54	1.59
Millwrights & Piledrivermen	12.29	1.59
CEMENT MASONS	12.75	.63
ELECTRICIANS	14.79	a+1.00
Cable Splicers	15.04	a+1.00
IRONWORKERS	14.60	2.37
LABORERS:		
Group I	6.41	1.45
Group II	6.66	1.45
Group III	6.81	1.45
Group IV	6.91	1.45
Group V	7.60	1.45
Group VI	7.31	1.45
Group VII	7.21	1.45
LINE CONSTRUCTION:		
Linemen, Operator	14.54	.80+ 9⅛%
Cable Splicer	14.79	.80+ 9⅛%
Powderman	90%JR	.80+ 9⅛%
Truck Driver	75%JR	.80+ 9⅛%
Groundman	65%JR	.80+ 9⅛%
MARBLE MASONS, TILELAYERS & TERRAZZO WORKERS	13.50	.85
Plumbers & Pipefitters:		
Commercial buildings, schools, colleges, universities, motels, hotels, banks, all two (2) stories & under, shopping centers, supermarkets, malls, fast foods, theater, & churches, warehouses, one (1) story, industrial maintenance, industrial plant modifications, hospitals & hospital additions, one (1) & two (2) stories	11.00	1.40
All other work	13.56	1.44

PAINTERS:	Basic Hourly Rates	Fringe Benefits
Spray	$ 9.65	
Swing Stage Work	9.15	
Sandblasting, Steam Cleaning	9.65	
Roller Work, Sheetwork, Finishing by Machinery	9.15	
Brush	8.65	
PLASTERERS	13.45	
POWER EQUIPMENT OPERATORS:		
Group I	15.07	1.40
Group II	13.65	1.40
Group III	13.01	1.40
Group IV	10.69	1.40
ROOFERS	11.91	.30
SHEET METAL WORKERS	12.58	2.02+ 3%
SPRINKLER FITTERS	14.57	3.23
SOUND & COMMUNICATION TECHNICIANS	12.50	
FOOTNOTE: a. 8-3/4%		
WASHINGTON COUNTY:		
BRICKLAYERS	9.00	
CARPENTERS	7.92	
CEMENT MASONS	7.67	
ELECTRICIANS	9.51	
GLAZIERS	7.60	
IRONWORKERS	6.87	
LABORERS (General)	5.23	
Mason Tenders	5.67	
Plasterers Tender	7.45	
PAINTERS	8.00	
PLASTERERS	11.22	
PLUMBER & PIPEFITTERS	11.46	1.14
ROOFERS	7.50	
SHEET METAL WORKERS	7.51	
TILE SETTERS	10.00	
TRUCK DRIVERS	6.05	12%
POWER EQUIPMENT OPERATORS:		
Asphalt Finishing	6.15	12%
Asphalt Pavers	6.05	12%
Asphalt Rakers	6.39	
Asphalt Dist. Operators	5.82	11%
Bulldozer Operator	5.95	16%
Backhoe Operator	6.65	
Crane Operator	6.87	
Roller Operator	6.52	
Motor Patrol Operator	6.88	
Foundation Drill Op.	7.29	
Scarpers	5.75	15%

SEBASTIAN AND CRAWFORD COUNTIES ONLY

LABORERS CLASSIFICATION DEFINITIONS

GROUP I - Construction laborer-concrete, wrecking, carpenters, drywall, mechanics, excavating, plumbers and electricians laborers, green cutter, blow pipe, and crete pump hose placer

GROUP II - Semi-skilled labor - pipelayers, concrete, clay and mechanical tool, cement mixer, wet or dry finishers and plasterers, mason tenders, mortar mixers, asphalt rakers and shovelers, creosote wood handlers, chuck tender

GROUP III - Skilled "A" - Steelform setters, curb and gutters, grout and cement muckers

GROUP IV - Skilled "B" - Swinging scaffold, barco, 90lb pavement breakers and burners

GROUP V - Nozzleman (gunite, grout, and sandblasters); concrete pump (nozzel placer)

GROUP VI - Powderman and blaster GROUP VII - Wagon drill

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP I - Cranes, draglines, shovels and piledrivers with a lifting capacity of 50 tons or over, and operators of all towers, climbing cranes, and derricks required to work 25 feet or over from the ground, blacksmith, mechanics

GROUP II - Hydraulic cranes, cherry pickers, backhoes and all derricks with a lifting capacity less than 50 tons, as specified by the manufacturers, all backhoes, tractor or truck type, all overhead and traveling cranes, or tractors with swinging boom attachments, gradalls, all above equipment irrespective of motive power, leverman (engineer), hydraulic or bucket dredges, irrespective of size

GROUP III - HEAVY EQUIPMENT OPERATORS: All bulldozers, all front end loaders, all sidebooms, skytracks, all push tractors, all pull scrapers, all motor graders, all trenching machines, regardless of size or motive power, all back fillers, central mixing plants, 10S and larger, finishing machines, all boiler firemen high or low pressure, all asphalt spreaders, hydro truck crane, multiple drum hoist, irrespective of motive power, all rotary, cable tool core drill or cnurn drill, water well and foundation drilling machines, regardless of size, regardless of motive power and dredge tender operator

GROUP IV - LIGHT EQUIPMENT OPERATORS: Oilerdriver motor crane, single drum hoists, winches and air tuggers, irrespective of motive power, winch or A-frame trucks, forklifts, rollers of all types and pull tractors, regardless of size, elevator operators inside and outside when used for carrying workmen from floor to floor and handling building material. Lad-A-Vator, conveyor, batch plant, and mortar or concrete mixers, below 10S, end dump Euclid, pumpcrete, spray machine and pressure grout machine, air compressors, regardless of size, all equipment, welding machines light plants, pumps, all well point system de-watering and protable pumps, space heater, irrespective of size, and motive power, equipment greaser, oiler, asphalt distributor, and like equipment, safety boat operator and deckhand.

WELDERS--received rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Michigan COUNTY: Kent
DECISION NUMBER: MI84-5043 DATE: Date of Publication
Supersedes Decision No. MI81-2030 dated June 26, 1981 in 46 FR 33193.
DESCRIPTION OF WORK: Building Construction Projects (excluding single family homes and apartments up to and including 4 stories.)

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$ 7.50	
BOILERMAKERS	11.07	3.83
BRICKLAYERS & STONEMASONS	7.45	
CARPENTERS	5.96	
CEMENT MASONS	6.12	
ELECTRICIANS	13.00	1.23+ 9⅓%
ELEVATOR CONSTRUCTORS	9.90	.915+ 4%+a+b
IRONWORKERS:		
Structural & Ornamental	5.86	
Reinforcing	5.92	
LABORERS - Unskilled	4.89	
LABORERS - Mason Tenders	5.15	
PAINTERS - Brush	12.00	1.07
PAINTERS - Tapers	12.25	1.07
PLASTERERS	7.80	
PLUMBERS & STEAMFITTERS	14.89	2.22
ROOFERS	5.55	
SHEET METAL WORKERS	13.75	4.23
Truck Drivers	5.62	
POWER EQUIPMENT OPERATORS:		
Backhoe Operator	7.15	
Bulldozer Operator	8.35	
Crane Operator	5.27	
Finishing Machine Operator	5.50	
Front End Loader	7.02	
Scraper	7.00	
WELDER: Receive rate prescribed for craft performing work to which welding is incidental.		

Basic Hourly Rates	Fringe Benefits

FOOTNOTES:
a. 6 Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day.
b. Employer contributes 4% of regular hourly rate to vacation pay credit for employee who has worked more than 5 years & 2% for employee who has worked less than 5 years.
c. $5.00 per month - Life Insurance

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Texas
COUNTIES: Collin,Dallas,Denton,Ellis,Grayson,Hood,Hunt,Johnson,Kaufman, Palo Pinto,Rockwall,Tarrant, & Wise
DECISION NO: TX84-4112 DATE: Date of Publication
Supersedes Decision No. TX84-4005, dated February 24, 1984, in 49 FR 7069.
DESCRIPTION OF WORK: Building Projects (does not include single family homes & apartments up to & including 4 stories). (Use current heavy & highway general wage determination for Paving Incidental to Building Const. in Tarrant Co. & for Paving & Utilities Incidental to Building Const. in remaining Cos.).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$16.71	$ 2.94
BOILERMAKERS	16.125	2.95
BRICKLAYERS & STONEMASONS:		
ZONE 1- Collin,Dallas, Ellis,Hunt,Kaufman, & Rockwall Cos.	14.00	2.50
ZONE 2- Denton,Hood,Johnson,Palo Pinto,Tarrant, and Wise Cos.	14.00	2.50
ZONE 3- Grayson Co.	12.77	2.50
CARPENTERS:		
ZONE 1- Grayson Co.:		
Carpenters	14.61	1.655
Millwrights	15.01	1.655
Piledrivermen	15.11	1.655
ZONE 2- Collin,Dallas, Denton,Ellis,Hood,Hunt, Johnson,Kaufman,Palo Pinto,Rockwall,Tarrant, & Wise Cos.:		
Carpenters & Piledrivermen	14.00	2.22
Acoustical,Drywall, Insulation & Metal Door Frames	11.78	2.22
Millwrights	16.08	3.73
CEMENT MASONS:		
ZONE 1- Denton,Hood,Johnson,Palo Pinto,Tarrant, & Wise Cos.	16.65	2.07
ZONE 2- Collin,Dallas, Ellis,Hunt,Kaufman, & Rockwall Cos.	16.63	2.09
ELECTRICIANS:		
ZONE 1- Denton,Hood,Johnson,Palo Pinto,Tarrant, & Wise Cos.:		
Electricians	15.90	1.00 + 8%
Cable Splicers	16.15	1.00 + 8%
ZONE 2- Collin,Dallas, Ellis,Grayson,Hunt, Kaufman & Rockwall Cos.:		
Electricians	17.10	.80+9%
Cable Splicers	18.81	.80+9%
ELEVATOR CONSTRUCTORS:		
Mechanics	16.175	3.00+a
Helpers	70%JR	3.00+a
Helpers (Prob.)	50%JR	
GLAZIERS (excluding Grayson Co.)	15.60	1.55
IRONWORKERS:		
ZONE 1- Collin,Dallas, Denton,Ellis,Grayson, Hood,Hunt,Johnson,Kaufman,Palo Pinto(excluding northwest corner),Rockwall,Tarrant & Wise (excluding northwest ⅓)	12.88	2.92
ZONE 2- Palo Pinto(northwest corner) & Wise (northwest ⅓)	12.625	2.95
LABORERS:		
ZONE 1- Grayson Co.:		
GROUP 1- Unskilled	9.675	.775
GROUP 2- Air tool oper. (jackhammer,vibrator), mason tenders & mortar mixers,pipelayers	9.925	.775
ZONE 2- Collin,Dallas, Denton,Ellis,Hood,Hunt, Johnson,Kaufman,Palo Pinto,Rockwall,Tarrant, & Wise Cos.	8.60	1.30
LATHERS	16.38	1.04
LINE CONSTRUCTION:		
ZONE 1- Collin,Dallas, Ellis,Grayson,Hunt, Kaufman & Rockwall Cos.:		
Lineman	17.10	1.00+ 8⅓%
Cable Splicers	18.81	"
Operators	17.10	"
Groundman	11.97	"

DECISION NO.: TX84-4112

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION: (cont'd)		
ZONE 2- Denton, Hood, Johnson, Palo Pinto, Tarrant, & Wise Cos.:		
Lineman	$14.64	$ .80+ 8½%
Cable Splicer	16.10	"
Operators	14.64	"
Groundman	10.25	"
MARBLE, TILE, & TERRAZZO WORKERS (excluding Ellis County)	14.94	1.87
PAINTERS:		
ZONE 1- Collin, Dallas, Denton, Ellis, Grayson, Hunt, Kaufman & Rockwall:		
GROUP 1- Brush	13.36	1.80
GROUP 2- All wall covering work: paper, fabric, sheeting, flexwood, etc.	13.61	1.80
GROUP 3- Ames tool oper.	13.48	1.80
GROUP 4- Structural steel, stage work, bosun chair, spray gun, sandblasting & window jack & fire escapes	13.74	1.80
GROUP 5- Steeple jack work consisting of watertowers, smoke stacks & breeching; chimneys, flag poles, radio & TV towers, cable work 16' & over above ground where cables are strung to scaffolds & running boards	14.11	1.80
ZONE 2- Hood, Johnson, Palo Pinto, Tarrant & Wise:		
GROUP 1- Brush	16.41	1.37
GROUP 2- Wallcovering; pressure roller; sandblasting; structural steel; bosun chair, window jack & window sill; stage, fire escape; steel storage tank; stilts; mittens; ames tools, drywall finishing	16.66	1.37
GROUP 3- Steeple jack (radio & TV towers, smoke stacks, chimneys & water towers & similar facilities & flagpole atop bldgs. lacated closer to the edge of bldg. that the height of the pole); toxic material (creosote, coal tar products or similar materials injuriaous to the skin	17.66	1.37
GROUP 4- Spray	16.785	1.37
PLASTERERS:		
ZONE 1- Collin, Dallas, Ellis, Hunt, Kaufman, & Rockwall Cos.	15.41	3.59
ZONE 2- Denton, Hood, Johnson, Palo Pinto, Tarrant, & Wise Cos.	18.34	.66
PLUMBERS & PIPEFITTERS:		
ZONE 1- Collin, Dallas, Ellis, Grayson, Hood, Hunt, Kaufman, & Rockwall Cos.	16.75	2.19
ZONE 2- Denton, Johnson, Palo Pinto, Tarrant, & Wise Cos.	13.50	2.03
ROOFERS:		
GROUP 1- Slate & tile	12.96	.775
GROUP 2- Composition & built-up, dampproofing & bituminous waterproofing	12.81	.775
SHEET METAL WORKERS:		
ZONE 1- Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Rockwall, Tarrant & Wise Cos.	16.905	2.08
ZONE 2- Palo Pinto Co.	14.38	.89
SOFT FLOOR LAYERS	13.75	1.25

DECISION NO.: TX84-4112

	Basic Hourly Rates	Fringe Benefits
SOUND INSTALLERS - repair, service & install intercommunication telephones, interconnect sound & public address equipment, electronic systems, music & TV distributing systems for commercial bldgs. & shall include the pulling of all wires in conjuit or raceways or surface wiring, the running of open wiring, the running of conduit & raceways not to exceed 10 ft. in length & the wiring of all electrical communication devices of 100 volts or less controlling the equipment described above	$11.36	.54+3%
SPRINKLER FITTERS	16.17	3.23
POWER EQUIPMENT OPERATORS:		
ZONE 1- Dallas Co.:		
GROUP 1	15.12	2.35
GROUP 2	15.52	2.35
ZONE 2- Remaining Cos.:		
GROUP 1	7.265	2.30
GROUP 2	15.17	2.30
GROUP 3	15.57	2.30

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

PAID HOLIDAYS
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-the Friday after Thanksgiving Day; G-Christmas Day

FOOTNOTES:
a - 1st 6 mos. - none; 6 mos. to 5 yrs. - 6%; over 5 yrs. - 8% of basic hourly rate. Also 7 Paid Holidays A thru G
b - Sick or Injury Pay:
1st day out - no pay
2nd day out - 1/2 pay
3rd day out & thereafter - full pay for a maximum of 10 days pay per year
Employees who receive pay for less than 5 sick days per year shall receive on 8/31 of each year incentive pay equal in amount to a day's pay for each day that such days were less than 5

Employees who are members of a reserve component of the Armed Services & are ordered to annual active duty for training as a normal part of their reserve obiligation shall be eligible for & shall receive differential pay equal to the difference between their computed daily base rate (excluding overtime compensation) & their daily military base pay (excluding quarters & subsistence allowances) for each day of military leave where the employee would normally have performed work up to a maximum of 10 work days per year

Employees absent from work while serving as jurors shall be paid at their hourly rate excluding overtime for the hours actually lost from work less any amount received by the employee as juror's fee

Up to 3 days leave for death of immediate family member (spouse,child,parent, brother,sister,mother-in-law,father-in-law,grandparents & grandchildren)

Paid Vacation:
after 1 year service - 1 week vacation
after 2 years service - 2 weeks vacation
after 5 years service - 2 weeks & 1 day vacation
after 6 years service - 2 weeks & 2 days vacation
after 7 years service - 2 weeks & 3 days vacation
after 8 years service - 2 weeks & 4 days vacation
after 9 years service - 3 weeks vacation

Paid Holidays - A thru G plus the last working day preceding Christmas Day & another day designated by the Company

POWER EQUIPMENT OPERATORS (ZONE 1) CLASSIFICATION DEFINITIONS
GROUP 1 - Air compressor,water pumps,welding machines(2 to 6 machines) & generators;Blade grader,towed;Flex plane;Form grader;Concrete mixer,less than 14 cu. ft.;Pulsometer;Wagon drill op.;Conveyor;Hoist,single drum;Scraper, 3 cu. yd. or less;Bob cat with loader
GROUP 2 - Heavy duty mechanic;Asphalt mixer op. on job;Blade grader,self-propelled;Bull clam;Backfiller;Bulldozer & all cat type tractors;Backhoe;Concrete mixers over 14 cu. ft.;Crusher on job;Concrete batch plant;Clamshell;Cranes (all types);Truck mounted or crawler requires oiler including groves(hydraulic) or similar type over 12½ ton cap.;Escalated rate on crane & derrick booms: .01¢ per hr., per ft. over 90 ft. including jib;Draglines;Derricks,power operated (all types);DW-10 caterpillar,S-8 Euclid & similar tractors;Elevating grader,self-propelled;Foundation drilling machines(all);Forklifts used in handling machinery on const.;Gradeall;Hoist,motor driven,2 drums or more; Locomotive crane;Mixmobile;Paving mixers(all types);Piledriver;Pumpcrete machines;Pneumatic roller,self-propelled;Shovels,power operated;Scrapers, over 3 cu. yds.;Scoopmobile;Trenching machines,all types;Winch trucks,when pole & winch is used;Water well drilling machines,used on construction;Well point pump;Welding machines(7 to 13 machines)

POWER EQUIPMENT OPERATORS (ZONE 2) CLASSIFICATION DEFINITIONS
GROUP 1 - Oiler-Fireman
GROUP 2 - Air compressors,Pumps,Welding Machines,Throttle Valves,Light Plants; Conveyor;Wagon drill;Elevators Building;Form Graders,Hoist,Single drum;Ford Tractor including blade & mower on rear;Mixers less than 14 cu. ft.;Screening Plants;Crushing Plants;Forklifts(short under 25 ft.);Concrete Pumps(all types);Bobcat type equip.
GROUP 3 - Ford Tractor or like with any attachments(except blade & mower on rear);Drilling Machines(all types);Scoopmobiles;Hoist,2 drums or more;Forklifts (over 25 ft.);Winch Truck, 6 wheel truck,when used continuously for 5 days;Mixermobile;Locomotives;Mixers,14 cu. ft. or over;Blade Graders,self-propelled;Cableways;Cranes-power operated to 100 ft.;Derricks,power operated (all types);Gradall;Hy-Ho;Hop-To;Paving Mixers (all types);Piledrivers; Mobile Concrete Mixers over 14 cu. ft.;Bulldozers,Loaders,Tractorvators: Scrapers & Pulls;Welding;Trenching Machines;Roller, 10 tons or over; Air Compressor & Air Tugger;Boilers,2 or more fired by 1 man;Heavy Duty Mechanic

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Friday
December 28, 1984

Part IV

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 243, 511, and 942

Pet Ownership in Assisted Rental Housing for the Elderly or Handicapped; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 243, 511, and 942

[Docket No. R-84-1152; FR-1936]

Pet Ownership in Assisted Rental Housing for the Elderly or Handicapped

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: Section 227 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181) provides that no owner or manager of federally assisted rental housing for the elderly or handicapped may prohibit or prevent a tenant from owning or having common household pets living in the tenant's dwelling unit, or restrict or discriminate against any person regarding admission to or continued occupancy of such housing because of the person's ownership of pets or the presence of pets in the person's dwelling unit. These proposed regulations implement the statute and establish guidelines under which owners or managers of covered housing (1) may prescribe reasonable rules governing the keeping of common household pets and (2) must consult with tenants when prescribing the rules.

DATE: Comments must be submitted on or before February 26, 1985.

ADDRESS: Comments on rule: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Comments should refer to the above docket number and title. A copy of each comment received will be available for public inspection during regular business hours at the above address. Comments on the information collection requirements contained in this rule (which include docket number and title) should be submitted both to the HUD Rules Docket Clerk at the above address and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Desk Officer for HUD.

FOR FURTHER INFORMATION CONTACT: Edward C. Whipple, Office of Public Housing, telephone (202) 426-0744, or James J. Tahash, Office of Multifamily Housing, telephone (202) 426-3970, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Hearing or speech impaired individuals may call our TDD number, (202) 426-0015. (The telephone numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 227 of the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98-181, provides for the ownership and keeping of common household pets in federally assisted rental housing for the elderly or handicapped. The law provides that no owner or manager of covered housing may (1) prohibit or prevent any tenant from owning or having common household pets living in the dwelling accommodations or (2) restrict or discriminate against any person in connection with admission to, or continued occupancy of, covered housing by reason of the ownership of such pets or the presence of such pets in the dwelling accommodations. Section 227(b) directs the Department to issue regulations that may be necessary to ensure compliance with Section 227's provisions and to ensure attaining of the goal of providing decent, safe, and sanitary housing for the elderly or handicapped. Section 227(b) also requires that these regulations include guidelines under which the owner or manager of covered housing (1) may prescribe reasonable rules for the keeping of pets and (2) must consult with tenants in prescribing the rules.

On February 28, 1984, HUD issued Notice H-84-10 to Public Housing agencies (PHAs), Indian Housing Authorities (IHAs) project owners, and HUD Field Staff. This notice indicated that the prohibitions of section 227 were effective and that PHAs, IHAs and project owners were required to comply with section 227 even in the absence of HUD regulations. The notice also urged PHAs. IHAs and project owners to adopt reasonable interim house rules to govern the keeping of pets by tenants. The Department emphasizes that the duty to comply with section 227 and the need for interim house rules will continue until a final rule is issued and becomes effective.

The February 28 Notice also invited preliminary comments on the issues that HUD's regulations should address. There has been a heavy response to this invitation—much of it expressing strong opposition to the requirements of the new law. While the program adminsitrators have taken the more than 2,600 comments received on this notice into account in developing the proposed rules, HUD will consider these comments further when formulating the final pet rules. As a further aid to individuals concerned with the Department's proposed implementation of section 227, a summary of the public comments received in response to the Notice is published with this rule. The summary appears in the appendix immediately following the text of the proposed rules.

The Department proposes to implement section 227 by promulgating two rules. 24 CFR Part 243 would govern the housing programs administered by the Assistant Secretary for Housing-Federal Housing Commissioner, except programs under section 10(c) and section 23 of the United States Housing Act of 1937 (as in effect before amendment by the Housing and Community Development Act of 1974). 24 CFR Part 942 would govern section 10(c) and section 23 programs and public housing programs administered by the Assistant Secretary for Public and Indian Housing. While the two rules are similar in content, generally Part 942 would permit PHAs and IHAs to have more autonomy in the administration of their programs.[1] For example, § 243.3(a) provides a specific defintion of common household pet to be used by project owners. By contrast, § 942.20(b)(1) permits PHAs and IHAs to adopt house rules containing a reasonable definition of a common household pet.

There are several reasons for this bifurcated approach. First, PHAs and IHAs have traditionally been given a great deal of discretion in the management of their local public housing programs. Indeed, one of the major policies of the United States Housing Act of 1937 is "to vest in local public housing agencies the maximum amount of responsibility in the administration of their housing programs . . ." Section 2 of the United States Housing Act of 1937. Moreover, PHAs and IHAs are public bodies created by State, local and tribal governments and traditionally have jurisdiction over a broad area. Giving these entities greater responsibility for the management of projects would serve the goal of minimizing Federal control over matters of local concern which are within the competency of local governments.

By contrast, for most purposes, the owners of elderly or handicapped projects covered by Part 243 are not likely to receive guidance in the management of projects from non-mortgagee agencies of State or local

[1] While section 10(c) and section 23 projects are under the jurisdiction of the Assistant Secretary for Housing-Federal Housing Commissioner, these projects are administered by PHAs. To grant these PHAs the same administrative discretion as PHAs and IHA s operating projects under the jurisdiction of the Assistant Secretary for Public and Indian Housing, the proposed rule would make Part 942 applicable to section 10(c) and section 23 projects.

governments. Such project owners are likely to be private non-profit or profit-motivated entities with varying capabilities to properly implement our regulations. While many private owners only have one or two such projects under management, some possess many such projects in a given community. To preclude the possibility that project owners would adopt radically different management approaches for projects in the same community, and to ensure more universal compliance with the purposes of section 227, the Department has determined that it is necessary to give project owners subject to Part 243 more explicit guidance. For example, the proposed rules would require project owners to prescribe a small number of mandatory rules. This requirement would assure that tenants in such projects will receive more uniform treatment with respect to pet innoculations, sanitary standards, leashing, registration, and pet or no-pet areas. Additionally, the proposed rules would permit project owners to promulgate discretionary rules reasonably related to the keeping of common household pets including rules on pet density, size and type, standards of care and licensing. These rules would permit project owners to adapt their management of projects to meet tenant needs and local conditions or circumstances.

Applicability

The statute states that federally assisted rental housing for the elderly or handicapped includes any rental housing project that (1) is assisted under Section 202 of the Housing Act of 1959; or (2) is assisted under the United States Housing Act of 1937, the National Housing Act or Title V of the Housing Act of 1949, and is designated for occupancy by elderly or handicapped families. The definitions of project for the elderly or handicapped [§§ 243.3(c) and 942.3(c)] include all the housing programs that the Department proposes to include under section 227, except the Rental Rehabilitation Program under Section 17 of the United States Housing Act of 1937. This program is included in an amendment to 24 CFR Part 511. Programs under Title V of the Housing Act of 1949 are administered by the Department of Agriculture and will be covered in regulations issued by that Department.

Part 243 would apply to rental and cooperative multifamily projects for the elderly or handicapped that are assisted under Section 202 of the Housing Act of 1959; Sections 8 and 17 of the United States Housing Act of 1937; and Sections 221(d)(3) (BMIR) and 236 of the National Housing Act, irrespective of whether the project mortgages are HUD-insured. The statute refers to projects "assisted" under the National Housing Act. In HUD program usage, the term "assisted" normally refers to subsidy and does not encompass mortgage insurance without subsidy. However, the Department believes that Congress intended a broader coverage in the case of this particular enactment. Congress' focus appears to have been on the character of the tenants as elderly or handicapped—without regard to whether their rent is subsidized. Given this apparent focus, no rational basis appears for excluding projects that have a HUD association but are not subsidized. Such a basis might exist if Congress contemplated that compliance with its requirements would entail additional cost burdens on owners and managers which would be fairly imposed only if absorbed by additional subsidy, but no such contemplation is disclosed in the legislative history. Accordingly, consistent with the determination previously announced in Notice H–84–10, Part 243 would include elderly or handicapped projects that have HUD-insured mortgages under Sections 221(d)(3) (Market Rate), 221(d)(4), and 231 of the National Housing Act, even though these projects may be unsubsidized. Part 243 also would apply to any projects for the elderly or handicapped that HUD owns.

Section 227 applies to projects that are assisted under the United States Housing Act of 1937 or the National Housing Act and that are "designated for occupancy by elderly or handicapped families." A National Housing Act project would meet the "designation" requirement if it is designated for occupancy by the elderly or handicapped in the regulatory agreement covering the project. A Section 8 project would be so "designated" if preference in tenant selection is given (with HUD or PHA approval) for all units in the project to elderly or handicapped families. A project assisted under the Rental Rehabilitation or Housing Development Grant Program would be covered if it gives such a preference without reference to HUD approval, since these programs do not contemplate this type of HUD involvement. HUD-owned projects would be covered where HUD gives tenant selection preference for elderly or handicapped families and the preference is applicable to all units in the project. A project owner would not be subject to Part 243, however, by virtue of having set aside a minor portion of project units for elderly or handicapped families, *e.g.*, actions taken to comply with Section 504 of the Rehabilitation Act of 1973.

This approach expands the coverage of the February 28 Notice. This notice provided that section 227 applied to projects *"built exclusively for occupancy by the elderly and handicapped."* (emphasis in original). Since an initial project design bears no necessary relationship to the current tenant selection and occupancy status of insured and assisted projects, HUD believes that the approach proposed in this rule is more responsive to the intended coverage of section 227.

Part 243 would exclude health and care facilities that have mortgages insured under the National Housing Act, such as nursing homes and intermediate care facilities under section 232 of the Act and hospitals under section 242 of the Act, because these facilities are not rental or cooperative housing projects. Part 243 would also exclude properties that do not independently qualify under § 243.3(c), even though the additional property is adjacent to or under joint or common ownership or management with a qualifying rental or cooperative housing project.

Part 942 would apply to public and Indian housing projects that are assisted under the United States Housing Act of 1937 and designated for occupancy by the elderly or handicapped. It would not cover projects assisted under sections 8 or 17 of the Act since these projects are covered under Part 243. Part 942 also would not cover housing provided under the Mutual Help Homeownership Program (24 CFR Part 905, Subpart D) and the Low Rent Housing Homeownership Program (24 CFR Part 904) (Turnkey III), because these programs involve homeownership rather than rental housing projects.

To meet the "designation" requirement under Part 942, a project (including any building in a mixed-use project) must have been designated for occupancy by the elderly at the project's inception or, if not so designated, the PHA or IHA must currently give preference in tenant selection (with HUD approval) for all units in the project (or building within a mixed-use project) to elderly or handicapped families. As noted above, this expands the coverage contained in the February 28 Notice. Technically, this definition would include all projects designated for occupancy by the elderly at inception, including those projects that may have evolved to other uses and currently no longer serve elderly or handicapped families. We do not believe that any existing projects fall within this

category. PHAs and IHAs, however, are invited to comment on this factual issue and if there are any such projects, to make recommendations on how HUD should treat these projects in the final rulemaking.

Nondiscrimination Provisions

Section 227(a) contains the basic statutory provision forbidding owners and managers of federally assisted housing from (1) prohibiting or preventing any tenant from owning or keeping common household pets in the dwelling unit and (2) restricting or discriminating against any person based on pet ownership or presence in the dwelling unit. This statutory obligation is incorporated in §§ 243.10 and 942.10. This provision would apply to all residents of covered housing for the elderly or handicapped, even if the individual resident is not elderly or handicapped or is not a member of an elderly or handicapped family.

A large number of the comments received in response to the February 28 notice have requested HUD to promulgate rules that would permit PHAs, IHAs and project owners to ban all pets from projects. We emphasize that the nondiscrimination provisions of section 227 do not permit such a rule, even if the ban were consistent with the wishes of the owner and the majority of residents of the projects. Interested parties should consider the mandatory nature of these nondiscrimination provisions when submitting further comments.

To ensure that all tenants and potential tenants are informed of the nondiscrimination provisions, the proposed regulations would require owners of covered projects to notify tenants of the nondiscrimination provisions (§§ 243.15 and 942.15).

Reasonable Rules Governing the Keeping of Pets

Section 227(b)(2) requires HUD to promulgate regulations that establish guidelines under which owners of rental housing projects for the elderly or handicapped may prescribe reasonable rules for the keeping of pets and under which owners must consult with tenants in prescribing the rules. These guidelines are found in §§ 243.20 and 942.20. While the pet rule guidelines contained in these two regulations are similar, there are major differences. For example, the Department has determined that project owners subject to Part 243 must, at a minimum, prescribe five mandatory rules (See § 243.20(b)). These rules require: (1) Pet owners to have their pets innoculated in accordance with State and local law; (2) pet owners to register pets with project owners; (3) the project owners to prescribe sanitary standards to govern the disposal of pet waste; (4) pet owners to leash cats and dogs while on the common areas of the project; and (5) the project owners to establish pet and no pet areas.

Based on the broad latitude given PHAS and IHAs in the administration of their housing program, § 942.20 would permit PHAs and IHAs to choose not to promulgate rules governing the keeping of common household pets. It is emphasized, however, that a PHA's or IHA's failure to prescribe reasonable rules under these regulations would not permit the authority to ban pets from rental housing projects. Under such circumstances, the keeping of pets would be governed by the general obligations imposed on the parties in the lease. If PHAs or IHAs choose to promulgate rules, § 942.20 describes factors that PHAs and IHAs may consider when issuing house rules.

While the content of the pet rules under part 243 and Part 942 varies, the subjects to be considered in both rules are quite similar. With some minor variations, the guidelines of both Parts address the following subjects: permissible limitations on the number, size, and type of pets; financial obligations of pet owners to the project owner; the standards of pet care (including rules governing the disposal of pet waste); pet control; and compliance with State and local laws governing the licensing and innoculation of pets. To ensure that the guidelines permit owners to establish adequate rules to govern the keeping of pets, project owners, PHAs and IHAs that have permitted pets in the past are encouraged to comment on the proposed guidelines. These comments should include estimates of the incidence of pet ownership in their projects, estimates of costs associated with pet presence in the projects, and should explain how HUD's guidelines might be changed to address any pet problems.

The statute requires HUD to issue guidelines under which owners and managers may establish "reasonable" pet rules. Since the "reasonableness" of a rule will frequently depend on the facts and circumstances in each case, the regulations do not define with specificity the limits of owner discretion to promulgate pet rules. Given the myriad differences among and within projects (including matters such as the size, type, location, and occupancy of individual projects or their units), it would be impossible for HUD to establish more explicit guidelines that would not be be unduly restrictive in some cases and inappropriately lax in others. As a matter of general guidance, however, the pet rules should be reasonably related to furthering a legitimate interest of the owner. These interests could include providing a decent, safe, and sanitary living environment for existing and prospective tenants and protecting and preserving the physical condition of the project and the owner's financial interest in it. In addition, the pet rules should be drawn narrowly to achieve the owner's legitimate interest, without imposing unnecessary burdens and restrictions on pet owners and prospective pet owners.

As noted above, both parts would permit owners to place reasonable limitations on the number of pets that may be kept in each dwelling unit. Other than this pet limitation, the rules do not permit a project owner to place any quotas on overall pet occupancy of a rental housing project since such quotas could deny an individual tenant the right to own a pet and may, thus, violate section 227(a). Because Congress stipulated that pet rules may address "tenant density" (section 227(b)(2)), however, there may be some basis for permitting pet quotas. We, therefore, specifically request comments on this issue. These comments should examine whether quotas are permissable; describe the factors that might be used to develop a building quota; explain why these factors would serve as a reasonable basis for a quota; and describe how these factors might be objectively applied to determine a building quota.

The guidelines address the financial obligations of pet owners by permitting project owners, PHAs and IHAs to impose a pet security deposit. *See* §§ 243.20(c)(3) and 942.20(b)(4). Currently, the guidelines place no limitation on the amount of the pet security deposit. (Deposits subject to Part 243 are, however, subject to HUD approval.) The Department is considering the appropriateness of imposing such limitations in the final rule, and requests public comments on this issue. Commenters are invited to address whether limitations are appropriate, how the limits should be set (*e.g.*, as a set amount or as a percentage of rent payable by the tenant), how the amount of the pet security deposit should relate to other deposits currently permitted, and what types of projects should or should not be affected. In addition, comments received in response to the February 28 notice suggested that the pet rule guidelines should permit the imposition of a

monthly pet fee. Public comment is also invited on this issue.

As indicated, the guidelines would also address State and local laws governing the licensing and innoculation of pets. Many State and local laws generally only require rabies inoculations. While compliance with these laws should ensure that tenants' health and safety is adequately protected, there may be other transmittable animal diseases that should be addressed by our guidelines. The public is invited to comment on this matter. Additionally, there may be jurisdictions that have not enacted any laws addressing the innoculation of pets. The public is also invited to identify these jurisdictions and comment concerning the guidance that we should give affected PHAs, IHAs, and project owners in these jurisdictions.

Special Rules Governing Designated Areas and Tenant Moves

Both parts would permit project owners, PHAs, and IHAs to establish and maintain areas in the rental housing projects as pet and no-pet areas. There are, however, differences between the two parts.

Part 942 would permit, but not require, PHAs and IHAs to designate buildings, floors of buildings or sections of buildings where pets generally may not be permitted. PHAs and IHAs may also designate areas for residency generally by pet-owning tenants. The PHA or IHA would be permitted to direct such tenant moves as may be necessary to establish these areas. If the PHA or IHA elects to establish these areas, it would not be permitted to deny or delay admission of an applicant for tenancy on the grounds that the applicant's admission would violate a pet or no-pet area. The PHA or IHA would be permitted to adjust the areas and/or direct such additional tenant moves as may be necessary to accommodate applicants for tenancy and to meet the changing needs of existing tenants. *See* § 942.20(b)(6)(ii).

Part 243, on the other hand, would *require* project owners to designate buildings, sections of buildings or floors of buildings as areas for occupancy by tenants for whom the presence of a pet would constitute a serious health threat. When initially implementing Part 243, the project owner would be required to set aside a sufficient number of units to accommodate existing tenants whose health would be seriously threatened by the presence of a pet. The project owner would be required to direct such tenant moves as may be necessary to establish such areas. Thereafter, the project owners would be required to adjust the designated areas and direct such moves as may be necessary to accommodate tenants who would be seriously threatened. *See* § 243.20(b)(5)(i).

Section 243.26(g)(4) provides that expenses associated with the move of an existing tenant shall be borne by the project as a project expense. Comments are solicited on this provision and on the extent to which project owners should be permitted to recover such expenses from pet security deposits or fees imposed on pet owners.

Section 243.26 prescribes rules governing tenant and project owners rights and responsibilities when, despite reasonable efforts, the presence of a pet in the project would seriously threaten the health of an individual. These rules would permit project owners to refuse to admit an applicant for tenancy; allow an applicant for tenancy to refuse offers of dwelling units; permit a project owner to refuse to allow existing tenants to acquire pets; and require the project owner to take certain actions where a pet in residence will cause a serious health threat to an existing tenant. It should be noted that § 243.26 would contain provisions which ensure that applicants denied admission for tenancy would be expeditiously offered a suitable alternate dwelling unit and that tenants that have been denied pets and tenants that are seriously threatened by existing pets may, if appropriate, be moved to alternate suitable units as quickly as possible.

Under the proposed rule, a serious threat to health would not include mild allergic reactions caused by random, but reasonably avoidable, contact with pets in the common areas. Rather, a serious threat would involve strong allergic reactions that are brought on by the presence of pets and are not reasonably avoidable. To ensure that claims of serious threat are *bona fide*, the proposed rules would provide that a licensed physician must certify that a serious health threat exists and must specify the type of exposure, duration of exposure, and the type of pet that will cause the serious health threat. We anticipate that the percentage of individuals that would be seriously threatened by the presence of pets will be small. However, we specifically request comments addressing this factual issue. Comments should discuss the range of allergic reactions that may be caused by pets; suggest ways of mitigating the risk of exposure; identify the situations and reactions that constitute a serious threat to the health of an individual; and estimate the percentage of the population that would experience seriously threatening reactions based on exposure to pets.

HUD is interested in giving the fullest possible effect to the nondiscrimination provisions of section 227, while still ensuring the health and safety of the tenants. As noted above, the proposed rule would protect individuals whose health is seriously threatened by an allergic reaction to pets. It may be preferable to further limit the scope of the special rules in proposed § 243.26 to situations where a doctor certifies that exposure to pets would be life threatening or would result in hospitalization. HUD also recognizes that there may be circumstances, other than allergic reactions, where a pet could pose a serious health threat. The public is invited to submit comments addressing the proposed scope of the special rules and any additional health threats that may be caused by the presence of pets.

The proposed Part 243 would protect all tenants—both present and future—from serious threats to health caused by the presence of pets in the rental housing project. It has been suggested that this protection should only extend to tenants in place when the rule is implemented, on the theory that these tenants have relied on project owners' past assurances that a project would be pet-free, whereas future tenants will be aware of the possible presence of pets in these projects. Commenters are specifically requested to address this issue in their submissions.

Promulgation of Pet Rules

Both parts would establish guidelines for the promulgation of house pet rules and for tenant consultation. *See* §§243.22 and 942.25. The Department would establish a detailed notice and comment procedure to govern the promulgation of house rules by project owners subject to Part 243. Part 942, on the other hand, would require PHAs and IHAs to develop their own procedures governing tenant consultation. These procedures must be designed to ensure that tenants are given an opportunity for notice and comment. Part 942, however, would not prescribe the manner of consultation, other than to require PHAs and IHAs to give consideration to the tenant comments. Both parts would give the project owner, PHA or IHA the sole discretion over the content of the final pet rules (subject to the content guidelines and requirements of § 243.20 or § 942.20).

Enforcement

Part 243 would require that all leases incorporate the house pet rules by reference, state that the tenant agrees to comply with these rules, state that a

violation of these rules may be grounds for removal of the pet or termination of tenancy (or both) in accordance with Part 243, State and local law, and applicable termination of tenancy provisions. These regulations include 24 CFR Part 247 (Evictions From Certain Subsidized and HUD-Owned Projects) and provisions governing the termination of tenancy under the Section 8 Housing Assistance Payments Program (*see* 24 CFR 880.607, 881.607, 882.511, 883.708, 884.216, 886.128, and 886.328).

To enforce the pet rules, Part 243 would provide that the project owner must (1) provide written notification to the pet owner of a pet rule violation; (2) give the pet owner an opportunity to correct the violation; and (3) give the pet owner an opportunity to meet with the project owner and discuss the violation. If the violation is not adequately resolved as provided in Part 243 and if the pet rule violation is otherwise sufficient to permit the initiation of an action to terminate the tenancy or have the pet removed, the project may commence such proceedings. *See* § 243.24.

The Public and Indian Housing regulation would provide that the pet rules (if prescribed by the PHA or IHA) must be incorporated by reference in the lease. The lease would state that tenants agree to comply with these rules and that violations of the pet rules may be grounds for removal of the pet or termination of the pet owner's tenancy (or both) in accordance with State or local law and applicable regulations, *e.g.*, Part 966 (Lease and Grievance Procedures).[2] Where no pet rules have been prescribed, the keeping of pets is subject to the general obligations imposed on the parties to the lease. Violations of these general obligations may be grounds for the removal of the pet or termination of the pet owner's tenancy (or both) in accordance with State and local law and applicable regulations. *See* § 942.27.

In addition to the procedures described, existing HUD procedures will provide some additional insurance that PHAs, IHAs, and project owners will comply with the statute and the regulations. For example, projects under the United States Housing Act of 1937 (except Section 8 and 17 projects) are reviewed by HUD in a biannual occupancy audit under the *Occupancy Audit Handbook*, HUD Handbook 7465.2. As part of this audit, HUD reviews admission and occupancy policies, dwelling leases and the rules incorporated in dwelling leases.

Nuisance and Threat to Health and Safety

In accordance with Section 227(c) of the 1983 Act, §§ 243.40 and 942.30 would preserve the rights of project owners, PHAs, IHAs and appropriate community authorities to require the removal of any pet that is duly determined to constitute, under State or local law, a nuisance or a threat to the health or safety of the occupants of the rental housing project or other members of the community. Similarly, §§ 243.45 and 942.35 would permit project owners, PHAs and IHAs to require the immediate removal of a pet that constitutes an immediate threat to health or safety by either requesting the pet owner to remove the pet or contacting the appropriate State or local authority (or an entity designated by such an authority).

The regulations and the pet rule guidelines would primarily protect the health and safety of present and future tenants, the condition of tenant's units and the general condition of project premises. However, Part 243 would contain explicit authority permitting the project owner to act to protect the health or safety of the *pet* in one instance. If the health or safety of a pet is threatened by the death or incapacity of the pet owner, a project owner may contact the responsible party designated by the pet owner in the pet registration. If that person is unavailable or unwilling to care for the pet, the project owner may contact the appropriate State or local authority (or designated agent) to remove and care for the pet. Because it is possible that there may be local jurisdictions without any authorities (or designated agents) authorized to remove and care for an animal, the rules provide that a project owner may insert a clause in the lease which permits the project owner to enter the premises, remove the pet and arrange for pet care for no less than 30 days to protect the pet. Commenters are requested to inform the Department whether there are any jurisdictions without such an authority and, if such jurisdictions exist, how HUD should address this problem.

Miscellaneous Matters

Transition Provisions

The proposed regulations impose various obligations on project owners, PHAs and IHAs to serve notice regarding the pet nondiscrimination provisions (§§ 243.15 and 942.15) and to develop house rules governing the keeping of pets (§§ 243.22 and 942.25). To provide sufficient time to perform these tasks, the regulations would provide that project owners, PHAs and IHAs have 120 days from the effective date of the regulations to fully implement their provisions. §§ 243.4 and 942.4. Because it may not be possible for project owners to complete the initial tenant moves required to establish designated pet and no-pet areas as required under § 243.20(b)(5), § 243.4 would permit HUD to grant an extension of this time period if necessary to make these moves. An extension would be approved only if the project owner's request is supported by a proposed timetable for accomplishing the moves.

The proposed regulation would recognize that it may be impossible to amend all leases to incorporate the regulations' provisions within this 120-day-time period. Accordingly, specific transition provisions governing the incorporation of provisions concerning pets in leases are provided at §§ 243.35 and 942.27(b).

Preemption of State and Local Laws

The proposed regulations would address subjects that may also be covered by State and local laws. In some instances, the rule expressly provides that local law is inapplicable (*e.g.* § 942.20(b)(4)) concerning limitations on pet security deposits). In other cases, the rule would expressly preserve the State and local law (*e.g.* § 243.40 and 942.30 governing pets whose condition or conduct constitutes a nuisance or threat to health or safety, and §§ 242.20(b)(1), 243.20(c)(5), and 942.20(b)(6) governing State and local licensing and innoculation requirements).

It is possible that these regulations and the pet rules prescribed pursuant to them will conflict with State and local laws in other areas as well. During the course of the development of final rules in this proceeding, we intend to identify potentially conflicting State and local law, determined if Federal preemption is available and, if available, the extent to which it should be exercised. Accordingly, we invite commenters to identify conflicting statutes and ordinances that HUD ought to take into account in developing a final rule.

[2] This grievance procedure may not be applicable when Section 204 of the Housing and Urbvan-Rural Recovery Act of 1983 is implemented. This provision permits PHAs and IHAs to exclaude a grievance from grievance procedures if the State or local law requires that a tenant be given a court hearing before eviction and HUD determines that the State or local procedure provides the basic elements of due process. The precise coverage of Section 204 is under development and a rulemaking to implement these statutory provisions will be undertaken in the near future.

Exclusion

Neither Part 243 nor Part 942 would be applicable to animals that assist the handicapped. These animals are not considered to be pets but rather are aids necessary to ensure the independence of handicapped individuals. This exclusion is applicable to resident animals and animals that visit covered projects. Project owners subject to Part 243 may require that resident animals qualify for the exclusion. Furthermore, nothing in these rules will limit or impair the rights of handicapped individuals under other Federal, State, or local law.

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 10276, at the address listed above.

This rule does not constitute a "major rule," as that term is defined in Section 1(b) of Executive Order 12291 issued by the President on February 17, 1981. Analysis of the proposed 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, producitivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. Since the proposed rule will require project owners to permit common household pets to reside in rental housing units, it is possible that the rule may cause increased costs for owners of rental housing projects, some of whom may constitute small entities. However, since the rule also permits recovery of costs through security deposits, it is not believed that the effect will be substantial.

This rule was listed as item 274 in the Department's Semiannual Agenda of Regulations published April 19, 1984 (49 FR 15902, at 15959) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register.**

The Catalog of Federal Domestic Assistance Program numbers and titles for Part 243 are: 14.103 Interest Reduction Payments—Rental and Cooperative Housing for Lower Income Families, 14.135 Mortgage Insurance—Rental Housing for Moderate Income Families, 14.137 Mortgage Insurance—Rental and Cooperative Housing for Low and Moderate Income Families, Market Interest Rate, 14.138 Mortgage Insurance—Rental Housing for the Elderly, 14.156 Lower Income Housing Assistance Program, 14.157 Housing for the Elderly and Handicapped 14.174 Housing Development Grant Porgram.

There are no Catalog of Federal Domestic Assistance Program numbers and titles for Part 511.

The Catalog of Federal Domestic Assistance Program numbers for Part 942 are: 14.146 Low-Income Housing—Assistance Program (Public Housing).

List of Subjects

24 CFR Part 243

Housing, Aged, Handicapped, Pets.

24 CFR Part 511

Administrative practice and procedure, Grant programs—Housing and community development, Low and moderate income housing, Rental rehabilitation grants, Reporting and record keeping requirements.

24 CFR Part 942

Public housing, Aged, Handicapped, Pets.

For reasons set out in the preamble, Title 24 of the Code of Federal Regulations is proposed to be amended as follows:

1. Part 243 would be added to read as follows:

PART 243—PET OWNERSHIP IN RENTAL HOUSING FOR THE ELDERLY OR HANDICAPPED

Subpart A—General

Sec.

243.1 Purpose.
243.2 Exclusion for animals that assist the handicapped.
243.3. Definitions.
243.4. Effective date.

Subpart B—Nondiscrimination Provisions

243.10 Prohibition against discrimination.
243.15. Notice to tenants.

Subpart C—Rules Governing the Keeping of Pets

243.20 Content of pet rules.
243.22 Procedure for development of pet rules.
243.24 Pet rule violation procedures.
243.26 Special rules for health threats and tenant moves.

Subpart D—Lease Provisions

243.30 Lease provisions.
243.35 Implementation of lease provisions.

Subpart E—Nuisance or Threat to Health or Safety

243.40 Nuisance or threat to health or safety.
243.45 Emergencies.

Authority: Section 227(b), Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98–181, approved November 30, 1983); and Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Subpart A—General

§ 243.1 Purpose.

(a) This part implements Section 227 of the Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701n–1) as it pertains to the housing programs administered by the Assistant Secretary for Housing-Federal Housing Commissioner, except programs under Section 10(c) and Section 23 of the United States Housing Act of 1937 (as in effect before amendment of the Housing and Community Development Act of 1974). 24 CFR Part 942 implements this provision as it pertains to the Section 10(c) and Section 23 programs and programs administered by the Assistant Secretary for Public and Indian Housing.

(b) Section 227 provides that no owner or manager of federally assisted rental housing for the elderly or handicapped may (1) as a condition of tenancy or otherwise, prohibit or prevent tenants of such housing from owning or keeping common household pets in their units or (2) restrict or discriminate against persons in connection with admission to, or continued occupancy of, such housing because they own common household pets. The statute directs HUD to issue regulations necessary to ensure compliance with these provisions and to ensure attaining the goal of providing decent, safe, and sanitary housing for the elderly or handicapped. The statute also requires that these regulations establish guidelines under which owners and managers may prescribe reasonable

rules for the keeping of pets by tenants and must consult with tenants in prescribing the rules.

§243.2 Exclusion for animals that assist the handicapped.

This part does not apply to animals that are used to assist the handicapped. This exclusion applies to animals that reside in projects for the elderly or handicapped, as well as to animals that visit these projects. A project owner may require resident animals to qualify for this exclusion. Exclusion must be granted if the tenant or prospective tenant certifies in writing that (a) the tenant or a member of his or her family is handicapped, (b) the animal has been trained to assist persons with that specific handicap, and (c) the animal actually assists the handicapped individual. Nothing in this part limits or impairs the rights of handicapped individuals under Federal, State, or local law.

§ 243.3 Definitions.

(a) *Common household pet* means a smaller domesticated animal, such as a dog, cat, bird, rodent, fish or turtle, that is traditionally kept in the home for pleasure rather than for commercial purposes. Reptiles (except turtles) are not common household pets.

(b) *Elderly or handicapped family* means an elderly or handicapped person or family for purposes of the program under which a project for the elderly or handicapped is assisted or has its mortgage insured.

(c) *Project for the elderly or handicapped* means a specific rental or cooperative multifamily property that, unless currently owned by HUD, is subject to a first mortgage, and:

(1) That is assisted under 24 CFR Part 885 (Loans for Housing for the Elderly or Handicapped);

(2)(i) That is designated for occupancy by elderly or handicapped families in the regulatory agreement covering the project and (ii) that is assisted (with or without HUD mortage insurance) under Section 221(d)(3) (BMIR) of the National Housing Act or 24 CFR Part 236;

(3)(i) That is designated for occupancy by elderly or handicapped families in the regulatory agreement covering the project and (ii) that is insured under Section 221(d)(3) (Market Rate) or Section 221(d)(4) of the National Housing Act, or 24 CFR Part 231 (Housing Mortgage Insurance for the Elderly);

(4)(i) For which preference in tenant selection is given (with HUD or PHA approval) for all units in the project to elderly or handicapped families and (ii) that is assisted under Part 880 (Section 8 New Construction), Part 881 (Section 8 Substantial Rehabilitation), Part 882 (Subparts D and E) (Section 8 Moderate Rehabilitation), Part 883 (Section 8 State Housing Agency Programs), Part 884 (Section 8 Rural Set-Aside), or Part 886 (Subparts A and C) (Section 8 Loan Management and Property Disposition).

(5)(i) For which preference in tenant selection is given for all units in the project to elderly or handicapped families and (ii) that is assisted under 24 CFR Part 850 (Housing Development Grant Program); or

(6)(i) That is owned by HUD and (ii) for which HUD gives preference in tenant selection for all units in the project to elderly or handicapped families.

This term does not include health and care facilities that have mortgage insurance under the National Housing Act, such as nursing homes and intermediate care facilities with insurance under 24 CFR Part 232 and hospitals with insurance under 24 CFR Part 242. This term also does not include any of the project owner's other property that does not meet the criteria contained in any one of paragraphs (c)(1)–(6) of this section even if the property is adjacent to or under joint or common management with such specific property.

(d) *Project owner* means an owner (including HUD, where HUD is the owner) or manager of a project for the elderly or handicapped, or an agent authorized to act for an owner or manager of such housing.

§ 243.4 Effective date.

This part shall be effective on (*insert effective date of final rule*). Project owners shall have until (*insert date 120 days after effective date*) to implement the provisions of this part, except that HUD may approve a reasonable extension of this period upon request by the project owner if necessary to complete the tenant moves required under § 243.20(b)(5). This request must include the project owner's proposed timetable for accomplishing these moves.

Subpart B—Nondiscrimination Provisions

§ 243.10 Prohibition against discrimination.

Except as otherwise specifically authorized under this part, no owner of a project for the elderly or handicapped may:

(a) As a condition of tenancy or otherwise, prohibit or prevent any tenant of such housing from owning common household pets or having such pets living in the tenant's dwelling unit; or

(b) Restrict or discriminate against any person in connection with admission to, or continued occupancy of, such housing by reason of the person's ownership of common household pets or the presence of such pets in that person's dwelling unit.

§ 243.15 Notice to tenants.

(a) Project owners shall serve written notice on all tenants of projects for the elderly or handicapped in occupancy at the time of implementation of this part, stating that (1) tenants are permitted to own and keep common household pets in their dwelling units, in accordance with the pet rules promulgated under Subpart C of this part and the provisions of § 243.26; (2) animals that are used to assist the handicapped are excluded from the requirements of this part, as provided in § 243.2; and (3) tenants may request that their leases be amended in accordance with § 243.30 to permit common household pets. This notice shall be served along with the notice of proposed pet rules described in § 243.22(b).

(b) Project owners shall provide a copy of the pet rules developed under § 243.22 and the written notice specified in paragraphs (a) (1) and (2) of this section to each applicant for tenancy when he or she is offered a dwelling unit in the project.

Subpart C—Rules Governing the Keeping of Pets

§ 243.20 Content of pet rules.

(a) *General.* The project owner shall prescribe reasonable rules to govern the keeping of common household pets. The pet rules must include the mandatory rules described in paragraph (b) of this section and may include the discretionary provisions described in paragraph (c) of this section. Since the "reasonableness" of a rule will frequently depend on the facts and circumstances in each case, this part does not define with specificity the limits of the project owners' discretion to promulgate pet rules. As a matter of general guidance, however, the pet rules should be reasonably related to furthering a legitimate interest of the project owner, such as the owner's interest in providing a decent, safe, and sanitary living environment for existing and prospective tenants and in protecting and preserving the physical condition of the project and the owner's financial interest in it. In addition, the pet rules should be drawn narrowly to achieve the owner's legitimate interests.

without imposing unnecessary burdens and restrictions on pet owners and prospective pet owners. Where a project owner has discretion to prescribe pet rules under this section, the owner may vary the rules' content among projects owned by the project owner.

(b) *Mandatory rules.* The project owner must prescribe the following pet rules:

(1) *Innoculations.* The pet rules shall require pet owners to have their pets innoculated in accordance with State and local laws.

(2) *Sanitary standards.* The pet rules shall prescribe sanitary standards to govern the disposal of pet waste. These rules may designate areas on the project premises for pet exercise and the deposit of pet waste; may forbid pet owners from exercising their pets or permitting their pets to deposit waste on the project premises outside the designated areas; may require pet owners to remove and properly dispose of all removable pet waste; and may require pet owners to remove pets from the premises to permit the pet to exercise or deposit waste, if no area in the project is designated for such purposes. In the case of cats and other pets using litter boxes, the pet rules may require the pet owner to change the litter (but not more than twice each week), may require pet owners to separate pet waste from litter (but not more than once each day), and may prescribe methods for the disposal of pet waste and used litter.

(3) *Leashing.* The pet rules shall require that all cats and dogs be leashed and under the control of a responsible individual while on the common areas of the project.

(4) *Registration.* The pet rules shall require pet owners to register their pets with the project owner. The pet owner must register the pet before it is brought to reside on the project premises, and must update the registration at least annually. The registration must include: (i) A certificate signed by a licensed veterinarian or a State or local authority empowered to innoculate animals (or designated agent of such an authority) stating that the pet has received all innoculations required by applicable State and local law; (ii) information sufficient to identify the pet and to demonstrate that it is a common household pet; and (iii) the name, address, and phone number of a responsible party that will care for the pet if the pet owner dies, is incapacitated, or is otherwise unable to care for the pet. The project owner may require the pet owner to provide additional information necessary to ensure compliance with the discretionary rules prescribed in paragraph (c) of this section, and shall require the pet owner to sign a statement indicating that he or she has read the pet rules and agrees to comply with them. The pet rules shall permit the project owner to refuse to register a pet if the pet is not a common household pet, if the keeping of the pet will violate any applicable house pet rule, if the presence of the pet will constitute a serious threat to the health of another resident of the project (as provided in § 243.26(c)), or if the pet owner fails to provide complete pet registration information or fails to annually update the pet registration. The pet rules shall require the project owner to notify the pet owner if the project owner refuses to register a pet. The notice shall state the basis for the project owner's action and shall be served in accordance with the requirements of § 243.22(f). The notice of refusal to register a pet may be combined with a notice of pet violation as required in § 243.24.

(5) *Pet and no-pet areas.* (i) The pet rules shall designate buildings, floors of buildings, or sections of buildings as areas for occupancy by tenants for whom the presence of a pet will constitute a serious health threat, as provided in § 243.26(a)(1). When initially implementing this part, project owners must designate areas with a sufficient number of units to accommodate all existing tenants for whom the presence of a pet will constitute such a threat. Owners must direct such tenant moves (as provided in § 243.26(g) as may be necessary to establish such areas within the time period provided in § 243.4. Thereafter, project owners shall make such adjustments to the designated areas and may direct such moves as may be reasonably necessary to accommodate tenants for whom the presence of a pet will constitute such a threat.

(ii) Except for the circumstances in § 243.26, a project owner may not refuse to admit an applicant for tenancy on grounds that the applicant's admission would violate a pet or no-pet area. The project owner may, however, require the applicant, as a condition of admission to tenancy, to agree to move at a later time (as provided in § 243.26(g) to another suitable unit in the project that is within a pet or no-pet area, as appropriate.

(c) *Discretionary rules.* The project owner may prescribe other reasonable rules to govern the keeping of common household pets. These rules may include, but are not limited to, consideration of the following factors:

(1) *Density of pets.* The pet rules may place reasonable limitations on the number of common household pets that may be allowed in each dwelling unit. Under these rules, the number of four-legged, warm-blooded pets may be limited to one pet in each dwelling unit. Other than the dwelling unit pet limitations, the pet rules may not limit the total number of pets allowed in the project.

(2) *Pet size and pet type.* The pet rules may place reasonable limitations on the types of pets and the size and weight of pets allowed in the project.

(3) *Potential financial obligation of tenants.* The pet rules may require pet owners to pay a pet security deposit to compensate the project owner for costs associated with the presence of the pet in the rental housing project. The pet rules may also permit the project owner to impose a separate pet waste removal charge on pet owners that fail to remove pet wastes in accordance with the prescribed pet rules. Fees and deposits are subject to prior HUD approval and will be approved only if the project owner can provide a sufficient cost justification. Fees and deposits are not a part of rent payable to the project.

(4) *Standards of pet care.* The pet rules may prescribe standards of pet care and handling. For example, these rules may require owners to have their dogs and cats spayed or neutered; may bar pets from specified common areas (such as lobbies, laundry rooms, and social rooms); may limit the length of time that a pet may be left unattended in a dwelling unit; may require the pet owner to control noise and odor caused by a pet; and may exclude from the project pets that are not owned by a tenant.

(5) *Pet licensing.* The pet rules may require pet owners to license their pets in accordance with State and local laws. (Failure of the pet rules to contain this requirement does not relieve the pet owner of responsibility for complying with applicable State and local pet licensing requirements.)

§ 243.22 Procedure for development of pet rules.

(a) *General.* Project owners shall use the procedures specified in this section to promulgate the pet rules referred to in § 243.20.

(b) *Development and notice of proposed pet rules.* Project owners shall develop proposed rules to govern the keeping of common household pets in projects for the elderly or handicapped. Notice of the proposed pet rules shall be served on each tenant of the project as provided in paragraph (f) of this section. The notice shall include the text of the proposed rules, state that tenants or tenant representatives may submit

written comments on the rules, and state that all comments must be submitted to the project owner no later than 30 days from the effective date of the notice of the proposed rules. The notice may also announced the date, time, and place for a meeting to discuss the proposed rules (as provided in paragraph (c) of this section).

(c) *Tenant consultation.* Tenants or tenant representatives may submit written comments on the proposed pet rules to the project owner by the date specified in the notice of proposed rules. In addition, the owner may schedule one or more meetings with tenants during the comment period to discuss the proposed rules. Tenants and tenant representatives may make oral comments on the proposed rules at these meetings. The project owner must consider comments made at these meetings only if they are summarized, reduced to writing, and submitted to the project owner before the end of the comment period.

(d) *Development and notice of final pet rules.* The project owner shall develop the final rules after reviewing tenants' written comments and written summaries of any owner-tenant meetings. The project owner may meet with tenants and tenant representatives to attempt to resolve issues raised by the comments. Subject to this part, the content of the final pet rules, however, is within the sole discretion of the project owner. The project owner shall serve on each tenant of the project, a notice of the final pet rules as provided in paragraph (f) of this section. The notice must include the text of the final pet rules and must specify the effective date of the final pet rules.

(e) *Amendment of pet rules.* The project owner may amend the pet rules at any time by following the procedure for the development of pet rules as specified in paragraphs (b)–(d) of this section.

(f) *Service of notice.* The project owner must serve the notices required under this section on each tenant by (1) sending a letter by first class mail properly stamped and addressed to the tenant at the dwelling unit, with a proper return address, and (2) serving a copy of the notice on any adult answering the door at the tenant's leased dwelling unit or, if no adult responds, by placing the notice under or through the door, if possible, or else, by attaching the notice to the door. Service of a notice on a tenant will be complete on the date that the first class letter under paragraph (f)(1) of this section is mailed or the date the notice under paragraph (f)(2) of this section is personally served, whichever is later. A notice will not be effective until service has been completed on any tenant for whom notice is to be provided.

§ 243.24 Pet rule violation procedures.

(a) *Notice of pet rule violation.* If a project owner determines on the basis of objective facts, supported by written statements, that a pet owner has violated a rule governing the keeping of pets, the project owner shall serve a notice of pet rule violation on the pet owner in accordance with § 243.22(f). The notice of pet rule violation must be in writing and must:

(1) Contain a brief statement of the factual basis for the determination and the pet rule or rules alleged to be violated;

(2) State that the pet owner has 10 days from the effective date of service of the notice to correct the violation (including, in appropriate circumstances, removal of the pet) or to make a written request for a meeting to discuss the violation; and

(3) State that the pet owner's failure to correct the violation, to request a meeting, or to appear at a requested meeting may result in initiation of procedures to have the pet removed (*see* § 243.40) or terminate the pet owner's tenancy, or both.

(b)(1) *Pet rule violation meeting.* If the pet owner makes a timely request for a meeting to discuss a pet rule violation, the project owner shall establish a mutually agreeable time and place for the meeting no later than 15 days from the effective date of service of the notice of pet rule violation. At the pet rule violation meeting, the pet owner and project owner shall discuss any alleged pet rule violation and attempt to correct it. The project owner may, as a result of the meeting, give the pet owner additional time to correct the violation. If the parties are unable to resolve the problem, the project owner may inform the pet owner in writing that the pet must be removed from the premises within 10 days of the pet rule violation meeting.

(2) *Notice for pet removal.* If the project owner determines that the pet owner has failed to correct the pet rule violation within the time provided under paragraph (b)(1) of this section (including any additional time permitted by the owner), the project owner may serve a notice on the pet owner in accordance with § 243.22(f) requiring the pet owner to remove the pet. The notice must be in writing and must:

(i) Contain a brief statement of the factual basis for the determination and the pet rule that has been violated;

(ii) State that the pet owner must remove the pet within 10 days of the effective date of the notice; and

(iii) State that failure to remove the pet may result in initiation of procedures to have the pet removed under § 243.40 or terminate the pet owner's tenancy, or both.

(c) *Commencement of procedures to remove a pet or terminate the pet owner's tenancy.* If the project owner determines that (1) a pet owner has not removed the pet or corrected the pet rule violation within the applicable time period specified in this section (including any additional time permitted by the owner) and (2) the pet rule violation is sufficient to begin procedures to have the pet removed under § 243.40 or terminate the pet owner's tenancy under the terms of the lease and applicable regulations, the project owner may commence such procedures.

§ 243.26 Special rules for health threats and tenant moves.

(a) *General.* (1) The project owner shall not permit the presence of a common household pet to constitute a serious threat to the health of a tenant or prospective tentant, or any member of his or her family. For purposes of this section, a common household pet will constitute a serious threat to the health of an individual only if the individual (or his or her parent or guardian) has filed with the project owner a certificate signed by a licensed physician indicating that exposure to the pet will cause an allergic reaction that will constitute such a threat to the individual. The certificate must describe the type of exposure (such as direct contact or presence in the same room, elevator, or common area), duration of exposure, the types or groups of animals (such as long-haired, fur-bearing animals), and any other information relevant to ascertaining the nature and extent of the circumstances that will cause such a reaction.

(2) Project owners must take reasonable measures to ensure that the presence of a pet does not constitute such a threat. These measures must include designating buildings, floors of buildings, or sections of buildings as no-pet areas (as provided in § 243.20(b)(5)) and may include (as required by this part or otherwise appropriate to the circumstances) steps such as requiring tenants to move to suitable alternative dwelling units within the project (as provided in paragraph (g) of this section) or restricting the presence of the pet or types of pets in hallways, elevators, and common areas (as provided in

§ 243.20(c)(4)). This section prescribes rules governing project owner and tenant rights and responsibilities when, despite reasonable measures, the presence of a pet will constitute a serious threat to the health of an individual. It also provides guidance with respect to tenant moves directed by a project owner in furtherance of the provisions of this part.

(b) *Applicants for tenancy.* (1) A project owner shall refuse to admit an applicant for tenancy if the applicant will own or keep a common household pet in the dwelling unit and the presence of the pet will cause a serious threat to the health of a tenant (or a resident member of a tenant's family). A project owner may not refuse to admit the applicant if the applicant agrees not to keep the pet in the unit. If the applicant is denied admission to a project or if the applicant agrees to move into the unit but not to keep the pet in the unit, the project owner must, upon the applicant's request, place the applicant on the pet waiting list described in paragraph (e) of this section. A project owner's refusal to admit an applicant to a project under this paragraph (b)(1) shall not adversely affect his or her application for tenancy in the project, including (but not limited to) the applicant's position on the project waiting list or qualification for any tenant selection preference.

(2) An applicant for tenancy in a project may reject a unit offered by a project owner if an existing tenant of the project owns or keeps a common household pet in his or her dwelling unit and the presence of the pet will constitute a serious threat to the health of the applicant (or a resident member of the applicant's family). An applicant's rejection of a unit under this paragraph (b)(2) shall not adversely affect his or her application for tenancy in the project, including (but not limited to) his or her position on the project waiting list or qualification for any tenant selection preference.

(c) *Acquisition of pets by existing tenants.* If, after reviewing the registration information under § 243.20(b)(4), the project owner determines that an existing tenant of the project intends to own or keep a common household pet in the dwelling unit and the pet will constitute a serious threat to the health of another tenant (or a resident member of that tenant's family), the project owner shall refuse to register the pet. If the project owner refuses to register a pet, the project owner must, at the tenant's request, place the tenant on the pet waiting list described in paragraph (e) of this section.

(d) *Registered pets residing in a unit.* If, after a common household pet is registered and resides in a unit, the project owner determines that its presence will cause a serious threat to the health of a tenant (or a resident member of this tenant's family), the project owner shall direct tenant moves (as provided in paragraph (g) of this section) to enable the tenant to move to an available suitable unit in a no-pet area. If no such unit can be made available, the project owner shall make such adjustments to the no-pet area and may direct such moves as may be reasonably necessary to accommodate the tenant. If the tenant cannot be accommodated, the project owner shall place the tenant on a no-pet waiting list. The project owner shall list the names of such tenants in the chronological order of the date on which the project owner determined that the presence of a pet will constitute a serious health threat for them.

(e) *Pet waiting list.* If requested under paragraph (b) or (c) of this section, the project owner shall establish and maintain a pet waiting list. The project owner shall list the names of prospective pet owners in the chronological order of their request for inclusion on the list.

(f) *Available dwelling units.* (1) If a dwelling unit in a no-pet area of a project becomes available for occupancy, the project owner must offer the unit to the first family that is on the no-pet waiting list and that is eligible to occupy the unit. If a family to whom a dwelling unit if offered refuses to accept the unit, the project owner shall offer the unit to the next eligible family on the no-pet waiting list.

(2) If a dwelling unit in a project for which no family is eligible under paragraph (f)(1) of this section becomes available for occupancy, the project owner must offer the unit to the first family on the pet waiting list that is eligible to occupy the unit. A prospective tenant who has been refused tenancy under paragraph (b)(1) of this section will be considered eligible for purposes of this paragraph (f)(2) only if he or she is first on the project waiting list. If a family to whom a dwelling unit is offered refuses to accept the unit, the project owner shall offer the unit to the next eligible family on the pet waiting list.

(3) A family will be considered ineligible to occupy a unit under this paragraph (f) if such occupancy would expose an individual to a common household pet whose presence will constitute a serious threat to that individual's health.

(4) A unit is not considered available for occupancy under this paragraph (f) if existing tenants of the project trade units pursuant to a move directed by the project owner, as provided in paragraph (g) of this section.

(g) *Tenant moves.* (1) The project owner may direct existing tenants to move to suitable alternative dwelling units within the project, if the move will enable the project owner to (i) offer a suitable dwelling unit (A) to a family listed on the pet waiting list described in paragraph (e) of this section; (B) to an applicant for tenancy who otherwise would be denied admission under paragraph (b)(1) of this section; (C) to an applicant for tenancy who otherwise would be permitted to refuse an offer of a dwelling unit under paragraph (b)(2) of this section; or (D) to an existing tenant whose pet registration would otherwise be refused under paragraph (c) of this section; (ii) maintain the character of areas designated as pet and no-pet areas, as provided in § 243.20; (iii) protect an individual from exposure to a pet that would constitute a serious threat to that individual's health; or (iv) otherwise further the purposes of this part. The project owner must direct moves to establish designated no-pet areas as described in § 243.20(b)(5).

(2) When directing moves, the project owner shall (i) attempt to maintain the character of the areas designated as pet and no-pet areas; (ii) attempt to minimize disruption to existing tenants; (iii) consider the length of time existing tenants have occupied their dwelling units; and (iv) consider the wishes of existing tenants.

(3) The project owner may not direct any move that would expose a tenant (or a resident member of a tenant's family) to a common household pet whose presence will constitute a serious threat to that individual's health.

(4) Expenses associated with the move of an existing tenant authorized by this paragraph (g) shall be borne by the project and shall be considered a project expense.

Subpart D—Lease Provisions

§ 243.30 Lease provisions.

(a) *Pet provisions.* The leases for all tenants of projects for the elderly or handicapped shall state that tenants are permitted to keep common household pets in their dwelling units (subject to the provisions of this part and the pet rules promulgated under § 243.20); shall incorporate by reference the pet rules promulgated by the project owner; shall provide that the tenant agrees to comply with these rules; and shall state that

violation of these rules may be grounds for removal of the pet or termination of the pet owner's tenancy (or both) in accordance with the provisions of this part and State or local law and applicable regulations. These regulations include 24 CFR Part 247 (Evictions From Certain Subsidized and HUD-Owned Projects) and provisions governing the termination of tenancy under the Section 8 Housing Assistance Payments Programs (*see* 24 CFR 880.607, 881.607, 882.511, 883.708, 884.216, 886.128, and 886.328).

(b) *Emergency provisions.* If there is no State or local authority (or a designated agent of such an authority) authorized to remove a pet whose health or safety is immediately threatened by the death of incapacity of the pet owner, the project owner may place a provision in tenant leases permitting the project owner to enter the premises, remove the pet, and place the pet in a facility that will provide care and shelter for no less than 30 days. The lease shall permit the project owner to enter the premises only if the project owner has made a reasonable attempt to contact the responsible party listed on the pet registration required under § 243.20(b)(4)(iii) and the responsible party is unwilling or unable to care for the pet.

§ 243.35 Implementation of lease provisions.

The lease for each tenant of a project for the elderly or handicapped who is admitted on or after the date on which the project owner implements this part shall contain the lease provisions described in § 243.30(a) and, if applicable, § 243.30(b). The lease for each tenant who occupies a unit in such a project under lease on the date of implementation of this part shall be amended to include the provisions described in § 243.30(a) and, if applicable, § 243.30(b):

(a) Upon renewal of the lease and in accordance with any applicable regulation (*see,* for example, 24 CFR 247.4(d)); or

(b) When a tenant registers a common household pet under § 243.20(b)(4).

Subpart E—Nuisance or Threat to Health or Safety

§ 243.40 Nuisance or threat to health of safety.

Nothing in this part prohibits a project owner or an appropriate community authority from requiring the removal of any pet from a project, if the pet's conduct or condition is duly determined to constitute, under the provisions of State or local law, a nuisance or a threat to the health or safety of the occupants of the project or of other persons in the community where the project is located.

§ 243.45 Emergencies.

(a) If a pet becomes vicious, displays symptoms of severe illness, or demonstrates other behavior that constitutes an immediate threat to health or safety of the tenancy as a whole, the project owner may request the pet owner immediately to remove the pet from the rental housing project. If the pet owner refuses to remove the pet or if the project owner is unable to contact the pet owner, the project owner may contact the appropriate State or local authority (or designated agent of such an authority) to have the pet immediately removed from the project premises.

(b) If the health or safety of a pet is threatened by the death or incapacity of the pet owner, or by other factors that render the pet owner unable to care for the pet, the project owner may contact the responsible party listed in the pet registration required under § 243.20(b)(4)(iii). If the project owner has made a reasonable attempt to contact the responsible party, but the party is either unwilling or unable to care for the pet, the project owner may contact the appropriate State or local authority (or designated agent of such an authority) and request the removal of the pet. If there is no State or local authority (or designated agent of such an authority) authorized to remove a pet under these circumstances and the project owner has placed a provision in the lease agreement (as described in § 243.30(b)), the project owner may enter the pet owner's unit, remove the pet, and place the pet in a facility that will provide care and shelter for no less than 30 days. The cost of the animal care facility may be paid from the security deposit, if imposed under the pet rules. If there is no security deposit, the cost of the animal care facility shall be paid from project expense.

PART 511—RENTAL REHABILITATION GRANT PROGRAM

2. The authority cite for Part 551 would be revised to read as follows:

Authority: Sec. 17, United States Housing Act of 1937, 42 U.S.C. 1437o; sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); sec. 227(b), Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 91–181, approved November 30, 1983).

3. In Part 511, § 511.11 would be amended by adding a new paragraph (h) to read as follows:

§ 511.11 Other Federal requirements.

* * * * *

(h) *Pet ownership in housing for the elderly or handicapped.* The provisions of 24 CFR Part 243 apply to any project assisted under this part for which preference in tenant selection is given for all units in the project to elderly or handicapped persons or families, as defined in 24 CFR 812.2.

4. Part 942 would be added to read as follows:

PART 942—PET OWNERSHIP IN PUBLIC HOUSING FOR THE ELDERLY AND HANDICAPPED

Subpart A—General

Sec.
942.1 Purpose.
942.2 Exclusion for animals that assist the handicapped.
942.3 Definitions.
942.4 Effective date.

Subpart B—Nondiscrimination Provisions

942.10 Prohibition against discrimination.
942.15 Notice to tenants.

Subpart C—Rules Governing the Keeping of Pets

942.20 Content of pet rules.
942.25 Consultation with tenants on pet rules.
942.27 Lease provisions.

Subpart D—Nuisance or Threat to Health or Safety

942.30 Nuisance or threat to health or safety.
942.35 Emergencies.

Authority: Sec. 227(b), Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 91–181, approved November 30, 1983); and sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Subpart A—General

§ 942.1 Purpose.

(a) This part implements Section 227 of the Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701n–1) as it pertains to the public housing programs administered by the Assistant Secretary for Public and Indian Housing and programs under Section 10(c) and Section 23 of the United States Housing Act of 1937 (as in effect before amendment by the Housing and Community Development Act of 1974). (24 CFR Part 243 implements this provision as it pertains to the programs administered by the Assistant Secretary for Housing-Federal Housing Commissioner, except the Section 10(c) and Section 23 programs.)

(b) Section 227 provides that no owner or manager of federally assisted rental housing for the elderly or handicapped may (1) as a condition of tenancy or

otherwise, prohibit or prevent tenants of such housing from owning or keeping common household pets in their units or (2) restrict or discriminate against persons in connection with admission to, or continued occupancy of, such housing because they own common household pets. The statute directs HUD to issue regulations necessary to ensure compliance with these provisions and to ensure attaining the goal of providing decent, safe, and sanitary housing for the elerely or handicapped. The statute also requires that these regulations establish guidelines under which owners and managers may prescribe reasonable rules for the keeping of pets by tenants and must consult with tenants in prescribing the rules.

§ 942.2 Exclusion for animals that assist the handicapped.

This part does not apply to animals that are used to assist the handicapped. This exclusion applies to animals that reside in projects for the elderly or handicapped, as well as to animals that visit these projects. Nothing in this part limits or impairs the rights of handicapped individuals under Federal, State, or local law.

§ 942.3 Definitions.

(a) *Elderly or handicapped family* means an elderly or handicapped person or family, as defined in 24 CFR 912.2.

(b) *Indian Housing Authority* means a public housing agency established (1) by exercise of an Indian tribe's powers of self government independent of State law or (2) by operation of State law providing specifically for housing authorities for Indians.

(c) *Project for the elderly or handicapped* means any project assisted under the United States Housing Act of 1937 (other than under section 8 or 17 of the Act), including any building within a mixed-use project, that was designated for occupancy by the elderly at its inception or, although not so designated, for which the PHA gives preference in tenant selection (with HUD approval) for all units in the project (or for a building within a mixed-use project) to elderly or handicapped families. This term does not include projects assisted under the Mutual Help Homeownership Opportunity Program (24 CFR Part 905, Subpart D) or the Low-Rent Housing Homeownership Opportunity Program (Turnkey III–24 CFR Part 904).

(d) *Public Housing Agency ("PHA")* Means any State, county, municipality, or other governmental entity or public body (or agency or instrumentality) that is authorized to engage in or assist in the development or operation of housing for low income families. As used in this part, PHA includes an Indian Housing Authority.

§ 942.4 Effective date.

This part shall be effective *(insert effective date of final rule)*. However, PHAs shall have until *(insert date 120 days after effective date)* to implement the provisions of this part.

Subpart B—Nondiscrimination Provisions

§ 942.10 Prohibition against discrimination.

Except as otherwise specifically authorized under this part, no PHA as owner or manager of a project for the elderly or handicapped may:

(a) As a condition of tenancy or otherwise, prohibit or prevent any tenant of such housing from owning common household pets or having such pets living in the tenant's dwelling unit; or

(b) Restrict or discriminate against any person in connection with admission to, or continued occupancy of, such housing by reason of the person's ownership of common household pets or the presence of such pets in that person's dwelling unit.

§ 942.15 Notice to tenants.

(a) Each PHA shall serve a written notice on all tenants of projects for the elderly or handicapped administered by the PHA who are in occupancy at the time of implementation of this part, stating that (1) tenants are permitted to own and keep common household pets in their dwelling units, in accordance with the pet rules (if any) promulgated under Subpart C of this part; (2) animals that are used to assist the handicapped are excluded from the requirements of this part; (3) where leases prohibit pets, tenants may request that their leases be amended in accordance with § 942.27. This notice shall be served during the tenant consultation process described in § 942.25. If a PHA chooses not to promulgate pet rules, the notice shall be served within 120 days of the effective date of this part, as provided in § 942.4. Notice under this paragraph shall be served according to the normal service of notice procedures used by the PHA.

(b) The PHA shall provide a copy of any pet rule developed under § 942.25 and the written notice specified in paragraphs (a) (1) and (2) of this section to each applicant for tenancy when he or she is offered a dwelling unit in a project for the elderly or handicapped.

Subpart C—Rules Governing the Keeping of Pets

§ 942.20 Content of pet rules.

(a) *General.* (1) PHAs may choose not to promulgate rules governing the keeping of common households pets. If they so choose, tenants must be permitted to own and keep pets in their units in accordance with the terms and conditions of their leases and provisions of this part.

(2) PHAs may, if they choose, prescribe reasonable rules to govern the keeping of common household pets, as provided in paragraph (b) of this section. These rules must be reasonably related to furthering the interest of the PHA, such as its interest in providing a decent, safe, and sanitary living environment for existing and prospective tenants and its interest in protecting and preserving the physical condition of the project and its financial interest in the project. Where a PHA has discretion to prescribe pet rules under this section, the PHA may vary the rules' content among projects administered by the PHA and within individual projects, based on factors such as the size, type, location, and occupancy of the project or its units, provided that the variances are reasonable.

(b) *Discretionary rules.* Pet rules promulgated by PHAs may include, but are not limited to, consideration of the following factors:

(1) *Common household pet.* The pet rules may contain a reasonable definition of a common household pet.

(2) *Density of pets.* The pet rules may place reasonable limitations on the number of common household pets that may be allowed in each dwelling unit. Other than the dwelling unit pet limitations, the pet rules may not limit the total number of pets allowed in the project.

(3) *Pet size and pet type.* The pet rules may place reasonable limitations on the size and weight of common household pets allowed in the rental housing project.

(4) *Potential financial obligations of tenants.* The pet rules may require pet owners to pay a pet security deposit to ensure that the PHA will be compensated for costs associated with the presence of the pets in the rental housing project. The pet rules may provide for gradual accumulation of the security deposit by the pet owner. Pet deposits shall not be subject to any limitations on security deposits provided by State or local law.

(5) *Standards of pet care.* The pet rules may address standards of pet care and handling.

(i) The pet rules may prescribe sanitary standards to govern the disposal of pet waste. For example, the rules may designate areas on the project premises for pet exercise and the deposit of pet waste; may forbid pet owners from exercising or permitting their pets to deposit waste on the project premises outside the designated areas; may require pet owners to remove and properly dispose of all removable pet waste; and may require pet owners to remove pets from the premises to permit the pet to exercise or deposit waste, if no area on the premises is designated for such purposes. In the case of cats and other pets using litter boxes, the PHA may prescribe standards for changing and disposing of litter and disposing of pet waste.

(ii) The pet rules may address other aspects of pet care and handling, but must be limited to those necessary to protect the condition of the tenant's unit and the general condition of the project premises, or to protect the health or safety of present tenants, PHA employees and the public. Permitted pet rules may include requirements that all cats and dogs be leased and under the control of a responsible individual while on the project's common areas, the exclusion of pets from specified common areas (such as lobbies, laundry rooms and social rooms), prescription of methods and procedures for transporting common household pets to and from the pet owner's dwelling unit, and requirements that the pet owner control noise and odor caused by the pet.

(6) *Other.* (i) The pet rules may require pet owners to comply with State or local laws governing the licensing and innoculation of pets. (Failure of the pet rules to contain these requirements does not relieve the pet owner of responsibility for complying with applicable State and local pet licensing and innoculation requirements.)

(ii) The pet rules may designate buildings, floors of buildings or sections of buildings as no-pet areas where pets generally may not be permitted. Similarly, the pet rules may designate buildings, floors of buildings or sections of buildings for residency generally by pet-owning tenants. The PHA may direct such initial tenant moves as may be necessary to establish pet and no-pet areas. The PHA may not refuse to admit (or delay admission of) an applicant for tenancy on the grounds that the applicant's admission would violate a pet or no-pet area. The PHA may adjust the pet and no-pet areas or may direct such additional moves as may be necessary to accommodate such applicants for tenancy or to meet the changing needs of existing tenants.

(iii) The pet rules may permit the tenants of a project to establish a voluntary pet owners association. The pet owners association may perform such functions as the collection and dissemination of information on pet care, provision of pet care assistance to tenants, informal mediation of disputes between tenants concerning pets, and provision of advice to the project management concerning compliance with the pet rules.

§ 942.25 Consultation with tenants on pet rules.

PHAs that choose to promulgate pet rule shall consult with tenants of projects for the elderly or handicapped administered by them with respect to their promulgation and subsequent amendment. PHAs shall develop the specific procedures governing tenant consultation, but these procedures must be designed to give tenants (or, if appropriate, tenant councils) adequate opportunity to review and comment upon the pet rules before they are issued for effect. PHAs are solely responsible for the content of final pet rules, but must give consideration to tenant comments. PHAs shall send to the responsible HUD field office, copies of the final (or amended) pet rules, as well as summaries or copies of all tenant comments received in the course of the tenant consultation.

§ 942.27 Lease provisions.

(a) *Lease provisions.* (1) Where a PHA has established pet rules under Subpart C of this part, the leases for all tenants of projects for the elderly or handicapped shall not contain any provisions prohibiting the owning or keeping of common household pets (subject to the provisions of this part and the pet rules); shall incorporate by reference the pet rules promulgated by the PHA; shall provide that the tenant agrees to comply with these rules, including those governing tenant moves as provided in this part; and shall state that violation of these rules may be grounds for removal of the pet, or termination of the pet owner's tenancy (or both) in accordance with State or local law and applicable regulations, *e.g.*, 24 CFR Part 966 (Lease and Grievance Procedures).

(2) Where a PHA has not established pet rules under Subpart C, the leases of all tenants of such projects shall not contain any provisions prohibiting the owning or keeping of common household pets and shall state that owning and keeping of such pets will be subject to the general obligations imposed on the PHA and tenants in the lease.

(b) *Implementation of lease provisions.* The lease for each tenant of a project for the elderly or handicapped who is admitted on or after the date on which this part is implemented shall contain the lease provisions described in paragraph (a) (1) or (2) of this section, as appropriate. The lease for each tenant who occupies a unit in such a project under lease on the date of implementation of this part shall be amended to include the appropriate provisions of paragraph (a) of this section as follows:

(1) Upon annual reexamination of tenant income in accordance with any applicable regulations, or

(2) When a tenant wishes to own or keep a common household pet in his or her unit.

Subpart D—Nuisance or Threat to Health or Safety

§ 942.30 Nuisance or threat to health or safety.

Nothing in this part prohibits a PHA or an appropriate community authority from requiring the removal of any pet from a project if the pet's conduct or condition is duly determined to constitute, under the provisions of State or local law, a nuisance or a threat to the health or safety of other occupants of the project or of other persons in the community where the project is located.

§ 942.35 Emergencies.

If a pet exhibits behavior that constitutes an immediate threat to health or safety, the PHA may contact the appropriate State or local authority (or designated agent of such an authority). Nothing in this part shall preclude the State or local authority from immediately removing the pet from the project premises.

Dated: December 20, 1984.

Samuel R. Pierce, Jr.,

Secretary.

Appendix—Summary of Public Comments on Notice H–84–10

[Note.—This material will not appear in the Code of Federal Regulations.]

I. Introduction

The department received an unprecedented number of public comments in response to the February 28, 1984 notice (H–84–10) to Public Housing Agencies (PHAs), Indian Housing Authorities (IHAs), project owners, and HUD field staff concerning the ownership of pets in federally assisted rental housing for the elderly or handicapped, as provided by section 227 of the Housing and Urban-Rural Recovery Act of 1983. This

document summarizes 2,664 comments received by October 22, 1984. Commenters included individuals (including elderly or handicapped residents of HUD-insured or HUD-assisted housing), PHAs, owner/managers, management/development companies, animal rights organizations and church/charity associations. (A percentage breakdown of the comments received from each commenter category is included as Part VI to this Appendix. A list of ten commonly asked questions is attached as Part VII.)

II. General support/opposition to section 227

A large majority of the public comments expressed opposition to the new law. The Department classified the 2,664 comments as follows:

A. Comments that expressly endorsed the law or indicated general support for the concept of pets in federally assisted rental housing, were classified as comments in favor of the statute. The Department placed 239 comments in this category.

B. Comments that expressly opposed section 227, opposed the keeping of pets in certain types of covered housing (e.g., high-rise projects), or opposed the keeping of cats or dogs in covered housing, and comments with attached surveys or petitions of tenants that opposed the law, were classified as comments in opposition to section 227. There were 2,297 comments in this category.

C. Comments that were indecipherable or expressed no clear opinion favoring or opposing the law, including comments that merely advanced suggestions for the implementation of the law or identified subjects that HUD regulations should address, were classified as comments expressing no opinion. There were 128 such comments.

Those in favor of section 227 based their support on the therapeutic value, companionship and sense of purpose provided by pet ownership. For example, the Pet Food Institute, Washington, DC, forwarded publications of the Pets Are Wonderful Council which stated, "Scientific research has proven that dogs and cats are important to the physical and psychological well-being of people. Among the benefits pets offer people are reduced stress and lower blood pressure, increased security and a general feeling of well-being . . . Studies have shown that most people consider their pets to be actual members of the family. Very strong bonds and attachments develop between people and their pets, especially over the course of many years. These bonds are critically important, particularly to people who may be alone. To refuse to allow tenants to keep companion animals can be very cruel indeed."

While these commenters argued that "no great management problems" would be created by pet ownership (Housing and Redevelopment Authority for the City of Brainerd, MN), they also offered suggestions for reasonable rules to insure that the ownership of pets would not constitute "a nuisance or a burden to those who do not wish to have pets." (Humane Society of the United States.)

III. Guideline proposals

Section 227(b)(2) requires HUD to establish guidelines under which project owners, PHAs, and IHAs may prescribe reasonable rules for the keeping of pets by tenants and under which they shall consult with tenants in prescribing such rules. The rules may consider factors such as density of tenants, pet size, types of pets, potential financial obligations of tenants, and standards of pet care. The following is a discussion of the major concerns raised by the commenters.

A. Financial responsibility

Overview. Commenters expressed concern that pets would increase project costs. The consensus of the comments was that the regulations should provide compensation to project owners for the increased costs associated with pet presence, and that pet owners should have primary financial responsibility for the increased costs. Commenters in each of the categories addressed this as a major concern.

Comments and Suggestions. 1. *Increased costs.* Commenters were concerned that pet presence would increase the costs of operating assisted housing. Increased costs were predicted as a result of:

(a) *Property damage.* "We cannot begin to tell you the damages that can be done by pets to apartments. Cats will claw carpets and drapes not to mention walls and floors. A dog will chew on woodwork as well as scratch same. Finally, pet messes literally destroy carpet and pad. We have had situations where cats and dogs do so much damage that to get the urine odor out of the apartment, we actually had to remove the sheetrock in places and reseal the subflooring after removing and discarding carpet and pad." (Robert E. Esrey and Company, Kansas City, MO.)

(b) *Maintenance costs.* "Grounds clean up costs would increase significantly for obvious reasons" and "extermination costs would increase due to flea infestation, both in occupied and vacant apartments." (Rochester Housing Authority, Rochester NY.)

(c) *Administrative costs.* "Further costs would be incurred through increased evictions and the administrative burdens of developing and monitoring rules for pets." (National Leased Housing Association, Washington, DC.)

(d) *Legal liability.* "The presence of animals capable of injurious attack places an undue liability exposure" on management, particularly in light of recent court decisions holding that "the ownership of an apartment project failed to use reasonable care to prevent a tenant's dog from attacking a visitor." (Promex Midwest Management Investment Developmnet, Des Plaines, IL.)

2. *Tenant financial responsibility.* The major suggestions for insuring adequate compensation to project owners are discussed below.

(a) *Security deposit.* The most common method proposed to ensure tenant accountability for damages caused by pets was a pet security deposit independent of the standard security deposit required of all tenants. The proposed amount of the deposit varied widely (e.g., the Housing Authority of the City of Annapolis, MD, proposed a deposit of $30, while the Jefferson Center, Sarasota, FL, proposed a deposit of $1,122 for one of its units).

For the most part, commenters merely suggested dollar amounts for the deposit and did not state how the deposit should be calculated. Others, however, tied the amount of the deposit: (1) To the amount of the current security deposit (Massachusetts Society for the Prevention of Cruelty to Animals); (2) to a multiple of the current security deposit (Brevard Family of Housing Authorities, Merritt Island, FL); (3) to an amount equal to one month's rent (Oklahoma City Housing Authority); (4) to comparable pet security deposits for other housing complexes in the area (Florida Association of Homes for the Aging, Inc.); and (5) to amounts which varied with the size of the unit (Jefferson Center, Sarasota, FL), the type of pet (Florida Association of Homes for the Aging, Inc.) or the fixture in the units (Community Management Corporation of Maryland).

One commenter recommended that HUD establish maximum limits, but give owners and managers the flexibility to determine the amount at a specific project taking into account various factors. (Vermont State Housing Authority.) The Wilder Foundation, St. Paul, MN, warned against setting an unreasonably low damage deposit, since such deposits "may encourage pet ownership by residents who cannot financially afford the cost . . . and that will mean that uncompensated damages will be charged back to non-owners through rent." Another commenter feared, however, that any deposit could be interpreted as discrimination since projects are mandated to have 75 percent of their tenants in the very low-income range. (John Paul Apartments, Cold Spring, MN.)

Commenters' proposed security deposits had very different features. Some variations involved: (1) Provisions for the gradual accumulation of the deposit (Massachusetts Society for the Prevention of Cruelty to Animals); (2) provisions which eliminate any requirement that the security deposit be invested unless management receives a percentage of the profit (Housing Authority of the City of Annapolis, MD); (3) the availability of the deposit for disbursement (and required tenant replenishment) when the damage occurs, rather than upon vacation of the unit (Vermont State Housing Authority); and (4) refundability (Cinnamon Lake Towers, Waukegan, IL), partial refundability (Houston Height Tower, Houston, TX), or non-refundability (Housing Authority of the City of Greenville, SC and Russell House Inc., Virginia Beach, VA) of deposits.

(b) *Monthly Fees.* Assessing monthly fees to cover increased costs associated with pet presence was considered by some to be a more equitable means of holding pet owners responsible for pets' actions and to reimburse project owners for the additional costs of pet presence. (B'nai B'rith Parkview Apartments, Albany, NY.) Suggested fees varied widely. Housing Development Corporation of Lancaster County, PA, would impose a monthly $20 "pet housing fee"; Roosevelt House, Owensboro, KY, would impose a $25 monthly general maintenance fee; Jefferson

Center, Sarasota, FL, would impose a $10 monthly fee for use of the elevator by cats and dogs and a $5 electricity fee for fish in aquariums; and Community Management Corporation of Maryland would charge an additional $20 in rent.

(c) *Liability Insurance.* A commenter asserted that while pet-related claims (e.g., dog bites) will be paid under the liability provisions of project insurance policies, many insurance claims could raise rates, and too many claims may result in the insurer's dropping the project. (Wilder Foundation, St. Paul, MN.)

To cover excessive property damage and to ensure financial accountability that might arise as a result of a negligence suit or personal property damage to other tenants, commenters would require pet owners to have liability insurance. (Vermont State Housing Authority.) The proposals fairly consistently called for policies with the following characteristics: (1) Coverage in the minimum amount of $100,000; (2) a hold harmless clause naming the ownership and managing agent; (3) a statement that the tenant will defend any pet-related suit brought against ownership or management; (4) provisions for notification of management upon cancellation of the policy; and (5) annual notice to ownership to insure that the policy was not cancelled without notice. (Promex Midwest Management Investment Development, Des Plaines, IL.)

(d) *Fines.* In order to assure compliance with the terms of the lease and the house pet rules, some commenters requested authority to impose fees to cover the cost of noncompliance. (New York City Housing Authority.) One commenter suggested fees ranging from $50 to $75 per violation. (Community Management Corporation of Maryland.) (Other methods of enforcement are discussed elsewhere in this summary.)

(e) *Management screening for financial responsibility.* People with low or fixed incomes often cannot meet the financial obligations of pet ownership, including food and medical care. (National Leased Housing Association, Washington, DC.) To prevent these expenses from being passed on to project owners, commenters recommended that owners and managers be permitted to disallow pet ownership to those who are financially incapable of providing care. (Boston Housing Authority.) These commenters also discussed non-financial criteria that could be used to screen potential pet owners or used as a basis to require a pet owner to divest himself/herself of a pet. Screening is specifically discussed at paragraph D below.

3. *Government Assistance.* A primary focus of some commenters was to urge that pet owners, rather than project owners, bear the costs of pet ownership. Other commenters would place responsibility on the Federal government. One commenter recommended "a revision of the subsidy funding system for all affected projects to offset legislated increases in operational costs." (Brevard Family of Housing Authorities, Merritt Island, FL.) Another recommended that the government absorb some specific costs of pet ownership, such as costs of building required pet runs. (Little Sisters of the Poor, Chicago, IL.) The Wilder Foundation, St. Paul, MN, would apply HUD claim producures (e.g., 24 CFR 880.608(f)) where a resident is unable to pay for damage in excess of the security deposit.

B. Care and Control of Pets

Overview. Appropriate guidelines governing the care and control of pets can offset potential problems such as those related to sanitation, tenant health, tenant safety, increased project costs, and tenant friction. Most commenters recognized care and condition of pets as an important concern.

Comments and Suggestions. Most commenters addressing the issue supported the idea of giving wide discretion to PHAs, IHAs, and project owners in establishing rules on the care and condition of pets. Areas mentioned included:

1. *Pet waste.* The problem of pet waste was of considerable concern to commenters in every category. Many feared that tenants would permit pets to use apartments, stairwells, hallways, and other inappropriate areas, and that these owners would be unwilling or unable to clean up after their pet. This would negatively impact on tenant health, would result in soiled and foul-smelling project facilities and would increase maintenance demands on project management. (Rochester Housing Authority, Rochester, NY.) To combat these problems, commenters recommended that management be permitted to adopt house rules requiring pet owners: to keep the units clean and free of pet odors, pet feces, urine, waste and litter (Delta Society, Renton, WA); to clean up after pets that are walked out of doors (Massachusetts Society for the Prevention of Cruelty to Animals and Housing Development Corporation of Lancaster County, PA); to dispose of all animal waste and litter in a manner prescribed by management (Humane Society of the United States); and to own specific cleaning equipment ("pooper scoopers", vacuum cleaners, etc.) (Riverside Presbyterian Tower, Philadelphia, PA). Some commenters would permit the imposition of very specific regulations dealing with this subject (e.g., Humane Society of the United States would require that dogs ". . . must be walked at least three times per day . . ." and the Housing Authority of Covington, KY would require the changing of the litter pan for cats at least three times per week).

2. *Pet control.* Commenters were concerned that uncontrolled and unsupervised pets would roam the hallways, elevators, and common areas, causing physical and property damage. (Boston Housing Authority.) To prevent such damage, it was suggested that house rules permit management: To require that pets be accompanied by an individual able to control the pet while on the common grounds (Chicago Housing Authority); to require that pets be leashed, caged, carried or muzzled while on common grounds (Pontiac Towers, Pontiac, IL; Community Management Corporation of Maryland; and Chicago Housing Authority); to require that all dogs be trained to voice command (Floria Association of Homes for the Aging, Inc.); and to prohibit pet owners from chaining or tying unattended pets outside of units (Brevard Family of Housing Authorities, Merritt Island, FL). Because dogs and cats could become hypersensitive in the mechanical elevators and other confined situations, some commenters would permit management to propose special restriction in hallways and elevators. For example, Mary Walker Apartments, Tampa, FL, proposed that no individuals other than the controlling pet owners would be permitted on elevators, and that only one animal could be walked in any given hallway.

Commenter asserted that the physical control of pets within a dwelling unit presents special problems. To prevent animal abuse and excessive noise, house rules should prohibit tenants from leaving animals unattended in the unit. (Russell House Inc., Virginia Beach, VA.) To protect maintenance workers, pet owners should be required to be present to restrain the pet while maintenance work is performed. (East Hartford Housing Authority, East Hartford, CT.)

3. *Noise control.* "Barking dogs and meowing cats would disturb the peace and quietness (sic) of the building. Many tenants, because of health problems, take naps all through the day and night. A barking dog would disturb what little sleep their health allows them." (Spring Creek Towers, Decatur, IL.) To control noise problems, commenters suggested that management be permitted to adopt rules prohibiting pet owners from permitting their pets to make excessive noise which disturbs the peace of their neighbors. (Chicago Housing Authority and Delta Society, Renton, WA); to ban "talking, squawking, baying, howling, crying, and meowing animals" (Jefferson Towers, Sarasota, FL); and to require a pet owner to remove a barking animal or choose to have it debarked (Housing Authority of the City of Columbus, IN).

4. *Pet procreation.* Many commenters suggested the neutering and spaying of animals. "This not only prevents the proliferation of unwanted litters of puppies and kittens but also the odor created by unaltered male cats, who spray in order to attract female cats, the noise created by unspayed female cats in heat and attraction to unspayed female dogs of hordes of male dogs. Altered cats and dogs are calmer, less prone to roam and therefore less apt to become a nuisance in and around the building." (Animals in Politics, New York, NY.) Commenters would permit this requirement to be deferred until the animal reaches an appropriate age for spaying (Massachusetts Society for the Prevention of Cruelty to Animals); or waived if the surgery is inadvisable because of the age or health of the pet (Humane Society of the United States). Other commenters also suggested limitations on commercial or non-commercial pet breeding. (Human Society of the United States.)

5. *Declawing.* To limit the damage to wall-to-wall carpeting and painted surfaces caused by scratching and clawing, some commenters would require all cats to be declawed. (Jefferson Center, Sarasota FL; Jewish Center Towers, Inc., Tampa, FL; and Altoona Housing Authority, Altoona, PA.)

6. *Pet health.* There are ". . . increasing medical findings which indicate that commonly kept household pets, especially cats and dogs, can harbor diseases and lice which are communicable to humans." (New York City Housing Authority.) In view of these findings, commenters suggested that pets should be innoculated and examined for certain diseases. These included: Distemper, hepatitis, leptospirosis, parainfluenza, parvo virus, and rabies innoculations and heartworm examinations for dogs, and distemper, calici virus and rhenotrachetis innoculations for cats. (Housing Authority of Covington, KY and Housing Development Corporation of Lancaster County, PA.) Additionally, it was recommended that pets be maintained and properly licensed and innoculated as required by local, county, or State codes. (Delta Society, Renton, WA; Humane Society of United States; and Florida Association of Homes for the Aging, Inc.) Some commenters suggested that licensing, innoculation, neutering, or the general health of a pet be certified (usually by a licensed veterinarian upon the pet's entrance to the unit and periodically thereafter. (East Hartford Housing Authority, East Hartford, CT; Florida Association of Homes for the Aging, Inc.; and Housing Authority of the City of Annapolis, MD.)

A related pet health problem with a direct impact on human health is flea and tick infestation. This problem is particularly acute in Florida. "Even with proper care, the Florida humid, tropical temperature, and the sandy soil conditions would make the control of fleas, ticks and roaches almost impossible." (Jewish Center Towers, Tampa, FL.) To combat these problems, commenters would permit management to impose house rules requiring pet owners to establish and maintain an acceptable pest-control program. (Florida Association of Homes for the Aging, Inc.) Such a program might include regular professional dipping of the animal (Mary Walker Apartments, Tampa, FL and Russell House, Inc., Virginia Beach, VA) and monthly spraying both inside and outside the apartment (Florida Association of Homes for the Aging, Inc. and Jefferson Center, Sarasota, FL).

7. *Absent pet owners.* "Many elderly and handicapped residents experience failing health while living in assisted housing. Very often they require in-home health care, housekeeping assistance and considerable family support. Owners and managers often find themselves in the position of care providers to those who are ailing. Sometimes the residents are hospitalized and have no one to look in on their apartments . . . If any of the residents who are suddenly or gradually not able to care properly for themselves alone decide to have a pet, there will be extra complications in an already difficult situation." (Niagara Frontier Builders' Association, Inc., Buffalo, NY.)

To avoid the possibility that management would be required to care for such abandoned pets, commenters suggested that pet owners be required to make prior arrangements for emergency care of the animal. Such arrangements included: (1) The provision of a phone number of a person who would care for the animal if the resident is incapacitated (Humane Society of the United States); (2) a signed consent authorizing management to remove a pet and place it with a designated person or veterinarian if the resident is hospitalized or otherwise incapacitated (Liberty Towers, Libertyville, IL); and (3) a signed agreement between the resident and a boarding kennel which assures payment for pick up and care of a pet if a resident is incapacitated (Kentucky Association of Homes for the Aging).

8. *Humane treatment.* An interest expressed by commenters was "in seeing domestic animals cared for responsibly for the lifetime of the pet." (Humane Society of the United States.) To serve this goal, commenters suggested the imposition of Federal regulations solely aimed at inhibiting abuse of animals and providing for their proper care and feeding. (Kentucky Association of Homes for the Aging and Community Management Corporation of Maryland.)

9. *Emergencies.* "The safety of tenants will be jeopardized in the event of a fire emergency (not to mention, fire drill). The presence of excited, nervous dogs and cats, (on leash or otherwise) in the close confinement of a firetower, and a crowd of elderly people, some with walking disabilities, the smell of smoke in the air, can lead to stumbling, falling, biting, scratching, in the congested space; and, worst of all, can lead to panic." (Jefferson Center, Sarasota, FL.) Accordingly, commenters would permit owners to establish rules requiring pet owners to vacate without pets during emergencies. (Florida Association of Homes for the Aging, Inc.; Jewish Center Towers, Tampa, FL; and Mary Walker Apartments, Tampa, FL.)

C. Size, type and number of pets

Overview. Limiting the size, type and number of pets permitted in a housing facility was of concern to PHAs, elderly tenants, owner/managers, church/charity associations, and local governments. It was generally held by such commenters that such limitations could greatly reduce the problems associated with pet presence in rental units. Among the commenters, the main focus was on the type of pet.

Comments and Suggestions

A variety of comments favored some limitation on the kind and number of pets. The major topics included:

1. *Type of pets.* Commenters generally urged the Department to define clearly the meaning of the term "common household pets" as used in section 227. (Housing Authority of Louisville, KY.) The majority of commenters felt that common household pet should include "fish, birds, cats and dogs. (New York City Housing Authority and Chicago Housing Authority, *but see* Housing and Redevelopment Authority of East Grand Forks, ND, whose tenants' survey indicated that only fish and birds should be permitted.) Commenters claimed that only these four categories of pets should be permitted in order to avoid a diverse and potentially uncontrollable group of pets in one facility, because the definition of common household pet under some State and local laws would permit rodents, reptiles and domesticated farm animals; and because the narrow definition is necessary in light of the changing cultural diversity that is present among tenant bodies. (New York City Housing Authority.) Some commenters warned that the expansion of the definition to include commonly owned pets such as "mice, rats, gerbils, hamsters, chinchillas, skunks, squirrels, snakes, lizards, monkeys or many more" would leave the door "wide open to a host of problems too numerous to list." (Housing Authority, City of Norman, OK.)

2. *Pet size.* Section 227 provides that reasonable house rules may consider pet size. The limitations proposed by commenters generally were applicable only to dogs or cats. Limitations on the size of birds were occasionally suggested. (East Hartford Housing Authority, East Hartford, CT.)

Comments on this issue encompassed a wide variaton in the proposed limits for dogs and cats. For example, the Human Society of the United States would permit dogs up to 50 pounds in weight. Other commenters, such as the East Hartford Housing Authority, East Hartford, CT, would limit the size of dogs to 15 pounds. Generally, however, weight limitations proposed were 25–30 pounds for dogs and 8–10 pounds for cats. Height limitations were also suggested.

Other commenters argued that the pets "should not be restricted by size or weight limitations but by the suitability of temperment. Some elderly have large docile older dogs that are accustomed to living in their apartments." (Delta Society, Renton, WA; *also see* Pet Food Institute (forwarding publications of the Pets Are Wonderful Council), Washington, DC.) In addition to temperment, commenters recommended that pets meet a minimum level of obedience training (generally, assurances that dogs are housebroken and cats are litter box trained).

3. *Number of Pets.* Commenters also asserted that too many animals in one facility could mean destruction of property, excessive noise and other problems causing unnecessary frustration for tenants and management. Commenters suggested various means of limiting the number of pets in a project.

First, commenters suggested that owners and managers be permitted to limit the total number of pets that may be kept in each dwelling unit. Commenters stated that such a limitation is needed, not only to prevent overpopulation in the project as a whole, but because the amount of living space in apartments for the elderly is generally small (apartments can be as small as 500 square feet). (Roosevelt House, Owensboro, KY.) The consensus was to permit a maximum of one pet per dwelling unit. However, the Humane Society of the United States and other major commenters would set the limit at two. Some commenters would apply these limitations only to fur bearing animals (Florida Association of Homes for the Aging, Inc.); some would exempt small caged birds and animals (Community Management Corporation of Maryland); and some would exempt fish (Jefferson Center, Sarasota, FL). As an alternative limitation for fish, a limitation on the size and number of

aquariums was suggested. (East Hartford Housing Authority, East Hartford, CT.)

Many commenters would permit the project owner, PHA or IHA to establish a quota on the number of pets that could be allowed in a project or in a building within a project. The Humane Society of the United States suggested, "There should be a standard ratio of pet owners to non-pet owning tenants, and we would suggest as a ceiling that no more than one-third of the tenants be pet-owners. In establishing a permissible percentage of pet-owning tenants, consideration should be given to the type of dwelling unit, location of unit, and availability of grounds for walking dogs . . . Ratio of pet-owning tenants should include domestic dogs and cats, but not caged birds, fish, hamsters or guinea pigs, which are pets of low nuisance value."

Finally, some commenters would attempt to hold down the number of pets in a project by only permitting new tenants to bring pets into the project. Once that animal dies, the tenant would not be allowed to replace it (Housing Authority of the City of Greenville, SC), or would be required to request permission to replace the pet (Saint Mark's Towers, Inc., Brunswick, GA).

4. *Restricted Areas.* The Housing Authority of the City of Annapolis, MD stated that "the bulk of our elderly population occupy apartments in high-rise or mid-rise buildings. The influx of pets into these buildings can and doubtlessly will cause a multiplicity of problems, *i.e.,* barking dogs, pets making noise on the floor above a unit, dog feces on the carpet, offensive odor in the air, the activation and aggravation of allergies, the possibility of law suits as the result of damage to property and/or injury to persons caused by aggressive or diseased pets." For these and other reasons, commenters suggested that cats and dogs be excluded from high-rise and mid-rise apartments (Housing Authority of the City of Annapolis, MD); be permitted only in ground level apartments (Riverside Presbyterian Tower, Philadelphia, PA); be permitted only in apartments located near stair exits (B'nai B'rith Parkview Apartments, Albany, NY); or be restricted to or from residence in certain buildings or areas of buildings (Michigan State Housing Development Authority). For similar reasons, commenters requested that the regulations permit managers or owners "to move pet owners from one apartment to another when necessary for the general welfare." (Housing Authority of Lousville, KY.)

In addition to limitations on the areas where pets may reside, commenters would permit owners and managers to restrict pet access to common areas, including dining rooms and nutrition centers, elevators, community rooms, rental offices, lobbies, and elevator lobby areas. (Community Management Corporation of Maryland; Delta Society, Renton, WA; Housing Development Corporation of Lancaster County, PA; and Chicago Housing Authority.)

5. *Pets for the handicapped.* Since animals that assist the handicapped are not considered as pets but rather as aids to independent living, many commenters urged that these animals be exempted from all or a portion of HUD and local regulation. For example, the Norfolk Redevelopment and Housing Authority, Norfolk, VA, would exclude seeing-eye dogs and hearing aid dogs from weight and size restrictions.

6. *Visiting pets.* Many commenters would ban all visiting pets from the project premises. (Community Management Corporation of Maryland.)

D. Effect on management and project operations

Overview. The primary intent of Federal housing programs and the responsibility of owners and managers is to provide decent, safe and sanitary housing for low-income Americans. Commenters suggested, in the words of one, that "there will be a great loss of effective management time due to increased handling of evictions, monitoring of compliance, increased maintenance of units and public areas and handling of resident complaints." (National Leased Housing Association, Washington, DC.)

Comments and Suggestions. Commenters suggested that HUD may mitigate the potential adverse effects on project operations by adopting regulations addressing the following subjects:

1. *Management review of pet owners.* "The elderly tenant that cannot care for self and apartment will be the first one to own a pet." (Midwest Management Corporation, Kansas City, MO.) Accordingly, commenters stated that across the board permission to keep pets is impracticable. (United Cerebral Palsy of Cleveland County, Inc., Norman, OK.) Commenters suggested that HUD specifically establish criteria by which a judgment may be made concerning a tenant's capacity to own or continue to own a pet. (New York City Housing Authority.) These criteria could be used to screen potential pet owners or as a basis for requiring a pet owner to divest himself/herself of a pet. (Boston Housing Authority.) Suggested screening criteria included:

(a) *Tenants' physical and mental ability.* Tenants would be required to demonstrate that "they are physically and mentally capable of providing sufficient control, maintenance and care for their pet, so as to protect the health of the tenant and the pet, maintain the habitable condition of the unit and prevent the creation of a nuisance, unsanitary condition, or threat to the health and safety of the public housing community." (Boston Housing Authority.) (*See* Chicago Housing Authority; New York City Housing Authority; Florida Association of Homes for the Aging, Inc.; and Brevard Family of Housing Authorities, Merritt Island, FL.) Where this criteria is to be used to screen potential pet owners, documentation in the form of doctor's certificates or letters of reference from prior landlords would be required. (Florida Association of Homes for the Aging, Inc.; Chicago Housing Authority and Pontiac Towers, Pontiac, IL.)

(b) *Tenants' financial ability.* Tenants would be required to demonstrate that "they are capable of meeting financial obligations of pet ownership, including provision of sufficient food, sanitary materials, restraining devices, medical care and any and all other expenses deemed necessary to provide for the care and safety of the tenant, the tenant's pet, and all other residents or employees of the housing authority working in the development area, and to avoid the creation of conditions constituting a nuisance as threats to the health and safety of the public housing community." (Boston Housing Authority and New York City Housing Authority.) However, some commenters opposed the prescription of rules which "presume to make the decision for tenants or applicants as to whether or not tenants can afford to keep a pet." (Massachusetts Society for the Prevention of Cruelty to Animals.)

(c) *Tenant Benefit.* Tenants might also be required to demonstrate that ownership of an animal would enhance their quality of life. (United Cerebral Palsy of Cleveland County, Inc., Norman, OK.)

2. *Management screening of pets.* Commenters suggested "that *any* pet should be screened in much the same manner as an applicant would be. No owner or agent should be forced to accept a good resident with an ill-mannered or untrained pet." (emphasis in original) (Nationwide Housing Corporation, Minneapolis, MN.) Factors that could be considered in evaluating the pet include: the suitability of the companion animal for apartment living and the size and disposition of the animal (Humane Society of the United States); veterinarian certificates or other evidence of innoculation, neutering and general health; other evidence that indicates that the pet is acceptable under the house rules.

3. *Pet removal.* Pet removal procedures were of particular interest to owners and managers of covered housing. These commenters demanded that HUD, "clearly establish grounds clarifying precisely what constitutes a 'bad pet,' and in what manner a workable and enforceable procedure is to be instituted requiring the removal of the offending pet. How much barking, how many bites, how many instances of soiling public spaces and grounds constitute a nuisance and menace?" (New York City Housing Authority.)

Suggested bases for removal of pets included determinations that: the presence of the pet constitutes a nuisance condition, or creates a threat to the health and safety of any number of the public housing community (Boston Housing Authority); the activities of the pet affect the right of any resident to quiet enjoyment of the leased premises (Riverside Presbyterian Tower, Philadelphia, PA); the pet owner is financially or physically unable to care for the pet (Boston Housing Authority); the pet is in serious violation of the pet rules (e.g., pet behavior that is injurious to the person or property or another) or the pet has committed a stated number of minor violations during a described time period (e.g., three instances of pet behavior that is nondangerous but nonetheless inappropriate) (Cinnamon Lake Towers, Waukegan, IL); the pet has become "objectionable" (Russell House, Inc., Virginia Beach, VA); or the animal creates a problem that management determines is "just cause"

for removal (Roosevelt House, Owensboro, KY).

The suggested procedures for pet removal also varied greatly. On one end of the spectrum, commenter would permit the immediate removal of pets without any notice or opportunity to be heard. (Mad River Manor, Dayton, OH.) Others would simply provide that complaints and problems concerning the pet or pet owner would be handled under the terms of the lease. (Florida Association of Homes for the Aging, Inc.) Others recommended elaborate dispute resolution procedures. Such procedures would be commenced only upon written complaint, would afford tenants informal conferences to meet with management to resolve complaints, and would accord formal grievance procedures modeled on 24 CFR Part 966. (Massachusetts Society for the Prevention of Cruelty to Animals.)

Whichever procedure is utilized, it was suggested that pet complaints be assigned to a tenants' council or pet owners' council. (Humane Society of the United States and Brevard Family of Housing Authorities, Merritt Island, FL.) Commenters asserted that this delegation would alleviate some of the administrative burden on management caused by pet presence. (City of Madison, WI, Community Development Authority.) It was predicted that councils composed of pet owners would be more effective, "since its members have a vested interest in making sure that pet ownership policies succeed." (Delta Society, Renton, WA.)

4. *Evictions.* Commenters recommended that management should also be permitted to evict pet owners based on the condition or conduct of the pet. Many recommended that the house rules should be incorporated in the lease so that violations of the house rules and the failure to remove a pet would become lease violations under existing procedures. (Boston Housing Authority; Community Management Corporation of Mayland; and Delta Society, Renton, WA.) Others would provide expedited eviction procedures for pet-related matters. (Grundy County Housing Authority, Morris, IL.)

5. *Inspection of units.* To ensure that the pet owner complies with house rules, commenters suggested that management be permitted to perform inspections of dwelling units housing pets. The commenters disagreed whether these inspections should be permitted without prior notice to the tenant (*compare* Community Management Corporation of Maryland with Delta Society, Renton, WA) and disagreed on the circumstances that would trigger the right to inspect. For example, the Altoona Housing Authority, Altoona, PA, would permit inspections based upon management's "reasonable suspicion" that the tenant failed to perform its maintenance obligations.

E. Tenant Consultation

Overview. Section 227(b) requires HUD to prescribe guidelines under which project owners, PHAs, and IHAs must consult with tenants in establishing house rules governing the keeping of pets.

Comments and Suggestions. Commenters reported that there is strong and persistent tenant opposition to the provisions of section 227. "All elderly are not pro-pet and welcome the protection our housing offered in eliminating their exposure." (Oklahoma City Housing Authority.) "No matter what rules or guidelines are imposed for the regulation of such pets by Housing Authorities, it will not be possible to allay the discomfort or discontent of those elderly residents of housing that do not want to live near animals, or are allergic to them, fearful of them, etc." (Syracuse Housing Authority, Syracuse, NY.) Accordingly, the majority of commenters addressing the issue of tenant consultation suggested that HUD regulations permit tenants to exclude pets from projects (or buildings within projects) by majority vote. Commenters believed "this proposal would be in keeping with the language of section 227 in that owners, managers, and housing authorities would not be able to discriminate in connection with admission or continued occupancy of Federally assisted housing on the basis of pet ownership, as the tenants themselves would decide." (Syracuse Housing Authority, Syracuse, NY.)

Comments addressing procedures for establishing house pet rules (other than the pet/no-pet election process) also favored tenant consultation, although these comments typically did not address the procedures to be used for the consultation. Where procedures were discussed, it was suggested that HUD regulations require management to conduct open meetings with all tenants, negotiate with recognized tenant committees, provide opportunities for the submission of written tenant comments, and accord "due consideration" to tenant input when prescribing the rules. (Massachusetts Society for the Prevention of Cruelty to Animals.) Some commenters, however, would permit management to amend or alter the pet rules at any time, without prior notice to the tenants. (Housing Development Corporation of Lancaster County, PA.) One commenter suggested special procedures to govern the prescription of interim rules in new projects. (Housing Authority for the City of Norman, OK.)

IV. Applicability

Notice H–84–10 states that section 227 applies to "rental housing projects *built exclusively for occupancy by the elderly and handicapped* and assisted and/or insured under the following programs: (1) Low-income public and Indian housing; (2) Section 8 New Construction, Substantial Rehabilitation, and Loan Management; (3) Section 202; (4) Section 221(d)(3); (5) Section 236; (6) Section 221(d)(4); and (7) Section 231." The public comments raised several questions concerning the applicability of the statute. These included:

A. *Unsubsidized projects.* Several commenters objected to the application of the law to unsubsidized projects insured under Section 221(d)(4) and Section 231 of the National Housing Act. (National Leased Housing Association, Washington, DC.)

B. *Non-elderly, non-handicapped residents.* As noted above, HUD's February 28, 1984 notice states that section 227 applies to projects built exclusively for occupancy by the elderly and handicapped. Some commenters argued that pets should only be allowed in projects that are occupied exclusively by elderly and handicapped residents. These commenters feared that if they are required to permit pets in mixed development where only a portion of the tenants are elderly or handicapped, nonelderly and nonhandicapped residents would claim discrimination and would demand that they be permitted to keep pets. (Mid-Peninsula Coalition Housing Fund, Palo Alto, CA.) Other commenters claimed that every elderly or handicapped resident of any federally assisted project should be permitted to have a pet and that limiting the applicability of section 227 to projects built exclusively for occupancy by the handicapped residents of other housing. (Animals in Distress, Trenton, NJ.) Some commenters feared that the law could be expanded to all residents of all federally assisted housing projects as a result of similar discrimination claims. (Nationwide Housing Corporation, Minneapolis, MN and Cinnamon Lake Towers, Waukegan, MN.)

C. *Buildings vs. projects.* Some commenters argued that section 227 should not be applicable to buildings which meet the section 227 criteria if the building is located within a project which, as a whole, does not meet the section 227 requirements. (Housing Authority of the City of Pittsburgh.)

D. *Congregate homes.* Becomes of special problems associated with the elderly, handcapped, and disabled living in group homes and projects with congregate living or dining facilities, several commenters requested that HUD determine that section 227 is inapplicable to such projects. (Milestone, Inc., Rockford, IL and Congressman John E. McKernan (forwarding letter from the Park Danforth, Portland, ME.)

E. *Exemption.* Many commenters requested that individual buildings whose design is incompatible with pet residence (*i.e.*, high-rises and buildings with elevators) be exempted from the statute. These comments are discussed above.

V. Other concerns

The comments raised a variety of miscellaneous concerns. The following were most significant.

A. *Local law.* Many commenters noted that State and local laws often address subjects that could be covered by the pet regulations and the house pet rules. For example, section 64.100 of the Minneapolis code states, "No owner or caretaker of any residential building shall knowingly allow more than three (3) dogs over the age of three (3) months to be kept, harbored, or maintained within any residential building or on any residential lot or parcel of property in the city without a permit." (Nationwide Housing Corporation, Minneapolis, MN.) The State of California has adopted statutes addressing the keeping of pets in elderly housing. (Area Housing Authority of the County of Ventura, CA.) Most commenters addressing this subject suggested that State and local law should prevail.

B. *Contractual rights.* The commenters questioned HUD's authority to promulgate rules which alter existing contractual rights and obligations between private parties. (Secured Associates, Cedarhurst, NY.) For

example, Christian Manor, Inc., West Palm Beach, FL, stated "Everyone that moved into the Manor moved in with the understanding that there were to be no pets allowed and they feel that your ruling is a violation of their understanding at the time of leasing. They all have signed leases stating that no pets are allowed and this was one reason they moved to the Manor. They are not willing to have their house rules changed by the whims of people who do not live by these rules. They designed the rules and the rules were accepted by HUD as a valid part of their lease."

VI. Table of commenters

Commenter	Approximate percentage of the total number of comments (percent)
Individuals	75
Public Housing Authorities	10
Owners/Managers	7
Management/Development Companies	4
Animal Rights Organizations	1
Church/Charitable Organizations	1
Other (including real estate brokers, local governments, Chambers of Commerce, State Universities, Elderly or Handicapped Rights Associations, United States Senators, State Senators)	2

VII. Ten Commonly Asked Questions

1. Where do pet owners exercise their pets or dispose of pet waste?

2. What happens when an owner is ill and cannot take proper care of his/her animal?

3. Who is responsible for cleaning up after pets in the halls and elevators, especially on weekends when the staff is off duty?

4. May a tenant with a pet that has an offensive odor be considered in violation of his/her lease?

5. How many warnings will management be required to give before a pet can be removed?

6. Who is liable for damage caused by a pet?

7. May a new tenant bring a pet with him/her, or will he/she have to wait until the regulations have been promulgated?

8. May a project owner charge a pet owner for fumigation costs? If so, would a failure to pay constitute a violation of the lease?

9. Must tenants with allergies and respiratory problems be segregated from other tenants?

10. May individual housing facilities restrict the term "common household pet" to fish and birds?

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Friday
December 28, 1984

Part V

Department of Energy

Western Area Power Administration

Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects; Notice

DEPARTMENT OF ENERGY

Western Area Power Administration

Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects

AGENCY: Western Area Power Administration, Department of Energy.

ACTION: Conformance of Power Marketing Criteria in Accordance with Hoover Power Plant Act of 1984 (Pub. L. 98–381)

SUMMARY: The Western Area Power Administration (Western) published the General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects (Criteria) in the **Federal Register** on May 9, 1983 (48 FR 20872–20889). The Criteria contained the principles and guidelines for the marketing of power from the Boulder Canyon Project, Parker-Davis Project, and the United States entitlement in the Navajo Generating Station (Navajo), a feature of the Central Arizona Project. The Criteria was developed through an extensive public process. Western began the informal public process in November 1979, holding several informal public information forums, and continued with the formal public process, when proposed Criteria were published in the **Federal Register** on September 22, 1981 (46 FR 46864–46874), and August 24, 1982 (47 FR 36946–36957). Two public comment forums were held to gather public input on the proposals. The public comment forums were announced in the **Federal Register** on December 29, 1981 (46 FR 62929), and September 20, 1982 (47 FR 41420), and were held on January 21, 1982, and November 23, 1982.

Throughout the public process Western received extensive legal briefs and comments concerning the marketing of Boulder Canyon Project power. Comments concerning the Boulder Canyon Project centered principally around the interpretation of section 5 of the Boulder Canyon Project Act.

The State of Nevada, on August 27, 1982, filed suit in Las Vegas District Court against the United States and the California Boulder Canyon Project contractors. The litigation advanced the claim by the State of Nevada to a statutory right to one-third of the Hoover resource upon contract termination and to any amount of power not applied for by California as a State. The State of Arizona joined the State of Nevada. The California Hoover allottees (except Metropolitan Water District of Southern California), answered the claim and filed a counter claim; and the California cities of Anaheim, Azusa, Banning, Riverside, and Colton filed a motion to intervene.

In order to settle the controversy over the allocation of Boulder Canyon Project power, Congress set forth the allocation of Hoover power for the period beginning June 1, 1987, in the Hoover Power Plant Act of 1984 (Pub. L. 98–381, August 17, 1984). The Hoover Power Plant Act of 1984 sets forth the amounts of power reserved for renewal to existing customers and authorizes the Secretary of the Interior to increase the capacity of existing generating equipment and appurtenances at Hoover Power Plant (hereinafter referred to as "uprating program"). This Act also prescribes the method of allocation of the power generated by the "uprating program" and prescribes the method for marketing of Navajo power in excess of the needs of the Central Arizona Project.

These mandated provisions were fully addressed in the environmental assessment and Finding of No Significant Impact dated May 2, 1983, see section D of the Criteria. For this reason section D of the Criteria remains unchanged from the May 9, 1983, **Federal Register** publication.

Title I, section 105(a)(3) of the Hoover Power Plant Act of 1984 requires the Secretary of Energy to publish a notice in the **Federal Register** conforming the text of subdivision E of the "General Consolidated Power Marketing Criteria for Boulder City Area Projects," published in the **Federal Register** on May 9, 1983 (48 FR 20881), to the Hoover Power Plant Act of 1984. The Criteria contained herein provides for the modifications required as a result of the Hoover Power Plant Act of 1984.

DATES: These Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects are effective on the date of this notice.

ADDRESS: For further information concerning these Criteria contact: Mr. Thomas A. Hine, Area Manager, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 293–8800.

SUPPLEMENTARY INFORMATION:

Contents

A. Mandated Revisions to the "General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects" as a Result of Hoover Power Plant Act of 1984 (Pub. L. 98–381).

B. Regulatory Procedural Requirements.

C. Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects.

Discussion

A. Mandated Revisions to the "General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects" as a Result of Hoover Power Plant Act of 1984 (Pub. L. 98–381)

Part 1 Section C—Contractual Information

Western will offer power contracts to each contractor containing the terms and conditions and any provisions which may be applicable to the power to be marketed under these Criteria.

The Hoover Power Plant Act of 1984 (Act) requires that certain contract terms shall be included in power contracts offered to each contractor.

Pursuant to Title II, section 201(a) of the Act, each long-term firm power service contract entered into or amended subsequent to 1 year from the date of enactment of the Act shall contain an article requiring the development and implementation of an energy conservation program by the contractor. The energy conservation program shall encourage customer consumption efficiency improvements and demand management practices which ensure that the available supply of hydroelectric power is used in an economically efficient and environmentally sound manner.

On November 13, 1981, Western published in the **Federal Register** (46 FR 56140–561145) a notice of the "Announcement of Final Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Programs." Each contractor will be subject to these guidelines. These guidelines will be amended to reflect the provisions of Title II of the Hoover Power Plant Act of 1984.

Title I, section 105(h)(2) of the Act provides that contracts entered into for power from the Boulder Canyon Project or Navajo surplus power shall contain provisions by which any dispute or disagreement as to interpretation or performance of the provisions of the Hoover Power Plant Act of 1984, or of applicable regulations or of the contract may be determined by arbitration or court proceedings.

Title I, section 105(a)(4) of the Act provides that a contract offer for Boulder Canyon Project power shall not restrict the use to which the capacity and energy contracted for by the Metropolitan Water District of Southern California may be placed within the State of California; Provided, that to the

extent practicable and consistent with sound water management and conservation practice, the Metropolitan Water District of Southern California shall use such capacity and energy to pump available Colorado River water prior to using such capacity and energy to pump California State water project water.

The May 9, 1983, Criteria provides that beginning June 1, 1987, the rate for Boulder Canyon Project power will include a component to provide for a contribution to the Lower Colorado River Basin Development Fund. Title I, section 102(c) of the Act specifies that the equivalent of 4½ mills/kilowatthour (kWh) will be included in the rates charged to purchasers in Arizona and the equivalent of 2½ mills/kWh will be included in the rates charged to purchasers in California and Nevada. These charges will be included in the rates for the Boulder Canyon Project commencing June 1, 1987, and the Parker-Davis Project commencing June 1, 2005. After the repayment period for the Central Arizona Project, the equivalent of 2½ mills/kWh shall be included in the rates charged to purchasers in Arizona, California, and Nevada.

Title I, Section 104 of the Hoover Power Plant Act of 1984 amended the Boulder Canyon Project Adjustment Act (54 Stat. 774, as amended, 43 U.S.C. 618). The General Regulations to the Boulder Canyon Project Adjustment Act, approved May 20, 1941, promulgates regulations for generation and sale of power. The Hoover Power Plant Act of 1984 is supplementary and amendatory to these General Regulations. To carry out the purposes of the Boulder Canyon Project Adjustment Act, as amended by the Hoover Power Plant Act of 1984, the Secretary of Energy will promulgate additional general regulations for ratemaking purposes for sale of power. These General Regulations will provide the basis for the rate methodology for the Boulder Canyon Project.

Part IV, Section A—Navajo Generating Station

Allocation of Navajo power for long-term arrangements will be made after the decision relative to the construction of a regulatory storage unit is reached. Title I, section 107(c) of the Act further stipulates that Navajo surplus shall be marketed and exchanged by the Secretary of Energy pursuant to the plan adopted by the Secretary of the Interior directly to, with or through the Arizona Power Authority (APA) and/or other entities having preference status under the preference provisions of the Reclamation Project Act of 1939. The Secretary of the Interior shall adopt the plan deemed most acceptable, after consultation with the Secretary of Energy, the Governor of Arizona, and the Central Arizona Water Conservation District (or its successor in interest to the repayment obligation for the Central Arizona Project), for the purposes of optimizing the availability of Navajo surplus and providing financial assistance in the timely construction and repayment of construction costs of authorized features of the Central Arizona Project.

Part VI—Boulder Canyon Project

The table showing the amounts of long-term contingent power has been modified to reflect long-term contingent capacity and associated energy reserved for renewal contract offers to existing Boulder Canyon Project contractors as allocated by Title I, section 105(a)(1)(A) of the Act. The table reflects an increase in capacity and energy to the City of Los Angeles, Department of Water and Power, and an increase in capacity to the APA and the Colorado River Commission of Nevada.

A new provision has been added to reflect Title I, section 105(c)(1) of the Act which provides that no renewal contract for Boulder Canyon Project power shall be executed with any entity which is a party to the lawsuit entitled the "State of Nevada et al. against the United States of America et al." in the United States District Court for the District of Nevada, case numbered CV LV '82 441 RDF, unless that entity agrees to file in that action a stipulation for voluntary dismissal with prejudice of its claims, or counterclaims, or crossclaims as the case may be, and also agrees to file with the Secretary of Energy a document releasing the United States, its officers and agents, and all other parties to that action who join in that stipulation from any claims arising out of disposition of capacity and energy from the Boulder Canyon Project.

The planned uprating program by the Bureau of Reclamation (Reclamation) was authorized by the Hoover Power Plant Act of 1984. The May 9, 1983, Criteria provided that the capacity and energy in excess of the renewal offers would be divided among the States of Arizona, California, and Nevada. Applications for this excess power would be accepted from all qualified preference entities within these States.

Title I, section 105(a)(1)(B) of the Act modified the proposed allocation process. Capacity and energy resulting from the uprating program will be divided between the States as identified in the existing Criteria; however, contracts for the capacity and energy resulting from the uprating program for use within Arizona and Nevada shall be offered to the APA and the Colorado River Commission of Nevada, respectively. In the case of California, Western will accept applications from all qualified entities; Provided, that no contract will be offered to any California entity who is offered a renewal contract for capacity exceeding 20,000 kilowatts.

Priority of entitlement to excess energy generated at Hoover Dam has been modified. Arizona receives the first right to delivery of excess energy which is equal in each year of operation to 200 million kWh. If excess energy is not generated at Hoover Powerplant, Arizona shall accumulate a first right of delivery of excess energy subsequently generated in an amount not to exceed 600 million kWh. The 600 million kWh has been further defined by Title I, section 105(a)(1)(C) of the Act. Said first right of delivery has been clarified to be 600 million kWh, inclusive of the current year's 200 million kWh.

The May 9, 1983, Criteria has been further modified by Title I, section 105(a)(1)(C) of the Act to provide that the second priority to excess energy will go to meet Hoover Dam contractual obligations for the renewal contracts and the uprating program, not to exceed 26 million kWh. The third priority will go to meet the energy requirements of the States of Arizona, California, and Nevada; such available excess energy to be divided equally among the three States.

A new section F has been added to the Criteria to outline the method of allocating deficiencies in generation as provided in Title I, section 105(a)(2) of the Act. When actual generation is less than commitments, such deficiency will be borne by the holder of contracts in the ratio that the sum of the quantities of firm energy to which each contractor is entitled bears to the total firm commitments.

B. Regulatory Procedural Requirements.

1. Determination under Executive Order 12291: Western has determined that these Criteria are not a major rule under section 1(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981). Western has an exemption from sections 3, 4, and 7 of the Executive Order 12291.

2. Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*): Each agency, when required by 5 U.S.C. 553 to publish certain rules, is further required to prepare and make available for public comment initial regulatory flexibility analyses to describe the impact of such

rules on small entities. Western has determined that this rulemaking of particular applicability relates to allocation and selling of electric power in accordance with reclamation law by Western and, therefore, is not a rule. In any event, the Administrator of Western hereby certifies that the impacts of such allocation and the selling of electric service by Western would not cause an adverse economic impact on a substantial number of those small entities provided for under the Regulatory Flexibility Act.

3. Environmental Assessment: Western has prepared an environmental assessment (EA) which is available for public review. The EA addresses the four alternatives of:

a. No action, essentially renewal in kind of existing Boulder Canyon Project capacity and offer for allocation of Parker-Davis Project capacity and energy.

b. One-third split of Boulder Canyon Project power and offer for allocation of Parker-Davis Project power.

c. Renewal of firm power to existing contractors and allocation of additional firm power and peaking power to existing and new customers.

d. Renewal of nameplate capacity and one-third split of additional uprated operating capacity of the Boulder Canyon Project power, offer for allocation of Parker-Davis Project power, and allocation of additional power as firm and peaking power.

The impact analysis deals with the effect these alternatives will have on the existing electrical system as well as the effect of the alternatives on the physical, natural, and social/economic environments.

Western has made a determination based upon environmental considerations of these final Criteria, that this action is not a significant action in the context of the National Environmental Policy Act, and that it will not lead to any significant environmental impacts. A Finding of No Significant Impact (FONSI) has been prepared. Copies of the EA and FONSI are available from the Boulder City Area Office.

C. Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects.

Part I. General

Section A. Purpose and Scope. In accordance with Federal power marketing authorities in reclamation law and the Department of Energy Organization Act of 1977, Western has developed and, pursuant to the Hoover Power Plant Act of 1984 (Pub. L. 98–381), has modified these General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects (Criteria). These Criteria establish one set of general marketing principles for power generated at all Federal projects (Projects) under the marketing jurisdiction of Western's Boulder City Area Office. This document will serve as a new power marketing criteria for the Parker-Davis Project and Central Arizona Project (Navajo) resources, and will serve as the regulations for contract renewal and for the sale of power from the Boulder Canyon Project. The power generated at these Projects has been marketed under different power marketing guidelines or regulations. By consolidating the marketing of power from these Projects under common guidelines, the Federal system can be operated at improved efficiency within the constraints imposed by law, regulations, and treaties.

Section B. Authorities. Federal power in the Boulder City Area is marketed in accordance with the power marketing authorities in Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and all acts amendatory thereof or supplementary thereto); the Department of Energy Organization Act of 1977 (91 Stat. 565); and in particular, those acts and amendments enabling the Boulder Canyon Project (45 Stat. 1057); Hoover Power Plant Act of 1984 (Pub. L. 98–381); Parker-Davis Project (49 Stat. 1028, 1039; 68 Stat. 143); and the Colorado River Basin Project (82 Stat. 885).

Section C. Contractual Information. Power contracts will be implemented as existing contracts and contract extensions terminate, and as additional resources become available. The existing Boulder Canyon Project contracts terminate on May 31, 1987. The existing Parker-Davis Project contracts terminate on March 31, 1986. The Parker-Davis Project contracts will be extended through May 31, 1987, upon mutual agreement between Western and each individual contractor, in order to have common contract termination dates.

The additional Parker-Davis Project power will not be available until operational integration in the Boulder City Area is implemented. Navajo power surplus to the needs of the Central Arizona Project and Title I Salinity Control Project (as amended by Pub. L. 96–336, September 4, 1980, 88 Stat. 266), may be available as early as July 1984, in varying quantities, and will be marketed in accordance with these Criteria.

Western will offer power contracts to each contractor containing the terms and conditions and any special provisions which may be applicable to the power to be marketed under these Criteria. Separate exhibits to the contracts will identify such things as the amounts of capacity and energy to be delivered on a monthly basis from a particular Project, the point(s) of delivery, and the maximum rate of delivery at each point of delivery. These exhibits will be prepared and modified as necessary. If requested by the contractor, Western, in preparation of the exhibits, will endeavor to approximate the individual contractor's seasonal and monthly energy usage pattern. The extent to which Western will be able to accommodate these patterns will be contingent upon monthly energy availability and required water releases.

Each long-term firm power service contract entered into or amended subsequent to 1 year from the date of enactment of the Hoover Power Plant Act of 1984, shall contain an article requiring the development and implementation by the contractor of an energy conservation program. The contractor's energy conservation program shall comply with Western's guidelines and Criteria for Customer Conservation and Renewable Energy Programs.

The Projects will be operationally integrated to improve the efficiency of the Federal system in accordance with: the operational constraints of the Colorado River, hydro-project powerplants, and Navajo Generating Station, as may be imposed by the Secretary of the Interior or authorized representatives; applicable laws; the general terms, conditions, and principles contained in these Criteria; and the General Power Contract Provisions in effect which are applicable to a particular Project.

Long-term contracts for Parker-Davis Project power will terminate September 30, 2007. Long-term contracts for Boulder Canyon Project power will terminate on September 30, 2017. Long-term contracts for the Boulder Canyon Project will be subject to an energy revision on or about October 1, 2007, if deemed necessary by Western, due to the results of then current hydrology studies.

Each Boulder Canyon Project and Navajo contractor will also contractually agree to supply its own reserves for power from these Projects which meet or exceed Western Systems Coordinating Council minimum reserve requirements.

Each contract for Boulder Canyon Project power or Navajo surplus power will contain a provision by which any dispute or disagreement as to interpretation or performance of the provisions of the Hoover Power Plant Act of 1984 or of applicable regulations or of the contract may be determined by arbitration or court proceedings.

Contracts for Boulder Canyon Project power will allow for a reduction in capacity due to generating unit outages caused by forced outages, maintenance schedules, or reservoir drawdown. This reduction will be based on the ratio each entity's allocation of Boulder Canyon Project capacity bears to the total Boulder Canyon Project capacity marketed, multiplied by the amount of capacity removed from service, or not available because of reduction in effective head.

The renewal contract offer to the Metropolitan Water District of Southern California for Boulder Canyon Project capacity and energy will not restrict the use to which capacity and energy contracted for by the Metropolitan Water District of Southern California may be placed within the State of California; Provided, that to the extent practicable and consistent with sound water management and conservation practice, the Metropolitan Water District of Southern California shall use such capacity and energy to pump available Colorado River water prior to using such capacity and energy to pump California State water project water.

Notwithstanding the procedures in section A of Part VIII, below, Western, within the constraints of river operation, intends to permit each Boulder Canyon Project power contractor to schedule loaded and unloaded synchronized generation, the sum of which cannot exceed the amount of capacity reserved for the renewal offer to the individual contractors. To the extent that energy entitlements are not exceeded, such previously scheduled unloaded synchronized generation may be used for regulation, ramping, and spinning reserves through the use of a dynamic signal. These functions will be developed by Western and Reclamation, in cooperation with the Boulder Canyon Project power contractors, and implemented by contract and through written operating instructions. Energy used for the purpose of supplying unloaded synchronized generation to Boulder Canyon Project power contractors will be accounted for on a monthly basis, and will be supplied by the individual contractors through reductions in energy deliveries, in subsequent months, as will be specified in the power contracts.

Studies are in progress to determine the possible benefits to the Central Arizona Project of combined marketing of the Navajo resource and the Boulder Canyon Project power allocated for use within Arizona, and to determine the amount of funding that could feasibly be provided to the Reclamation by entities in the State of Arizona or political subdivisions of the State of Arizona, for the construction of a regulatory storage unit or other features of the Central Arizona Project. The results of these studies and the term of indebtedness of any contributed funding arrangements that may result will have an effect upon the term of power contracts for the Navajo resource. Therefore, Western will delay establishment of a term of contract for long-term commitments for Navajo power until these studies are completed.

Western will purchase energy, if necessary, specifically for the purpose of fulfilling the energy obligations shown in these Criteria for the Boulder Canyon Project and Parker-Davis Project; except that for those Boulder Canyon Project contractors that can provide firming energy more efficiently from their own resources, Western, on an annual basis, will agree to those contractors providing their own firming energy. Western will reduce the energy obligation to those contractors proportionately. The cost of firming energy that is provided will be reimbursed in the year in which it occurs.

The individual Projects will remain financially segregated for the purposes of accounting and Project repayment. The Boulder City Area rate schedules for each individual Project will be developed to satisfy cost recovery criteria for each Project. Cost recovery criteria for the Boulder Canyon Project and for the United States Navajo entitlement will be develped as part of a separate public process. The Parker-Davis Project cost recovery criteria is already established.

In general, the cost recovery criteria will include components such as operation and maintenance, replacements, betterments, amoritzation of long-term debt with interest, and other financial obligations of the Projects. The Boulder Canyon Project beginning June 1, 1987, and the Parker-Davis Project beginning June 1, 2005, and until the end of the repayment period for the Central Arizona Project, will provide for surplus revenues by including the equivalent of 4½ mills per kWh in the rates charged to contractors in Arizona and by including the equivalent of 2½ mills per kWh in the rates charged to contractors in California and Nevada. After the repayment period for Central Arizona Project, the equivalent of 2½ mills per kWh shall be included in the rates charged to all contactors in Arizona, Nevada, and California.

In order to allow Reclamation to comply with required minimum water releases, and to allow Western to receive purchased energy during offpeak load hours, all power contractors may be required to schedule a minimum rate of delivery during such offpeak load hours. The percentage of energy to be taken by the contractors at the minimum scheduled rate of delivery shall be established on a seasonal basis, and may be increased or decreased as conditions dictate. The monthly minimum rate of delivery for each power contractor will be computed by dividing the number of kilowatthours to be taken during the month by a contractor at the minimum rate of delivery, by the number of offpeak load hours in the month. The number of kilowatthours to be taken during offpeak load hours at the minimum rate of delivery will not exceed 25 percent of the contractor's monthly energy entitlement. Offpeak load hours will be defined in the contracts based on individual system characteristics.

No contractor shall sell for profit any of the capacity and energy allocated to it to any customer of the contractor for resale by that customer.

Part II. Marketing Area

The marketing area for the Projects is defined in appendix A of these Criteria, and consists generally of southern California, southern Nevada, most of Arizona, and a small part of New Mexico. The Boulder City Area marketing area includes a limited portion of the Upper Colorado River Basin, in which the Navajo Generating Station is located, and most of the Lower Colorado River Basin, as defined in the Colorado River Compact.

Part III. Service Seasons

Power from all Projects will be marketed for delivery during two service seasons. These seasons are based upon historic water releases on the Lower Colorado River. Approximately 70 percent of the water is released from Lake Mead during the summer season, and 30 percent is released during the winter season. The reduced water releases during the winter season allow for a period in which to perform generator maintenance.

Section A. Summer Season. The summer season for any calendar year is

the 7-month period beginning the first day of the Boulder City Area's March billing period and continuing through the last day of its September billing period.

Section B. Winter Season. The winter season is the 5-month peiod beginning the first day of the Boulder City Area's October billing period, for any calendar year, and continuing through the last day of its February billing period in the next succeeding calendar year.

Section C. Proposed Regulatory Storage Unit. Reclamation is finalizing studies to provide a recommendation to the Secretary of the Interior concerning the location and size of a regulatory storage unit for the Central Arizona Project. Construction of a regulatory storage unit would give Reclamation the operational flexibility to increase winter season pumping and reduce summer season pumping. This may allow for marketing of Navajo power surplus to Central Arizona Project needs during both the summer and winter seasons. The length of service season for Navajo power will depend upon such factors as the construction of the storage unit, the size of the storage unit, utility exchange arrangements and Navajo outage schedules. Initially, the service seasons for delivery of Navajo power will coincide with the seasons established for all Projects.

Part IV. Navajo Generating Station

Section A. General. The Central Arizona Project is tentatively scheduled to begin pump testing operations in July 1984, with initial water deliveries in January 1985. Power surplus to pumping needs in varying quantities may be available at that time and will be marketed under short-term arrangements.

A regulatory storage unit for the Central Arizona Project, if constructed, would give Reclamation the operational flexibility to maximize winter season pumping and reduce summer season pumping with the effect of making Navajo power available during the peakload months. Arizona entities are presently completing studies to determine the amount of contributed financing that could be provided for contruction of a regulatory storage unit or other features of the Central Arizona Project.

With construction of a regulatory storage unit, the potential exists for power to be made available during the summer season under long-term arrangements. Allocations of Navajo power for long-term arrangements will be made after the decision relative to the construction of a regulatory storage unit is reached. Delivery of Navajo power under long-term arrangements with Western may require the contractor to contribute funds to Reclamation for the construction of a regulatory storage unit for the Central Arizona Project.

Navajo power, which is surplus to the Federal uses of the Central Arizona Project and Title I Salinity Control Project (as amended by Pub. L. 96–336, September 4, 1980, 88 Stat. 266), will be marketed by the Secretary of Energy pursuant to the plan adopted by the Secretary of the Interior directly to, with, or through the Arizona Power Authority and other entities having preference status under the provisions of section 9(c) of the Reclamation Project Act of 1939, in the following order of priority:

A. Preference entity(s) within Arizona;

B. Preference entities within the Boulder City marketing area;

C. Preference entitites in adjacent Federal marketing areas; and

D. Nonpreference entities in the Boulder City marketing area.

In the event that a potential contractor fails to place such power under contract within a reasonable period, as specified by the United States and in accordance with the terms and conditions offered by the United States, the amounts of power released by such failure will be reallocated in accordance with the preceding order of priority.

In the marketing of Navajo power, the Secretary of the Interior shall adopt the plan deemed most acceptable, after consultation with the Secretary of Energy, the Governor of Arizona, and the Central Arizona Water Conservation District for the purpose of optimizing the availability of Navajo surplus and providing financial assistance in the timely construction and repayment of construction costs of authorized features of the Central Arizona Project.

Section B. Short-Term Contingent Power. Contingent power is capacity and energy which is normally available, except during either forced or planned outages that affect powerplant capability. Reduction in capacity and energy, when necessary, will be on a pro rata basis among all contractors for Navajo surplus power. The Central Arizona Project is tentatively scheduled to begin pump testing operations in July 1984, with initial deliveries of water in January 1985. After that time, varying amounts of power may be available under short-term arrangements.

Section C. Long-Term Contingent Power. Amounts of contingent power available will depend upon the construction of a regulatory storage unit and related agreements, and Central Arizona Project operation plans.

Each Navajo contractor will also contractually agree to supply its own reserves for Navajo power which meet or exceed Western Systems Coordianting Council minimum reserve requirements.

Part V. Parker-Davis Project

Section A. General. An amount of Parker-Davis Project power is reserved for priority uses by the United States and, upon application, for allocation to new and current contractors.

Power reserved for United States priority use is capacity and energy which is reserved for Federal Reclamation project use, and irrigation pumping on certain Indian lands. Power that is reserved for United States priority use, but not presently needed, is marketed to some of the Parker-Davis Project contractors as withdrawable power. Requests for withdrawals for Federal reclamation project use power, and Indian irrigation pumping power have equal priority.

Federal reclamation project use power is defined for these Criteria to mean that capacity and energy which is established herein for Federal reclamation projects in the Lower Colorado River Basin. Such projects are Federal reclamation facilities established for the protection and drainage works along the lower Colorado River. The following is a list of projects for which Federal reclamation project use power is reserved: relift and drainage pumps; construction camp sites; Yuma-Mesa Irrigation and Drainage District; Gila Project drainage pumps; Wellton-Mohawk Irrigation and Drainage District Plant Nos. 1, 2, and 3; and the Colorado River Front Work and Levee System.

Power for irrigation pumping on certain Indian lands is defined for these Criteria to mean Federal capacity and energy established herein for use in irrigation pumping on Indian irrigation projects which are adjacent to the Lower Colorado River south of Davis Dam and north of the border between the United States and Mexico.

When priority use power is requested, Western will substantiate that the power to be withdrawn will be used for the above specified purposes, and then will withdraw the necessary amount of power upon a 2-year advance notice. Withdrawals of power will be made as requested and substantiated until the total amount of power reserved for priority use purposes is in use.

Power surplus to that reserved for United States priority uses and that reserved for allocation to the existing contractors will be available for

allocation to new or current contractors in accordance with preference provisions of section 9(c) of the Reclamation Project Act of 1939, in the following order of priority:

A. Preference entities within the Boulder City marketing area;

B. Preference entities in adjacent Federal marketing areas; and

C. Nonpreference entities in the Boulder City marketing area.

In the event that a contractor or potential contractor fails to place such power under contract within a reasonable period, to be determined by the United States, in accordance with the terms and conditions offered by the United States, the amounts of power released by such failure will be reallocated in accordance with the preceding preference order.

Section B. Long-Term Firm Power. Long-term firm power is intended to have assured availability to the conractor within energy limitations specified in these Criteria. The maximum seasonal capacity entitlement for long-term firm power shall be available to a contractor during each month of the service season. The amount of energy associated with long-term firm power shall be the amount of energy specified in these Criteria and in power sales contracts.

Parker-Davis Project long-term firm power capacity allocations reserved for current contractor upon receipt of an application for power are as follows:

Contractor Ref. App. B	Summer season kilowatts			Winter season kilowatts		
	With-drawable	Nonwith-drawable	Total	With-drawable	Nonwith-drawable	Total
APPA:						
AEPCO		21,100	21,100		16,200	16,200
Mesa		10,450	10,450		8,000	8,000
MEC		2,700	2,700		2,200	2,200
CRIR		8,900	8,900		5,940	5,940
CRC (Nevada)	7,900	49,050	56,950	4,710	36,300	41,010
EAFB	1,935	16,350	18,285	1,180	13,450	14,630
ED-3	2,925		2,925	2,115		2,115
IID		32,550	32,550		26,300	26,300
SRP		31,700	31,700		22,500	22,500
SCIP	1,935	15,250	17,185	1,180	11,950	13,130
Thatcher		350	350		250	250
WMIDD	900	2,200	3,100	595	1,850	2,445
YID		960	960		780	780
YPG	1,935	3,300	5,235	1,180	2,900	4,080
FMIT		1,970	1,970		1,200	1,200
Subtotals	17,530	196,830	214,360	10,960	149,820	160,780
Priority uses		39,000	39,000		24,700	24,700
Totals	17,530	235,830	253,360	10,960	174,520	185,480

Energy available to long-term firm power contractors on and after June 1, 1987, will be equal to 3,441 KWh/kW (67 percent capacity factor) in the summer season and 1,703 kWh/kW (47 percent capacity factor) in the winter season.

Western advised the city of Needles, California (Needles), by letter dated January 18, 1979, that the Deputy Secretary, Department of Energy, had elected to make power available to Needles under similar terms and conditions as that which was available to Needles under terminated Contract No. 14–06–300–802. Needles has met the requirements to become a preference customer.

Western has reserved for application by Needles the following amounts of power from the Parker-Davis Project for the post-1987 contract period under then current contract terms and conditions:

	kW	KWh
Summer	5,100	17,800,868
Winter	4,064	6,752,053

Section C. Power In Excess of Amount Reserved. Western will also make available for allocation to new and current contractors the power in excess of that reserved for the existing Parker-Davis Project contractors and priority uses. Amounts of such power which are estimated to be available for allocation after May 31, 1987, are as follows:

ADDITIONAL PARKER-DAVIS PROJECT POWER AVAILABLE FOR ALLOCATION

Season	Kilowatt
Summer	24,555
Winer	22,186

Energy available to long-term firm power contractors on and after June 1, 1987, will be equal to 3,441 kWh/kW (67 percent capacity factor) in the summer season and 1,703 kWh/kW (47 percent capacity factor) in the winter season.

Withdrawable power will continue to be subject to a 2-year withdrawal notice. In the event that withdrawals for priority use purposes are made following the allocation process and prior to June 1, 1987, the amount of withdrawable power allocated to individual contractors will be reduced on a pro rata basis.

Part VI. Boulder Canyon Project

Section A. Long-Term Contingent Power. Contingent capacity is capacity which is normally available, except during either forced or planned outages that affect powerplant capability. Electric service renewal contracts for long-term contingent capacity and firm energy under new terms and conditions will be offered to existing Boulder Canyon Project contractors in the following amounts:

LONG-TERM CONTINGENT CAPACITY AND ASSOCIATED FIRM ENERGY RESERVED FOR RENEWAL CONTRACT OFFERS TO CURRENT BOULDER CANYON PROJECT CONTRACTORS

Contractor [1]	Contingent capacity (kW)	Summer	Energy (thousands of kWh) winter	Total
Metropolitan Water District of Southern California	247,500	904,382	387,592	1,291,974
City of Los Angeles	490,875	488,535	209,658	698,193
Southern California Edison Co	277,500	175,486	75,208	250,694
City of Glendale	18,000	47,398	20,313	67,711
City of Pasadena	11,000	40,655	17,424	58,079
City of Burbank	5,125	14,811	6,347	21,158
Arizona Power Authority	189,000	452,192	193,797	645,989
Colorado River Commission of Nevada	189,000	452,192	193,797	645,989
U.S. for Boulder City	20,000	56,000	24,000	80,000
Total	1,448,000	2,631,651	1,128,136	3,759,787

[1] Reference Appendix C.

The reservation shown for the city of Boulder City includes a renewal offer of 700 kW and 1,550,000 kWh to the Bureau of Mines. In the event that the renewal offer to the Bureau of Mines is released, such amounts will be offered to the city of Boulder City.

No contract will be executed with an existing Boulder Canyon Project contractor which is a party to the action entitled the "State of Nevada, et al., against the United States of America, et al." in the United States District Court for the District of Nevada, case number

CV LV '82 441 RDF, unless that entity agrees to file in that action a stipulation for voluntary dismissal with prejudice of its claims, or counterclaims, or crossclaims, as the case may be, and also agrees to file with the Secretary, a document releasing the United States, its officers and agents, and all other parties to that action who join in that stipulation from any claims arising out of the disposition of capacity and energy from the Boulder Canyon Project. If after a reasonable period of time, as determined by the Secretary, Western shall offer the capacity and energy available, due to failure of entities to meet the above provision, to other entities in the same state eligible to enter into such contracts under section 5 of the Boulder Canyon Project Act.

Capacity reductions, when necessary, will be on a pro rata basis among all of the Boulder Canyon Project contractors. Winter season capacity will depend primarily upon the capacity of generating units removed from service for maintenance by Reclamation.

Each Boulder Canyon Project contractor will also contractually agree to supply its own reserves for Boulder Canyon Project power which meet or exceed Western Systems Coordinating Council minimum reserve requirements.

Section B. Planned Uprating Program. Reclamation is currently planning an uprating program which would increase the generating capability of the Boulder Canyon Project. The uprating program shall be undertaken with funds advanced under contracts made with the Secretary of the Interior by non-Federal entities in the States of Arizona, Nevada, and California. Reimbursement of funds advanced by non-Federal entities for the uprating program shall be a repayment requirement of the Boulder Canyon Project beginning with the first day of the month following completion of each segment thereof. The development and subsequent delivery of the uprated capacity and associated energy will be contingent upon the contractor finalizing financing agreements with Reclamation and satisfactory contract arrangements with Western.

The amounts of capacity and associated energy resulting from the uprating program reserved for allocation for use in the Boulder City marketing area within the States of Arizona, California, and Nevada are:

	Capacity (kilo-watts)	Energy[1]	
		Summer	Winter
Arizona	188,000	148,000	64,000
California	127,000	99,850	43,364
Nevada	188,000	288,000	124,000
Total	503,000	535,850	231,364

[1] Kilowatthours in thousands.

Contracts for the amounts of capacity and associated energy resulting from the uprating program shall be offered to the Arizona Power Authority and the Colorado River Commission of Nevada, as the agency specified by State law as the agent of such State for purchasing power from the Boulder Canyon Project. Western will accept applications from all qualified entities within the State of California. However, in the case of California, no contract shall be offered to any existing Boulder Canyon Project contractor who is offered a renewal contract for capacity exceeding 20,000 kilowatts.

In the event that a contractor or potential contractor fails to place power under contract within a reasonable period, as specified by the United States and in accordance with the terms and conditions offered by the United States, or fails to provide contributed funds, the amounts of power released by such failure will be reallocated in the following order:

A. Preference entities within the Boulder City marketing area;

B. Preference entities in adjacent Federal Marketing areas; and

C. Nonpreference entities in the Boulder City marketing area.

The uprating program will be constructed in stages and is currently scheduled to be completed in early 1991. Power contracts will become effective on June 1, 1987, and will contain an estimated schedule for power deliveries from the uprating program as this program is completed.

In the event that any part of the uprating program is not completed, the total amount of contingent capacity initially allocated to contractors will be reduced on a proportional basis. Power reserved for renewal to existing Boulder Canyon Project contractors will not be affected. If, subsequent to such a capacity reduction, the uprating program is reinstated in whole or in part, the amounts initially allocated will be restored to the contractors in proportionate amounts as the upratings are completed.

Section C. Energy in Excess of Firm Commitments. Energy generated in any year of operation in excess of 4,501.001 million kWh shall be delivered in the following order:

A. The first 200 million kWh for use within the State of Arizona: Provided, however, that in the event excess energy in the amount of 200 million kWh is not generated during any year of operation, Arizona shall accumulate a first right of delivery of excess energy subsequently generated in an amount not to exceed 600 million kWh, inclusive of the current year's 200 million kWh. Said first right of delivery shall accrue at a rate of 200 million kWh per year for each year excess energy in the amount of 200 million kWh is not generated, less amounts of excess energy delivered.

B. Meeting Hoover Dam contractural obligations under Section A (Renewal Contracts) and Section B (Uprating Program), not to exceed 26 million kWh in each year of operation.

C. Meeting the energy requirements of the States of Arizona, California, and Nevada; such available excess energy to be divided equally among the three States.

Section D. Modification Program. Reclamation is also planning a Hoover Modification Program which would further increase the generating capability of the Boulder Canyon Project by approximately 500 MW at rated head. If developed by Reclamation, marketing of that resource will be addressed by Western at that time.

Section E. Capacity Reductions. Contracts for Boulder Canyon Project power will allow for a reduction in capacity due to generating unit outages maintenance schedules or reservoir drawdown. This reduction will be based on the ratio each entity's allocation of Boulder Canyon Project capacity bears to the total Boulder Canyon Project capacity marketed, multiplied by the amount of capacity removed from service, or not available because of reduction of effective head.

Section F. Energy Generation Deficit to Firm Commitments. Whenever actual generation in any year is less than the firm commitments (4,527.001 million kWh), such deficiency shall be borne by the holders of contracts in the ratio that the sum of the quantities of firm energy to which each contractor is entitled to the total firm commitments. At the request of any such contractor, Western will purchase energy to meet that contractor's deficiency at such contractor's expense.

Part VII. Nonfirm Power and Other Agreements

Section A. Short-Term Interruptible Power. Interruptible power may be available under contracts which permit curtailment of delivery by the Boulder City Area.

To the extent that capacity and energy in excess of long-term contract

commitments become available, short-term interruptible power may be offered on an if-, as-, and when-available basis. Contracts for short-term interruptible power will be offered on a seasonal or monthly basis as conditions permit.

Western will continue to engage in a fuel replacement program in the Boulder City Area. Purchased energy and project generated energy in excess of long-term contract commitments may be offered as fuel replacement energy.

Section B. Short-Term Firm Power. To the extent that capacity and energy in excess of long-term contract commitments become available, short-term firm power may be offered. Contracts for short-term firm power will be offered on a seasonal, monthly, or yearly basis as conditions permit.

Section C. Other Agreements. Western may as it deems reasonable and necessary enter into such other agreements as: transmission service agreements, interchange agreements, reserve agreements, load regulation agreements, exchange agreements, maintenance and emergency service agreements, power pooling agreements, or other transactions.

Part VIII. Condition of Delivery

Western, in cooperation with the contractor, will establish scheduling and accounting procedures based upon standard utility industry practices. These procedures shall be set forth in separate written instructions. Subject to Western's approval as to location and voltage, delivery will be made at Boulder City Area transmission system voltages, but not normally less than 69 kilovolts. Subject to Western's approval, deliveries will continue to be made at lower voltages at powerplant and substation locations to contractors already receiving such deliveries from Western.

Section A. Scheduling. Deliveries of Boulder City Area power shall be scheduled in advance in accordance with procedures set forth in written instructions. These procedures shall provide for the adoption of schedules to the needs of day-to-day or hour-by-hour operations. Said procedures shall also specify the conditions under which actual deliveries, which are greater or less than scheduled deliveries during the month of a particular season, shall be adjusted in later deliveries in subsequent months of that season. Except in unusual circumstances, Western will not permit energy allocated to a contractor for use within one season to be used in another season.

Section B. Accounting. Deliveries of Boulder City Area power will normally be accounted for on the basis of advance schedules, in accordance with the procedures set forth in written instructions. The written instructions shall include procedures for determining amounts of Boulder City Area power delivered to the contractor at each point of delivery and the procedures for delivery of losses.

Section C. Designated Points of Delivery. Delivery will be made at designated points on the Boulder City Area transmission system at rates of delivery not to exceed the available capability of the transmission system. The designated points of Appendix E, respectively, and may be modified as required.

The designation of delivery points in Appendix D and the transmission systems in Appendix E does not imply any obligation for Western to furnish additional facilities or to increase transmission or transformer capabilities at the designated points. Modifications to existing facilities and alternate or additional delivery points requested by the contractors may be permitted at the discretion of Western. Requests for taps on the Boulder City Area transmission system will be considered on a case-by-case basis.

Navajo power will be delivered at the McCullough and Westwing Substations and other points on the Central Arizona Project system as may be available. If the contractor cannot take delivery of Navajo power into its own system at these delivery points, transmission service arrangements to other delivery points will be the obligation of the contractor.

Boulder Canyon Project power will be delivered at Mead Substation and designated Hoover Switchyards. If a contractor cannot accept delivery of Boulder Canyon Project power at Mead Substation or the designated Hoover Switchyard, transmission service arrangements to other delivery points will be the obligation of the contractor.

Parker-Davis Project power will be delivered to designated points of delivery shown in Appendix D, except for those points denoted as Navajo and Boulder Canyon Project delivery points.

Section D. Conservation and Renewable Energy Programs. Each long-term firm power service contract shall contain an article requiring the development and implementation by the contractor of an energy conservation program.

On November 13, 1981, Western published in the **Federal Register** a notice of the "Announcement of Final Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Programs" (Vol. 46, No. 219). These guidelines outline the present requirements for Western's contractors to develop and implement their conservation and renewable energy programs. Each contractor's program will be in compliance with these guidelines.

Issued in Golden, Colorado, December 17, 1984.

William H. Clagett,

Acting Administrator.

Appendix A

Included in this Area the following:

A. All of the drainage area considered tributary to the Colorado River below a point 1 mile downstream from the mouth of the Paria River (Lee's Ferry).

B. The State of Arizona, excluding that portion lying in the Upper Colorado River Basin, except for that portion of the Upper Colorado River Basin in which the Navajo Generating Station is located. The Navajo Generating Station is included in the power marketing area as a resource only.

C. That portion of the State of New Mexico lying in the Lower Colorado River Basin and the independent Quemada Basin lying north of the San Francisco River drainage area.

D. Those portions of the State of California lying in the Lower Colorado River Basin and in drainage basins of all streams draining into the Pacific Ocean south of Calleguas Creek.

E. Those parts of the States of California and Nevada in the Lahontan Basin including the lying south of the drainages of Mono Lake, Adobe Meadows, Owens Lake, Amargosa River, Dry Lakes, and all closed independent basins or other areas in southern Arizona not tributary to the Colorado River.

Appendix B—Existing Parker-Davis Project Contractors

APPA—Arizona Power Pooling Association (Arizona)[1]
CRIR—Colorado River Indian Reservation (Arizona, California)
CRC—State of Nevada and its Colorado River Commission (Contractor for the State of Nevada)[2]
EAFB—Edwards Air Force Base (California)
ED-3—Electrical District Number Three (Arizona)
FMIT—Fort Mohave Indian Tribe (Arizona, California)
IID—Imperial Irrigation District (California)
SRP—Salt River Project (Arizona)

SCIP—San Carlos Irrigation Project (Arizona)
Thatcher—Town of Thatcher (Arizona)
WMIDD—Wellton-Mohawk Irrigation and Drainage District (Arizona)
YID—Yuma Irrigation District (Arizona)
YPG—Department of the Army, Yuma Proving Ground (Arizona)

[1] APPA Distribution:
1. MEC—Mohave Electric Cooperative (Allottee and Member of AEPCO)
2. Mesa—City of Mesa (Allottee and Principal of APPA)
3. AEPCO—Arizona Electric Power Cooperative, Inc. (Allottee and Principal of APPA)
a. Anza Electric Cooperative (California)
b. Duncan County Electric Cooperative (Arizona)
c. Graham County Electric Cooperative (Arizona)
d. Mohave Electric Cooperative (Arizona)
e. Sulphur Springs Valley Electric Cooperative (Arizona)
f. Trico Electric Cooperative (Arizona)
[2] CRC Contractors:
1. Overton Power District (Nevada)
2. Valley Electric Association (Nevada)
3. BMP Industrial Complex (Nevada)
a. Basic Management, Inc. (Nevada)
b. Flintkote Company (Nevada)
c. Kerr-McGee (Nevada)
d. Stauffer Chemical Company (Nevada)
e. Titanium Metals Corporation (Nevada)

Appendix C—Existing Boulder Canyon Project Contractors

MWD—Metropolitan Water District of Southern California (California)
LADWP—Department of Water and Power, the City of Los Angeles (California)
SCE—Southern California Edison Company (California)
Glendale—City of Glendale (California)
Pasadena—City of Pasadena (California)
Burbank—City of Burbank (California)
APA—Arizona Power Authority (Contractor for the State of Arizona) [1]

CRC—State of Nevada and its Colorado River Commission (Contractor for the State of Nevada) [2]

Boulder City—City of Boulder City (Nevada)

[1] APA Contractors:
1. Buckeye Water Conservation and Drainage District
2. Chandler Heights Citrus Irrigation District
3. Cortaroi-Marana Irrigation District
4. Electrical District Number 2, Pinal County
5. Electrical District Number 3, Pinal County
6. Electrical District Number 4, Pinal County
7. Electrical District Number 5, Maricopa County
8. Electrical District Number 5, Pinal County
9. Electrical District Number 6, Pinal County
10. Electrical District Number 7, Pinal County
11. Maricopa County Municipal Water Conservaiton District Number One
12. Ocotillo Water Conservation District
13. Roosevelt Irrigation District
14. Roosevelt Water Conservation District
15. Salt River Project
16. San Tan Irrigation District
17. Wellton-Mohawk Irrigation and Draninage District
[2] CRC Contractors:
1. Lincoln County Power District
2. Nevada Power Company
3. Overton Power District
4. BMP Industrial Complex
a. Basic Management, Inc.
b. Flintkote Company
c. Kerr-McGee
d. Stauffer Chemical Company
e. Titanium Metals Corporation

Appendix D—Designated Points of Delivery, Tap Points, and Voltages

	Kilovolts
Arizona:	
Adams Tap	115
Black Mesa	230
Bouse	161
Buckeye	161
Buckskin Tap	69
Bullhead Tap	69
Casa Grande	115
	12.5
Cochise	115
Coolidge	230
	115
	13.8
	12.5
Colorado Tap	69
Davis Switchyard	230
	69
Davis Tap	4.16
Duval-Warm Springs Tap	69
Eagle Eye	161
ED-2	115
	12.5
ED-4	115
	12.5
ED-5	115
Empire	115
Gila	161
	69
	34.5
Headgate Rock Tap	161
Hilltop Tap	230
Liberty	230
Marana	115
Maricopa	115
	69
	13.8
MEC Kingman Tap	69
Mesa	230
	69
Navajo Switchyard [1]	500
Nogales Tap	115
Oracle	115
Phoenix	161
	69
	12.5
Pinnacle Peak	230
Planet Tap	69
Prescott	230
	115
Round Valley	230
Saguaro Generating Station	115
Signal	115
	12.5
Tucson	115
	14.4
Wellton-Mohawk	161
	34.5
Westwing [1]	500
	230
Yuma Tap	34.5
Yuma Mesa	34.5
California:	
Blythe	161
Gene	230
Knob	161
Parker Switchyard	230
	161
	69
	34.5
Senator Wash	69
Nevada:	
Amargosa	138
Basic	230
	13.8
Boulder City Switchyard	69
	2.4
Boulder City Tap	230
Clark Tie	230
Hoover Switchyard [2]	287.5
	230
	138
	69
Mead [2]	230
McCullough Switchyard [1]	500
	230

[1] Navajo Delivery Points.
[2] Boulder Canyon Project Delivery Points.

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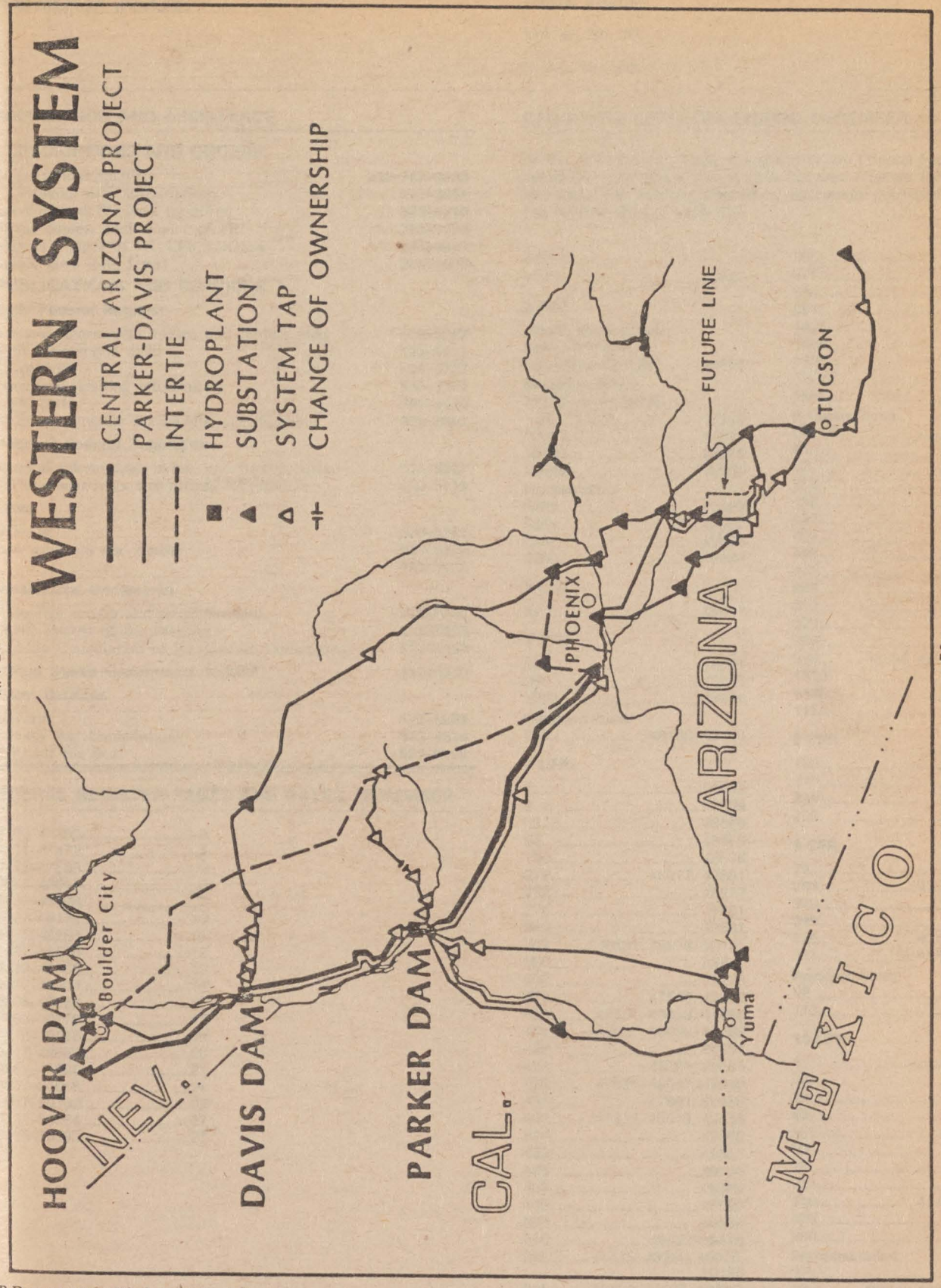
APPENDIX E



[FR Doc. 84–33766 Filed 12–27–84; 8:45 am]

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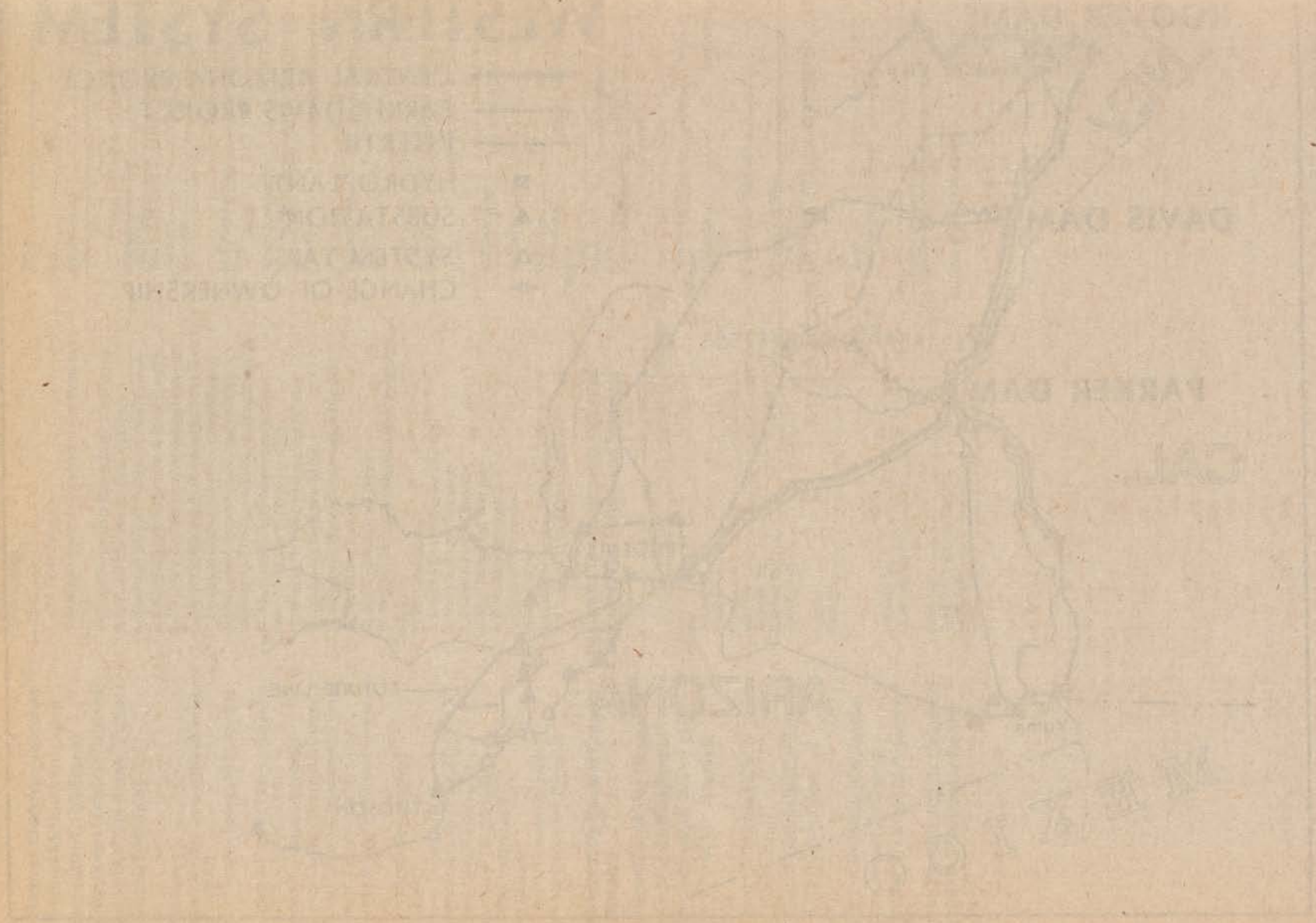

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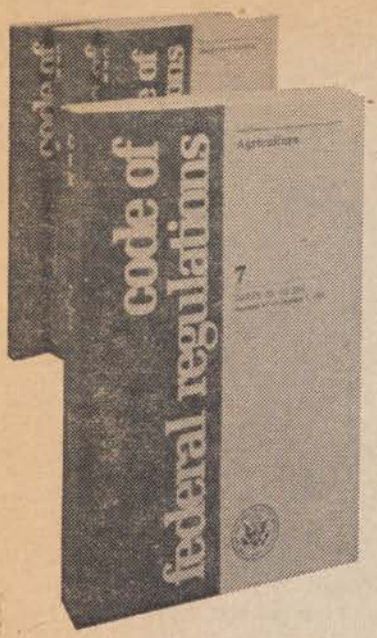

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